A RESOLUTION AWARDING A CONTRACT TO PURKISS ROSE/RSI FOR PROFESSIONAL LANDSCAPE ARCHITECTURAL SERVICES TO PREPARE A MASTER PLAN AND DESIGN DEVELOPMENT REPORT FOR GROGAN COMMUNITY PARK AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT.

WHEREAS, the city of Modesto owns the approximately 46 acre Grogan Community Park site located north of Sylvan Avenue and adjacent to the future Modesto City High School site on the west and Litt Road on the east, and

WHEREAS, this is the only community park site in the Village One Specific Plan, and

WHEREAS, the intent of this park is to provide the usual community park amenities along with numerous organized sports facilities, and

WHEREAS, the City now desires to have a Master Plan and Design Development Report prepared for this park, and

WHEREAS, through an RFP process, Purkiss Rose/RSI was determined to be the most qualified firm to prepare the Master Plan and Design Development Report, and

WHEREAS, Purkiss Rose/RSI has agreed to provide the services outlined in Exhibit “A” attached hereto and incorporated herein by reference at a cost not to exceed $106,575.00, and

WHEREAS, funds are budgeted in Capital Improvement Plan project 1350-310-M177, Sports Complex, and

WHEREAS, the Safety and Communities Committee met on February 3, 2003, and supported the recommendation to award a contract to Purkiss Rose/RSI for
professional landscape architectural services to prepare a Master Plan and Design Development Report for Grogan Community Park at a cost not to exceed $106,575.00,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves awarding a contract to Purkiss Rose/RSI for professional landscape architectural services to prepare a Master Plan and Design Development Report for Grogan Community Park at a cost not to exceed $106,575.00.

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 4th 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: Conrad, Fisher, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

Attest: JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney
EXHIBIT “A” or “Project”

Scope of Work
Grogan Community Park

Project Description:

Grogan Community Park is an approximately 46-acre (39-net) site located adjacent to the future James C. Enochs High School site, north of Sylvan Avenue and west of Litt Road in the northeastern part of the City of Modesto. The park site is bordered on the west by the school site and on the other 3 sides by agricultural land. The City desires to develop the site into a community park with emphasis on athletic fields. The anticipated construction budget for this park is approximately $11,240,000. The project will include the following:

1) Preparation of a Master Plan.
2) Public involvement in the design process.
3) Preparation of a Design Development Report that thoroughly describes the Master Plan and design intent so as to guide the development of working drawings.

The Master Plan phases for this project may include (but are not limited to):

Phase I
20 Acres to include - Site preparation, Grading, Drainage, Irrigation, Paving, Shaded picnic area and furnishings, Landscaping, Off-street parking, Play equipment, Utility/service buildings, Game courts, Security lighting, Athletic fields and facilities, Centralized restrooms, Court and athletic field lighting, Signage

Phase II
14 Acres to include - Site preparation, Grading, Drainage, Irrigation, Paving, Landscaping, Off-street parking for full build-out, Security lighting, Athletic fields and facilities, Conduit for lighting, Entry Features. 5 Acres of the above will be turf only for minimal use prior to the construction of the aquatic center and community center.

Phase III
Aquatics Center (approx. 2 acres)

Phase IV
Community Center (approx. 15,000 sq. ft. structure on - 3 acre site)
Professional Services to Include:

Task #1 – Master Plan Development

Total Cost Not To Exceed $80,000.00

1. Review project intent, scope, approach and schedule of work with City staff, City School District and Stakeholders, as directed. (Staff Meeting #1)

2. Collect and review physical limitations and opportunities of the existing site, including configuration, drainage, external influences, access and relationships with the adjacent high school and residential development. Landscape Architect will provide a Boundary and Topographical Survey and will identify all existing utilities, easements, drainage, facilities, etc. Submit an initial report on the findings for staff review and input.

3. Develop a method for community input in the design process and confirm meeting schedule with City staff. Prepare flyer to be mailed by City to interested citizens.

4. Evaluate collected data and formulate with City staff a park development program. (Staff Meeting #2)

5. Throughout the Master Plan development process the Landscape Architect should consult with the Aquatic Consultant and Architect for size of facilities, needs and relational layout. A floor plan for the Aquatic Center and Community Center will not be required.

6. Prepare a maximum of three (3) preliminary development studies depicting alternate solutions to program needs for review with City staff.

7. Prepare a preliminary cost estimate of proposed improvements for each of the alternate solutions. Include any anticipated additional services.

8. Meet and confer with City staff as directed and present three (3) rendered alternative studies and preliminary cost estimates for discussion and input. (Staff Meeting #3)

9. Present three (3) alternative studies for community review and input as directed by City. (Community Meeting #1)

10. Refine preferred concept into a preliminary site plan, depicting project scope, space requirements and functional relationships for review and comment by City staff.

11. Prepare itemized cost estimate of proposed improvements for the preliminary site plan. Present phasing strategy consistent with funding availability. Include any anticipated additional services.

12. Meet and confer with City staff as directed and present the preliminary site plan, proposed programs, preliminary cost estimate and phasing strategy for discussion and input (Staff Meeting #4)

13. Present preliminary site plan, rendered for public presentation, for review and comment to the general public. Receive final input on the refined plans, phasing strategy and proposed programs. (Community Meeting #2)
14. Prepare a Final Rendered Master Plan that reflects the consensus of Staff and community. Provide Rendered Master Plan (full size) to City. Also provide an Electronic Image of the Master Plan on Compact Disc to City which can be printed by the City in various sizes for public distribution and display.

Task #2 – Design Development Report  Total Cost Not To Exceed $14,000.00

1. Prepare final itemized estimates of probable cost for development and anticipate maintenance.

2. Prepare a comprehensive Design Development Report that will including a rendered Master Plan, no larger than 11” x 17”, and a narrative describing the design process, the functional intent and requirements of proposed improvements, a phasing program, environmental impacts associated with the project including any mitigation measures required (as developed by City staff), and a final cost estimate for construction and ongoing maintenance. The Design Development Report should be developed in order to guide the development of working drawings and specifications.


5. Present Design Development Report and Master Plan to the City Council at a public hearing for approval of Design Development Report and Master Plan and certification of Environmental Findings. Staff will assist in the presentation to City Council. (Community Meeting #3)

Proposed Compensation

The following fees are based on the scope of work described previously in Exhibit “A”. Payments will be made on a monthly basis when portions of the tasks are completed. The monthly billing should include billable work hours at the Hourly Rates included in Exhibit “B”, any sub-consultant bills at the Hourly Rates included in Exhibit “B”, and verifiable documentation on any reimbursable expenses incurred.

Task #1 – Master Plan Development (not to exceed) $ 80,000.00
Task #2 – Design Development Report (not to exceed) $ 14,000.00
Reimbursable Expenses (not to exceed budget) $ 7,500.00
Additional Services (not to exceed budget) $ 5,075.00

Total Contract Amount $ 106,575.00
Hourly Rates

The following hourly rates will be used for billable hours within this Agreement and for additional work requested and approved:

Purkiss Rose-RSI Landscape Architecture, Recreation and Park Planning
Principal ................................................ $ 135.00/hr.
Associate ................................................ $ 115.00/hr.
Project Manager ........................................ $ 95.00/hr.
Skate Park Designer .................................. $ 100.00/hr.
Project Captain ...................................... $ 80.00/hr.
Draftsperson .......................................... $ 70.00/hr.
Clerical and Word Processing Staff ............... $ 45.00/hr.

Crane Architectural Group, Architectural
Principal ................................................ $ 110.00/hr.
Staff Architect ........................................ $ 90.00/hr.
Project Designer .................................... $ 70.00/hr.
Project Manager .................................... $ 45.00/hr.
CADD Draftsman .................................... $ 35.00/hr.
Draftsman ............................................ $ 32.00/hr.
Clerical ................................................ $ 30.00/hr.

Aquatic Design Group, Aquatic Engineers
Principal ................................................ $ 125.00/hr.
Associate ............................................. $ 100.00/hr.
CAD Technician ...................................... $ 75.00/hr.
Graphics Technician ................................ $ 55.00/hr.
Clerical ............................................... $ 25.00/hr.

Consolidated Engineering, Electrical Engineers
Principal Engineer ................................... $ 100.00/hr.
Project Engineer .................................... $ 85.00/hr.
Design Engineer ..................................... $ 75.00/hr.
Design / Drafting ................................... $ 55.00/hr.
Clerical ............................................... $ 35.00/hr.

Thompson-Hysell Engineers, Civil Engineers
President, Vice President, Director of Engineering. $ 125.00/hr.
Director of Mapping .................................. $ 120.00/hr.
Sr. Project Manager .................................. $ 115.00/hr.
Project Manager ..................................... $ 105.00/hr.
Project Manager, Sr. Project Surveyor ............. $ 100.00/hr.
Mapping Supervisor, Project Surveyor, Sr. Project Engineer, Sr. Survey Analyst $ 100.00/hr.
<table>
<thead>
<tr>
<th>Position</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Designer</td>
<td>$95.00/hr.</td>
</tr>
<tr>
<td>Sr. Designer, Project Designer, Sr. Design Engineer</td>
<td>$90.00/hr.</td>
</tr>
<tr>
<td>Survey Analyst, Design Engineer, Designer</td>
<td>$85.00/hr.</td>
</tr>
<tr>
<td>Design Technician</td>
<td>$80.00/hr.</td>
</tr>
<tr>
<td>Assistant Engineer, Jr. Survey Analyst, Sr. CADD Technician</td>
<td>$75.00/hr.</td>
</tr>
<tr>
<td>Jr. Engineer, CADD Technician</td>
<td>$70.00/hr.</td>
</tr>
<tr>
<td>Research / Processing / Project Coordinator, Possessing Manager</td>
<td>$65.00/hr.</td>
</tr>
<tr>
<td>Jr. CADD Technician</td>
<td>$60.00/hr.</td>
</tr>
<tr>
<td>Engineering / Survey Aide, Office Work</td>
<td>$55.00/hr.</td>
</tr>
</tbody>
</table>
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-118

A RESOLUTION AWARDING A CONTRACT TO CALLANDER ASSOCIATES LANDSCAPE ARCHITECTURE, INC. FOR PROFESSIONAL LANDSCAPE ARCHITECTURAL SERVICES TO PREPARE A MASTER PLAN, DESIGN DEVELOPMENT REPORT AND CONSTRUCTION DOCUMENTS FOR FREEDOM NEIGHBORHOOD PARK AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT.

WHEREAS, the City of Modesto currently owns the approximately 7-acre Freedom Neighborhood Park (formerly Merle Neighborhood Park) site immediately to the south of Sharon Avenue and west of the future Sylvan Union Elementary School Site on the corner of Sharon Avenue and Fine Avenue, and

WHEREAS, development of this neighborhood park is expected to begin in spring of 2004, and

WHEREAS, in order to be prepared to begin construction in spring of 2004, the Master Plan, Design Development Report and Construction Documents must be completed by winter of 2003-2004, and

WHEREAS, following the City's standard RFP process, a three (3) member panel determined that Callander Associates Landscape Architecture, Inc. was the most qualified firm to complete this project, due to their vast experience in designing neighborhood parks, and

WHEREAS, Callander Associates Landscape Architecture, Inc. has agreed to provide the services outlined in Exhibit “A” attached hereto and incorporated herein by reference at a cost not to exceed $97,020.00, and

WHEREAS, the Safety and Communities Committee met on February 3, 2003, and supported the recommendation to award a contract to Callander Associates
Landscape Architecture, Inc. for professional landscape architectural services to prepare a Master Plan, Design Development Report and Construction Documents for Freedom Neighborhood Park at a cost not to exceed $97,020.00,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves award of a contract to Callander Associates Landscape Architecture, Inc. for professional landscape architectural services to prepare a Master Plan, Design Development Report and Construction Documents for Freedom Neighborhood Park at a cost not to exceed $97,020.00.

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 4th 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: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

Attest: Jean Zahr

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
EXHIBIT “A” or “Project”

Scope of Work
Freedom Neighborhood Park

Project Description:

The City of Modesto wishes to develop a neighborhood park adjacent to Freedom Middle School. The total site area is approximately 7 acres, along Sharon Avenue. The City envisions that the site is to be a neighborhood park with a construction budget of $805,000. Due to constraints on available funds, it is anticipated the construction will be phased in. The master plan, design development and construction documents will be comprehensive allowing for additive/deductive alternates and/or phasing. It is anticipated that park improvements will be as follows:

- Site preparation, grading and drainage.
- Pavement areas
  - pathways
  - play area border
  - pads for benches
  - pads for picnic tables
  - pad for one (1) shade structure
- One (1) Restroom foundation/pad with utility stubs.
- Landscaping including turf, trees, ground cover and shrubs.
- Automatic irrigation system including central control (with electrical connection).
- Electrical, sewer, water, storm drainage connections, and stub out when appropriate.
- Drinking fountain with water and sewer connection.
- Site furnishings.
- Conduit for future site electrical.
- Fencing.
- Play equipment including curb ramps and resilient surfacing.
- Water play feature.
- One (1) Restroom and / or utility building.
- Game courts (basketball, volleyball).
- Athletic fields (baseball, softball, and soccer).
- Picnic facilities (including one (1) shade structure, picnic tables, and barbecues).
- Security lighting. Ball field lighting is not part of the program.

All parking will be on street parking. A parking lot for the park is not part of the program.

Based on the above we have provided the following scope of services to be performed in chronological order. The items shown in bold-face italics represent documents to be provided to the City during that task.
**Professional Services to Include:**

**Task #1 – Master Plan Development**

Total Cost Not To Exceed $24,700.00

1.01 Review project intent, scope, approach and schedule of work with City staff, and others, as directed in a joint staff meeting to review project limits, contact information, scope, schedule, budget, regulatory items, approval processes, and other administrative procedures. Provide _written summary_ of conclusions.

1.02 Coordinate and obtain existing site and planning information from City and County records; prepare _base sheet_ for the site. Coordinate and provide topographic survey showing boundary data from title reports provided by the City (boundary survey not included); provide _topographic survey_.

1.03 Review physical limitations and opportunities of the existing site. Conduct site reconnaissance and walk the site to visually review apparent features, utilities, and character and context of the site; photograph the site and general vicinity for use in reviewing with City. Prepare and provide a conceptual level _opportunities and constraints map_ and _digital photo log_ to City staff.

1.04 Visit schools and parks in the surrounding neighborhoods and prepare an inventory of amenities of facilities; provide brief _photo log_ of facilities.

1.05 Develop a method for community input in the design process and confirm meeting schedule with City staff; prepare meeting _agenda_; prepare _flyer_ to be copied and mailed by City to interested citizens. City to provide postage.

1.06 Prepare two (2) preliminary _design plans_ depicting alternate solutions to program needs for review. Prepare one (1) typical concept level cost estimate.

1.07 Conduct work session with City staff to present the two (2) alternatives; develop consensus and provide written meeting _summary_.

1.08 Refine preliminary design plans as necessary.

1.09 Conduct interactive public workshop to present the above documents and concepts for community review and input; provide written meeting _summary_.

1.10 Review results of meeting and workshop with City staff in a single review session. At the review session, develop a consensus for proceeding. Prepare a meeting _summary_.

1.11 Refine the two (2) alternatives into a single _preliminary plan_ (black and white) for review and comment by City. Prepare up to three (3) cross _sections_ and an _enlarged plan_ of a selected key area; provide _image boards_ of proposed park improvements.

1.12 Refine documents as necessary.

1.13 Prepare a preliminary cost _estimate_ of proposed improvements for the total facility and present a plan for logical phase development. Include list of _prioritized additive_
alternates, any additional services, allowances for change orders and City administration, and other items as reviewed with City staff.

1.14 Revise community meeting flyer, prepare agenda and conduct a second interactive public workshop to present the color preliminary plan, cost estimates and related documents; facilitate consensus and provide written meeting summary.

1.15 Prepare a Final Rendered Master Plan that reflects the consensus of Staff and community. Provide Rendered Master Plan (full size) to City. Also provide an Electronic Image of the Master Plan on Compact Disc to City which can be printed by the City in various sizes for public distribution and display.

Task #2 – Design Development Report Total Cost Not To Exceed $5,300.00

2.01 Prepare a comprehensive design development report (DDR) that thoroughly describes the master plan and design intent so as to guide the development of the final construction documents. The report would include a rendered master plan (no larger than 11”x17”) and a narrative describing the functional intent and requirements of proposed improvements; environmental impacts associated with the projects; a phasing program; final cost estimate for construction and on-going maintenance.

2.02 Submit Draft Design Development Report for review and comment of City staff. Revise Report as directed by City staff.

2.03 Submit revised Design Development Report for review and comment of City staff. Prepare Final Design Development Report based on comments from City and Deliver one (1) photo ready copy and one (1) electronic file of the report on compact disc to City staff.

Task #3 – Construction Documents Total Cost Not To Exceed $49,700.00

3.01 Based on approved master plan, prepare preliminary (50% completion) construction plans, refined cost estimate and outline specifications. Deliver ten (10) sets of plans and specifications to City. City staff will require a minimum of two (2) weeks for review of 50% construction documents.

3.02 Conduct a single interdepartmental review session to review City comments. Prepare written summary.

3.03 Provide geotechnical evaluation of existing soils as warranted for pavements, minor grading, and building and pole foundation design. Submit geotechnical report; provide horticultural soils report for landscape soil preparation.

3.04 Prepare 90% level construction plans, outline specifications and refined cost estimates. Deliver ten (10) sets of plans and specifications to City. Prepare detailed cost estimates for all improvements as per City recommendations. City staff will require a minimum of three (3) weeks for review of 90% construction documents.
3.05 Based on comments received prepare 100% level construction plans, specs, and estimate. Plans will be prepared to allow for deductive and additive alternates or phased construction as necessary. City staff may require a minimum of one (1) week for review of 100% construction documents.

The construction documents for the park will include:

- grading and drainage plan (using 1' contours, scaled at 1”=40’ minimum)
- storm water pollution prevention plan
- site construction staking plan
- planting plan
- irrigation plan
- electrical plan
- details and specifications
- play equipment layout plan
- structural details
- technical specification
- bid form

3.06 Submit for review and make necessary modifications as part of final submittal.

3.07 Present *itemized final cost estimate* for construction and on-going maintenance for review.

3.08 Provide one (1) set of *final original plans and specifications* for reproduction and one (1) AutoCAD version 2002 or earlier, *drawings file*.

**Task #4 – Bidding and Construction Support**

4.01 Assist City staff in bidding process as required, including answering questions from bidders.

4.02 Attend pre-construction conference.

4.03 Review and process all *shop drawings and submittals* required by technical specifications.

4.04 Provide site reviews and prepare *reports* on construction progress and quality with recommendations for correction of any deficiencies (approximately four (4) field meetings).

4.05 Participate in the review of interim pay requests, if requested by the City.

4.06 Assist in determining and processing requests for information and change orders.

4.07 Make final review and *report* on completed project (one field meeting).
**Proposed Compensation**

The following fees are based on the scope of work described previously in Exhibit “A”. Payments will be made on a monthly basis when portions of the tasks are completed. The monthly billing should include billable work hours at the Hourly Rates included in Exhibit “B”, any sub-consultant bills at the Hourly Rates included in Exhibit “B”, and verifiable documentation on any reimbursable expenses incurred.

| Task #1 – Master Plan Development (not to exceed) | $24,700.00 |
| Task #2 – Design Development Report (not to exceed) | $5,300.00 |
| Task #3 – Construction Documents (not to exceed) | $49,700.00 |
| Task #4 – Bidding and Construction Support (not to exceed budget) | $7,050.00 |
| Reimbursable Expenses (not to exceed budget) | $5,650.00 |
| Additional Services (not to exceed budget) | $4,620.00 |
| **Total Contract Amount Not to Exceed** | **$97,020.00** |
# Exhibit “B”

## Hourly Rates
The following hourly rates will be used for billable hours within this Agreement and for additional work requested and approved:

### Callander Associates Landscape Architecture, Inc., Recreation and Park Planning

<table>
<thead>
<tr>
<th>Position</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Principal</td>
<td>$170/hour</td>
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<tr>
<td>Principal</td>
<td>$149/hour</td>
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<tr>
<td>Senior Associate</td>
<td>$132/hour</td>
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<tr>
<td>Associate 1</td>
<td>$128/hour</td>
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<tr>
<td>Associate 2</td>
<td>$106/hour</td>
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<tr>
<td>Associate 3</td>
<td>$96/hour</td>
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<tr>
<td>Landscape Architect 1</td>
<td>$92/hour</td>
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<tr>
<td>Landscape Architect 2</td>
<td>$85/hour</td>
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<tr>
<td>Senior Principal Landscape Architect</td>
<td>$79/hour</td>
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<tr>
<td>Construction Manager</td>
<td>$92/hour</td>
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<tr>
<td>Assistant 1</td>
<td>$75/hour</td>
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<tr>
<td>Assistant 2</td>
<td>$68/hour</td>
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<tr>
<td>Assistant 3</td>
<td>$59/hour</td>
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<tr>
<td>Technician</td>
<td>$51/hour</td>
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<tr>
<td>Word Processor</td>
<td>$75/hour</td>
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<td>Project Assistant</td>
<td>$75/hour</td>
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### Hawkins & Associates, Land Surveyor

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<th>Hourly Rate</th>
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<tbody>
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<td>Land Planning</td>
<td>$100/hour</td>
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<tr>
<td>Civil Engineering</td>
<td>$95/hour</td>
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<tr>
<td>Project Manager</td>
<td>$80/hour</td>
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<tr>
<td>Associate Engineer</td>
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<td>Design Technician</td>
<td>$65/hour</td>
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<td>CADD Draftsman</td>
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### Wallace-Kuhl & Associates, Inc., Geotechnical Sub-consultant

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<th>Position</th>
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<tr>
<td>Soil Tester</td>
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<tr>
<td>Project Manager</td>
<td>$90/hour</td>
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<tr>
<td>Staff Engineer or Geologist</td>
<td>$95/hour</td>
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### Zeiger Engineers, Inc., Electrical Engineer

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<th>Position</th>
<th>Hourly Rate</th>
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<tbody>
<tr>
<td>Expert Witness</td>
<td>$239/hour</td>
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<tr>
<td>Principals</td>
<td>$155/hour</td>
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<tr>
<td>Senior Engineers</td>
<td>$115/hour</td>
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</table>

### Carlton Engineering, Inc., Structural Engineer

<table>
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<tr>
<th>Position</th>
<th>Hourly Rate</th>
</tr>
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<tbody>
<tr>
<td>Principal</td>
<td>$173/hour</td>
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<tr>
<td>Associate Principal</td>
<td>$139/hour</td>
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<tr>
<td>Senior Engineer</td>
<td>$128/hour</td>
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<tr>
<td>Sr. Project Engineer</td>
<td>$116/hour</td>
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<tr>
<td>Project Engineer</td>
<td>$105/hour</td>
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<tr>
<td>Senior Staff Engineer</td>
<td>$93/hour</td>
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<tr>
<td>Senior Staff E.I.T.</td>
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</tr>
<tr>
<td>Staff E.I.T.</td>
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<tr>
<td>Agency Liaison</td>
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<tr>
<td>Project Facilitator</td>
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<tr>
<td>Senior Special Inspector</td>
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<tr>
<td>Staff Special Inspector</td>
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<tr>
<td>Sr. Special Inspector w/ Equip.</td>
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<tr>
<td>Staff Special Inspector w/ Equip.</td>
<td>$72/hour</td>
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<td>CAD Designer</td>
<td>$82/hour</td>
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<tr>
<td>Senior Draftsperson</td>
<td>$74/hour</td>
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<td>Staff Draftsperson</td>
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<td>Junior Draftsperson</td>
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<td>Clerical</td>
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MODESTO CITY COUNCIL
RESOLUTION NO. 2003-118A

A RESOLUTION AMENDING THE CAPITAL IMPROVEMENT PROGRAM TO CHANGE THE NAME OF PROJECT 1350-310-Q233 FROM MERLE NEIGHBORHOOD PARK TO FREEDOM NEIGHBORHOOD PARK, AND TRANSFERRING $28,000 FROM PROJECT 1350-310-N445, PARK MASTER PLANNING/CONSTRUCTION DOCUMENTS TO 1350-800-8000-8003, THE FUND 1350 RESERVE, AND APPROPRIATING $28,000 FROM 1350-800-8000-8003 TO 1350-310-Q233, MERLE NEIGHBORHOOD PARK.

WHEREAS, the City of Modesto currently owns the approximately 7-acre Freedom Neighborhood Park (formerly Merle Neighborhood Park) site immediately to the south of Sharon Avenue and west of the future Sylvan Union Elementary School Site on the corner of Sharon Avenue and Fine Avenue, and

WHEREAS, development of this neighborhood park is expected to begin in spring of 2004, and

WHEREAS, City Council Policy No 6.005 “Naming of City Parks” states that “Parks located adjacent to schools shall be given the same name as the school…” and in accordance with this existing City Council Policy, staff is recommending changing the name of this Park from Merle Neighborhood Park to Freedom Neighborhood Park., and

WHEREAS, in order to be prepared to begin construction in spring of 2004, the Master Plan, Design Development Report and Construction Documents must be completed by winter of 2003-2004, and

WHEREAS, following the City’s standard RFP process, a three (3) member panel determined that Callander Associates Landscape Architecture, Inc. was the most qualified firm to complete this project, due to their vast experience in designing neighborhood parks, and
WHEREAS, Callander Associates Landscape Architecture, Inc. has agreed to provide the Master Plan, Design Development Report and Construction Documents at a cost not to exceed $97,020.00, and

WHEREAS, $80,000 is available in Capital Improvement Project 1350-310-Q233, and

WHEREAS, in order to fully fund the preparation of the Master Plan, Design Development Report and Construction Documents and related staff time, $108,000 is needed in project 1350-310-Q233, and

WHEREAS, an additional $28,000 is available in project 1350-310-N445, Parks Master Planning/Construction Documents, which will be transferred to the Fund 1350 Reserve and appropriated to project Q233, and

WHEREAS, the Safety and Communities Committee met on February 3, 2003, and supported the recommendation to change the name of project 1350-310-Q233 from Merle Neighborhood Park to Freedom Neighborhood Park and to transfer $28,000 from project 1350-310-N445 to 1350-310-Q233 to fully fund the preparation of the Master Plan, Design Development Report and Construction Documents and related staff time for Freedom Neighborhood Park,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves amending the Capital Improvement Program to change the name of project 1350-310-Q233 from Merle Neighborhood Park to Freedom Neighborhood Park, and transferring $28,000 from project 1350-310-N445, Park Master Planning/Construction Documents to 1350-800-8000-8003, the Fund 1350 Reserve and appropriating $28,000 to project 1350-310-Q233.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th 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: Conrad, Fisher, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

Attest: 

JEAN ZAHR City Clerk

APPROVED AS TO FORM:

By: 

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-119

A RESOLUTION AUTHORIZING THE MAYOR TO SEND A LETTER TO THE STATE CONTROLLER REQUESTING THAT THE CONTROLLER INVESTIGATE THE USE OF LANDFILL ENTERPRISE FUNDS FOR PURPOSES NOT RELATED TO THE OPERATION OF THE LANDFILL, POSSIBLE OVERCHARGES AT THE FINK ROAD LANDFILL, AND PAYMENT OF MORE THAN THE APPRAISED VALUE OF PROPERTY PURCHASED WITH ENTERPRISE FUNDS

WHEREAS, at the February 25, 2003 Council meeting, the Council considered information presented to it regarding tipping fees at the Fink Road Landfill and the use of funds generated by those tip fees, and

WHEREAS, the Council directed that a resolution be prepared authorizing the Mayor to send a letter to the State Controller requesting an investigation of the Fink Road Landfill Enterprise Fund, and

WHEREAS, a draft of this letter is shown as Exhibit A..

NOW, THEREFORE, BE IT RESOLVED that the Modesto City Council hereby authorizes the Mayor to send the attached letter to the State Controller, after the March 4, 2003 meeting of the City Council, requesting that the Controller investigate the following actions by Stanislaus County: use of the Fink Road Landfill Enterprise Fund for purposes not related to landfill operations; possible overcharges on tipping fees at the Fink Road Landfill which led to the accumulation of a $19.2 million pooled cash balance, and; use of $14 million in Landfill Enterprise Funds to buy land that was appraised at $10.75 million, the majority of which appears to not be necessary for landfill expansion purposes to meet county disposal needs.

RESCINDED
MAR 11 2003

03/04/03/E&T/J Reed
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of March, 2003, by Councilmember Jackman, 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, Jackman, Keating, O'Bryant, Mayor Sabatino

**NOES:** Councilmembers: Conrad

**ABSENT:** Councilmembers: Frohman

**ATTEST:**

JEAN ZAHR, City Clerk

(SEAL)

**APPROVED AS TO FORM:**

By: MICHAEL D. MILICH, City Attorney

RESCINDED
MAR 11, 2003
THIS RESOLUTION WAS RESCINDED BY MODESTO CITY COUNCIL RESOLUTION NO. 2003-119
March 4, 2003

Steve Westley
State Controller
State of California
P.O. Box 942850
Sacramento, CA 94250-5872

Dear Controller Westley:

Enclosed please find a history of events and transactions surrounding the Stanislaus County Fink Landfill Enterprise Fund.

If you need additional information, please let us know and it will be made available to you.

Sincerely,

CARMEN SABATINO, Mayor
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-120

A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF MICHAEL CONTENT FROM THE HOUSING REHABILITATION LOAN COMMITTEE, EFFECTIVE MARCH 4, 2003

WHEREAS, MICHAEL CONTENT was appointed a member of the Housing Rehabilitation Loan Committee on March 6, 2001; and

WHEREAS, MICHAEL CONTENT has tendered his resignation from the Housing Rehabilitation Loan Committee, effective March 4, 2003; and

WHEREAS, MICHAEL CONTENT has been a devoted and sincere public servant and has contributed greatly to our civic progress,

NOW, THEREFORE, BE IT RESOLVED that the resignation of MICHAEL CONTENT from the Housing Rehabilitation Loan Committee be, and hereby is accepted with regret.

BE IT FURTHER RESOLVED that the Council of the City of Modesto, on its own behalf, and on behalf of the citizens of this City, hereby expresses its sincere appreciation to MICHAEL CONTENT for her outstanding service to the community.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th 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: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

APPROVED AS TO FORM: Michael D. Milich, City Attorney

ATTEST: JEAN ZAHR, City Clerk

03/04/03/CMOE Puckett
A RESOLUTION APPROVING A COST-SHARING AGREEMENT WITH STANISLAUS COUNTY FOR THE CABLECASTING OF CERTAIN COUNTY PROGRAMMING, INCLUDING ALL EMERGENCY BROADCASTS, ON A GOVERNMENT CHANNEL AVAILABLE THROUGH THE CITY’S FRANCHISE AGREEMENT WITH COMCAST CABLE AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAME.

WHEREAS, the City of Modesto and the Stanislaus County Office of Education, hereinafter referred to as “SCOE,” are parties to an existing agreement allowing the City to establish a Master Control Room in the basement of the SCOE building, and

WHEREAS, City has negotiated a cable television franchise agreement with Comcast Cable which requires the City to establish its own Master Control Room for the cable casting of public, educational, and government programming, and

WHEREAS, City has agreed to cablecast certain County programming, including all emergency broadcasts, on a government channel available through the City’s franchise agreement with Comcast Cable, and

WHEREAS, City has agreed to provide the County with staff and facilities for the operation and maintenance of a government channel available through the County’s franchise agreement with Charter Communications, and

Whereas, City agrees to accept from County the sum of $198,000 during the first year of the term of this Agreement as full remuneration for establishing and performing all services and furnishing all staffing, facilities and materials for performance by the City of all its duties and obligations under this agreement, and
Whereas, City agrees to accept from the County the sum of $128,000 annually as full remuneration for performing all services and furnishing all staffing, facilities and materials for performance by the City of all its duties and obligations under this agreement, and

WHEREAS, this contract is retroactive to July 2, 2002 and will continue for a 10-year period, and

WHEREAS, City agrees to the terms and conditions as set forth in “Attachment A,” the Agreement between the City of Modesto and County of Stanislaus for the operation of Government and Educational Programming on AccessModesto Community Television, and

WHEREAS, the City and County believe that by working together in a cooperative effort both entities will be able to better meet their respective needs for government and educational programming in a way, which will result in increased operational efficiency thereby better serving the public, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with the County of Stanislaus commencing on March 4, 2003, and causing such agreement to be retroactive to July 2, 2002.

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 4th 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: Conrad, Fisher, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

ATTEST: [Signature]

APPROVED AS TO FORM:

By: [Signature] [Name]

MICHAEL D. MILICH, City Attorney
ATTACHMENT A

AGREEMENT BY AND BETWEEN THE CITY OF MODESTO AND COUNTY OF STANISLAUS FOR THE OPERATION OF GOVERNMENT AND EDUCATIONAL PROGRAMMING ON ACCESSMODESTO COMMUNITY TELEVISION.

THIS AGREEMENT is made and entered into in the City of Modesto, State of California, this 4th day of March, 2003, by and between the CITY OF MODESTO, a Charter City and municipal corporation of the State of California, hereinafter referred to as “City,” and the County of Stanislaus, a political subdivision of the State of California, hereinafter referred to as “County.”

This Agreement is made with respect to the following recitals:

WHEREAS, City and the Stanislaus County Office of Education, hereinafter referred to as “SCOE,” are parties to an existing agreement allowing the City of Modesto to establish a Master Control Room in the basement of the SCOE building, and

WHEREAS, City has negotiated a cable television franchise agreement with Comcast Cable which requires the City to establish its own Master Control Room for the cable casting of public, educational, and government programming, and

WHEREAS, City has agreed to cablecast certain County programming, including all emergency broadcasts, on a government channel available through the City’s franchise agreement with Comcast Cable, and

WHEREAS, City has agreed to provide the County with staff and facilities for the operation and maintenance of a government channel available through the County’s franchise agreement with Charter Communications, and
WHEREAS, this contract is retroactive to July 2, 2002, and

NOW, THEREFORE, it is mutually agreed by and between both parties hereto as follows:

1. City agrees to provide staff, operate and maintain the government channels used by both the City and County. All employees shall not be considered employees of Stanislaus County and shall not be entitled to any benefits that are now, or may be in the future, Stanislaus County employee benefits.

2. City may enter into agreement with a third party or parties to operate the Master Control Room, which broadcasts the government channel(s). If the City contracts with a third party, the City shall require the third party to defend, indemnify and hold County harmless from and against any claim for any damages or liability of any kind that arises directly, indirectly or in any other manner out of the performance of this agreement or operation of the Master Control Room.

3. Day-to-day operations of the Master Control Room shall be vested in the control of the City and may be assigned to a third party or parties “independent contractor” hired by the City. The independent contractor shall report solely to the City, through its City Manager or his/her duly authorized designee, except for the County’s government channel that is exclusively controlled by and the responsibility of the County through the Charter Communications Cable System. Notwithstanding the above, the independent contractor hired by the City to run the day-to-day operations shall be responsive to and assist County in carrying out the terms and obligations set forth in this Agreement between the City and County.
4. City shall have full control of and responsibility for all programming placed on the City's government channel.

5. County shall have full control of and responsibility for all programming placed on the County's government channel.

6. City shall provide adequate time for County Emergency Broadcasting Announcements on the public, education and government channels.

7. The City and County agree that political endorsements and/or political advertising material, outside of formal debates, is prohibited on the Education/Government channels operated by both the City and County. Any such programming may be directed to the City’s Public Access Channel or any other public access channel provided within Stanislaus County.

8. City agrees to provide County with ample and fairly allocated access to cable capacity on the City’s government channel for programming to meet the needs and interests of the residents of the City of Modesto, which will include all regularly and specially scheduled Stanislaus County Board of Supervisors meetings, Stanislaus County Planning Commission meetings, specially scheduled Stanislaus County Department programs, and/or other County special programs or events.

9. City agrees to provide County with ample and fairly allocated access to cable capacity on the City’s education channel for programming to meet the needs and interests of the residents of the City of Modesto, which will include specially scheduled Stanislaus County Department programs and other County special programs or events. In exchange, the County agrees to provide ample and fairly allocated access to cable capacity on the County’s government channel for
Stanislaus County Office of Education programming and City of Modesto programming that is considered a benefit to all residents of Stanislaus County.

10. City shall provide to the County a camera crew to produce, cablecast and/or videotape the following meetings originating from the basement chambers of Tenth Street Place, Modesto Centre Plaza, Modesto Police Department, or the Stanislaus County Office of Education: All regularly and specially scheduled Stanislaus County Board of Supervisors meetings, Stanislaus County Planning Commission meetings, and specially scheduled Stanislaus County Department programs (up to six (6) per year upon request).

11. City shall provide production and management of video bulletin boards in substantially the same manner for both City and County government channels.

12. City agrees to maintain regular hours of operation of the Master Control Room provided pursuant to the SCOE agreement as follows:
   a. Monday through Friday 8 am – 5 pm for Tape Drop-Off for Public
   b. Monday through Friday 10 am – 7 pm for Master Control Room Operation
   c. Monday through Saturday as needed for Education/Government programming
   d. Saturday and Sunday – Open only for Master Control Room Operation
   e. On-Call – 24 hours per day and 365 days per year to oversee the use of the facility and provide technical management as needed

13. City agrees to provide adequate notice on the City's government channel of County programs and shall allow County to place adequate notices and announcements during County programs.

14. County agrees to assume all costs for production beyond the agreed upon production provided in the contract with the City.
15. Information necessary to the creation of the government video bulletin boards shall be submitted by the County to the City at least ten (10) days in advance of the requested air time. City agrees to make a good faith effort to include such County information if submitted after the ten (10) day notice period.

16. City shall duplicate tapes of all regularly and specially scheduled Stanislaus County Board of Supervisors meetings, Stanislaus County Planning Commission meetings, and specially scheduled Stanislaus County Department programs as requested by the County, and provide copies of those meetings to the Stanislaus County Board’s Office and store master copies of those meetings in the Master Control Room Library. Master copies shall not be discarded or destroyed without the prior written consent of the Clerk of the Board to the City Manager’s Office and Board of Supervisors Office.

17. City agrees to accept from County the sum of $198,000 during the first year of the term of this Agreement as full remuneration for establishing and performing all services and furnishing all staffing, facilities and materials for performance by the City of all its duties and obligations under this agreement, with the exception of all equipment related to the County’s channel provided by Charter Communications and all equipment related to the interconnect between Charter Communications and Comcast, Inc. This sum shall be paid in one lump sum, within thirty (30) days of approval of this Agreement by the Stanislaus County Board of Supervisors.

18. City agrees to accept from the County the sum of $128,000 annually as full remuneration for performing all services and furnishing all staffing, facilities and materials for performance by the City of all its duties and obligations under this
agreement. This will be considered the “baseline” amount for the contract. This annual sum shall be paid on July 2, each year for the duration of this Agreement. All payments shall be paid to the City within thirty (30) days following date of receipt. A one and one half-percent charge will assess on any late payments.

19. County accepts responsibility for all costs related to the necessary equipment needed to operate the County’s channel provided by Charter Communications and all equipment related to the interconnect between Charter Communications and Comcast, Inc. and will provide the City with an inventory of all equipment installed in the Master Control Room for such purpose.

20. During the term of the agreement, the City and/or County may require an audit of the financial operations of the Master Control Room, and upon mutual agreement, determine a new “baseline” charge. In the event that actual costs exceed projected costs, the sum set forth herein shall be subject to renegotiation between the parties. In the event that the costs of creating the Master Control Room are less than currently anticipated with respect to either party, such funds shall be retained by City for the sole purpose of maintaining the Master Control Room.

21. The parties agree to split the operating costs of the Master Control Room equally. Such costs shall be set forth in an annual budget to be prepared by the City. All funds provided by either party for the operation of the Master Control Room shall be utilized in accordance with the budget presented by City and approved by both the Modesto City Council and the Stanislaus County Board of Supervisors. The funds paid for operating costs by the parties will be used to provide management of the educational and government cable television channels and video production services as outlined previously in this Agreement.
22. City agrees to submit to County a final accounting of all revenues and expenses at the end of each year.

23. If City enters into cost-sharing agreement with any other agency for the operation of the Master Control Room, City agrees that it will convene a meeting with the County to determine a new "baseline" charge. In determining a new baseline, the City shall be compensated a fee equal to ten (10%) percent of operating expenses to compensate City for administrative overhead costs for all time spent by City staff, the City Manager's office, City Attorney's office, accounting, budgeting and administrative office space and facilities.

23. In the event that Comcast Cable reassigns channel numbers from the existing City controlled channel(s) to some new and different channel numbers, County shall not object to such reassignment. County acknowledges and agrees to an anticipated change in channel designations by the cable provider.

24. The City shall assume all liability related to the negligent maintenance of the Master Control Room, and shall indemnify and hold harmless County from and against all claims, damages, losses, liabilities, expenses and other costs including litigation costs and attorneys fees arising out of, or resulting from the City's negligent maintenance of the Master Control Room. City shall defend all claims arising from bodily injury or property damage relating to the maintenance of the Master Control Room except as to claims arising from negligent acts of the County, its agents, officers, and employees, or hazardous conditions caused by the City, its agents, officers, and employees. In the event that liability shall arise from the combined negligence of the parties, neither party shall have indemnity rights under this paragraph against the other. In the event of a claimed default or
claimed breach by either party of any covenant or condition contained in this Agreement, the parties agree to submit all disputes, controversy, differences or deadlocks in resolving issues which require an agreement of the parties relating to or arising out of this Agreement, that cannot be resolved by discussions between City-County staff for resolution initially to the City Manager of the City of Modesto and the Chief Executive Officer for the County of Stanislaus. If the City Manager and Chief Executive Officer of the County are unable to resolve the matter, then the parties shall agree on an arbitor and shall submit the matter to binding arbitration. If the parties are unable to agree on an arbitor, then the parties shall submit to binding arbitration administered by the Judicial Arbitration and Mediation Services, Inc. ("JAMS") unless the parties involved agree to another alternative dispute resolution method.

25. **Initiation of Arbitration.** Arbitration shall be initiated in the following manner:

25.1 **Initiating Party.** Any party may initiate the arbitration by serving the other party or parties with a demand for arbitration by registered, certified or FedEx mail. The demand for arbitration shall state the nature and amount of the claim, if applicable, or otherwise describe with reasonable particularity the nature of the dispute or controversy and the relief sought. Unless the parties agree on a non-JAMS arbitrator, the initiating party shall file a copy of the demand at any regional office of JAMS, together with the appropriate filing fee.

25.1.1 **Response.** If the responding party or parties desire to file a response and/or counterclaim, they must do so within twenty (20) days of service of the demand. Failure to file a counterclaim, they must do so within twenty
(20) days of service of the demand. Failure to file a counterclaim or response will not operate to delay the arbitration proceedings.

25.1.2 No Further Claims. After the filing of the claim, response and counterclaim, no further claims or counterclaims may be made except on motion to the arbitrator.

25.2 Appointment and Powers of Arbitrator.

25.2.1 Choosing an Arbitrator. If the parties are unable to agree on the choice of an arbitrator within twenty (20) days from service of the notice and demand for arbitration, then any party may request from JAMS a list containing at least ten (10) names of available arbitrators, accompanied by their resumes, if available. Each party shall have ten (10) days from mailing of the list in which to cross off the names of not more than four (4) arbitrators they deem objectionable, number the remaining names to indicate the order of preference and return the list to JAMS. If a party does not return the list within ten (10) days, then all persons named therein shall be deemed acceptable to that party. From among the persons who have been approved on the lists of all parties, and in accordance with the designated order of mutual preference, JAMS shall invite an arbitrator to serve. If acceptable arbitrators are unable to serve, or if any other reason the appointment cannot be made from the submitted lists, then JAMS shall have the power to make the appointment from among other retired judges on the panel, without the submission of any additional list.

25.2.2 Powers of Arbitrator, Generally. Subject to Section 25.2.4, the arbitrator shall have full power to make such regulations and to give all orders and
directions as he or she shall deem just and appropriate, not only in respect to the matters, disputes and claims submitted for decision, but also with respect to the mode and times of executing and performing any of the acts, deeds or other matters which may be directed to be done or awarded.

25.2.3. Production of Books and Records. The arbitrator shall have the authority and power to request the production of any books or records in the possession or control of any of the parties, and to order that any party in the meantime shall have access to and be permitted to inspect and take copies of all or any of the same relating to the matters in dispute.

25.2.4. Grant of Relief. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this Agreement, including, but not limited, injunctive relief and/or specific performance, provided, however, that the Arbitrator shall not be entitled to grant injunctive relief of any kind to any party which disrupts or interferes with the provision of cable television programming pursuant to this Agreement.

25.2.5. Proceeding Ex Parte. Should any party refuse or neglect to furnish the arbitrator with any papers or information demanded, or fail to attend hearings, the arbitrator is empowered by all parties to proceed ex parte.

25.3. Costs and Fees. Each party to the arbitration shall be responsible for its own costs and expense of the arbitration and the costs and fees of JAMS shall be borne equally by the parties to the arbitration.

25.4.1. Pre-hearing. Once the arbitrator is chosen, the Arbitration Administrator at JAMS may be authorized and directed upon application of any party to schedule a pre-hearing conference with the arbitrator for the purpose of narrowing the issues, establishing a discovery schedule, arranging an acceptable procedure for any law and motion proceedings and in all respects arranging for the most expeditious hearing possible of the matters in dispute.

25.4.2. Discovery. Discovery shall be at the discretion of the arbitrator and allowed only upon a showing of good cause utilizing the following guidelines.

25.4.2.1. Arbitrator’s Discretion. The arbitrator shall have discretion to order pre-hearing exchange of information, including, but not limited to, the production of requested documents and exchanges of summaries of testimony of proposed witnesses.

25.4.2.2. Depositions. Each party may depose no more than three non-expert witnesses, whether they are party or nonparty witnesses. Any such depositions shall be completed no later than ten (10) days prior to the arbitration hearing. Notice of deposition need not comply with the formal requirements of California law, and may consist of a letter from one party’s counsel to the other counsel, but such notice shall be faxed or hand-delivered at least ten (10) days prior to the scheduled deposition. The parties’ counsels shall endeavor in good faith to schedule and coordinate depositions in the most efficient manner possible.
25.4.2.3. Interrogatories. No party may serve any interrogatories on another party.

25.4.2.4. Expert Witnesses. There shall be an early and prompt designation of expert witnesses who may be called upon to testify at the arbitration hearing. Their depositions and all other discovery shall be allowed only upon a showing of good cause.

25.4.3. Evidence. Judicial rules relating to the order of proof, the conduct of the hearing and the presentation and admissibility of evidence shall not be applicable in this proceeding. Any relevant evidence, including hearsay, shall be admitted by the arbitrator if it is the sort of evidence upon which responsible persons are customarily to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law.

25.4.4. Location and Time of Hearing. The arbitration hearing shall be conducted in Modesto, California, unless the parties agree upon another location. The arbitrator shall fix the time for hearing and provide each party with at least fifteen (15) days written notice thereof.

25.4.5. Counsel. Any party may be represented by counsel in the arbitration.

25.4.6. Time Limits. To the extent possible, the arbitration shall be scheduled on consecutive days from 9:00 A.M. to 5:00 P.M., with a one-hour lunch break. The award shall be made by the arbitrator on or before thirty (30) days after final submission of all matters.

25.4.7. Reasoned Opinion: Jurisdiction. In rendering the award, the arbitrator shall set forth the reasons for his or her decision. The arbitrator shall follow the substantive law and the rules of equity of the State of
California, including the provisions of California law dealing with arbitration as they exist at the time of the arbitration except to the extent such provisions are inconsistent with this Agreement. The arbitrator may grant any remedy or relief inconsistent with this Agreement. The arbitrator may grant any remedy or relief that the arbitrator determines to be just and reasonable, except injunctive relief as set forth in Section 25.2.4, according to the applicable laws and within the scope of this Agreement.

25.5. Fees and Costs. Attorneys’ fees, costs and expenses incurred in connection with the arbitration shall be awarded in accordance with the provision of this Agreement, and in accordance with the provisions of California law and the rules of practice and procedure of JAMS to the extent such rules do not conflict with this Agreement.

25.6. Additional Procedures. The foregoing procedures shall be supplemented by the rules of practice and procedure of JAMS in effect at the time of the arbitration to the extent such rules do not conflict with anything stated above.

25.7. Other Relief. The foregoing provisions for non-binding arbitration shall not prevent any party from seeking relief from a court of competent jurisdiction in the event of a breach or other conduct by any party which threatens the innocent party with irreparable injury. All parties agree to waive any and all claims to injunctive relief.

26. Should any part, term or provision of the Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or
otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

27. This Agreement shall not be assignable.

This Agreement is effective as of the date first written above and will continue in effect for a period of ten (10) years.

28. This Agreement may be modified and amended at any time by the mutual agreement of the parties in writing.

29. This Agreement may be terminated prior to its term in the event of the occurrence of any of the following:

1. County fails to meet its financial obligations for services rendered.

2. City fails to perform its duties and obligations as set forth in the terms of this Agreement.

3. Mutual written agreement of the parties.

30. At all times during the course of this Agreement and upon termination or cancellation of this agreement, all equipment, improvements and personal property of any kind located on the property described herein shall be the sole property of the City, except for the equipment purchased by the County for the sole purpose of broadcasting the County’s government channel on the Charter Communications Cable System. The County agrees to provide City an inventory of all equipment to be installed in the Master Control Room, prior to its installation, to which the County intends to retain title.

31. This Agreement shall be construed in accordance with and governed by the laws of the State of California.

32. This Agreement, consisting of a total of sixteen (16) pages, may be executed in counterpart.
33. All words used herein in the singular number shall include the plural and the present tense shall include the future and the masculine gender shall include the feminine and neuter.
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has
authorized the execution of this Agreement in duplicate by its City Manager and
attestation by its City Clerk under authority of Resolution No. __________, adopted by
the City Council of the City of Modesto on the 4th day of March 2003, and the County of
Stanislaus has caused this Agreement to be executed.

COUNTY OF STANISLAUS

By: ____________________________
REAGAN WILSON
Chief Executive Officer

CITY OF MODESTO

By: ____________________________
JACK R. CRIST,
City Manager

ATTEST:

By: ____________________________
JEAN ZAHR, City Clerk

Approves as to Form:
MICHAEL H. KRAUSNICK

Approves as to Form:
MICHAEL D. MILICH

By: ____________________________
County Counsel

By: ____________________________
City Attorney

By: ____________________________
DONALD N. NORRIS,
Risk Manager
Proposed Budget for

accessmodesto
PUBLIC.EDUCATION.GOVERNMENT
### Proposed Budget for AccessModesto

**FIRST YEAR**

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<th>TOTAL EXPENSES</th>
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<td><strong>$198,000</strong></td>
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**NOTE:** County accepts responsibility for all costs related to the necessary equipment needed to operate the County’s channel provided by Charter Communications and all equipment related to the interconnect between Charter Communications and Comcast, Inc. These costs are not included above.
### Proposed Total Budget for AccessModesto ONGOING

<table>
<thead>
<tr>
<th>TOTAL EXPENSES</th>
<th>County Share</th>
<th>City Share</th>
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<td><strong>TOTAL</strong></td>
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Proposed Budget for AccessModesto
OPERATING BUDGET
BREAKDOWN

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TOTAL                                                  $90,000.00

City Share: $45,000 Annually
County Share: $45,000 Annually

(NOTE: This budget does not reflect costs for the purchase of broadcast airtime).
A RESOLUTION APPROVING AN AMENDMENT TO THE MODESTO URBAN AREA GENERAL PLAN TO ADOPT CHANGES TO: THE CIRCULATION AND TRANSPORTATION MAP, SCHOOL POLICY TEXT, ARCHAEOLOGICAL AND CULTURAL RESOURCE POLICIES, AIRPORT NOISE POLICY, EMPLOYMENT ESTIMATES, AND SALIDA COMPREHENSIVE PLANNING DISTRICT, (CITY INITIATED, FILE NO. GPA 2003-01)

WHEREAS, a General Plan for the City of Modesto entitled “City of Modesto Urban Area General Plan”, was adopted by the City Council by Resolution No. 95-409 on August 15, 1995, in accordance with Section 65300 of the Government Code, and

WHEREAS, on August 15, 1995, prior to the adoption of the City of Modesto Urban Area General Plan, by Resolution No. 95-408, the City Council certified the Final Master Environmental Impact Report (“MEIR”) for the Urban Area General Plan (SCH No. 92052017); and

WHEREAS, Government Code Section 65358 permits the amendment of General Plans by the legislative body up to four times per year, and

WHEREAS, said General Plan has been amended by Modesto City Council Resolution Nos. 95-584, 96-20, 96-338, 96-639, 97-3, 97-137, 97-158, 98-293, 99-162, 99-564, 2000-303, 2000-633, 2001-47, 2001-476, 2002-154 and 2002-526, copies of which are on file in the office of the City Clerk, and

WHEREAS, following adoption of the City’s Capital Facilities Fees (CFF) Update in 1999 a general plan amendment to the General Plan Circulation and Transportation Diagram roadway network was initiated by City Staff, as modified by
certain recommended upgrades and downgrades by Engineering and Transportation staff, to reflect said CFF program; and

WHEREAS, additional amendments to the General Plan to reflect changes in various laws and regulations and a traffic model update were initiated including: Airport Noise Policy, Historic Resource Policy, Schools Policy, Employee Estimates, and Salida Comprehensive Planning District, a copy of which is attached as Exhibit “A”; and

WHEREAS, pursuant to Public Resources Code Section 21157.6, a Draft comprehensive update to the City’s General Plan Master Environmental Impact Report ("MEIR Update") (SCH No. 1999082041) document was prepared to meet the Public Resource Code requirements regarding adequacy of environmental review, that includes analysis of the proposed General Plan Amendments along with a detailed traffic study, a copy of which is available at the Community and Economic Development Department, 1010 Tenth Street, Modesto, 95354, and

WHEREAS, the Draft MEIR Update was circulated for a 45-day public review period from November 25, 2002 to January 8, 2003, and

WHEREAS, on December 10, 2002 copies of the proposed General Plan Amendment, and notice of public hearings for the amendment was sent to the appropriate entities as described in Government Code Section 65352 for the required 45-day review period starting December 13, 2002 and ending January 27, 2003, and

WHEREAS, City staff determined that this General Plan amendment meets the Amendment Criteria set forth in Section II-C (4) of the General Plan, and

WHEREAS, on February 10, 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 relating to this proposed amendment to the Modesto Urban Area General Plan was considered, and

WHEREAS, after said public hearing, the Modesto Planning Commission adopted Resolution No. 2003-08, recommending to the City Council recommended the City Council certify the MEIR Update and adopt the related statement of findings of significant impacts and rejection of alternatives, statement of overriding considerations, and a mitigation monitoring program, and

WHEREAS, concurrent with its review of the proposed General Plan Amendment, the City Council certified a Final Master Environmental Impact Report Update (SCH#1999082041) ("FMEIR Update") for the Modesto Urban Area General Plan that comprehensively updated the document pursuant to the requirements of Public Resources Code Section 21157.6, and analyzed the proposed General Plan Amendment, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on March 4, 2003, in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, for the purpose of receiving public comment on the proposed amendment to the Modesto Urban Area General Plan text and diagrams in the Community Development Policies, Community Services and Facilities, Public Safety, and Environmental Resources and Open Space Sections of the General Plan Sections as set forth in Exhibit “A”.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Modesto that it hereby finds and determines that the proposed amendment to the Modesto Urban Area General Plan to adopt changes to the Circulation and Transportation map, School
Policy text, Archaeological and Cultural Resource policies, Airport Noise policy, Employment Estimates, and Salida Comprehensive Planning District, is required for the public health, safety and welfare of the citizens of Modesto because:

1. The amendment will revise the City’s General Plan street system to be more economically efficient and these changes would improve the City’s ability to finance necessary future roadway improvements. The amended street system will provide for the safe circulation of traffic at General Plan buildout.

2. The amendment will revise historic resources policies contained in Chapter VII of the General Plan (Environmental Resources and Open Space) to be consistent with Section 21084.1 of the Public Resources Code and Section 15064.5 of the CEQA Guidelines. The amended policies will provide for the integration of the cultural resources identified by the Modesto Landmark Preservation Commission into the General Plan, thereby improving the consistency of Commission and General Plan land use policies.

3. The amendment will provide appropriate Airport Noise studies including new contours to meet FAA requirements when an upgrade to jet air service for the City occurs. This will improve consistency between the General Plan and future airport planning and expansion activities, particularly in the area of noise element compliance.

4. The amendment will update the land uses in the Salida area to provide more realistic build out projections to assist in future planning efforts and analysis of infrastructure needs. Consolidation of the Stoddard, Stoddard/Dale, and Highway 99 Comprehensive Planning Districts (CPD’s) with the Salida CPD would reflect a more efficient planning approach for the area. This consolidation and related Modesto General Plan policy amendments would be under-taken under the City’s planning powers, and would not affect either Stanislaus County’s authority to adopt a Salida Community Plan or the County’s authority to determine the contents of that plan.

5. The amendment will update School facilities policies consistent with state law, specifically SB-50 and Prop 1A, regarding financing public school construction. This will conform City policies to the controls on school facilities financing established by state law.

6. The amendment will update future employment estimates to reflect current information on employment generation that has been
gathered from other communities with similar types of development. This improves the accuracy of projections that are made for planning purposes. These updated employment estimates are included in the Master EIR traffic model database.

and said General 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 of the City of Modesto that the Community Development Director is hereby authorized and directed to forward certified copies of this resolution and said amendment to the General Plan to the Board of Supervisors, and 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 the regular meeting of the Council of the City of Modesto held on March 4, 2003, by Councilmember Fisher, 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, Keating, O’Bryant, Mayor Sabatino

Noes: Councilmembers: Jackman

Absent: Councilmembers: Frohman

ATTEST: [Signature]
JEAN ZAHN, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]
MICHAEL D. MILICH, City Attorney
EXHIBIT "A"

URBAN AREA GENERAL PLAN AMENDMENT

This Exhibit is included with the City Council Agenda Packet.
Please refer to Attachment "D"
Below is a list of the location and type of revisions proposed to the City of Modesto Urban Area General Plan by this Amendment. Attached are the pages that reflect the changes that will result from amendment adoption. Additions are *italicized*, deletions are denoted by *strikeouts*.

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Section</th>
<th>Page No.</th>
<th>Text/Map Revision</th>
<th>Amendment to</th>
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<tr>
<td>I</td>
<td>B</td>
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<td>text</td>
<td>Community Vision Policies</td>
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<td>D</td>
<td>III-14</td>
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<td>CPD Summary</td>
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<td>III</td>
<td>D</td>
<td>III-15 &amp;16</td>
<td>Exhibit III-1, table</td>
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<td>D</td>
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<td>H.</td>
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2. **Visions for the Future**

The Modesto Urban Area General Plan provides an opportunity to address a variety of visions, as follows:

a. **Overall Mission Statement**

The following Mission Statement, originally developed by the General Plan Citizens' Steering Committee, remains the most appropriate statement to guide the overall future development of the Modesto community. Altered slightly to fit the context, the Mission Statement of the Modesto Urban Area General Plan reads as follows:

The Modesto Urban Area General Plan addresses the collective challenges of the future. The Urban Area General Plan presents a blueprint for the preservation of Modesto's "quality of life" while providing direction for the growth of business and industry to meet the needs of the future generations in the Modesto community.

b. **Employment Opportunities**

A guiding force in this General Plan is economic development to provide jobs to match population growth. This General Plan provides for a total of 3,500-5,000 acres of new Business Park and 1,000-1,500 acres of Commercial land uses. Through these new land uses, along with miscellaneous support commercial land uses in future residential areas, opportunities for land use supporting more than 200,000-144,000 new jobs are created in this General Plan.

c. **More Comprehensive Planning**

As Modesto grows, there will be a need for comprehensive planning approaches to deal with increasingly complex land development and public facilities and service issues. Chapter II of this Plan presents a strategy to recognize the urbanized community as it exists in 1995. The land use pattern in this area, termed the Baseline Developed Area, is not expected to change substantially. Future growth would occur in accordance with existing City zoning designations, and with other City policies in existence as of the Base Year (1995) of this General Plan. This strategy allows the City to concentrate its future growth in the Redevelopment Area, and in the Planned Urbanizing Area, which forms the outer perimeter of the General Plan area. Future projects in the Planned Urbanizing Area are guided by focused policies in the form of Comprehensive Planning Districts.
## PROPOSED AMENDMENT TO GENERAL PLAN TEXT: COMPREHENSIVE PLANNING DISTRICT SUMMARY, PAGE III-15

### Exhibit III-1

**COMPREHENSIVE PLANNING DISTRICT SUMMARY**

<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Comprehensive Planning District (CPD)</th>
<th>Land Use Designations Within the CPD</th>
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<td>Johansen</td>
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GPA 2  (1/16/96)
GPA 9  (4/13/99)
PROPOSED AMENDMENT TO GENERAL PLAN TEXT: BECKWITH/DAKOTA CPD,
PAGE III-18

b. Supplemental Land Use Policies:

In addition, the Comprehensive Plan shall also address the following land use policies which apply to this particular Comprehensive Planning District:

(1) The commercial uses adjacent to Freeway 99 shall be designed to present an attractive gateway to the City.

c. Housing Policy Implementation:

Because this Comprehensive Planning District does not propose any residential uses, the Housing Policies presented in Chapter IV do not apply to this Comprehensive Planning District.

5. Provision of Public Facilities and Services:

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. Sewer service for this Comprehensive Planning District may be the installation of the West No. 2 sanitary sewer trunk or an alternative solution for sewer service may be found at the time of the preparation of a Comprehensive Plan. A limited tie-in to the existing West Trunk may be permitted as an interim measure as determined by the Public Works and Transportation Department.

6. Focused EIR:

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 34,000 26,000 employees was assumed for this Comprehensive Planning District.

7. Special Considerations Unique to this Comprehensive Planning District:

The exact boundary between the Regional Commercial uses and the Business Park uses shall be determined by the Comprehensive Plan.
The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. **Provision of Public Facilities and Services:**

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District will be served by a subtrunk in Coffee Road that ties into the existing sanitary sewer system.

6. **Mitigated Negative Declaration:**

General Plan Policy III(D)(1)(g) specifically exempts the Coffee/Claratina Specific Plan from the requirement to prepare a Focused EIR. CEQA review for this Comprehensive Planning District shall be satisfied by a Mitigated Negative Declaration prepared pursuant to Section 2115.71 of CEQA.

The Mitigated Negative Declaration for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 1,000 dwelling units was assumed for this Comprehensive Planning District.

b. A total of 1340 employees was assumed for this Comprehensive Planning District.

7. **Special Considerations Unique to this Comprehensive Planning District:**

None.
The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District is presently served by the West sanitary sewer trunk.

6. Focused EIR:

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 8,400 6,290 employees was assumed for this Comprehensive Planning District.

7. Special Considerations Unique to this Comprehensive Planning District:

The Final EIR prepared for the College West Industrial Park in 1991, should be consulted on the preparation of the Comprehensive Plan for this Comprehensive Planning District.
6. **Focused EIR:**

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 1,400 dwelling units was assumed for the Comprehensive Planning District.

b. A total of 9270 employees was assumed for this Comprehensive Planning District.

c. A biological analysis will need to be prepared.

7. **Special Considerations Unique to this Comprehensive Planning District:**

Special considerations are as follows:

A. The Santa Fe Railroad.
B. The Dry Creek and the flood plain
C. The segmented nature of the CPD.
D. The Eastside Mosquito Abatement District’s Airstrip.
b. **Supplemental Land Use Policies:**

In addition, the Comprehensive Plan shall also address the following land use policies which apply to this particular Comprehensive Planning District:

(1) Notwithstanding the land use intensities presented in Section III-B, this Comprehensive Planning District shall contain a maximum of 2,250 dwelling units.

c. **Housing Policy Implementation:**

The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. **Provision of Public Facilities and Services:**

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District will be served by a short subtrunk extension from the trunk sewer in South Modesto.

6. **Focused EIR:**

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 2,250 dwelling units was assumed for this Comprehensive Planning District.

b. A total of 800 employees was assumed for this Comprehensive Planning District.

7. **Special Considerations Unique to this Comprehensive Planning District:**

The exact boundaries of this Comprehensive Planning District will be determined by the Comprehensive Plan.
PROPOSED AMENDMENT TO GENERAL PLAN TEXT: HETCH HETCHY CPD,
PAGE III-40

(1) Notwithstanding the land use intensities presented in Section III-B, this Comprehensive Planning District shall contain a maximum of 4,400 dwelling units.

(2) The Hetch Hetchy right-of-way, power lines, and aqueduct that traverse this Comprehensive Planning District present a significant design constraint that should be addressed.

(3) The regional commercial uses should be located along the east side of McHenry Avenue to join the established commercial uses along McHenry Avenue.

c. Housing Policy Implementation:

The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. Provision of Public Facilities and Services:

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District will be served by an extension of the North Trunk from Dale Road easterly through two Comprehensive Planning Districts: Kiernan/Carver and Kiernan/McHenry.

6. Focused EIR:

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 4,400 dwelling units was assumed for this Comprehensive Planning District.

b. A total of 4,000 employees was assumed for this Comprehensive Planning District.

7. Special Considerations Unique to this Comprehensive Planning District:

The exact boundary between the Village Residential and Regional Commercial uses will be determined by the Comprehensive Plan.
Exhibit III-9

HIGHWAY 99

COMPREHENSIVE PLANNING DISTRICT

1. Overview

This 570-acre Comprehensive Planning District proposes regional commercial uses to take advantage of proximity to Highway 99, and to present a "gateway" to Modesto.

2. Principal Comprehensive Planning District Policies

The Comprehensive Plan to implement this Comprehensive Planning District shall address the Principal Comprehensive Planning District Policies presented in this Chapter.

3. Land Use Description

a. Land Use Types: (See Section III-B)

- 570 acres designated "Regional Commercial"

b. Distribution of Land Uses Within the CPD

Not applicable, as there is only one land use proposed.

4. Land Use Policies

a. Implementation of Adopted Land Use Policies:

The Comprehensive Plan to implement this Comprehensive Planning District shall address the Land Use Policies presented earlier in this Chapter, as follows:

(1) Overall Land Use Policies (Section III-C(1))

b. Supplemental Land Use Policies:

In addition, the Comprehensive Plan shall also address the following land use policies which apply to this particular Comprehensive Planning District:

(1) The Regional Commercial uses located adjacent to Freeway 99 shall be designed to present an attractive gateway to the City.

c. Housing Policy Implementation:

Because this Comprehensive Planning District does not propose any residential uses, the Housing Policies presented in Chapter IV do not apply to this Comprehensive Planning District.
5. **Provision of Public Facilities and Services:**

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District can be served by a Westerly extension of the North Sanitary Sewer Trunk. However, downstream capacity in the system cannot accommodate the Highway 99 Comprehensive Planning District and Stoddard Comprehensive Planning District and the planned easterly extension to serve the City's North end. At some point, the westerly leg of the North Trunk will have to be served by the West No. 2 Trunk and a force main and trunk to the primary treatment plant.

6. **Focused EIR:**

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 11,000 employees was assumed for this Comprehensive Planning District.

7. **Special Considerations Unique to this Comprehensive Planning District:**

The exact boundaries of this Comprehensive Planning District will be determined by the Specific Plan.
5. Provision of Public Facilities and Services:

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District is already served by the West Sanitary Sewer Trunk.

6. Focused EIR:

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 15,400 employees was assumed for this Comprehensive Planning District.

7. Special Considerations Unique to this Comprehensive Planning District:

None.
PROPOSED AMENDMENT TO GENERAL PLAN TEXT: JOHANSEN CPD, PAGE III-49

(1) Notwithstanding the land use intensities presented in Section III-B, this Comprehensive Planning District shall contain a maximum of 3,100 dwelling units.

(2) Johansen High School and Sutton Community Park, as significant existing public facilities, should be a focal point in this Comprehensive Planning District.

(3) Compatibility with Santa Fe Railroad, as a significant noise generator, should be addressed in the Comprehensive Plan for this Comprehensive Planning District.

c. Housing Policy Implementation:

The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. Provision of Public Facilities and Services:

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District will be served by the easterly extension of the Yosemite sanitary sewer trunk along Yosemite Boulevard from Claus Road adjacent to the West, to the Town of Empire.

6. Focused EIR:

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 3,100 dwelling units was assumed for this Comprehensive Planning District.

b. A total of 0 1,000 employees was assumed for this Comprehensive Planning District.

7. Special Considerations Unique to this Comprehensive Planning District:

None.
b. **Supplemental Land Use Policies:**

In addition, the Comprehensive Plan shall also address the following land use policies which apply to this particular Comprehensive Planning District:

1. Adequate buffering should be provided between the Business Park uses and residential use to the south and east.

2. Notwithstanding the land use intensities presented in Section III-B, this Comprehensive Planning District shall contain a maximum of $3,700$ dwelling units.

c. **Housing Policy Implementation:**

The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. **Provision of Public Facilities and Services:**

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District will be served by an extension of the North Sanitary Sewer Trunk.

6. **Focused EIR:**

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of $18,000$ employees was assumed for this Comprehensive Planning District.

b. A total of $3,700$ dwelling units was assumed for this Comprehensive Planning District.
(1) Notwithstanding the land use intensities presented in Section III-B, this Comprehensive Planning District shall contain a maximum of 2,300 dwelling units.

(2) The regional commercial uses should be located along the west side of McHenry Avenue to join the established commercial uses along McHenry Avenue.

c. **Housing Policy Implementation:**

The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. **Provision of Public Facilities and Services:**

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District will be served by an extension of the North Trunk from Dale Road easterly through the Kiernan/Carver Comprehensive Planning District.

6. **Focused EIR:**

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 2,300 dwelling units were assumed for this Comprehensive Planning District.

b. A total of 600 860 employees was assumed for this Comprehensive Planning District.
Because this Comprehensive Planning District does not propose any residential uses, the Housing Policies presented in Chapter IV do not apply to this Comprehensive Planning District.

5. **Provision of Public Facilities and Services:**

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District will be served by the North Sanitary Sewer Trunk after it is extended easterly through the Kiernan/Carver Comprehensive Planning District.

6. **Focused EIR:**

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 11,650 employees was assumed for this Comprehensive Planning District.

7. **Special Considerations Unique to this Comprehensive Planning District:**

The exact boundary between the Business Park and Regional Commercial uses will be determined by the Comprehensive Plan.
(1) Notwithstanding the land use intensities presented in Section III-B, this Comprehensive Planning District shall contain a maximum of 1,200 dwelling units.

(2) Neighborhood Shopping Center(s) developed within the Mixed Use areas shall be consistent with the City's Neighborhood Shopping Center Policy.

c. Housing Policy Implementation:

The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. Provision of Public Facilities and Services:

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District will be served by a subtrunk in Coffee Road that ties into the existing sanitary sewer system.

6. Focused EIR:

General Plan Policy III(D)(1)(g) specifically exempts the North Beyer CPD from the requirement to prepare a Focused EIR. CEQA review for the Comprehensive Plan for the North Beyer Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 1,200 dwelling units was assumed for this Comprehensive Planning District.

b. A total of 780 employees was assumed for this Comprehensive Planning District.

7. Special Considerations Unique to this Comprehensive Planning District:

None.
The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. Provision of Public Facilities and Services:

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District is already served by the West Sanitary Sewer Trunk.

6. Focused EIR:

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 4,100 dwelling units was assumed for this Comprehensive Planning District.

b. A total of 600 1,540 employees was assumed for this Comprehensive Planning District.

7. Special Considerations Unique to this Comprehensive Planning District:

The exact boundaries of this Comprehensive Planning District will be determined by the Comprehensive Plan.
b. **Supplemental Land Use Policies:**

In addition, the Comprehensive Plan shall also address the following land use policies which apply to this particular Comprehensive Planning District:

1. Notwithstanding the land use intensities presented in Section III-B, this Comprehensive Planning District shall contain a maximum of 400 dwelling units.

2. The uses in this Comprehensive Planning District should support the future use of light rail along the Union Pacific tracks.

c. **Housing Policy Implementation:**

The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. **Provision of Public Facilities and Services:**

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District will be served by the North Sanitary Sewer Trunk extension after it passes through these Comprehensive Planning Districts to the west: Kiernan/Carver, Kiernan/McHenry.

6. **Focused EIR:**

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 400 dwelling units was assumed for this Comprehensive Planning District.

b. A total of 600,720 employees was assumed for this Comprehensive Planning District.
PROPOSED AMENDMENT TO GENERAL PLAN TEXT: PELANDALE/SNYDER CPD,
PAGE III-73

c. Housing Policy Implementation:

The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. Provision of Public Facilities and Services:

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District can be served one of two ways: a subtrunk from the North Trunk near Dale Road or extension of the adjacent North Trunk sanitary sewer to serve the Kieman/Carver Comprehensive Planning District as well as this Comprehensive Planning District.

6. Focused EIR:

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 2,800 dwelling units was assumed for this Comprehensive Planning District.

b. A total of 9,300 employees was assumed for this Comprehensive Planning District.

7. Special Considerations Unique to this Comprehensive Planning District:

None.
b. **Supplemental Land Use Policies:**

In addition, the Comprehensive Plan shall also address the following land use policies which apply to this particular Comprehensive Planning District:

1. Notwithstanding the land use intensities presented in Section III-B, this Comprehensive Planning District shall contain a maximum of 7,300 dwelling units.

2. Adequate buffering shall be provided between the residential uses and the business park uses in this Comprehensive Planning District.

3. Special consideration shall be given in the design of this Comprehensive Planning District and the following edges: the high school site proposed by Village One; the Santa Fe Railroad; and the southern edge of the Riverbank General Plan/Sphere of Influence boundary.

c. **Housing Policy Implementation:**

The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. **Provision of Public Facilities and Services:**

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District can be readily served by extensions of the Roselle and Lakewood Sanitary Sewer Trunks that are adjacent in the Village One Comprehensive Planning District.

6. **Focused EIR:**

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 7,300 dwelling units was assumed for this Comprehensive Planning District.

b. A total of 10,290 8,550 employees was assumed for this Comprehensive Planning District.
SALIDA

COMPREHENSIVE PLANNING DISTRICT

1. Overview

This 4,450-4,472-acre Comprehensive Planning District is intended to precisely match the land uses adopted by Stanislaus County for the Salida Community Plan. Whether this Comprehensive Planning District completes development in the County, or annexes to the City and completes development, the proposed land uses are the same.

*On August 29, 2000 the Stanislaus County Board of Supervisors adopted a General Plan update for the Salida Community Plan. The updated Community plan will be implemented through subsequent Specific Plans, rezones and General Plan amendments through Stanislaus County.*

2. Principal Comprehensive Planning District Policies

The Comprehensive Plan to implement this Comprehensive Planning District shall address the Principal Comprehensive Planning District Policies presented in this Chapter.

3. Land Use Description

a. Land Use Types:

The land uses proposed for this Comprehensive Planning District are exactly the Land Use Designations adopted in the Stanislaus County General Plan for the Salida Community Plan as of January 1, 1995 *August 29, 2000* as follows:

- **Low Density Residential (LDR)** (as defined in the Stanislaus County General Plan as of January 1, 1995 *August 29, 2000*)

  *"Intent. The intent of this designation is to provide appropriate locations and adequate areas for single-family detached homes, in either conventional or clustered configurations. Single-family detached dwellings are the predominant housing type in areas so designated, and would remain so under this designation. Semi-detached dwellings and manufactured housing would be consistent with this designation.*

  **Zoning.** R-A (Rural Residential) and R-1 (Single-Family Residential) zones are appropriate within this designation. PD (Planned Development) zoning may also be appropriate provided the development does not exceed the established building intensity of this designation. The use of the US (Urban Service) combining district in conjunction with any of the above zones would be appropriate for areas adjacent to unincorporated towns so that annexation to
and service from the adjoining sanitary sewer district or community services district is required prior to development. Residential building intensity when served by a community services district or sanitary sewer district and public water district is zero to eight units per net acre. Building intensity for areas not served by public water and sewer service is zero to two units per net acre. Population density ranges from zero to 25 persons per net acre in areas served by public water and sewer and zero to six persons per net acre in other areas. Small second units, as permitted by state law may increase both the building intensity and the population density to a limited degree within this designation.

**Appropriate Locations.** The Low Density Residential designation is appropriate in established residential areas characterized by single family dwellings. It would also be appropriate in areas: (a) designated by the Board of Supervisors for ranchettes of 1/2 to 1 acre in size if the area is of diminished agricultural importance but capable of supporting rural residential development based on the eight factors to be considered in locating "Estate Residential" land; or (b) adjacent to unincorporated towns which can serve the development after annexation to and service by a sanitary district or community services district.

**Medium Density Residential (MDR)** (as defined in the Stanislaus County General Plan as of January 1, 1995 August 29, 2000)

"Intent. The intent of this designation is to provide appropriate locations for single and multiple family units, primarily in semi-detached or clustered arrangements. Typical housing types would be single family detached manufactured houses, duplexes, triplexes and low-mass multi-family units (townhouses and garden apartments). All lands within this designation shall be within the boundaries of a community services district, sanitary district or similar public district which provides urban services except where such designation existed at the time of adoption of this plan.

**Zoning.** The R-2 (Duplex Residential) zone is appropriate within this designation. PD (Planned Development) zoning may also be appropriate provided the development does not exceed the established building intensity of this designation. PD zoning which allows sewage generated on site to be metered into the disposal system during non-peak hours are encouraged in communities with limited system capacity. Residential buildings intensity varies from zero to 14 units per net acre. Population density ranges from zero to 45 persons per net acre.

**Appropriate Locations.** The Medium Density Residential designation would be appropriate in areas adjacent to unincorporated towns where the Board of Supervisors has determined, pursuant to a community plan, that medium density residential use is needed. These areas will be developed only after annexation to and service by a sanitary district or community services district.

**Medium High Density Residential (MHDR)** (as defined in the Stanislaus County General Plan as of January 1, 1995 August 29, 2000)
"Intent. The intent of this designation is to provide appropriate locations for housing types including duplexes, triplexes, fourplexes, and apartment buildings. This designation shall be within the boundaries of a community services district, sanitary district or similar public district which provides urban services.

Zoning. The R-3 (Multiple-Family Residential) zone is appropriate within this designation. PD (Planned Development) zoning may also be appropriate provided the development does not exceed the established building intensity of this designation. PD zoning which allows sewage generated on site to be metered into the disposal system during non-peak hours is encouraged in communities with limited system capacity. Residential building intensity varies from zero to 25 units per net acre. Population density ranges from zero to 85 persons per net acre.

Appropriate Locations. The Medium High Density Residential designation is appropriate in established residential areas characterized by duplexes, triplexes, fourplexes, and apartment buildings. It would also be appropriate in areas adjacent to unincorporated towns where the Board of Supervisors has determined, pursuant to a community plan, that medium high density residential use is needed. These areas will be developed only after annexation to and served by a sanitary district or community services district."

Commercial (C) (as defined in the Stanislaus County General Plan as of January 1, 1995 August 29, 2000)

"Intent. The intent of this designation is to indicate areas best suited for various forms of light or heavy commercial uses, including, but not limited to, retail, service and wholesaling operations. The County has one designation to correspond to the various commercial zoning districts. This designation is intended for lands which demonstrate a valid supportive relationship to other existing or projected urban development.

Zoning. C-1 (Neighborhood Commercial), C-2 (General Commercial), and H-1 (Highway Frontage Commercial) zones shall be considered consistent with this designation. PD (Planned Development) zoning may also be appropriate provided the development does not exceed the established building intensity of this designation. The building intensity shall be determined by Zoning Ordinance development standards for setback, landscaping, height, parking and other requirements except that residential building intensity shall not exceed 25 units per net acre. In no case shall buildings exceed 75 feet in height nor shall they cover so much of the lot that insufficient area remains for parking, landscaping, etc. In commercial zones which allow dwelling units, population density can range from zero to 85 persons per net acre.

Appropriate Locations. The Commercial designation is appropriate in areas already committed to commercial use. In unincorporated towns this designation is appropriate for Central Business Districts and other areas within the sanitary
sewer or community services district in sufficient amount to serve the needs of the community. Areas adjacent to community services district may also be appropriate if the US (Urban Service) combining zone is utilized.

**Industrial** (as defined in the Stanislaus County General Plan as of January 1, 1995)

*Intent.* The intent of this designation is to indicate areas for various forms of light or heavy industrial uses, including, but not limited to, manufacturing and warehousing. Generally, the Industrial designation shall be used in areas where public sewer and water is available or were the restrictions of the Planned Industrial designation is inappropriate. The Planned Industrial designation shall be used instead of the Industrial designation unless (a) the property to be designated is intended for a single use applicant not permitted in the Planned Industrial designation and needing a very large site (see discussion under DESIGNATING NEW INDUSTRIAL AREAS (Page 38) or, (b) the property is adjacent to an existing industrial area which is reaching capacity and whose services can be extended to serve the expansion.

*Zoning.* The LM (Limited Industrial, M (Industrial), and PI (Planned Industrial) zones shall be consistent with this designation. PD (Planned Development) zoning may also be appropriate provided the development does not exceed the established building intensity of this designation. Building intensity is governed by the fact that the Zoning Ordinance prohibits more than 75% coverage of the property by buildings. Buildings for human occupancy shall not exceed 75 feet in height. Population density is almost nonexistent as only one residential unit per parcel is allowed and then only if it is secondary to the industrial use of the property.

*Existing Locations.* Nearly all existing industrial areas are within or adjacent to the sphere of influence of a City or special district which serves an unincorporated town. Only one...west of McHenry (see Salida Community Plan in Stanislaus County's General Plan for complete text).

*Designating New Industrial Areas.* The amount of land designated as Industrial in the County has changed very little in the past 10 years, decreasing slightly during a five-year period from 1979 to 1984 by about 6.9%. Most of this decrease has been through annexation to cities. Although a great deal of land is still available for industrial development, more than 70% is located in the Beard Tract.

The criteria listed below shall be used in evaluating potential areas, both for general Industrial designation and for designating sites for industries that need very large sites. There are few industries with the need for extremely large parcels but they do exist. It is not practical to designate a large industrial area because a large amount of land might lay idle for an extended period of time. If an industry requiring a large site approaches the County or if more industrial
sites are needed, the following criteria shall be used in determining whether or not a site is suitable for being designated Industrial:

a. Access. The proposed site should have adequate access to handle the type and quantity of traffic associated with industrial uses without impacting existing facilities. This shall usually mean that the area will be located on a major road at a minimum, with location on a state highway preferred.

b. Sewage disposal. Public sanitary sewer service should be available and a written commitment for service received. (Lands suitable for industrial development but without public sanitary sewer service should more appropriately be designated Planned Industrial.)

c. Water. An adequate supply of potable water should be available for industrial usage including water needed for fire suppression. Generally this will require a public water supply in order to meet fire flow standards.

d. Infrastructure. Other utilities (such as natural gas, electricity) shall be reasonably available to the site as might be required by the proposed uses.

e. Topography. The site is physically suitable for industrial development.

f. Williamson Act and other constraints to development. The site should be free from constraints such as valid Williamson Act Contracts that would inhibit rezoning and development of the area.

g. Conflicts. The proposed site development shall not cause land use conflicts with surrounding properties. From this viewpoint, expansion of existing areas is more desirable than designating totally new areas.

h. City General Plan Land Use Designation. Any new areas proposed for industrial designation shall not be inconsistent with the General Plan of any City in whose Sphere of Influence they lie."

Planned Industrial (PI) (as defined in the Stanislaus County General Plan as of January 1, 1995 - August 29, 2000)

"Intent. The intent of this designation is to provide locations for light industrial development. Such locations may be so designated on the initiative of the county or may be requested by a property owner or group of property owners. The Planned Industrial designation shall be preferred to the Industrial designation as it allows more control of development to ensure that impacts on adjoining properties are reduced. It shall be used largely in areas without public sewer and/or water service but shall only be used if it is practical, both physically and financially to provide sewage disposal and water service as needed by the proposed development.
PROPOSED AMENDMENT TO GENERAL PLAN TEXT: SALIDA CPD, PAGE III-84

Zoning. Building intensity will be determined by the County on an individual basis, depending upon the nature and location of the proposed planned development. However, no buildings shall cumulatively occupy more than 70% of the area of any parcel. Population density is almost nonexistent as only one residential unit per parcel is allowed if it is secondary to the industrial use of the property. The A-2 (Exclusive Agriculture), PI (Planned Industrial), PD (25), PD (30), PD (43), PD (77), PD (88) and PD (126) zones shall be consistent with this designation.

Annexation. Areas designated Planned Industrial on the General Plan and rezoned for development which are located within the adopted Sphere of Influence of a city shall include the requirement that an agreement be signed in a form satisfactory to the City Attorney of the affected city and Stanislaus County Counsel guaranteeing that the property on which the planned industrial designation is applicable will be annexed to the affected city upon demand by the city and with the approval of the Stanislaus County Board of Supervisors.

Appropriate Locations. Appropriate locations for the Planned Industrial designation shall be based on the same criteria as used for designating new Industrial areas. The Planned Industrial designation shall be more appropriate than Industrial in locations with limited or no sanitary sewer capacity or in other locations where restricting the permitted uses is desirable. Based on these criteria, the following two areas of the Salida Plan have been designated Planned Industrial.

a. 282 acres on the east side of Highway 99 between the Hammett Road andPelandale Avenue interchanges. The area generally bounded by Sisk Road, MID Lateral No. 6, Dale Road and Ladd Road, and

b. 183.31 acres on the south side of Kiernan Avenue, west of McHenry Avenue. The area east and west of Highway 99 and north of the Hammet Road interchange, and

c. The east side of Pirrone Road generally between Hammet Road and Kiernan Road.

Planned Development (as defined in the Stanislaus County General Plan as of January 1, 1995)

"Intent. The Planned Development designation is intended for land which, because of demonstrably unique characteristics, may be suitable for a variety of uses without detrimental effects on other property.

Zoning. Land within a Planned Development designation should be zoned A-2 (Exclusive Agriculture) until development occurs through Planned Development zoning. A PD (Planned Development) zone (which, with the A-2 zone, are the only zoning districts consistent with this designation) is applied through application and submission of specific development plans. Building intensity and
population density would be determined by the County on an individual basis, depending upon the nature and location of the proposed planned development.

Appropriate Locations. The Zoning Ordinance indicates that all applications for planned development should be consistent with the General Plan. The following are considered to be valid uses of the planned development designation consistent with the intent of this element.

a. Application for uses of unique character (not otherwise allowed as proposed in other zoning districts) for which findings can be made as to the appropriateness of the location and the absence of detrimental effect to the surrounding area.

b. Applications falling within an area designated by this element as a Planned Development area, subject to those resolutions within the appendix of this element that define special policy for planned development uses in the following area:

(1) (see Salida Community Plan text)
(2)...
(3)...

Highway Commercial Planned Development (as defined in the Stanislaus County General Plan as of January 1, 1995)

"Intent. This designation is intended for land located at freeway interchanges where it is necessary to provide services to highway travelers.

Zoning. Land within this designation shall be zoned for Exclusive Agriculture (A-2) until rezoned to Planned Development (PD). Population density and building intensity will be determined on a case-by-case basis.

Uses within this designation shall be limited to the following as principal uses:

- Truck Stops
- Restaurants
- Motels
- Service Stations
- Overnight R.V. Camping
- Fruit Stands

The following uses may be permitted, but only when accessory to uses listed above:

- Towing Service
- Minor Emergency-Automobile Repair
- Convenience Market
- Wine Tasting
Appropriate Locations. The Highway-Commercial Planned Development designation is appropriate only for parcels adjacent to a freeway interchange. No property shall be designated Highway-Commercial Planned Development and rezoned PD unless findings are made that the change will not be detrimental to the agricultural value of the surrounding property and that the subject property is of diminished agricultural importance."

**Neighborhood Parks** *(as defined in the Stanislaus County General Plan as of August 29, 2000)*

Parks and vacant land acreage is based on a calculation need of 3 acres/1,000 residents projected in the Community Plan. Vacant parkland is representative of the community Plan “Proposed “Parks” symbol which denotes general location.

**Elementary Schools** *(as defined in the Stanislaus County General Plan as of August 29, 2000)*

Vacant land inventory for schools includes the planned middle school to be constructed at the northwest corner of Kiernan Avenue and Toomes road, and for three additional elementary schools that will be needed.

**Middle Schools:** *A total of 40 acres will be provided for Middle School sites.*

**Private School:** *Modesto Christian School, total of 40 acres.*

b. **Distribution of Land Uses Within the CPD:**

The distribution of the above land uses in this Comprehensive Planning District shall be as presented in the Stanislaus County General Plan for the Salida Community Plan as of January 1, 1995. *August 29, 2000*, as shown in Figure III.

4. **Land Use Policies**

a. **Implementation of Adopted Land Use Policies:**

The Comprehensive Plan to implement this Comprehensive Planning District shall address the Land Use Policies presented earlier in this Chapter, as follows:

(1) Overall Land Use Policies (Section III-C(1))
b. **Supplemental Land Use Policies:**

In addition, the Comprehensive Plan shall also address the following land use policies which apply to this particular Comprehensive Planning District:

None.

c. **Housing Policy Implementation:**

Any County Housing Policies applicable to the Salida Community Plan, prior to the adoption of the Comprehensive Plan, shall be incorporated into the Comprehensive Plan.

5. **Provision of Public Facilities and Services:**

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District is currently served by the Salida Sanitary Sewer District.

6. **Focused EIR:**

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. The Final Master EIR Update for the Urban Area General Plan traffic model includes assumptions on the build out of the Salida Community Plan area which included:

b. A total of 7,300 dwelling units was assumed for this Comprehensive Planning District

c. A total of 35,780 employees was assumed for this Comprehensive Planning District

7. **Special Considerations Unique to this Comprehensive Planning District:**

The August 29, 2000 Salida Community Plan provides sufficient guidance for future land use. *All development shall comply with the Salida Community Character and Design Guidelines adopted August 29, 2000.* A Mello-Roos Community Facilities District was adopted in 1988, covering much of the property in the Salida Community Plan.
1. **Overview**

This 1,200-acre Comprehensive Planning District proposes a mixed-use pedestrian-oriented "Village" south of the Stanislaus River park, and a business park along Stoddard Road.

2. **Principal Comprehensive Planning District Policies**

The Comprehensive Plan to implement this Comprehensive Planning District shall address the Principal Comprehensive Planning District Policies presented in this Chapter.

3. **Land Use Description**

   a. **Land Use Types:** (See Section III-B)

      - 820 acres designated "Village Residential"
      - 380 acres designated "Business Park"

   b. **Distribution of Land Uses Within the CPD:**

      The Support Commercial uses in the Village Residential portion of this Comprehensive Planning District should be sited to facilitate pedestrian access from the residential development.

4. **Land Use Policies**

   a. **Implementation of Adopted Land Use Policies:**

      The Comprehensive Plan to implement this Comprehensive Planning District shall address the Land Use Policies presented earlier in this Chapter, as follows:

      (1) Overall Land Use Policies (Section III-C(1))
      (2) Neotraditional Planning Principles (Section III-C(3))
b. **Supplemental Land Use Policies:**

In addition, the Comprehensive Plan shall also address the following land use policies which apply to this particular Comprehensive Planning District:

(1) Notwithstanding the land use intensities presented in Section III-B, this Comprehensive Planning District shall contain a maximum of 2,700 dwelling units.

(2) Adequate buffering should be provided between the proposed Business Park and the proposed Village Residential uses.

c. **Housing Policy Implementation:**

The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. **Provision of Public Facilities and Services:**

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District can be served by a westerly extension of the North Sanitary Sewer Trunk. However, downstream capacity in the system cannot accommodate the Highway 99 Comprehensive Planning District and Stoddard Comprehensive Planning District and the planned easterly extension to serve the City's north end. At some point, the westerly leg of the North Trunk will have to be served by the West No. 2 Trunk and a force main and trunk to the primary treatment plant.

6. **Focused EIR:**

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 2,700 dwelling units was assumed for this Comprehensive Planning District.
b. A total of 13,700 employees was assumed for this Comprehensive Planning District.

7. Special Considerations Unique to this Comprehensive Planning District:

The exact boundaries of this Comprehensive Planning District will be determined by the Comprehensive Plan.
PROPOSED AMENDMENT TO GENERAL PLAN TEXT: STODDARD/DALE CPD, PAGE III-97 – THIS PAGE PROPOSED FOR DELETION

Exhibit III-23

STODDARD/DALE

COMPREHENSIVE PLANNING DISTRICT

1. Overview

This 1,180-acre Comprehensive Planning District proposes a mixed-use pedestrian-oriented "Village" south of the Stanislaus River park, and a business park along Kiernan Avenue.

2. Principal Comprehensive Planning District Policies

The Comprehensive Plan to implement this Comprehensive Planning District shall address the Principal Comprehensive Planning District Policies presented in this Chapter.

3. Land Use Description

a. Land Use Types: (See Section III-B)

   - 860 acres designated "Village Residential"
   - 320 acres designated "Business Park"

b. Distribution of Land Uses Within the CPD:

   The Support Commercial uses in the Village Residential portion of this Comprehensive Planning District should be sited to facilitate pedestrian access from the residential development.

4. Land Use Policies

a. Implementation of Adopted Land Use Policies:

   The Comprehensive Plan to implement this Comprehensive Planning District shall address the Land Use Policies presented earlier in this Chapter, as follows:

   (1) Overall Land Use Policies (Section III-C(1))
   (2) Neotraditional Planning Principles (Section III-C(3))
b. **Supplemental Land Use Policies:**

In addition, the Comprehensive Plan shall also address the following land use policies which apply to this particular Comprehensive Planning District:

1. Notwithstanding the land use intensities presented in Section III-B, this Comprehensive Planning District shall contain a maximum of 3,300 dwelling units.

2. Adequate buffering should be provided between the proposed Business Park and the proposed Village Residential uses.

c. **Housing Policy Implementation:**

The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. **Provision of Public Facilities and Services:**

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District can be served by a westerly extension of the North Sanitary Sewer Trunk. However, downstream capacity in the system cannot accommodate the Highway 99 Comprehensive Planning District and Stoddard Comprehensive Planning District and the planned easterly extension to serve the City's north end. At some point, the westerly leg of the North Trunk will have to be served by the West No. 2 Trunk and a force main and trunk to the primary treatment plant.

6. **Focused EIR:**

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 3,300 dwelling units was assumed for this Comprehensive Planning District.
b. A total of 11,700 employees was assumed for this Comprehensive Planning District.

7. Special Considerations Unique to this Comprehensive Planning District:

a. The exact boundaries of this Comprehensive Planning District will be determined by the Comprehensive Plan.
PROPOSED AMENDMENT TO GENERAL PLAN TEXT: CARPENTER/WHITMORE CPD,
PAGE III-112

(1) Notwithstanding the land use intensities presented in Section III-B, this Comprehensive Planning District shall contain a maximum of 3,500 dwelling units.

(2) The landfill located in this Comprehensive Planning District presents a significant design constraint. This constraint should be addressed in the Comprehensive Plan.

c. Housing Policy Implementation:

The Comprehensive Plan which implements this Comprehensive Planning District shall address the relevant Housing Policies presented in Chapter IV for the residentially-designated portion of this Comprehensive Planning District.

5. Provision of Public Facilities and Services:

The Comprehensive Plan to implement this Comprehensive Planning District shall address the public facilities and services policies presented in Chapter V. In addition, the Comprehensive Plan shall also address the following policies which apply to this particular Comprehensive Planning District:

a. This Comprehensive Planning District will be served by a new South No. 2 Sanitary Sewer Trunk over Tuolumne River to the primary treatment plant at the foot of Sutter Street.

6. Focused EIR:

The Focused Environmental Impact Report for this Comprehensive Planning District shall consider the following issues identified in the Master Environmental Impact Report for the General Plan:

a. A total of 3,500 dwelling units was assumed for this Comprehensive Planning District.

b. A total of 5,000 1,200 employees was assumed for this Comprehensive Planning District.

7. Special Considerations Unique to this Comprehensive Planning District:

The exact boundary between this Comprehensive Planning District and the Tuolumne River Comprehensive Planning District shall be determined by the Comprehensive Plan.
PROPOSED AMENDMENT TO GENERAL PLAN MAP: LAND USE DIAGRAM, FIGURE III-1

CITY OF MODESTO
GENERAL PLAN PROGRAM

FIGURE III-1
ADOPTED LAND USE DIAGRAM

LEGEND

- Commercial
- Residential
- Industrial
- Public
- Open Space
- Agricultural
- Natural Area

[Map with various symbols and legends]
3. **Storm Water Drainage Policies - Planned Urbanizing Area**
   
a. All of the Storm Water Drainage Policies for the Baseline Developed Area apply within the Planned Urbanizing Area.

b. The City of Modesto shall require each new development area to be served with positive storm drainage systems. A positive storm drainage system may be comprised of catch basins, pipe lines, channels, recharge/detention basins and pumping facilities which discharge storm water to surface waters of the state. The positive storm drainage facilities shall consider the requirements presented in Table 9-1 of the Final Master Environmental Impact Report.

c. The City of Modesto shall require positive storm drainage facilities in the Planned Urbanizing Area to accomplish storm water recharge to groundwater of 80% of the average annual runoff. Recharge shall be typically accomplished at recharge/detention basins, designed to be in compliance with applicable federal and state water quality regulations for both groundwater and surface water. The City shall update its Drainage Master Plan to cover the entire area within the City's Sphere of Influence.

d. New areas shall be designed so that runoff in excess of groundwater recharge in Policy 3.c. shall be discharged to waters of the state in a manner not exceeding the undeveloped storm hydrograph.

e. Dual-use flood control/recreation facilities shall be developed (dual-use facilities) as part of the storm drainage system. Dual-use facilities maximize efficient use of land and funds by satisfying needs for water quality, flood control, recreation and aesthetics within a single consolidated facility.

f. Dual-use facilities shall be designed and constructed in accordance with the standards in the "Design Standards for Dual Use Flood control/Recreation Facilities" manual.

g. *New developments shall be required to implement an appropriate selection of permanent pollution control measures in accordance with the City's implementation policies for the municipal NPDES stormwater permit. Permanent erosion control measures such as seeding and planting vegetation for new cut-and-fill slopes, directing runoff through vegetation, or otherwise reducing the offsite discharge of particulates and sediment are the most effective method of controlling offsite discharges of urban pollutants.*

4. **Implementation**

A storm water management program (SWMP) should be prepared by the City, potentially incorporating those measures listed in Table 9-4 in the Master Environmental Impact
A school district has imposed school mitigation fees pursuant to Government Code Section 53080; and

A school district has a valid application for the funding of public school capital facilities pending before the State unless it is not eligible for such State funding in which case the school district shall, within thirty (30) days after it has determined in good faith that it is so eligible, initiate a process leading to the filing of a valid application for such funding.

The above policies (3e through 3k) shall not apply to residential projects approved in conjunction with a General Plan Amendment, rezoning, prezoning, annexation, or other legislative act that have completed the CEQA process (certification of an environmental impact report, adoption of a negative declaration or adoption of an exemption determination) as of March 5, 1991.

4. Implementation

The construction, maintenance, and day-to-day operations of schools is not governed by the City of Modesto. School districts with elected Boards of Directors are responsible for the actual implementation of School Facilities. Therefore, the City's role in the implementation of the above policies would be limited to: coordination with the affected school districts; determining whether a development project's impacts on school capital facilities is fully mitigated; and making appropriate findings under CEQA if the impacts are not fully mitigated.

5. Proposition 1A and Senate Bill 50

Upon the passage of Proposition 1A on November 3, 1998, the provisions of Senate Bill 50 became effective. Senate Bill 50 alters the method by which school facilities made necessary by development are addressed in the State of California. To the extent that the provisions of the General Plan relating to school facilities do not conflict with Senate Bill 50, they are suspended. The language relating to school facilities will remain unaltered in the General Plan so that a history of school facility development under Senate Bill 50 can exist prior to any further review and amendment of the General Plan provisions relating to school facilities. Should Senate Bill 50 be repealed, the provisions of the General Plan relating to school facilities which were suspended shall once again become effective.

I. COMMUNITY SERVICES - TRANSIT

1. Overview

In addition to the Circulation policies presented in this Chapter, the City should adopt a goal of improving public transportation that could include increased bus and light rail service. This could help mitigate some issues related to site-specific intersection operations or parking requirements, if combined with other trip reduction measures. The ability to add service may be determined by the availability of public sector funding sources, the extent of private sector participation or subsidy, and the overall feasibility of transit service.

2. Transit Policies - Baseline Developed Area and Planned Urbanizing Area

a. Public transit services shall be provided, using the most cost-effective methods available and based upon professional analysis of alternatives.
PROPOSED AMENDMENT TO GENERAL PLAN
DIAGRAM: CIRCULATION & TRANSPORTATION
PAGE V-34, FIGURE V-1 (SHEET 2 OF 2)

Figure V-1
Circulation and Transportation Diagram
(Sheet 2 of 2)

Legend:
- Freeway 99
- Interchanges
- Class A Expressway
- Class B Expressway
- Class C Expressway

*NOTE: Classifications and interchanges shown outside the General Plan Boundary are illustrative only, subject to other jurisdictions.

Reference Points
(For illustration only, not adapted)
- General Plan Boundary

Source: City of Modesto 2002.

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c. The results of the Flood Hazard Analysis shall be incorporated into the project design of any Comprehensive Plan.

d. The Urban Area General Plan Update includes policies to restrict development in the flood plain. Existing policies of the Urban Area General Plan will also restrict the amount of post-development runoff from exceeding pre-development conditions.

4. Implementation

From time to time, the City may adopt subsequent plans or policy documents to implement some or all of the policies listed above. These subsequent policy documents will be considered "anticipated subsequent projects" in the context of Section 21157.7 of CEQA. Chapter VIII of this General Plan presents a variety of other potential implementation tools.

D. PUBLIC SAFETY - FIRE HAZARDS

Fire protection policies within the City of Modesto are contained in Chapter V. Fire hazards in Modesto are primarily associated with urban fires. Urban fires may be defined as fires which occur in commercial, industrial and residential structures. Most urban fires are caused by human activity, and may result in property damage, injuries, and loss of life.

Over the years, building codes have been established and utilized to reduce the frequency and severity of urban fires. Electrical construction standards have been improved, building separation requirements have been implemented, and fire walls are now required to separate closely sited structures and properties. Buildings which are highly susceptible to fire may also have automatic sprinkler systems installed. Development standards established by the City of Modesto and Stanislaus County zoning codes, including setback and access requirements, also help to minimize urban fire hazards. However, despite these measures, older buildings which do not meet current building codes and/or were constructed prior to the implementation of protective zoning may represent a significant fire hazard.

Peak-load water supply is defined as "the supply of water available to meet both domestic water and fire fighting needs during the particular season and time of day when domestic water demand on a water system is at its peak". Pipeline sizes, pump capacities, and water storage capacity should be adequate to meet the demand for peak-load water supply. The following Policies supplement the Fire Protection Policies contained in Section V-K.

1. Fire Hazard Policies - Baseline Developed Area and Planned Urbanizing Area

a. Peak Load Water Supply

The City shall ensure that adequate water fire-flows are maintained throughout the City and shall regularly monitor fire-flows to ensure adequacy. New development shall comply with the minimum fire-flow rates, as presented in Appendix III-A of
Additional resources exist below the ground. Remnants of razed buildings exist below the surface with related deposits such as trash pits. These sub-surface features are some of the only evidence of past activities, enterprises, and peoples.

2. Policies in the Redevelopment Area and Baseline Developed Area

   a. For all proposed development within an archaeological resource study area (as depicted on Figure 8-1 in the Master Environmental Impact Report), a combination of archival research, particularly through the Central California Information Center at Turlock, and preliminary surface field reconnaissance shall be employed to identify any areas that may have been used by Native Americans. Areas containing prehistoric deposits shall be mapped with evaluation of their significance following only in those areas where proposed development might affect the resources.

   Where proposed development could affect the resources, the City shall consult Table 8-1, "Procedures for Mitigating and Monitoring Impacts to Cultural Resources", in the Master Environmental Impact Report for the required steps to be implemented.

   b. For proposed development outside an identified archaeological resource study area (as depicted on Figure 8-1 in the Master Environmental Impact Report), no further research for prehistoric deposits is warranted unless specific information concerning the known or potential presence of significant cultural resources is identified in future updates at the applicable cultural resource information repository or through formal or informal input received from a qualified source. If previously unknown subsurface cultural resources are discovered during excavation activities, excavation would be temporarily halted and an archaeologist consulted as to the importance of the resources. Should the archaeologist determine that the resources are important, the project sponsor would follow the procedure described in Policy 2-a, above.
c. The City of Modesto shall implement regulations which identify important historic resources, and establish regulations to preserve the important aspects of those resources. The City could encourage adaptive reuse of listed buildings, including historically sensitive restoration, as a means of preserving eligible structures. Restoration and renovation of buildings should be performed in accordance with the "Secretary of the Interior's Standards for the Treatment of Historic Properties" and the State Historic Building Code. The standards serve as guidelines for rehabilitation, restoration, preservation, retaining, and preserving historic character of a property.

d. The City shall ensure that zoning provisions for structures of historical significance are sufficiently flexible to ensure that parking or other structures requirements of the Zoning Ordinance allow the historic structures to remain viable in the future.

e. The modification of historic structures and places can be mitigated through the application of existing regulations and consultation with the State Historic Preservation Officer, an interim procedure whereby the City evaluates proposals to modify historic structure and develops a program to reduce the impacts on an individual basis.

Projects that follow Secretary of Interior Standards, in consultation with SHPO, can be considered mitigated to a level of less than significant.

f. If archaeological resources are discovered at any time during construction, all activity shall cease, until the site is surveyed by a qualified archaeologist. The survey shall include mitigation measures, which shall be implemented before construction resumes. The survey shall follow the criteria presented in Appendix K of the CEQA Guidelines.

g. The unearthing of prehistoric items during construction can be mitigated by halting the construction activities and by applying mitigation measures developed by a qualified archaeologist.

Mitigation a.: Whenever possible, the City should seek to avoid disturbing or damaging archaeological resources. Preservation is the preferred manner of mitigating impacts to archaeological sites. Preservation may be accomplished by:

1. Planning construction to avoid archaeological sites;
2. Incorporating sites within parks, greenspace, or other open space;
3. Covering the sites with a layer of chemically stable soil;
4. Deeding the site into a permanent conservation easement.

Mitigation b.: When in-place mitigation is not feasible, data recovery through excavation may be necessary. A data recovery plan, which makes provisions for adequately recovering the scientifically consequential information about the site, shall be prepared and adopted prior to any excavation being undertaken. Such studies must be deposited with the CCIC in Turlock, California. Special rules apply to any archaeological sites known to contain human remains (Health and Safety Code sec. 7050.5; Guidelines sec. 15126.4[b]).

Data recovery shall not be required if the lead agency determines that testing or studies already completed have adequately recovered the necessary data, provided that the data have already been documented in another EIR and are available for review at the California Historical Resource Regional Information Center (Guidelines sec. 15126.4[b]).
h. When structures or areas of historical significance over 45 years old are proposed for demolition, alteration, or where construction is proposed within 100 feet of that structure, the applicant shall submit data to the City regarding the structure's history or locations prepared by a qualified architectural historian. The City shall evaluate the historical significance of the proposal and require measures be implemented to preserve all structures and places it deems historically significant.

i. As an ongoing measure, the City of Modesto shall maintain professional standard inventories of historic resources, such as those conducted by Carey and Company in 1997, with the findings of those inventories concurred by the SHPO and kept on file with the State Office of Historic Preservation. The records will provide a preliminary assessment of eligibility at the initial study stage to indicate whether CEQA protections would apply in the case of a project application or whether the resource has previously been determined ineligible. When no previous survey has been conducted, buildings and structures older than 50 years must be evaluated by a professional historian or architectural historian prior to project approval to determine whether the resource is a historically significant resource, for purposes of CEQA.

When CEQA does apply, the character-defining elements of resources that will be affected should be identified by an architectural historian, City staff member, or other professional qualified under Secretary of Interior Standards to review such projects. It is these elements that are a crucial part of the ability of the resource to convey its historic significance. Projects that would alter character-defining elements would cause a compromise in historic integrity and would constitute a significant impact. Projects that follow Secretary of Interior Standards, in consultation with SHPO, can be considered mitigated to a level of less than significant.

The modification of historic structures and places can be mitigated through the application of existing regulations and consultation with the State Historic Preservation Officer, an interim procedure whereby the City evaluates proposals to modify historic structures and develops a program to reduce the impacts on an individual basis.

4. Policies in the Planned Urbanizing Area
   
a. Policies for the Planned Urbanizing Area are the same as those presented for the Baseline Developed Area.

G. NOISE

1. Overview

Noise pollution is recognized as a significant source of environmental degradation. In an effort to improve the quality of life in urban areas, California planning law requires every
PROPOSED AMENDMENT TO GENERAL PLAN TEXT: AIRPORT NOISE POLICY,
PAGE VII-16

(1) Widened right-of-way;
(2) Depressed roadway alignments;
(3) Earthen berms or earthen/wall combination;
(4) Walls;
(5) Acoustical retrofitting to affected parties.

g. In recognition of the conservative methodology used to develop the noise contours shown on Figure VII-1, builders, developers (for private development projects) and the City (for Capital projects) shall be allowed to demonstrate that detailed noise studies and/or mitigation are not necessary because future noise levels would be substantially less than depicted on Figure VII-1 due to, for example, natural shielding (e.g. from intervening topographical features or man-made structures) of a site or inapplicability of assumptions (shown on Table 3-3 of the Master Environmental Impact Report) used to develop the contours.

h. The City of Modesto shall limit trucking to specific routes, times and speeds that minimize adverse effects to sensitive land uses such as schools and residential areas.

i. To address noise impacts related to operation of the Airport, the City shall continue with noise abatement measures related to the airport operations (included in the Airport's approved FAR Part 150 Program) including curfews, ground run up suppressers, prohibition of operations of some aircraft types at certain hours of the day, land acquisition to prevent development in noise impacted areas, use of appropriate zoning and implementation of sound insulation programs in the aircraft noise impacted area.

Airport and aircraft noise analysis will be conducted in accordance with the Modesto City/County Airport's Master Plan mitigation measure in the approved plan published April 1993 and Federal Aviation Regulation (FAR) Part 150. Upon implementation of regular air carrier scheduled jet service, a new noise contour will be prepared based on the daily flight frequency and type of aircraft proposed for use. New contours will be prepared for subsequent significant increases in daily scheduled jet service. Every five years between commencement of air carrier jet service and the year 2010, the City of Modesto will monitor aircraft noise levels within the airport area of influence and publish a report of the findings.
PROPOSED AMENDMENT TO GENERAL PLAN
DIAGRAM: NOISE CONTOURS
PAGE VII-21, FIGURE V-3-2 (SHEET 1 OF 6)

Figure V-3-2
Noise Contours

Legend
- 60 LDN
- 65 LDN
- 70 LDN
- 75 LDN
- General Plan Boundary

Day Night Average Sound Levels (LDN)
60 LDN, 65 LDN, 70 LDN, 75 LDN Noise Contour

Reference Points
(For illustration only; not adopted)
- Streets
- Freeway
- Railroads
- Rivers

Source: City of Modesto 2002.
PROPOSED AMENDMENT TO GENERAL PLAN
DIAGRAM: NOISE CONTOURS
PAGE YII-24, FIGURE V-3-2 (SHEET 4 OF 6)

Figure V-3-2
Noise Contours

Legend

- - 60 LDN
- - 65 LDN
- - 70 LDN
- - 75 LDN

General Plan Boundary

Dry Night Average Sound Levels (LDN)
(80 Decibel LDN, 65 LDN, 55 LDN Noise Contours)

Reference Points
(For illustration only, not adopted)

- - Streets
- - Freeways
- - Railroads
- - Rivers

Not to Scale
Source: City of Modesto 2002.
PROPOSED AMENDMENT TO GENERAL PLAN
DIAGRAM: NOISE CONTOURS
PAGE VII-25, FIGURE V-3-2 (SHEET 5 OF 6)

Figure V-3-2
Noise Contours

Legend
- 60 LDN
- 65 LDN
- 70 LDN
- 75 LDN

General Plan Boundary

Day Night Average Sound Levels (LDN)
(60 LDN, 65 LDN, 70 LDN, 75 LDN Noise Contours)

Reference Points
(For illustration only; not adopted)
- Streets
- Freeway
- Railroads
- Rivers

Not to Scale
Source: City of Modesto 2002.

Jones & Stokes
PROPOSED AMENDMENT TO GENERAL PLAN
DIAGRAM: NOISE CONTOURS
PAGE VII-26, FIGURE V-3-2 (SHEET 6 OF 6)

Figure V-3-2
Noise Contours

Legend

--- 60 LDN
--- 65 LDN
--- 70 LDN
纳税 75 LDN
[ ] [ ] General Plan Boundary

Day Night Average Sound Levels (LDN)
[60 LDN], [65 LDN], [70 LDN], [75 LDN Noise Contours]

Reference Points
[For illustration only; not adopted]

--- Streets
--- Freeway
--- Railroads
--- Rivers

Not to Scale
Source: City of Modesto 2002

Jones & Stokes
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-123

CERTIFYING THE FINAL MASTER ENVIRONMENTAL IMPACT REPORT UPDATE FOR THE MODESTO URBAN AREA GENERAL PLAN (SCH#1999082041), AND ADOPTING STATEMENT OF FINDINGS OF SIGNIFICANT IMPACTS AND REJECTION OF ALTERNATIVES, AND A STATEMENT OF OVERRIDING CONSIDERATIONS, AND A MITIGATION MONITORING PROGRAM

WHEREAS, on August 15, 1995, the City of Modesto adopted a Modesto Urban Area General Plan, that has been amended from time to time, to guide the growth of the City of Modesto to year 2025 and beyond; and

WHEREAS, prior to adopting the Modesto Urban Area General Plan, and any amendments thereto, the California Environmental Quality Act (CEQA) requires that the City consider the environmental consequences of the proposed project; and

WHEREAS, the preparation of the Master Environmental Impact Report (MEIR) is to provide decision-makers and the public with information concerning the individual and cumulative environmental effects of the project, to indicate possible ways to mitigate, reduce or avoid the environmental impacts, and to identify alternatives to the project; and

WHEREAS, on August 15, 1995, a Final Master Environmental Impact Report (MEIR) on the City of Modesto’s General Plan (SCH#92052017) was certified and appropriate findings adopted prior to the adoption of the 1995 Modesto Urban Area General Plan; and

WHEREAS, periodic updates have been made to the MEIR via additions, deletions and other proposed modifications as part of the adoption of Focused Environmental Impact Reports on: Fairview Village Specific Plan (November 1995),
Empire North Unit No. 1 Specific Plan (November 1996), and the Kiernan Business Park/Carver Bangs Specific Plan (April 1997); and

WHEREAS, the City is proposing an amendment to the General Plan for maintenance purposes, including changes to the Circulation and Transportation map, School Policy text, Archaeological and Cultural resource policies, Airport Noise policy, Employment Estimates, and the Salida Comprehensive Planning District; and

WHEREAS, in conjunction with the environmental review for the proposed General Plan Amendment the staff also proposes a comprehensive update to the MEIR; and

WHEREAS, Notices of Preparation (NOPs) for the proposed Update to the MEIR were circulated for the required 30-day periods, from August 20, 1999 to September 25, 1999, August 6, 2001 to September 9, 2001 and June 12, 2002 to July 15, 2002; and

WHEREAS, pursuant to the California Environmental Quality Act, Public Resources Code Section 21000, et seq., (CEQA) and the CEQA Guidelines, California State Office of Planning and Research, 14 California Code of Regulations 15000, et seq. (CEQA Guidelines), the City prepared an MEIR Update entitled "Draft Master Environmental Impact Report Update for the Urban Area General Plan and Related Amendments to the Urban Area General Plan" (DMEIR) (SCH#1999082041); and

WHEREAS, the DMEIR was released for public review and comment for the required 45-day period beginning on November 25, 2002; and

WHEREAS, the City prepared a Final Master Environmental Impact Report Update (FMEIR), which incorporated all the comments received during the circulation period and the City’s responses thereto, and the City distributed copies of the response to comments along with the date, time and location of the scheduled public hearing on
certification of the FMEIR Update, to commenting agencies for the required ten-day period on January 30, 2003;

WHEREAS, the Planning Commission held a public hearing on February 10, 2003, to review and consider the proposed FMEIR Update and recommended the City Council certify the FMEIR Update and adopt the related statement of findings of significant impacts and rejection of alternatives, statement of overriding considerations, and a mitigation monitoring program; and

WHEREAS, the City Council held a public hearing on March 4, 2003, to review and consider the proposed Final MEIR Update and the Statement of Findings of Significant Impacts and Rejection of Alternatives, Statement of Overriding Considerations, and a Mitigation Monitoring Program; and

WHEREAS, the information contained in the proposed FMEIR Update, evidence both oral and documentary, and staff reports for the Project, including information submitted throughout the process recited above, was reviewed and considered by the City Council prior to taking action on the FMEIR Update.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. Recitals. The foregoing recitals are true correct and are incorporated herein as findings.

2. Compliance with CEQA. The Final Master Environmental Impact Report Update for the Modesto Urban Area General Plan (SCH# 1999082041) (FMEIR Update) was prepared in compliance with the requirements of the California Environmental Quality Act (CEQA). A copy of the FMEIR Update is on file with the City Clerk.
3. The FMEIR Update, reflects the fact that mitigation monitoring, pursuant to Public Resources Code Section 21081.6, for Mitigation Measures from the 1995 MEIR (SCH# 92052017) has been accomplished by incorporation of those mitigation measures directly into the Urban Area General Plan as adopted policies, thereby leaving only mitigation measures required for new additional impacts not previously identified in the 1995 MEIR.

- Traffic and Circulation Needs
- Degradation of Air Quality
- Generation of Noise
- Effects on Agricultural Land
- Increased Demand for Long Term Water Supplies
- Increased Demand for Sanitary Sewer Facilities
- Loss of Sensitive Potential Disturbance of Archaeological or Historical Sites
- Wildlife and Plant Habitat
- Increased Demand for Storm Drainage
- Flooding & Water Quality
- Increased Demand for Parks and Open Space
- Increased Demand for Schools
- Generation of Hazardous Materials
- Growth-Inducing Impact

4. FMEIR Update Reviewed and Considered. The City Council certifies that the FMEIR has been completed in compliance with CEQA; that it has been presented to the Council and that the Council has reviewed and considered the information contained in the FMEIR Update, that the FMEIR Update reflects the independent judgement of the Council, and all of the information contained therein has substantially influenced all aspects of the decision by the Council. The FMEIR Update is a material part of this resolution.
5. Findings Regarding Significant Effects. Section 21081(a) of the Public Resources Code requires the City Council to make certain findings regarding the significant effects of the General Plan. This includes effects that would be significant, but that would be mitigated by either policies of the Urban Area General Plan or by new mitigation measures identified in the Master EIR. The effects addressed by the findings are:

<table>
<thead>
<tr>
<th>Effect</th>
<th>Page in FMEIR</th>
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<tbody>
<tr>
<td>a. The City Council adopts these Findings, attached hereto as Exhibit &quot;A&quot; and incorporated herein by this reference, which makes findings for each significant impact identified in the FMEIR and the project alternatives identified in the FMEIR.</td>
<td></td>
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<tr>
<td>b. In accordance with CEQA and the State CEQA Guidelines, the FMEIR examined a range of reasonable alternatives to the Project which could feasibly attain the basic objectives of the Project and evaluated the comparative merits of the alternatives including: Alternative 1 - the No-Project Alternative – the current General Plan without any amendments, Alternative 2 – the 1998 Capital Facility Fee (CFF) Program Roadway Modifications Only, and Alternative 3 – the Beckwith/Dakota Comprehensive Planning district Develops after year 2025.</td>
<td></td>
</tr>
<tr>
<td>c. The City Council adopts the Findings Supporting Rejection of Alternatives, included in Exhibit &quot;A&quot; and incorporated herein by this reference, which makes findings for the rejection of each alternative analyzed in the FMEIR. The City Council, exercising</td>
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</table>
their own independent judgment, determines that such Findings are supported by substantial evidence in the record.


   a. The Final Master EIR identified the following impacts as Significant and Unavoidable:

<table>
<thead>
<tr>
<th>Effect</th>
<th>Page in FMEIR</th>
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<tbody>
<tr>
<td>Traffic and Circulation Needs (direct and cumulative impacts)</td>
<td>V-1-22-30</td>
</tr>
<tr>
<td>Degradation of Air Quality (direct and cumulative impacts)</td>
<td>V-2-20-23</td>
</tr>
<tr>
<td>Generation of Noise (direct and cumulative impacts)</td>
<td>V-3-17-20</td>
</tr>
<tr>
<td>Loss of Productive Agricultural Land (cumulative impact)</td>
<td>V-4-9-10</td>
</tr>
<tr>
<td>Increased Demand for Long Term Water Supplies (cumulative impact)</td>
<td>V-5-10&amp;11</td>
</tr>
<tr>
<td>Increased Demand for Sanitary Sewer Facilities (cumulative operational impact)</td>
<td>V-6-10</td>
</tr>
<tr>
<td>Loss of Sensitive Wildlife and Plant Habitat (cumulative impact)</td>
<td>V-7-25</td>
</tr>
<tr>
<td>Potential Disturbance of Archaeological or Historical Sites (cumulative impact)</td>
<td>V-V-8-18</td>
</tr>
<tr>
<td>Increased Demand for Storm Drainage (cumulative impact)</td>
<td>V-9-10</td>
</tr>
<tr>
<td>Growth-Inducement</td>
<td>VI-1-4</td>
</tr>
</tbody>
</table>

   b. In accordance with Section 21081 of the Public Resources Code and Section 15093 of the State CEQA Guidelines, in order to approve the Project the City Council must make a statement, supported by findings, as to the specific economic, legal, social, technological, or other benefits of the project, which outweigh the project’s unavoidable environmental impacts. The City Council has balanced the benefits of the proposed project against its unavoidable environmental risks in determining whether to
approve the project and has determined that the adverse environmental effects are acceptable.

c. The City Council adopts the Statement of Overriding Considerations, attached hereto as Exhibit "B" and incorporated herein by this reference.

7. Mitigation Monitoring.

Pursuant to Section 21081.6 of the Public Resources Code, the mitigation monitoring program set forth in Exhibit “C”, is hereby adopted and incorporated herein by this reference to ensure that all mitigation measures adopted for the Project are fully implemented.

8. Location and Custodian of Documents

The record of project approval shall be kept in the office of the Community and Economic Development Department, City of Modesto, City Hall, 1010 Tenth Street, Modesto, CA 95354.

9. Certification. Based on the above facts and findings, the City Council of the City of Modesto hereby certifies the Final Master Environmental Impact Report Update for the Modesto Urban Area General Plan as accurate and adequate. The City Council further certifies that the FMEIR Update was completed in compliance with CEQA and the State CEQA Guidelines. The Community Development Director is directed to file a Notice of Determination as required by CEQA and the State CEQA Guidelines.
The foregoing resolution was introduced at the regular meeting of the Council of
the City of Modesto held on March 4, 2003, by Councilmember Fisher, 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, Keating, O’Bryant, Mayor Sabatino
Noes: Councilmembers: Jackman
Absent: Councilmembers: Frohman

ATTEST: JEAN ZAHN, City Clerk
(SEAL)
APPROVED AS TO FORM:
By: MICHAEL D. MILICH, City Attorney
STATEMENT OF FINDINGS OF SIGNIFICANT IMPACTS
AND REJECTION OF ALTERNATIVES

Pursuant to Public Resources Code Section 21081 and Section 15091 of the State CEQA Guidelines (14 California Code of Regulations 15000, et seq.), the City of Modesto cannot approve a project for which an Environmental Impact Report (EIR) has been certified which identifies significant effects on the environment unless it adopts findings with respect to each significant effect. The City must also find that there are specific considerations that make infeasible the alternatives identified in the EIR.

In Section A below, the City will make one or more of the following findings for each of the significant effects identified in the Master EIR:

Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures identified in the Master EIR.

In Section B below, the City will make the following finding regarding each of the alternatives identified in the Master EIR.

Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the alternatives identified in the Master EIR.

Section 21081 provides that the City may also find that “changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.” That finding does not apply to any of the significant effects identified in the Master EIR.

A. FINDINGS REGARDING SIGNIFICANT IMPACTS

Traffic and Circulation Needs Impact: The project will result in an increase in traffic, with a related reduction in the level of service (LOS) on various streets within the planning area.

Finding:

Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

Supporting Evidence:

Modesto Urban Area General Plan policies under section V-4.B.5 require general actions, such as Transportation Demand Management, encouragement of walking, and promotion of bicycle use to reduce future traffic demand. Modesto Urban Area General Plan policies under section V-4.B.6 (applicable to the Baseline Developed Area and
Redevelopment Area) require the review of individual development projects in order to maintain projected LOS. Where LOS cannot be maintained, the policies would require the preparation of a Comprehensive Traffic Study as part of a mitigated negative declaration or Focused EIR on the project. Site-specific mitigation measures will be imposed on that development. The Initial Study prepared for each subsequent activity under the Master EIR (as required by Public Resources Code Section 21157.1) will determine whether the project would exceed projected traffic LOS and, if so, require an analysis and mitigation of the excess traffic.

Modesto Urban Area General Plan policies under section V-4.B.7 (applicable to the Planned Urbanizing Area) require a Comprehensive Traffic Study prior to approval of any Comprehensive Plan. The Comprehensive Plan will include measures necessary to maintain a standard of LOS D.

Traffic and Circulation Needs Impact: The project will contribute to a substantial cumulative impact related to an increase in the existing traffic load in relation to the capacity of the street system.

Finding:

Specific legal, economic and social considerations make infeasible the mitigation measures identified in the Master EIR.

Supporting Evidence:

The EIR certified by the Stanislaus Council of Governments (StanCOG) for its Regional Transportation Plan in 2001 identified the increase in traffic as a cumulative effect. This increase is the result of social and economic conditions that favor continued growth within California and Stanislaus County. State Planning Law, in particular the requirements for housing elements, requires the County and its cities, including Modesto, to plan for their fair share of future housing needs (Government Code Section 65580 et seq.). Neither the County, nor the city may choose to restrict housing opportunities.

Data from the California Department of Finance indicates that the statewide population increased by approximately 13.8 percent (Public Law 94-171 Summary File, Table 1: Population Change 1990 – 2000, Incorporated Cities by County). During the same period, the California Department of Motor Vehicles reported that vehicle registration, including commercial vehicles and trailers, increased by 16 percent (Estimated Fee-Paid Vehicle Registrations by County, Report 2001). The rate of increase in motor vehicle registration closely tracks the rate of population increase.

The California Department of Finance projects that the population of Stanislaus County will increase by approximately 56.6 percent by the year 2020 (Interim County Population Projections --June 2001. California Department of Finance. Sacramento, CA). The number of motor vehicles may be expected to increase at a similar rate.

Degradation of Air Quality Impact: Over the span of the planning period, CO, NOx, ROG, and PM10 emissions will exceed the significance thresholds established by the San Joaquin Valley Unified Air Pollution Control District.
Findings:

Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

Specific legal, economic and social considerations make infeasible the mitigation measures identified in the Master EIR.

Supporting Evidence:

The City has adopted, as part of its Urban Area General Plan, various policies and air quality measures intended to moderate the effects of increased traffic and growth on air quality. These include General Plan policies VII-H.2 and the air quality measures in Tables 2-2 through 2-6 of the Master EIR that are referenced in those policies.

Although the above referenced policies will moderate the projected impacts on air quality, the increase in emissions is the result of social and economic conditions that favor continued growth within California and Stanislaus County. State Planning Law, in particular the requirements for housing elements, requires the County and its cities, including Modesto, to plan for their fair share of future housing needs (Government Code Section 65580 et seq.). Neither the County, nor the city may choose to restrict housing opportunities and thereby control emissions through growth prohibitions.

Motor vehicle use, a major source of emissions will increase with population. Data from the California Department of Finance indicates that the statewide population increased by approximately 13.8 percent (Public Law 94-171 Summary File, Table 1: Population Change 1990 – 2000, Incorporated Cities by County). During the same period, the California Department of Motor Vehicles reported that vehicle registration, including commercial vehicles and trailers, increased by 16 percent (Estimated Fee-Paid Vehicle Registrations by County, Report 2001). The rate of increase in motor vehicle registration closely tracks the rate of population increase.

The California Department of Finance projects that the population of Stanislaus County will increase by approximately 56.6 percent by the year 2020 (Interim County Population Projections --June 2001). The number of motor vehicles may be expected to increase at a similar rate. Despite expected improvements in control technology (e.g., a greater percentage of low emissions vehicles on the road, etc.) and regulations (e.g., limits on burning, formulation of paints, etc.), the increase in vehicles and population will result in the exceedance of significance thresholds over the planning period.

Degradation of Air Quality Impact: The San Joaquin Valley Air Basin is an air quality non-attainment area. Planned growth in Modesto will make a considerable contribution to the cumulative air quality impact within the basin.

Finding:

Specific legal, economic and social considerations make infeasible the mitigation measures identified in the Master EIR.
Supporting Evidence:

State Planning Law, in particular the requirements for housing elements, requires the County and its cities, including Modesto, to plan for their fair share of future housing needs (Government Code Section 65580 et seq.). Neither the County, nor the city may choose to restrict housing opportunities and thereby control emissions through growth prohibitions.

Motor vehicle use, a major source of emissions will increase with population. Data from the California Department of Finance indicates that the statewide population increased by approximately 13.8 percent (Public Law 94-171 Summary File, Table 1: Population Change 1990 – 2000, Incorporated Cities by County). During the same period, the California Department of Motor Vehicles reported that vehicle registration, including commercial vehicles and trailers, increased by 16 percent (Estimated Fee-Paid Vehicle Registrations by County, Report 2001). The rate of increase in motor vehicle registration closely tracks the rate of population increase.

The California Department of Finance projects that the population of Stanislaus County will increase by approximately 56.6 percent by the year 2020 (Interim County Population Projections --June 2001). The number of motor vehicles may be expected to increase at a similar rate. Despite expected improvements in control technology (e.g., a greater percentage of low emissions vehicles on the road, etc.) and regulations (e.g., limits on burning, formulation of paints, etc.), the increase in vehicles and population will result in the exceedance of significance thresholds over the planning period. As the largest city in Stanislaus County, Modesto’s growth will make a significant contribution to the county’s population gain.

Generation of Noise Impact: Traffic noise levels under future conditions have the potential to result in exceedances of the City’s noise significance standards.

Findings:

Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

Specific legal, economic and social considerations make infeasible the mitigation measures identified in the Master EIR.

Supporting Evidence:

The City has adopted, as part of its Urban Area General Plan, various policies which moderate the effects of increased traffic and growth on noise. These include the Modesto City Noise Ordinance, which limits noise to daytime hours and prohibits the production of loud noises from stationary engines, and General Plan policies VII-G.3 and VII-G.4 which require mitigation of noise in new development in the existing City limits and Planned Urbanizing Area. These policies are implemented through the Initial Study analysis that is applied to all discretionary projects undertaken under the General Plan.
As described above in the discussion of air quality impacts, California Planning Law and the County’s growth rate combine to limit the ability of the City to restrict growth and avoid increases in noise associated with additional growth (including traffic).

**Generation of Noise Impact:** Traffic noise levels from individual projects under future conditions have the potential to make a cumulatively considerable contribution to the City’s noise levels.

**Finding:**

Specific legal, economic and social considerations make infeasible the mitigation measures identified in the Master EIR.

**Supporting Evidence:**

As described above in the discussion of air quality impacts, California Planning Law and the County’s growth rate combine to limit the ability of the City to restrict growth and avoid increases in noise associated with additional growth (including traffic). Individual project contributions, although moderated by the City Noise Ordinance and General Plan policies described above, would be sufficient to result in a cumulative exceedance of City noise standards in some situations.

**Effects on Agricultural Land Impact:** The Urban Area General Plan will convert land from agricultural to urban use, particularly in the Planned Urbanizing Area. This impact is less-than-significant in the Baseline Developed and Redevelopment Areas since this conversion has already taken place.

**Finding:**

Specific legal, economic and social considerations make infeasible the mitigation measures identified in the Master EIR.

**Supporting Evidence:**

The City of Modesto is surrounded by agricultural lands. As described above in the discussion of air quality impacts, California Planning Law and the County’s growth rate combine to limit the ability of the City to restrict growth and avoid the conversion of agricultural land associated with additional growth (including traffic). The City has adopted policies intended to encourage compact growth, including policies VII.D.3[e] of the Urban Area General Plan. While these policies will result in higher densities of development than might occur without those policies, thereby reducing the total amount of farmland that must be converted to meet growth projections, the existing built area of the City cannot absorb the projected 100 percent increase in City population during the planning period.

**Effect on Agricultural Land Impact:** Modesto’s growth will contribute to the cumulative impact of County-wide growth on agricultural lands.

**Finding:**
Specific legal, economic and social considerations make infeasible the mitigation measures identified in the Master EIR.

Supporting Evidence:

As described above in the discussion of air quality impacts, California Planning Law and the County’s growth rate combine to limit the ability of the City to restrict growth and thereby avoid water demand that will contribute to future groundwater shortages. The City has adopted water conservation policies in Section V.C.2 of the Urban Area General Plan. In addition, as described in Section V-5 of the Master EIR, the City is participating in groundwater management planning for the Turlock, Stanislaus, and Tuolumne groundwater basins and, in conjunction with the Modesto Irrigation District, on an Integrated Water Resources Plan. These activities are intended to utilize groundwater resources efficiently, but are ultimately limited in their ability to avoid future groundwater overdraft by the sheer amount of growth that is forecast to arrive in the San Joaquin Valley, Stanislaus County, and Modesto by the year 2020.

Increased Demand for Sanitary Sewer Facilities Impact: Implementation of the City Wastewater Master Plan (WMP) would result in residual cumulative impacts on air quality and odors.

Finding:

Specific legal, economic and social considerations make infeasible the mitigation measures identified in the Master EIR.

Supporting Evidence:
The Master EIR prepared for the WMP identified this cumulative impact on the demand for additional sewer service resulting from future development under the Urban Area General Plan. As described above in the discussion of air quality impacts, California Planning Law and the County’s growth rate combine to limit the ability of the City to restrict growth and avoid expansion of the Wastewater Treatment Plant.

Loss of Sensitive Wildlife and Plant Habitat Impact: Development under the Urban Area General Plan will result in the loss of sensitive wildlife and plant habitat.

Finding:

Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

Supporting Evidence:

Except for lands within the designated riparian corridors (protected from development under the Urban Area General Plan’s Comprehensive Planning District [CPD] policies), lands within the Baseline Developed Area and the Redevelopment Area are of limited habitat value. Impact within these areas are less-than-significant.

Within the Planned Urbanizing Area, development will be subject to further environmental review through CEQA, as well as the state and federal Endangered Species Acts, when CPDs are proposed for development. During the preparation of the specific plan for each CPD, appropriate measures will be required, including urban design and development standards, to avoid taking of listed species. Urban Area General Plan policies, including policies VII-E.3 (and requiring implementation of Table 7-1 of the Master EIR) will protect sensitive habitats.

New Mitigation Measure Biology-1, described in the Master EIR, will require the City to comply with federal requirements to avoid the incidental take of listed species.

Loss of Sensitive Wildlife and Plant Habitat Impact: Development under the Urban Area General Plan will contribute to the cumulative loss of sensitive wildlife and plant habitat.

Finding:

Specific legal, economic and social considerations make infeasible the mitigation measures identified in the Master EIR.

Supporting Evidence:

As described above in the discussion of air quality impacts, California Planning Law and the County’s growth rate combine to limit the ability of the City to restrict growth and thereby avoid loss of some habitat lands. The amount of growth that is forecast to arrive in the San Joaquin Valley, Stanislaus County, and Modesto by the year 2020 portends significant losses of habitat within the region.
Potential Disturbance of Archaeological or Historical Sites Impact: Substantial changes to existing historical structures resulting from Zoning Ordinance requirements such as parking and landscaping could have a significant effect.

Finding:

Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

Supporting Evidence:

Policies VII-F.2 of the Urban Area General Plan, New Mitigation Measure Cultural-1 and revised Table 8-1 of the Master EIR will reduce this effect to less-than-significant levels. The General Plan policies require protection of archaeological and historical resources within the planning area. New Mitigation Measure Cultural-1 requires the addition of new General Plan policy V.F.2[g] requiring the City to maintain inventories of historical resources and to protect historical resources through the discretionary review process. Revised Table 8-1 establishes procedures for mitigating impacts to cultural resources.

Potential Disturbance of Archaeological or Historical Sites Impact: The cumulative impacts on cultural resources is the same as the project impact described above.

Finding:

Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

Supporting Evidence:

Policies VII-F.2 of the Urban Area General Plan, New Mitigation Measure Cultural-1 and revised Table 8-1 of the Master EIR will reduce this effect to less-than-significant levels. The General Plan policies require protection of archaeological and historical resources within the planning area. New Mitigation Measure Cultural-1 requires the addition of new General Plan policy V.F.2[g] requiring the City to maintain inventories of historical resources and to protect historical resources through the discretionary review process. Revised Table 8-1 establishes procedures for mitigating impacts to cultural resources.

Increased Demand for Storm Drainage Impact: New development will potentially stress existing stormwater drainage systems.

Finding:

Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

Supporting Evidence:

Urban Area General Plan policies applicable to the Baseline Developed Area (where rockwells provide a portion of the existing storm drainage capacity), including policies V-E.2, require construction of adequate storm drain facilities with new development.
Urban Area General Plan policies applicable to the Planned Urbanizing Area, including policies V-E.3, will require new development areas to be served by positive storm drainage systems, including dual-use (e.g., drainage and recreation) facilities. Tables 9-1 through 9-4 of the Master EIR establish requirements for drainage plans, the design of sediment control basins, and set out best management practices for drainage design. In addition, plans and specifications for new stormwater facilities within the City must comply with the City's Comprehensive Stormwater Management Program to ensure the avoidance of pollutants in stormwater.

In addition, New Mitigation Measure Drainage-1 requires the City to adopt a Master Drainage Plan, in consultation with Stanislaus County, MID, and TID, to address the projected cumulative flows that would be discharged to MID and TID facilities from the urbanized drainage areas. The master drainage program would include the procedures for planning, evaluation, and design of necessary stormwater drainage facilities to ensure that facilities are capable of accommodating the additional flows. The master drainage program would also include capital improvement, operations, and maintenance-financing plans necessary to ensure that facilities are constructed in a timely fashion to reduce the impacts from potential flooding problems.

**Increased Demand for Storm Drainage Impact**: Development in Modesto and the County will contribute to cumulative impact on the capacity of Modesto Irrigation District and Tuolumne Irrigation District canals to convey drainage waters.

**Finding**: Specific legal, economic and social considerations make infeasible the mitigation measures identified in the Master EIR.

**Supporting Evidence**: As described above in the discussion of air quality impacts, California Planning Law and the County's growth rate combine to limit the ability of the City to restrict growth and thereby avoid increased volumes of storm drainage water.

**Flooding and Water Quality Impact**: Increased development could contribute to runoff, contributing to flooding problems in the urban area. Development of urban areas could increase discharges of erosion and wastes to surface waters through urban runoff.

**Finding**: Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

**Supporting Evidence**: Adopted policies of the Modesto Urban Area General Plan, specifically General Plan policies VI-C.2 and VI-C.3, City floodplain ordinances, and the City's Guidance Manual for New Development Stormwater Quality Control Measures would reduce direct impacts to less than significant by, among other things, restricting development within floodplains and requiring specific water-quality protections from development.
Flooding and Water Quality Impact: Cumulative impacts could occur from the project’s contributions to runoff and discharges of waste and erosion.

Finding:

Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

Supporting Evidence:

Adopted policies of the Modesto Urban Area General Plan, specifically General Plan policies VI-C.2 and VI-C.3, City floodplain ordinances, and the City’s Guidance Manual for New Development Stormwater Quality Control Measures, as well as federal regulations limiting discharges to surface waters (Clean Water Act sections 402 [NPDES permitting] and 401 [water quality certification]), would reduce the City’s contribution to cumulative impacts to less than significant by, among other things, restricting development within floodplains and requiring specific water-quality protections from development.

Increased Demand for Parks and Open Space Impact: Increased population under the Urban Area General Plan would increase demand for park and open space facilities, requiring new facilities to be constructed.

Finding:

Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

Supporting Evidence:

Urban Area General Plan policies, including policies V-G.2 and V-G.3, require the provision of park facilities as new development occurs. The required minimum acreages can be met through the application of existing policies and regulations, including also Government Code Section 66474, which enables the City to require developers to pay Parks Capital Facilities Fees to fund the acquisition of appropriate parkland acreage.

Increased Demand for Schools Impact: The project would necessitate the construction of additional school facilities to satisfy the demand created by increased population under the Urban Area General Plan. This is both a direct and cumulative impact.

Finding:

Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

Supporting Evidence:

State law, commonly referred to as SB 50, governs K-12 school financing. SB 50 provides that payment of development impact fees, or other compliance with its provisions, reduces the impact on schools to a less-than-significant level.
Generation of Hazardous Materials Impact: Impacts from the generation, transportation, storage, and disposal of hazardous materials within the Baseline Developed Area and the Planned Urbanizing Area cannot be completely eliminated.

Finding:

Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

Supporting Evidence:

Urban Area General Plan policies, including policies V-M.2, require avoidance of impacts in new development. Federal and state laws regulating the transportation, storage, disposal, and clean-up of hazardous materials and wastes, including those programs administered by Stanislaus County, are described in Section V-16 of the Master EIR. Together, these reduce the impacts to a less-than-significant level.

Growth-Inducing Impact: The Urban Area General Plan will have a growth-inducing impact by removing regulatory obstacles to growth.

Finding:

Specific legal, economic and social considerations make infeasible the mitigation measures identified in the Master EIR.

Supporting Evidence:

State Planning Law requires each city and county to adopt a general plan for its future development. This general plan must consider land use, transportation, housing, conservation, open-space, noise, and safety issues. Under the Housing Element, State Law requires the City of Modesto, to plan for its fair share of future housing needs (Government Code Section 65580 et seq.). Fair share housing need allocations are assigned on the basis of population projections for the region. The California Department of Finance projects that the population of Stanislaus County will increase by approximately 56.6 percent by the year 2020 (Interim County Population Projections -- June 2001).

State law prohibits the City from adopting a general plan that would not make provision for this future growth.

As described in Chapter VI of the Master EIR, the City has adopted a number of policies intended to control the rate of its growth, and to encourage higher-than-usual density of development so that the urban area will develop compactly. These policies will channel the direction and form of growth, but will not prevent it.

B. FINDINGS SUPPORTING REJECTION OF ALTERNATIVES
The Final MEIR discussed and evaluated a range of alternatives as required by CEQA Guidelines Section 15126.6. In order to reject an alternative, the City must find:

Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the alternatives identified in the Master EIR.

Following are the findings supporting rejection of each of the alternatives.

**Alternative 1. No Project Alternative:** The “No Project Alternative” reflects the continuation of the 1995 Modesto Urban Area General Plan, as previously amended, into the future.

Finding for rejection:

Specific legal and fiscal considerations make infeasible the alternative identified in the Master EIR.

Supporting Evidence:

The California Planning and Zoning Law (Government Code Section 65300, et seq.) requires each City to adopt a long-term general plan for its physical development. The general plan is expected to be comprehensive, internally consistent, and have a long-term perspective (Chapter 1, State General Plan Guidelines. Office of Planning and Research. 1998) Furthermore, the provisions of the circulation element must be “correlated” with the land use element (Government Code Section 65302(b)). In addition, in a charter city such as Modesto, subdivisions of land, specific plans, development agreements, capital improvement plans, and comprehensive plans must be consistent with the general plan (Government Code Sections 66474, 65454, 65867.5, 65103, and 65300.5, respectively).

Since the 1995 adoption of the Urban Area General Plan, the City has revised its job generation estimates, refined its traffic model, identified numerous cultural resources, among other things. These will change the way in which the City considers land use projects. Accordingly, these changes must be represented in revisions to the General Plan roadway network (in order to maintain correlation with the land use element), cultural resources section, and other policies in the Urban Area General Plan so that they may be reflected in the review of subdivisions, specific plans, and other City actions that require consistency with the General Plan. In order to ensure that the general plan consistently reflects proposed changes to the City’s roadway network, cultural resources preservation policies, and other policies described in Chapter III (Project Description) of the Master EIR, the City is required to incorporate these proposed changes into the General Plan itself.

The California Environmental Quality Act provides that a Master EIR must be examined within 5 years of its original certification to ensure that it continues to reflect the environment and current information about environmental effects (Public Resources Code Section 21157.6). Since the certification of the Master EIR for the Urban Area General Plan in 1995, the City has consistently cross-referenced new information from later environmental analyses, such as the Focused EIR prepared for the Kiernan Business Park Specific Plan and the Master EIR for the Wastewater Master Plan, to the
Urban Area General Plan Master EIR. In order to ensure that its Master EIR meets the spirit, as well as the letter, of the law Modesto is certifying this update of its Master EIR.

**Alternative 2. 1998 Capital Facilities Fee (CFF) Modifications Only Alternative:** The “1998 Capital Facilities Fee (CFF) Modifications Only Alternative” consists of a series of modifications to the proposed roadway network that were considered necessary in order that facility improvements could be fully funded through the CFF and other foreseeable funding sources. These comprise an alternative to the set of Modesto Urban Area General Plan roadway network amendments proposed as part of the project.

**Finding:**

Specific technical considerations make infeasible the alternative identified in the Master EIR.

**Supporting Evidence:**

This alternative reflects a set of modifications to the roadway network developed in 1998 for consideration as part of the Master EIR Update. Additional development projects approved since 1998, as well as more recent traffic modeling studies have lead the City’s Transportation Planners and Engineers to conclude that a number of network modifications, not reflected in Alternative 2, are necessary in order to efficiently serve future development under the Urban Area General Plan. Further, since developing this alternative the City has refined its traffic model and chosen to use that revised traffic model for future traffic projections.

Alternative 2 is rejected because it does not reflect the City’s current understanding of traffic generation by proposed land uses (as a function of land use, current employment estimates, and other factors), as embodied in the City’s refined traffic model.

**Alternative 3. Beckwith/Dakota Comprehensive Planning District (CPD) Develops after Year 2025 Alternative:** The “Beckwith/Dakota Comprehensive Planning District (CPD) Develops after Year 2025 Alternative” assumes that no development will occur within the 1,040-acre Beckwith/Dakota CPD until after year 2025.

**Finding:**

Specific legal and social considerations make infeasible the alternative identified in the Master EIR.

**Supporting Evidence:**

Although there are currently no proposals to develop the Beckwith/Dakota CPD, such proposals may arise prior to the 2025 planning horizon. The Beckwith/Dakota CPD is designated for business park development on the Urban Area General Plan. General Plan policies (e.g., Policy II-B.1[a]) encourage business park development in order to diversify the City’s economic base. Acting to discourage development of this CPD if such a project were proposed would be inconsistent with the General Plan. Government Code Section 65300.5 requires the General Plan to be internally consistent and so would prohibit that action.
Stanislaus County suffers from chronically high unemployment levels in comparison to the rest of California. Based on information from the State Employment Development Department, Stanislaus County's unemployment rate is often twice the state average. In 2001, for example, the County's annual average unemployment rate was 10.2 percent while that of California as a whole was 5.3 percent. In 2000, Stanislaus' rate was 10.4 percent while the California rate was 4.9 percent. (Civilian Labor Force, Employment and Unemployment. Employment Development Department. January 15, 2003)

While population growth has been rapid in the area, job growth has not kept pace. The Beckwith/Dakota CPD would generate as many as 26,000 employees at build out. These additional jobs would help to reduce unemployment within the region and meet community growth policies of the Urban Area General Plan which give top priority to expansion of business park areas and diversify the City's economic base (e.g. Policy II-B.1[a]).
STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to Public Resources Code Section 21081 and Section 15093 of the State CEQA Guidelines (14 California Code of Regulations 15000, et seq.), the City of Modesto cannot approve a project for which an Environmental Impact Report (EIR) has been certified which identifies significant unavoidable effects on the environment, unless it adopts a statement of overriding considerations that finds that specific overriding economic, legal, social, technological or other benefits of the project outweigh its significant effects on the environment.

The Master EIR identified the following adverse effects of the project that cannot be mitigated below a level of significance:

- Traffic and Circulation Needs (direct and cumulative impacts)
- Degradation of Air Quality (direct and cumulative impacts)
- Generation of Noise (direct and cumulative impacts)
- Loss of Productive Agricultural Land (cumulative impact)
- Increased Demand for Long Term Water Supplies (cumulative impact)
- Increased Demand for Sanitary Sewer Facilities (cumulative operational impact)
- Loss of Sensitive Wildlife and Plant Habitat (cumulative impact)
- Potential Disturbance of Archaeological or Historical Sites (cumulative impact)
- Increased Demand for Storm Drainage (cumulative impact)
- Growth-Inducement

A. FINDINGS REGARDING SIGNIFICANT UNAVOIDABLE IMPACTS

The City Council has determined that the Modesto Urban Area General Plan Amendments should be approved and that any remaining unmitigated environmental impacts attributable to the Modesto Urban Area General Plan are outweighed by the following specific benefits.

Traffic and Circulation Needs (direct and cumulative impacts)

The proposed project, particularly the General Plan Amendment for the roadway network, will establish a set of roadway network standards that are more economically feasible than the current network and that are consistent with new information from the City's traffic model. Because the City will lack sufficient financing to make the roadway improvements identified in the 1995 Urban Area General Plan, it will be unable to meet the standards established in that plan. The proposed project promotes internal consistency within the General Plan, as required under Government Code Section 65300.5.

Although the project will exceed Level of Service standards along numerous road segments within the Planning Area, the development associated with the Urban Area General Plan would result in approximately 144,000 new employment opportunities in total within the planning area at build-out. The increased number of local jobs has the benefit of reducing chronic local unemployment levels that are currently nearly twice the statewide average (Civilian Labor Force, Employment and Unemployment Employment Development Department. January 15, 2003). The increased number of residences benefits the community both socially and legally by helping it meet its future regional fair share housing allocations, as required under Government Code Section 65580 et seq.

The City of Modesto's Redevelopment Plan, adopted in 1991, contains numerous goals and policy statements, which would not be achieved without the promotion of significant employment opportunities. The proposed project benefits the City economically by authorizing nearly 45,000 new employment opportunities and 5,700 residents in the central city area.
Primary among these redevelopment goals are the following:

- The replanning, redesign and development of undeveloped areas, which are stagnant or improperly utilized.

- The strengthening of retail and other commercial functions in the Project Area.

- The strengthening of the economic base of the Project Area and the community by the installation of needed site improvements to stimulate new commercial expansion, employment and economic growth.

- The expansion of the supply of housing for low- and moderate-income persons.

Degradation of Air Quality (direct and cumulative impacts)

California Planning and Zoning Law requires the City to adopt a general plan for its long-range physical development (Government Code Section 65300 et seq.). Substantial population increases are projected to occur in Stanislaus County and the City of Modesto during the planning period. The California Department of Finance projects that the population of Stanislaus County will increase by approximately 56.6 percent by the year 2020 (Interim County Population Projections --June 2001. California Department of Finance. Sacramento, CA). The level of development proposed under the Urban Area General Plan and the General Plan Amendments made a part of this project offer the planning benefit of directing how this increased population will be efficiently located within the City through compact development policies contained in the plan, and describing City policies for the provision of future infrastructure and other needs.

The development associated with the Urban Area General Plan would result in approximately 144,000 new employment opportunities within the planning area at build-out in 2025. The increased number of local jobs has the benefit of reducing chronic local unemployment levels that are currently nearly twice the statewide average (Civilian Labor Force, Employment and Unemployment. Employment Development Department. January 15, 2003). The increased number of residences economically benefit the community by helping it meet its future regional fair share housing allocations, as required under Government Code Section 65580 et seq.

Generation of Noise (direct and cumulative impacts)

The proposed project, particularly the General Plan Amendment for the roadway network, will establish a set of roadway network standards that are more economically feasible than the current network and that are consistent with new information from the City’s traffic model. Because the City will lack sufficient financing to make the roadway improvements identified in the 1995 Urban Area General Plan, it will be unable to meet the standards established in that plan. Although the proposed project will result in increased levels of transportation-related noise at build-out in 2025, it offers the legal benefit of promoting internal consistency within the General Plan, as required under Government Code Section 65300.5.

The development associated with the Urban Area General Plan would result in approximately 144,000 new employment opportunities within the planning area at build-out in 2025. The increased number of local jobs has the benefit of reducing chronic local unemployment levels that are currently nearly twice the statewide average (Civilian Labor Force, Employment and Unemployment. Employment Development Department. January 15, 2003). The increased number of residences socially and legally benefit the community by helping it meet its future regional fair share housing allocations, as required under Government Code Section 65580 et seq.
regional fair share housing allocations, as required under Government Code Section 65580 et seq.

**Loss of Productive Agricultural Land** (cumulative impact)

Agriculture is a mainstay of the Stanislaus County economy, with a 2001 market value for its commodities of over $1.35 billion (Agriculture Resource Directory 2002. 2002. California Department of Food and Agriculture. Sacramento, CA). Nonetheless, agriculture is a seasonal occupation and is one reason for Stanislaus County’s relatively high unemployment rate. High unemployment rates are common among the agricultural-dependent counties of the San Joaquin Valley, as well as Imperial County (Civilian Labor Force, Employment and Unemployment. Employment Development Department. January 15, 2003).

The proposal has the social and economic benefits of encouraging significant new employment opportunities, outside of agriculture, as the business parks identified in the Urban Area General Plan are developed. At build-out, the plan would allow up to 144,000 new jobs within the planning area. This will create a more diversified job market. It will also enable the City to meet the economic development goals of its general plan calling for diversification of its economic base (Policy II-B.1[a]).

California Planning and Zoning Law requires the City to adopt a general plan for its long-range physical development (Government Code Section 65300 et seq.). Substantial population increases are projected to occur in Stanislaus County and the City of Modesto during the planning period. The California Department of Finance projects that the population of Stanislaus County will increase by approximately 56.6 percent by the year 2020 (Interim County Population Projections --June 2001. California Department of Finance. Sacramento, CA). The level of development proposed under the Urban Area General Plan and the General Plan Amendments made a part of this project offer the planning benefit of directing how this increased population will be efficiently located within the City through compact development policies contained in the plan, and describing City policies for the provision of future infrastructure and other needs.

**Increased Demand for Long Term Water Supplies** (cumulative impact)

California Planning and Zoning Law requires the City to adopt a general plan for its long-range physical development (Government Code Section 65300 et seq.). Substantial population increases are projected to occur in Stanislaus County and the City of Modesto during the planning period. The level of development proposed under the Urban Area General Plan and the General Plan Amendments made a part of this project offer the planning benefit of directing how this increased population will be efficiently located within the City through compact development policies contained in the plan, and describing City policies for the provision of future infrastructure and other needs.

The development associated with the Urban Area General Plan would result in approximately 144,000 new employment opportunities within the planning area at build-out in 2025. The increased number of local jobs has the economic and social benefits of reducing chronic local unemployment levels that are currently nearly twice the statewide average (Civilian Labor Force, Employment and Unemployment. Employment Development Department. January 15, 2003). The increased number of residences socially and legally benefits the community by helping it meet its future regional fair share housing allocations, as required under Government Code Section 65580 et seq.
The policies of the City's Urban Area General Plan offer the planning benefit of providing a mechanism for responding to future drought conditions. The General Plan and Urban Water Management Plan (UWMP) identify a number of actions that the City is currently conducting or planning to implement to reduce demands on the water supply. These measures include limiting groundwater extraction to the level considered a safe yield for the aquifers, increasing the use of reclaimed wastewater, implementing, a mandatory residential water metering, and implementing trough-response measures. The UWMP describes the City's 3-stage Water Shortage Contingency Plan that is implemented during times of drought. Each stage of the drought contingency plan allows the City to implement more restrictive water rationing from relatively simple mechanisms (e.g., outdoor watering restrictions, requiring leaks to be fixed, reducing restaurant water use, requiring positive shutoff and low-flow water fixtures) to very restrictive measures such as mandatory system retrofitting requirements and imposing moratoriums on new construction. The City has implemented additional distribution system improvements, maintenance programs, and automated control systems in recent years to increase system efficiency and reduce water losses. An existing City ordinance requires water meters to be installed on new construction. Although the City currently charges a flat rate for water use, installation of water meters will reduce water use by allowing the City to implement structured water pricing policies if deemed necessary.

Increased Demand for Sanitary Sewer Facilities (cumulative operational impact)

California Planning and Zoning Law requires the City to adopt a general plan for its long-range physical development (Government Code Section 65300 et seq.). Substantial population increases are projected to occur in Stanislaus County and the City of Modesto during the planning period. The level of development proposed under the Urban Area General Plan and the General Plan Amendments made a part of this project offer the planning benefit of directing how this increased population will be efficiently located within the City through compact development policies contained in the plan, and describing City policies for the provision of future infrastructure and other needs.

The development associated with the Urban Area General Plan would result in approximately 144,000 new employment opportunities within the planning area at build-out in 2025. The increased number of local jobs has the social and economic benefits of reducing chronic local unemployment levels that are currently nearly twice the statewide average (Civilian Labor Force, Employment and Unemployment. Employment Development Department. January 15, 2003). The increased number of residences socially and legally benefits the community by helping it meet its future regional fair share housing allocations, as required under Government Code Section 65580 et seq.

Loss of Sensitive Wildlife and Plant Habitat (cumulative impact)

California Planning and Zoning Law requires the City to adopt a general plan for its long-range physical development (Government Code Section 65300 et seq.). Substantial population increases are projected to occur in Stanislaus County and the City of Modesto during the planning period. The level of development proposed under the Urban Area General Plan and the General Plan Amendments made a part of this project offer the planning benefit of directing how this increased population will be efficiently located within the City through compact development policies contained in the plan, and describing City policies for the provision of future infrastructure and other needs.
The policies of the Urban Area General Plan relating to the CPDs and protection of special status species within the riparian corridors and the Planned Urbanizing Areas offer the benefit of enabling the City to undertake comprehensive planning of large areas. This will provide opportunities for programmatic, large-scale approaches to the protection of special status species and their habitats.

The development associated with the Urban Area General Plan would result in approximately 144,000 new employment opportunities within the planning area at build-out in 2025. The increased number of local jobs has the economic and social benefits of reducing chronic local unemployment levels that are currently nearly twice the statewide average (Civilian Labor Force, Employment and Unemployment. Employment Development Department. January 15, 2003). The increased number of residences benefits the community socially and legally by helping it meet its future regional fair share housing allocations, as required under Government Code Section 65580 et seq.

Potential Disturbance of Archaeological or Historical Sites (cumulative impact)

California Planning and Zoning Law requires the City to adopt a general plan for its long-range physical development (Government Code Section 65300 et seq.). Substantial population increases are projected to occur in Stanislaus County and the City of Modesto during the planning period. The level of development proposed under the Urban Area General Plan and the General Plan Amendments made a part of this project offer the planning benefit of directing how this increased population will be efficiently located within the City through compact development policies contained in the plan, and describing City policies for the provision of future infrastructure and other needs.

New policies proposed as part of this project (see Chapter III of the Master EIR and Section V-8, New Mitigation Measure Cultural-1 and revised Table 8-1) will help to protect existing historic resources from damage or destruction that might otherwise occur as a result of meeting City Zoning Ordinance requirements. This is a resource-protective benefit over existing policies.

The development associated with the Urban Area General Plan would result in approximately 144,000 new employment opportunities within the planning area at build-out in 2025. The increased number of local jobs has the economic and social benefits of reducing chronic local unemployment levels that are currently nearly twice the statewide average (Civilian Labor Force, Employment and Unemployment. Employment Development Department. January 15, 2003). The increased number of residences socially and legally benefits the community by helping it meet its future regional fair share housing allocations, as required under Government Code Section 65580 et seq.

Increased Demand for Storm Drainage (cumulative impact)

California Planning and Zoning Law requires the City to adopt a general plan for its long-range physical development (Government Code Section 65300 et seq.). Substantial population increases are projected to occur in Stanislaus County and the City of Modesto during the planning period. The level of development proposed under the Urban Area General Plan and the General Plan Amendments made a part of this project offer the planning benefit of directing how this increased population will be efficiently located within the City through compact development policies contained in the plan, and describing City policies for the provision of future infrastructure and other needs.

The Urban Area General Plan CPD policies give the City the opportunity to undertake comprehensive planning of large areas identified for future development. This provides the
benefit of being able to develop large-scale drainage facilities as part of these plans, in cooperation with other affected agencies. This has the planning benefit of creating programmatic solutions to drainage within those CPDs. The City is currently completing a Drainage Master Plan that will describe the schematic layout of future stormwater drainage systems in all of the planned urbanizing areas (Gilton pers. Comm.). In addition, the City is participating with MID and other local agencies on the preparation of an Integrated Water Resources Management Plan that will address water resources planning and management in the region for surface water, groundwater, wastewater, and stormwater drainage.

The development associated with the Urban Area General Plan would result in approximately 144,000 new employment opportunities within the planning area at build-out in 2025. The increased number of local jobs has the social and economic benefits of reducing chronic local unemployment levels that are currently nearly twice the statewide average (Civilian Labor Force, Employment and Unemployment. Employment Development Department. January 15, 2003). The increased number of residences economically and legally benefits the community by helping it meet its future regional fair share housing allocations, as required under Government Code Section 65580 et seq.

Growth-Inducement

California Planning and Zoning Law requires the City to adopt a general plan for its long-range physical development (Government Code Section 65300 et seq.). Substantial population increases are projected to occur in Stanislaus County and the City of Modesto during the planning period. The level of development proposed under the Urban Area General Plan and the General Plan Amendments made a part of this project offer the planning benefit of directing how this increased population will be efficiently located within the City through compact development policies contained in the plan, and describing City policies for the provision of future infrastructure and other needs.

The development associated with the Urban Area General Plan would result in approximately 144,000 new employment opportunities within the planning area at build-out in 2025. The increased number of local jobs has the economic and social benefits of reducing chronic local unemployment levels that are currently nearly twice the statewide average (Civilian Labor Force, Employment and Unemployment. Employment Development Department. January 15, 2003). The increased number of residences legally and socially benefits the community by helping it meet its future regional fair share housing allocations, as required under Government Code Section 65580 et seq.
Mitigation Monitoring Program

Background

1. Purpose of the Monitoring Program

This Mitigation Monitoring Program is prepared in accordance with Section 21081.6 of the Public Resource Code. Its purpose is to provide for the accomplishment of the new mitigation measures required by the Final Master Environmental Impact Report (FMEIR) for the City of Modesto Urban Area General Plan.

Because the Master EIR approach has been utilized and because the subject project is a General Plan, the required mitigation measures are programmatic in nature. The mitigation measures generally consist of long-term strategies to be implemented through individual future development projects or through new and existing City procedures.

While implementation of some of the mitigation measures will be ongoing, the implementation of other mitigation measures will occur only when the need arises. For example, building code enforcement will be ongoing, but improvements to the circulation system will be constructed when traffic exceeds acceptable service levels, or when development occurs. Implementation of any programmatic measures will be subject to funding availability.

2. When Implemented

The mitigation measures required for the General Plan will be implemented at various times as development proceeds in the City of Modesto. For each mitigation measure, the implementation schedule may either be ongoing, or concurrent with development. Ongoing indicates that the mitigation measure is a broad policy statement that must be continually implemented. Mitigation measures will also be implemented through all or some future development projects.

3. Monitoring Agency

For each mitigation measure, the monitoring agency will be the City of Modesto. The City will be responsible for ensuring that the mitigation measure is properly implemented.

4. Monitoring Schedule

All the mitigation measures will be monitored periodically, to ensure that implementation is successful. Monitoring will occur, at a minimum, during the Annual General Plan Review and/or during individual development project processing. All of the mitigation measures determined as ongoing will be monitored during the Annual General Plan Review. All of the mitigation measures to be implemented through individual projects will be monitored during both the Annual General Plan Review and through individual project processing.

5. Monitoring

The 2003 FMEIR for the General Plan identifies a number of new mitigation measures to reduce significant environmental impacts. Those mitigation measures identified in the 1995
FMEIR certified for the Urban Area General Plan have been made policies of that plan and are identified in the 2003 FMEIR as policies in place that reduce or avoid significant effects, rather than mitigation measures. They are monitored through the City’s Annual Review of its General Plan and are not included as part of this Mitigation Monitoring Program. Some of the new mitigation measures are long-term programs and policies while others are to be implemented through future development projects. The following Mitigation Monitoring Program is limited to those new mitigation measures identified under the 2003 FMEIR. It also identifies those FMEIR tables that have been revised since the 1995 FMEIR was certified and that are referenced in General Plan policies.

When a focused Environmental Impact Report or Mitigated Negative Declaration is prepared for a subsequent development project, the FMEIR for the General Plan will be reviewed in accordance with Section 21157.1 of the Public Resources Code, the City will adopt a Mitigation Monitoring Program specific to that project. The environmental documentation for the proposed development project shall include all the mitigation measures from the FMEIR for the General Plan that are applicable to the proposed project as individual project-level mitigation measures. If some of the applicable mitigation measures have already been incorporated into the project design prior to the preparation of the environmental documentation, the measures will not be included as project-level mitigation measures.

Refinements of the mitigation measures and/or additional mitigation measures beyond those identified in the FMEIR may be required to reduce significant project-level impacts associated with each proposed development project. All mitigation measures identified in the project-level environmental documentation will also be included in the Mitigation Monitoring Program for that project.

6. Format.

The following format is employed for each mitigation measure, in order to comply with the Mitigation Monitoring requirement of Section 21081.6 of the Public Resources Code:

**Mitigation Measure**

This describes the mitigation measure identified in the Master EIR.

**a. Method of Project Implementation**

The City of Modesto has adopted all of the mitigation measures identified in the Master EIR into the Modesto Urban Area General Plan as Policy Statements. This approach will comply with section 21081.6(2)(b), which states:

"A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures, or in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design." (emphasis added)
b. State Law requires the Mitigation Monitoring Program to be "designed to ensure compliance during project implementation." This Mitigation Measure supports the State Law requirement in the following manner:

In order to ensure compliance of a subsequent project with the Mitigation Measure, the measure itself must be carefully written. It is important to describe the means by which the mitigation measure relates to current practices, or established methods of review.

c. This Measure is "fully enforceable through permit conditions, agreements, or other measures", as follows:

The City has adopted the subject mitigation measure as a Policy Statement in the General Plan. This approach will comply with Public Resources Code Section 21081.6(2)(b).
Mitigation Monitoring Program

Mitigation Measure - Biological Resources

New Mitigation Measure Biology-1: Urban Area General Plan Policy VII-E amendment

3(a) For all lands within the Planned Urbanizing Area, site specific surveys shall be conducted by a qualified biologist to determine whether any sensitive natural communities or species are present within the proposed development area. These studies shall particularly focus on proposed development within any lands included within a potential biological resource study area as delineated on Figure 7-1 in the Final Master EIR. (Riparian Corridor Diagram). Prior to considering development applications, the City shall coordinate with the U.S. Fish and Wildlife Service (USFWS) regarding listed species and potential for impacts. The City shall employ the measures recommended by the USFWS to avoid incidental take.

Surveys should be conducted at the appropriate season to best determine the likelihood of occurrence and should employ accepted methodologies as determined by the DFG and USFWS. The significant results of such surveys should be recorded onto the City’s existing biological resources map for future planning purposes.

a. Method of “Project Implementation”

This Mitigation Measure is incorporated directly into the General Plan as a Policy Statement.

b. State Law requires the Mitigation Monitoring Program to be “designed to ensure compliance during project implementation.” This Mitigation Measure supports the State Law requirement in the following manner:

The mitigation measure will be applied during the preparation of specific plans and community plans within the Planned Urbanizing Area.

c. This Measure is “fully enforceable through permit conditions, agreements, or other measures” as follows:

State Planning Law (Government Code Section 65100, et seq.) requires specific plans and community plans to be consistent with the Urban Area General Plan. As a result, this measure must be applied during the preparation of a specific plan or community plan.
Mitigation Measure - Biological Resources

Policies VII.E.3 of the Urban Area General Plan will cite Table 8-1 of the 2003 Master EIR, rather than the 1995 Master EIR.

a. Method of “Project Implementation”

This Mitigation Measure is incorporated by reference into the General Plan policies.

b. State Law requires the Mitigation Monitoring Program to be “designed to ensure compliance during project implementation.” This Mitigation Measure supports the State Law requirement in the following manner:

The mitigation measure will be applied during the preparation of specific plans and community plans within the Planned Urbanizing Area.

d. This Measure is “fully enforceable through permit conditions, agreements, or other measures” as follows:

State Planning Law (Government Code Section 65100, et seq.) requires specific plans and community plans to be consistent with the Urban Area General Plan. As a result, this measure must be applied during the preparation of a specific plan or community plan.
New Mitigation Measure Cultural-1: The Urban Area General Plan shall be amended to include the following Policy VII.F.2[g]:

g. As an ongoing measure, the City of Modesto shall maintain professional standard inventories of historic resources, such as those conducted by Carey and Company in 1997, with the findings of those inventories concurred by the SHPO and kept on file with the State Office of Historic Preservation. The records will provide a preliminary assessment of eligibility at the initial study stage to indicate whether CEQA protections would apply in the case of a project application or whether the resource has previously been determined ineligible. When no previous survey has been conducted, buildings and structures older than 50 years must be evaluated by a professional historian or architectural historian prior to project approval to determine whether the resource is a historically significant resource, for purposes of CEQA.

When CEQA does apply, the character-defining elements of resources that will be affected should be identified by an architectural historian, city staff member, or other professional qualified under Secretary of Interior Standards to review such projects. It is these elements that are a crucial part of the ability of the resource to convey its historic significance. Projects that would alter character-defining elements would cause a compromise in historic integrity and would constitute a significant impact. Projects that follow Secretary of Interior Standards, in consultation with SHPO, can be considered mitigated to a level of less than significant.

The modification of historic structures and places can be mitigated through the application of existing regulations and consultation with the State Historic Preservation Officer, an interim procedure whereby the City evaluates proposals to modify historic structures and develops a program to reduce the impacts on an individual basis.

e. Method of “Project Implementation”

This Mitigation Measure is incorporated directly into the General Plan as a Policy Statement.

f. State Law requires the Mitigation Monitoring Program to be “designed to ensure compliance during project implementation.” This Mitigation Measure supports the State Law requirement in the following manner:

Archeological and historical analysis in the Master EIR has used commonly-accepted analytical criteria of the Central California Information Center
(Turlock), National Register of Historic Places, and California State Office of Historic Preservation. The mitigation measure will be applied during the review of subsequent projects through the City’s Initial Study process.

g. This Measure is “fully enforceable through permit conditions, agreements, or other measures” as follows:

Section VII-F(2) of the General Plan presents these Mitigation Measures as General Plan Policies. Conditions of approval will be applied at such time as individual projects are approved. Where a project is found, through the Initial Study process, not to comply with these policies, the City will prepare a Mitigated Negative Declaration or Focused EIR and may impose further requirements at that time. Subsequent implementation actions, such as amendments to the Municipal Code, may provide further enforcement opportunities.
Mitigation Measure - Cultural

Policies VII.F.2[a] of the Urban Area General Plan shall be amended to cite Table V-8-1 of the 2003 Master EIR, rather than the 1995 Master EIR.

a. Method of “Project Implementation”

This Mitigation Measure is incorporated directly into the General Plan as a Policy Statement.

b. State Law requires the Mitigation Monitoring Program to be “designed to ensure compliance during project implementation.” This Mitigation Measure supports the State Law requirement in the following manner:

Policies VII-F(2) of the Urban Area General Plan require compliance with the provisions of Table 8-1 during project review.

c. This Measure is “fully enforceable through permit conditions, agreements, or other measures” as follows:

General Plan conformance review, which assures that this Mitigation Measure is “fully enforceable,” is required for:

- Subdivision Maps (66473.5, Government Code)
- Public Works Projects/Capital Improvement Program (65401)
- Specific Plans (65454)
- Development Agreements (65867.5)
- Redevelopment Plan (33330, et seq, Health & Safety Code)
- Comprehensive Plans (Section III-D, General Plan)

These are the primary means of reviewing development plans and installing public facilities.
Mitigation Measure - Noise

Noise Table 3-3 is incorporated into the 2003 FMEIR to continue the requirement under Urban Area General Plan noise policies VII-G.3 and VII-G.4 that individual project noise contours be based on the assumptions in Table 3-3.

a. Method of “Project Implementation”

This Mitigation Measure is into the General Plan by reference as a Policy Statement.

b. State Law requires the Mitigation Monitoring Program to be “designed to ensure compliance during project implementation.” This Mitigation Measure supports the State Law requirement in the following manner:

Table 3-3 will be applied as part of the project conformance review when preparing noise impact studies for individual projects.

c. This Measure is “fully enforceable through permit conditions, agreements, or other measures” as follows:

General Plan conformance review, which assures that this Mitigation Measure is “fully enforceable,” is required for:

- Subdivision Maps (66473.5, Government Code)
- Public Works Projects/Capital Improvement Program (65401)
- Specific Plans (65454)
- Development Agreements (65867.5)
- Redevelopment Plan (33330, et seq, Health & Safety Code)
- Comprehensive Plans (Section III-D, General Plan)

These are the primary means of reviewing development plans and installing public facilities.
1. Mitigation Measure

New Mitigation Measure Drainage-1: The City of Modesto shall adopt a Master Drainage Plan, in consultation with Stanislaus County, MID, and TID, to address the projected cumulative flows that would be discharged to MID and TID facilities from the urbanized drainage areas. The master drainage program should include the procedures for planning, evaluation, and design of necessary stormwater drainage facilities to ensure that facilities are capable of accommodating the additional flows. The master drainage program should include capital improvement, operations, and maintenance-financing plans necessary to ensure that facilities are constructed in a timely fashion to reduce the impacts from potential flooding problems.

a. Method of “Project Implementation”

This Mitigation Measure will be implemented as a result of the consistency requirements of State Planning Law. Government Code Section 65401 requires a consistency review of public works plans.

b. State Law requires the Mitigation Monitoring Program to be “designed to ensure compliance during project implementation.” This Mitigation Measure supports the State Law requirement in the following manner:

As a General Plan Policy, this Mitigation Measure must be followed in the Capital Improvement Program.

c. This Measure is “fully enforceable through permit conditions, agreements, or other measures” as follows:

General Plan conformance review, which assures that this Mitigation Measure is “fully enforceable,” is required for:

- Subdivision Maps (66473.5, Government Code)
- Public Works Projects/Capital Improvement Program (65401)
- Specific Plans (65454)
- Development Agreements (65867.5)
- Redevelopment Plan (33330, et seq, Health & Safety Code)
- Comprehensive Plans (Section III-D, General Plan)
Mitigation Measure - Drainage

Tables 9-1 through 9-4 establish design considerations for new drainage facilities throughout the planning area.

a. Method of "Project Implementation"

These tables are incorporated into the General Plan indirectly, through references in General Plan Policies V-E.2 and V-E.

b. State Law requires the Mitigation Monitoring Program to be "designed to ensure compliance during project implementation."

This Mitigation Measure supports the State Law requirement in the following manner:

As a General Plan Policy, this Mitigation Measure must be followed in the Capital Improvement Program.

c. This Measure is "fully enforceable through permit conditions, agreements, or other measures" as follows:

General Plan conformance review, which assures that this Mitigation Measure is "fully enforceable," is required for:

Subdivision Maps (66473.5, Government Code)
Public Works Projects/Capital Improvement Program (65401)
Specific Plans (65454)
Development Agreements (65867.5)
Redevelopment Plan (33330, et seq, Health & Safety Code)
Comprehensive Plans (Section III-D, General Plan)

These are the primary means of reviewing development plans and installing public facilities.
A RESOLUTION APPROVING THE INSTALLATION OF A ROUNDABOUT AT THE INTERSECTION OF SYLVAN AVENUE AND ROSELLE AVENUE AND THE INTERSECTION OF SYLVAN AVENUE AND MILLBROOK AVENUE

WHEREAS, on September 3, 2002, by Resolution No.2002-432 the City Council adopted a Roundabout Policy, and

WHEREAS, Modesto City Schools asked City staff to provide a traffic signal/roundabout comparison analysis at the intersection of Sylvan Avenue and Roselle Avenue (Sylvan/Roselle), and

WHEREAS, Modesto City Schools asked City staff to finalize the intersection controls for Sylvan/Roselle to aid them in finishing the improvement plans for a proposed high school, and

WHEREAS, Modesto City Schools also asked City staff to bring to the City Council for review and approval a proposed roundabout at the intersection of Sylvan Avenue and Millbrook Avenue (Sylvan/Millbrook), which will help complete the design of the entire frontage of a proposed high school, and

WHEREAS, the proposed roundabouts for Sylvan/Roselle and Sylvan/Millbrook comply with the Roundabout Policy, and

WHEREAS, on February 10, 2003, the Economic Development Committee approved the proposed roundabout at Sylvan/Roselle,

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the installation of roundabouts at the intersections of Sylvan Avenue and Roselle Avenue and Sylvan Avenue and Millbrook Avenue. In addition,
Staff is directed to prepare a visual model of the Sylvan/Millbrook intersection to resolve any engineering concerns that the schools may have and to advise the Council of any changes in the staff recommendation based on issues of student safety.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th 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, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: Conrad

ABSENT: Councilmembers: Frohman

ATTEST: ________
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By ________
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-125

A RESOLUTION AWARDING A FIVE-YEAR CONTRACT TO STORER TRANSIT SYSTEMS TO OPERATE THE MODESTO AREA DIAL-A-RIDE SERVICE AND AUTHORIZING STAFF TO PREPARE A FINAL AGREEMENT WITH STORER TRANSIT SYSTEMS FOR CONSIDERATION BY THE CITY COUNCIL.

WHEREAS, the existing agreement with Storer Transit Systems to operate the Modesto Area Dial-A-Ride (MADAR) service expires June 27, 2003, and

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

WHEREAS, the City Council authorized staff to solicit proposals for a new five-year contract to be effective June 28, 2003, and

WHEREAS, two proposals were received for the contract, and

WHEREAS, an evaluation committee composed of staff from three different transit agencies and the City of Modesto selected Storer Transit System’s proposal as the best submitted, and

WHEREAS, by an agenda report to the City Council dated February 11, 2003, from the Engineering and Transportation Director, recommended award of a new MADAR operations contract to Storer Transit systems, AND

WHEREAS, at its February 10, 2003, meeting, the Economic Development Committee approved recommending award of the contract to Storer Transit Systems,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that a five-year contract to operate the Modesto Area Dial-A-Ride service is hereby awarded to Storer Transit Systems, subject to City Council approval of a final agreement.

BE IT FURTHER RESOLVED that staff is hereby authorized to prepare a final agreement with Storer Transit Systems for consideration by the City Council.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th 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: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

ATTEST: Jean Zahr

JEAN ZAHR City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-126

A RESOLUTION APPROVING A "ZERO RENT" GROUND LEASE AGREEMENT WITH THE FEDERAL AVIATION ADMINISTRATION (FAA) FOR THE AIRPORT SITE OF THE AUTOMATED SURFACE OBSERVATION SYSTEM (ASOS) EQUIPMENT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNATED REPRESENTATIVE, TO EXECUTE THE LEASE ON BEHALF OF THE CITY.

WHEREAS, airport weather information is gathered and reported using an Automated Surface Observation System (ASOS) located at Modesto City-County Airport, and

WHEREAS, the ASOS equipment was owned and maintained by the National Weather Service of the National Oceanic and Atmospheric Administration (NOAA), and NOAA has leased an equipment site at the airport since 1994, and

WHEREAS, the City of Modesto recently received word from the Federal Aviation Administration (FAA) that the responsibility of maintaining the ASOS is now their responsibility, and

WHEREAS, the FAA is requesting that the City enter into a lease with the FAA for the ASOS site, and

WHEREAS, the FAA lease is a "zero rent" ground lease like the NOAA agreement that will continue 12 years beyond that of the NOAA lease, with an expiration date of September 30, 2021, and

WHEREAS, the Council’s Economic Development Committee considered the lease agreement at their February 10, 2003, meeting and supports the acceptance and the approval of the lease with the FAA,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the ground lease agreement with the FAA allowing the continued use of a site at the airport for the Automated Surface Observation System (ASOS).

BE IT FURTHER RESOLVED that the City Manager or his designated representative is hereby authorized to execute the lease on behalf of the City of Modesto.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th 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 was adopted by the following vote.

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

ATTEST: Jean Zahr, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-127

A RESOLUTION AUTHORIZING THE PURCHASING SUPERVISOR TO FORMALLY SOLICIT REQUEST FOR BIDS FOR WATER METERS, FOR A THREE (3) YEAR AGREEMENT WITH TWO (2) ONE-YEAR EXTENSION OPTIONS.

WHEREAS, the Operations and Maintenance Department Water Division has requested the purchase of water meters in various sizes, and

WHEREAS, these water meters will be used to service residential sites and commercial and industrial businesses within the City, and

WHEREAS, the purchase of new meters under the meter replacement program is for the replacement of non-operable and non-repairable water meters, and installation for new metered service in new subdivisions, and

WHEREAS, the City desires to solicit bids for a three (3) year agreement with two (2) one-year extension options, and

WHEREAS, Modesto Municipal Code (MMC), Section 8-3.203, generally requires all purchases, which meet or exceed $50,000.00 for material, equipment or contractual services to be formally bid, and

WHEREAS, by soliciting competitive bids for water meters in various sizes, the Finance Department Purchasing Division will comply with MMC Section 8-3.203 regarding formal bid procedures,

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 purchase of water meters in various sizes, for a three (3) year agreement with two (2) one-year extension options, to be opened in the office of the City Clerk, 1010 Tenth 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 sealed 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 11th 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: Conrad, Fisher, Frohman, Keating O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

ATTEST: JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-128

A RESOLUTION AUTHORIZING THE PURCHASE OF THIRTEEN (13), 2003, FORD CROWN VICTORIA, CHP CLASS “E” PATROL SEDANS THROUGH HERITAGE FORD, MODESTO, CA. FOR A TOTAL ESTIMATED COST OF $347,743.00

WHEREAS, the Operations and Maintenance Department-Fleet Services has requested the purchase of thirteen (13), 2003, Ford Crown Victoria, CHP Class “E” patrol sedans for the Police Department, and

WHEREAS, eleven (11) of these units have met their life expectancy and are fully funded for replacement from funds set aside out of the vehicle replacement fund, and

WHEREAS, two (2) additional units are needed to replace two patrol sedans that were totaled in collisions, and

WHEREAS, in previous years the police patrol vehicles were purchased through the State of California, Department of General Services vehicle contract, and

WHEREAS, this year the Purchasing Division issued a competitive bid inquiry to see if the pricing received from the local Ford dealer would be competitive with the State contract pricing, and

WHEREAS, after extensive comparison of vehicle standards and options, the pricing received from Heritage Ford was found to be more competitive than the pricing off the State vehicle contract based on not having to pay the administrative fees associated with accessing the contract, and

WHEREAS, pricing the vehicles locally will also afford the City the benefit of local tax dollars, and

WHEREAS, this purchase of 13 sedans is expected to meet the City’s patrol sedan needs for the next 12 months, and

WHEREAS, the City will receive the full benefits of the vehicle warranty since warranty start is delayed until the vehicles are put into service, and

WHEREAS, in accordance with the recommendation of the Finance Committee at their meeting on August 26, 2002, staff is bringing requests for critical pieces of equipment forward to Council on an individual “as needed” basis, and
WHEREAS, on January 27, 2003, the Finance Committee recommended that a like-vehicle price comparison be obtained from the local Ford dealer, and

WHEREAS, the estimated cost of thirteen (13), 2003, Ford Crown Victoria, CHP Class “E” patrol sedans purchased through Heritage Ford, Modesto, Ca. is $347,743.00, which is less than the cost of purchasing the vehicles under the State of California, Department of General Services contract, and

WHEREAS, the Modesto Municipal Code (MMC) generally requires all purchases exceeding $50,000 for materials and equipment of this type to be formally bid, and

WHEREAS, per MMC 8-3.204 (d) the Purchasing Supervisor may determine that a process other than the formal bid procedure set forth in Section 8-3.203 will result in a procurement for the City at the lowest possible cost commensurate with the desired quality,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the purchase of thirteen (13), 2003, Ford Crown Victoria, CHP Class “E” patrol sedans from Heritage Ford, Modesto, Ca. for a total estimated cost of $347,743.00.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of March, 2003, by Councilmember Keating, 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: Conrad, Fisher, Frohman, Keating O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

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 PROPOSAL (RFP) FOR HOT PATCH WORK.

WHEREAS, the Operations and Maintenance Department-Water Division is requesting the purchase of hot patch work for the period of May 30, 2003, through May 30, 2004, with two one-year extension options, and

WHEREAS, hot patch work consists of asphalt repairs to street cuts made in order to perform repairs in Empire and Zone 3 water systems, and

WHEREAS, Zone 3 is comprised of Waterford, Hickman, Empire, Salida, Del Rio, Ceres, Turlock, Grayson, and County areas just outside the City limits that do not receive surface water from the Modesto Irrigation District (MID) water system, and

WHEREAS, the City crews perform some of this work but often in-house resources are not available to perform the hot-patch work needed in Zone 3, and

WHEREAS, the City has encroachment permits with Stanislaus County that allow the City to make the necessary street cuts to repair Empire and Zone 3 water system, and

WHEREAS, those permits give us a restricted timeframe to repair the street system and perform the hot patch work once the street cuts are made, and

WHEREAS, the City has additional exposure to the liability for damages resulting from the vehicles traveling over the un-repaired cuts, and

WHEREAS, by soliciting competitive proposals for hot-patch work, the Finance Department, Purchasing Division will comply with the Modesto Municipal Code, Section 8-3.204, regarding formal proposal procedures,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that formal solicitation of proposals for hot-patch work is hereby approved as follows:

SECTION 1. The City Clerk is hereby authorized to call for public competitive sealed proposals for hot-patch work to be opened in the City Clerk, 1010 10TH Street, in the City of Modesto. The City Clerk shall be directed to give notice inviting such sealed proposals in the time, form, and manner provided by law.

SECTION 2. After the proposals 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 11th 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: Conrad, Fisher, Frohman, Keating O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

ATTEST: 

JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

BY: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-130

A RESOLUTION AUTHORIZING THE PURCHASE OF SIX (6), 2003 CHEVROLET SILVERADO 1500 TRUCKS OFF THE STATE OF CALIFORNIA, DEPARTMENT OF GENERAL SERVICES CONTRACT AND FROM COALINGA MOTORS OF COALINGA CA. FOR A TOTAL ESTIMATED COST OF $104,531.97

WHEREAS, the Operations and Maintenance Department-Fleet Services has requested the purchase of six (6), 2003 Chevrolet Silverado, 1500 trucks, and
WHEREAS, these units will replace trucks which have become unreliable and costly to keep operational, and
WHEREAS, these units have met their life expectancy, and
WHEREAS, these units are fully funded for replacement from funds set aside out of the Fleet Replacement Fund, and
WHEREAS, the estimated cost for six (6), 2003 Chevrolet Silverado, 1500 trucks purchased under the State of California, Department of General Services (DGS), Purchasing Division contract is $102,694.19, and
WHEREAS, the estimated State service charge for using the DGS contract is $1,837.78, and
WHEREAS, Coalinga Motors is the closest State authorized Chevrolet dealer for the Silverado 1500 trucks, and
WHEREAS, purchasing these Chevrolet trucks from Coalinga Motors under the DGS contract will allow the City to receive the lowest possible price for these vehicles, and
WHEREAS, the Purchasing Division went through an extensive informal bid process for these vehicles, and
WHEREAS, the lowest pricing received was $2,000.00 more that the state pricing, and
WHEREAS, the estimated total cost of this purchase is $104,531.97, and
WHEREAS, the Modesto Municipal Code generally requires all purchases exceeding $50,000 for materials and equipment of this type to be formally bid, and
WHEREAS, per MMC 8-3.204 (d) the Purchasing Supervisor may determine that a process other than the formal bid procedure set forth in Section 8-3.203 will result in a procurement for the City at the lowest possible cost commensurate with the desired quality,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto hereby approves the purchase of six (6), 2003 Chevrolet Silverado, 1500 trucks under the DGS statewide pricing contract for a total estimated cost of $104,531.97.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th 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: Conrad, Fisher, Frohman, Keating O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-131

A RESOLUTION AUTHORIZING THE PURCHASE OF A JOHN DEERE 304H WHEEL LOADER UNDER THE STATE OF CALIFORNIA, DEPARTMENT OF GENERAL SERVICES, CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS) CONTRACT FROM NORTREX WEST OF FRENCH CAMP, CA. FOR A TOTAL ESTIMATED COST OF $70,522.45.

WHEREAS, the Operations and Maintenance Department-Fleet Services has requested the purchase of a John Deere 304H wheel loader, and
WHEREAS, this unit will replace a loader which has become unreliable and costly to keep operational, and
WHEREAS, this unit has met its life expectancy, and
WHEREAS, this unit is fully funded for replacement from funds set aside out of the Water Enterprise Fund, and
WHEREAS, the Water Department heavy construction crew, needs this loader to meet its work program installing and replacing major sections of water distributions lines, and
WHEREAS, the estimated cost of a new John Deere 304H loader Purchased under a California multiple Award Schedule (CMAS), General Services Administration Statewide pricing contract is $69,277.13, and
WHEREAS, the estimated State Service Charge for using the CMAS contract is $1,245.22, and
WHEREAS, purchasing the equipment from Nortrex West under the CMAS contract will allow the City to receive the lowest possible price for this piece of industrial equipment, and
WHEREAS, Nortrax West, French Camp, CA. is the closest authorized dealer for this equipment, and there are no local vendors authorized to sell this piece of industrial equipment, and
WHEREAS, the estimated total cost of this purchase is $70,522.45, and 
WHEREAS, the Modesto Municipal Code (MMC) generally requires all 
purchases exceeding $50,000 for materials and equipment of this type to be formally bid, 
and
WHEREAS, per MMC Section 8-3.204 (d) the Purchasing Supervisor may 
determine that a process other than the formal bid procedure set forth in Section 8-3.203 
will result in a procurement for the City at the lowest possible cost commensurate with 
the desired quality, and 

WHEREAS, at its meeting on February 24, 2003, the Finance Committee 
authorized City staff to take this equipment purchase to Council for approval,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of 
Modesto hereby approves the purchase of a John Deere 304H wheel loader from Nortrex 
West under the CMAS statewide pricing contract for a total estimated cost of $70,522.45.

The foregoing resolution was introduced at a regular meeting of the Council of the 
City of Modesto held on the 11th 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: Conrad, Fisher, Frohman, Keating 
O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

ATTEST: 

By: Michael D. Milich, City Attorney
RESOLUTION APPROVING AN AGREEMENT TO RECEIVE A $342,000 REIMBURSEMENT FOR THE CONSTRUCTION OF A PACBELL RETAINING WALL STRUCTURE ON THE KANSAS NEEDHAM OVERCROSSING PROJECT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, construction has started on the Kansas Needham Overhead Crossing project, and

WHEREAS, Pacbell manhole number 491 required a retaining wall adjacent to the Kansas Needham Overhead Crossing, and

WHEREAS, Pacbell has signed an agreement with the City to repay all costs incurred for the construction of the Pacbell MH 491 retaining wall, and

WHEREAS, Pacbell has reviewed and approved the retaining wall design, and

WHEREAS, in good faith, City of Modesto has proceeded with the initial engineering and construction briefings with its contractor, and

WHEREAS, the construction is ready to proceed, and

WHEREAS, the cost for all work has been determined and submitted to the City of Modesto in the amount of $342,000,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the agreement to accept the reimbursement of $342,000 from Pacbell for the retaining wall construction.

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 11th 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: Conrad, Fisher, Frohman, Keating O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

ATTEST: [Signature]
JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

By [Signature]
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-133

A RESOLUTION ACCEPTING THE BID AND AWARDING GRANITE CONSTRUCTION COMPANY THE CONTRACT FOR THE PROJECT TITLED "VILLAGE ONE WEST BASIN ROAD IMPROVEMENTS"

WHEREAS, the bids received for Village One West Basin Road Improvements were opened at 11:00 a.m. on February 25, 2003, 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 $852,907.70 received from GRANITE CONSTRUCTION COMPANY, be accepted as the lowest responsible bid, and the contract be awarded to GRANITE CONSTRUCTION COMPANY,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the bid of GRANITE CONSTRUCTION COMPANY, and hereby awards GRANITE CONSTRUCTION COMPANY the contract titled "Village One West Basin Road Improvements" in the amount of $852,907.70.

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 11th 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: Conrad, Fisher, Frohman, Keating O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

ATTEST: ____________________________
JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

By ____________________________
MICHAEL D. MILICH, City Attorney
A RESOLUTION RE-ADOPTING THE MODESTO NON-MOTORIZED TRANSPORTATION MASTER PLAN.

WHEREAS, staff has recently submitted grant applications to the State of California under the Bicycle Transportation Account (BTA) for funding for the Virginia Corridor, and

WHEREAS, BTA requires eligible applicants to have a non-motorized transportation plan adopted within four years from the time of submission of grant applications, and

WHEREAS, the City Council last adopted a Modesto Non-Motorized Transportation Master Plan in February 1997, and

WHEREAS, submitting a resolution re-adopting the Modesto Non-Motorized Transportation Master Plan prior to March 25, 2003, will guarantee the City’s eligibility for BTA funding and the review of the City’s grant applications,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby re-adopts the Modesto Non-Motorized Transportation Master Plan.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of March, 2003, by Councilmember Fisher, 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, Keating O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

Attest: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
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,

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

SECTION 1. CLASSIFICATION AMENDED. The Position Classification Plan of the City of Modesto is hereby amended to revise the following classification:

Traffic Engineer

This classification is being amended as a result of the updating of the job specification in preparation of opening a recruitment. The specification for the classification of Traffic Engineer (Range 447), as shown on the attached Exhibit “A”, which is hereby made a part of this resolution by reference, is hereby approved and made part of the Position Classification Plan of the City of Modesto.
SECTION 2. EFFECTIVE DATE. This resolution shall become effective on and after March 11, 2003.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th 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: Conrad, Fisher, Frohman, Keating O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

ATTEST: ____________________________

JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By ____________________________

MICHAEL D. MILICH, City Attorney
CITY OF MODESTO
No. 2339

TRAFFIC ENGINEER

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

DEFINITION

To plan, organize, direct, and participate in the development, operation, and maintenance of the City's traffic system and facilities; and to provide responsible staff assistance to the Deputy Director of Engineering and Transportation, Traffic and Development Services Division.

SUPERVISION RECEIVED AND EXERCISED

Receives administrative direction from the Deputy Director of Engineering and Transportation - Traffic and Development Services Division.

Exercises technical and functional supervision over professional, technical, and clerical staff.

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

Essential Functions

Develop and implement division goals, objectives, policies, and priorities.

Plan, organize, direct, review and evaluate work involving transportation planning and traffic engineering.

Provide advice and technical assistance to City Council and department management and staff, Planning Commission, Council committees, and the public on traffic matters.

Participate in review of development plans and Environmental Impact Reviews (EIR's).

Provide for the selection, training and professional development of assigned staff.

Direct or conduct studies and prepare reports and correspondence on traffic control issues for presentation to the City Council, Planning Commission, Council committees, and other civil bodies.

Establish and maintain liaison with appropriate governmental bodies, private firms, organizations or individuals to assist in achieving City objectives and insuring compliance with appropriate laws and technical standards affecting traffic engineering.

Represent the City in legal affairs related to traffic and transportation issues; coordinate and prepare answers to legal inquiries.
Monitor the operations and suitability of existing traffic facilities; recommend and assist in the implementation of new traffic control facilities.

Oversee and develop citywide traffic calming programs.

Prepare and administer division budget.

Marginal Functions:
Perform related duties as assigned.

QUALIFICATIONS

Knowledge of:

Principles and practices of traffic engineering.
Principles of traffic calming, neighborhood traffic reduction.
Transportation engineering theory and practices.
Current state and federal traffic regulations.
Recent developments, current literature, and sources of information regarding traffic engineering.
Principles of supervision, training, and budget administration.

Ability to:

Manage and prioritize a diverse traffic control program.
Analyze complex traffic control problems, evaluating alternatives and reaching sound conclusions.
Plan, assign, direct, review, and evaluate the work of others.
Perform a variety of responsible traffic and transportation engineering functions.
Perform required traffic/transportation studies, and analyses.
Identify, analyze, and develop workable solutions to traffic problems.
Understand community traffic concerns.
Explain technical traffic engineering information to nonprofessionals.
Write clear, concise and effective reports, letters, or memos.
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 professional traffic engineering experience including one year of supervisory or lead responsibility.

Training:

Equivalent to a Bachelor’s degree from an accredited college or university with major course work in civil and/or traffic engineering or a related field. A Master's Degree in Transportation is desirable.

License or Certificate:

Possession of a valid Certificate of Registration as a Traffic Engineer issued by the California State Board of Registration for Professional Engineers.

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

WORKING CONDITIONS

Environmental Conditions:

Office environment; occasionally travel from site to site.

Physical Conditions:

Essential and marginal functions may require maintaining physical condition necessary for sitting for prolonged periods of time; travel to and from various locations; attending meetings; and using a personal computer and related office equipment.
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,

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

SECTION I. CLASSIFICATION AMENDED. The Position Classification Plan of the City of Modesto is hereby amended to revise the following classification, formerly titled Detective:

Police Detective

This classification is being amended as a result of the updating of the job specification in preparation of opening a recruitment. The specification for the classification of Police Detective (Range 312), as shown on the attached Exhibit “A”, which is hereby made a part of this resolution by reference, is hereby approved and made part of the Position Classification Plan of the City of Modesto.
SECTION 2. EFFECTIVE DATE. This resolution shall become effective on and after March 11, 2003.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th 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: Conrad, Fisher, Frohman, Keating O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

ATTEST: 

JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

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

DEFINITION
To perform law enforcement and crime prevention work; to perform investigative work; to participate in and provide support and assistance to special crime prevention and enforcement programs; and to perform a variety of technical and administrative tasks in support of the department.

SUPERVISION RECEIVED AND EXERCISED
Receives general supervision from higher level supervisory and management staff.
Exercises functional and technical supervision over sworn and non-sworn personnel.

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

Essential Functions:
Collect, process, photograph and present evidence using scientific techniques including fingerprints, fibers, blood, and related physical evidence.
Conduct a variety of criminal investigations involving crimes against persons and property, auto theft, white collar crime, and narcotics; gather evidence and prepare cases for prosecution.
Identify suspects; conduct interviews and interrogations; apprehend and arrest offenders.
Contact and interview victims and witnesses; preserve and investigate crime scenes.
Conduct covert, undercover investigations as assigned.
Contact and cooperate with other law enforcement agencies in matters relating to the apprehension of offenders and the investigation of offenses.
Assist in the performance of special investigative and crime prevention duties as required.
Prepare reports on arrests made, activities performed and unusual incidents observed.
Make arrests as necessary; interview victims, complainants and witnesses; interrogate suspects; administer polygraph tests; gather and preserve evidence; testify and present evidence in court.

Serve arrest and search warrants within the department and with outside agencies; remain current on laws and procedures required for processing warrants.

Perform a wide variety of laboratory tests and procedures including those related to narcotics testing; act as Department photographer; testify in court as an expert witness.

Gather crime related intelligence information and conduct background investigations; coordinate information and activities with outside agencies and jurisdictions.

Investigate juvenile related crimes including child abuse and juvenile narcotics; coordinate youth services with outside agencies and organizations including local school districts; conduct community presentations and instruct assigned classes.

Operate applicable computer systems; enter and retrieve information; assess bank records.

Conduct personnel recruitment background investigations; interview potential job candidates and references; administer voice stress analysis tests.

Give oral presentations at schools, clubs and other community organizations.

**Marginal Functions:**

Perform related duties as assigned.

**QUALIFICATIONS**

**Knowledge of:**

Police methods and procedures including investigation and identification techniques.

Criminal law and criminal procedure with particular reference to the apprehension, arrest and custody of persons committing misdemeanors and felonies, including rules of evidence pertaining to the seizure and preservation of evidence.

Offensive and defensive weapons nomenclature and theory.

Self defense tactics.
Interviewing and interrogation techniques.

**Ability to:**

Analyze situations quickly and objectively, and determine and take emergency action.

Understand and carry out oral and written instructions.

Communicate effectively, both orally and in writing.

Learn the operation of standard equipment and facilities required in the performance of assigned tasks including a computer.

Learn standard broadcasting procedures of a police radio system.

Learn to prepare search warrants.

Meet the physical requirements established by the Department including medium-heavy lifting up to 75 lbs.

Learn to cultivate well placed informants in the civilian population.

Use and care for firearms.

Prepare accurate and grammatically correct written reports.

**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:**

A minimum of four years of increasingly responsible full-time sworn law enforcement experience, two of which must be with Modesto Police Department.

**OR**

Three years of full-time sworn law enforcement experience with Modesto Police Department.
Training:

Equivalent to the completion of the twelfth grade supplemented by specialized training in police science, criminology or a related field. An Associate of Arts degree is desirable.

License or Certificate

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

Possession of a P.O.S.T. Basic Certificate.

WORKING CONDITIONS

Environmental Conditions:

Office and field environment; travel from site to site.

Physical Conditions:

Essential and marginal functions may require maintaining physical condition necessary for walking or standing for prolonged periods of time; operating a personal computer and other office equipment and vehicles.
A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH PRC TO DEVELOP MDC COMMUNICATION SOFTWARE FOR MODESTO POLICE DEPARTMENT MOBILE DATA COMPUTERS.

WHEREAS, The City of Modesto currently uses Aether’s (formerly Cerulean) mobile data computer software (MDC) in ten of the fleet of sixty police vehicles, to communicate between the Stanislaus Regional 911 Center and the Modesto Police Department mobile computer units in its police vehicles, and

WHEREAS, the current software, provided by Aether, has several performance problems which is due to gaps in functionality between the Stanislaus Regional 911 vendor PRC and the City’s current Aether provided software, and

WHEREAS, the problems were brought to the attention of the MDC software provider Cerulean (now Aether) but no resolution to the problem has been provided, and

WHEREAS, the City attempted to negotiate with Aether to correct the problems but was informed their product design did not allow for Modesto’s requests without a costly rewrite of their system, and

WHEREAS, The Police Department contacted other agencies and vendors in search for alternatives to Aether’s product. and

WHEREAS, the MPD and IT Department developed a detailed requirement specification that was competitively bid, and

WHEREAS, PRC was the only vendor to meet and exceed all the City’s requirements including correcting the messaging issue, determined as an officer safety issue and was the lowest responsive bidder, and

WHEREAS The Safety and Communities Committee met on March 3rd, 2003 and supported the execution of a contract with PRC to develop MDC communication software for Modesto Police Department Mobile Data Computers to go to Council for the full review, and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Modesto that it authorizes the City Manager to execute a contract with PRC to develop MDC communication software for Modesto Police Department Mobile Data Computers.
BE IT FURTHER RESOLVED The Police Department currently has $148,805 encumbered under purchase order 02-93082 and it intends to unencumber these funds to pay for this project. If the Police Department is unable to unencumber these funds they will try to locate additional funding sources.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th 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: Conrad, Fisher, Frohman, Keating O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

ATTEST: JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

BY: MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-138

A RESOLUTION RESCINDING RESOLUTION NO. 2003-119 WHICH
AUTHORIZED MAYOR SABATINO TO SEND A LETTER TO THE STATE
AUDITOR CONTROLLER REQUESTING AN AUDIT WITH REGARD TO
STANISLAUS COUNTY'S POSSIBLE OVERCHARGE OF TIPPING FEES AT
THE FINK ROAD LANDFILL.

WHEREAS, on March 4, 2003 the City Council authorized Mayor Sabatino to
send a letter to the State Auditor Controller requesting an audit with regard to Stanislaus
County's possible overcharge of tipping fees at the Fink Road Landfill and other related
matters; and

WHEREAS, the letter was not to be sent until the Council had heard an oral
report from Stanislaus County's Chief Executive Officer, Reagan Wilson; and

WHEREAS, on March 11, 2003, the City Council did hear an oral report form
Reagan Wilson concerning the issues that were to be the subject of the audit.

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Modesto
that resolution no 2003-119 is hereby rescinded.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of March, 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, Keating O'Bryant

NOES: Councilmembers: Mayor Sabatino

ABSENT: Councilmembers: Jackman

ATTEST: Jean Zahra, City Clerk

APPROVED AS TO FORM:

BY: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2003-139  

A RESOLUTION AUTHORIZING THE PURCHASING SUPERVISOR TO RE-ISSUE A REQUEST FOR PROPOSAL (RFP) FOR FUEL CARDLOCK SERVICES

WHEREAS, the proposals received for Fuel Cardlock Services were opened at 11:00 a.m. on May 14, 2002, in the office of the City Clerk, and

WHEREAS, out of twenty-seven (27) vendors solicited only two (2) responsive proposals were received, and

WHEREAS, one of the responsive proposers alleged that the proposal process was flawed, and

WHEREAS, in November of 2002, by Resolution No. 2002-589, Council authorized rejecting all bids and re-issuing a new Request for Proposal (RFP) with changes to the specifications and evaluation criteria in hopes of receiving a more competitive response, and

WHEREAS, based on direction from the Finance Committee, the following changes to specifications shall be incorporated into the new RFP for Fuel Cardlock Services:

- Contract term will be for three (3) years with the option of two (2) one year extensions.
- A proposers’ conference will be held to address any questions regarding the content of the RFP.
- The pricing index used will be OPIS Unbranded Low
- Fuel Sites will be broken down by number of islands and number of nozzles for each fuel type at each island.
- Reporting will entail giving a cost estimate on what it will cost to have the proposers reporting system interface with the City’s reporting system.
- Proposers will be required to meet with City staff on a quarterly basis to perform invoice line audits to ensure pricing accuracy and contract compliance.

and,
WHEREAS, new Award Criteria and Weighting shall be as follows:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Weighting</th>
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</thead>
<tbody>
<tr>
<td>Relevant Experience</td>
<td>5</td>
</tr>
<tr>
<td>Company Background</td>
<td>5</td>
</tr>
<tr>
<td>Fuel Sites/Hours of Operations</td>
<td>30</td>
</tr>
<tr>
<td>Auditing, QA, Reporting</td>
<td>25</td>
</tr>
<tr>
<td>Pricing</td>
<td>35</td>
</tr>
</tbody>
</table>

and,

WHEREAS, an evaluation committee comprised of representatives from the Fleet and Purchasing Divisions as well as subject experts from other public agencies will evaluate the proposals based on the evaluation criteria, and

WHEREAS, a member of Council and the City’s internal auditor will also be invited to observe the evaluation process, and

WHEREAS, Modesto Municipal Code (MMC) Section 8-3.203 generally requires all purchases exceeding $50,000 for material and equipment of this type to be formally bid, and

WHEREAS, the re-issuance of a formal RFP for Fuel Cardlock Services will conform to MMC 8-3.203, and

WHEREAS, at its meeting on December 12, 2002, the Finance Committee fully supported the issuance of a new Request for Proposal (RFP), and

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto hereby authorizes the Purchasing Supervisor to re-issue a Request for Proposal (RFP) for Fuel Cardlock Services with modifications to the specifications and evaluation criteria as set forth in this Resolution, except that the pricing index will be Opis Low, and;
BE IT FURTHER RESOLVED that staff is directed to implement a process providing for a protest procedure prior to the bid award.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of March, 2003, by Councilmember Fisher, 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

APPROVED AS TO FORM: 
By 
MICHAEL D. MILICH, City Attorney
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MODESTO AND ROBERT E. COURTNEY FOR THE ACQUISITION OF PROPERTY, BEING A PORTION OF ASSESSORS PARCEL NO. 077-3309, FOR THE SYLVAN AVENUE WIDENING PROJECT

WHEREAS, as part of the City Council policy to reduce "bottlenecks" on major streets, the City Council of the City of Modesto approved the widening of Sylvan Avenue, east of Bob's Way, per the Capital Improvement Program project list in Fiscal Year 2000-2001, and

WHEREAS, right of way needs to be acquired for this widening project, and

WHEREAS, an agreement is needed for the acquisition of the needed right of way.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Agreement between City of Modesto and Robert E. Courtney for the acquisition of property, being a portion of Assessors Parcel No. 077-3309, for the Sylvan 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 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:

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-141

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN ACCEPTANCE FORM FOR A GRANT DEED FOR THE ACQUISITION OF PROPERTY OWNED BY ROBERT E. COURTNEY, BEING A PORTION OF ASSESSORS PARCEL NO. 077-33-09, FOR THE WIDENING OF SYLVAN AVENUE, EAST OF OAKDALE ROAD

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 Robert E. Courtney, being a portion of Assessors Parcel No. 077-3309 for the Sylvan 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 Robert E. Courtney, Assessors Parcel No. 077-3309 for the Sylvan Avenue Widening Project.

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:

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-142


WHEREAS, on March 28, 2000, the City Council of the City of Modesto approved the Bus Maintenance Facility Project ("Project") to expand the maintenance capabilities for the City's bus fleet, and

WHEREAS, certain real properties needed to be acquired for said Project which properties are identified as Assessor’s Parcel Nos: 101-02-15; 101-02-16 and 101-02-03, and which properties are owned by Varni Brothers, LLC, a California Limited Liability Company, individually, and also in joint ownership with David J. Martini and Beverly T. Martini, trustees of the Martini Revocable Trust under Instrument dated April 1, 1996 (" Owners"), and

WHEREAS, a certain real property needs to be exchanged and deeded from the City of Modesto to some or all of said Owners which property is identified as Assessor’s Parcel Nos: 105-47-08, and

WHEREAS, an agreement is needed for the acquisition and exchange of the needed real properties.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Agreement between City of Modesto and Varni Brothers, LLC, a California Limited Liability Company, individually, and also in joint ownership with David J.
Martini and Beverly T. Martini, trustees of the Martini Revocable Trust under Instrument dated April 1, 1996 for the Bus Maintenance Facility 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 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:

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-143

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN ACCEPTANCE FORMS FOR GRANT DEEDS FOR THE ACQUISITION OF PROPERTIES OWNED BY VARNI BROTHERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, INDIVIDUALLY, AND ALSO IN JOINT OWNERSHIP WITH DAVID J. MARTINI AND BEVERLY T. MARTINI, TRUSTEES OF THE MARTINI REVOCABLE TRUST UNDER INSTRUMENT DATED APRIL 1, 1996 FOR ASSESSORS PARCEL NOS. APN: 101-02-15; 101-02-16 AND 101-02-03 FOR THE BUS MAINTENANCE FACILITY 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 real property from Varni Brothers, LLC, a California Limited Liability Company, individually, and also in joint ownership with David J. Martini and Beverly T. Martini, Trustees of the Martini Revocable Trust under Instrument dated April 1, 1996 for Assessors Parcel Nos. APN: 101-02-15; 101-02-16 and 101-02-03 for the Bus Maintenance Facility Project.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the City Manager is hereby authorized to sign Certificates of Acceptance on behalf of the City of Modesto for Grant Deeds for the acquisition of property for the Bus Maintenance Facility as follows:

1. APN: 101-02-15  Owners: Varni Brothers, LLC, a California Limited Liability Company and David J. Martini and Beverly T. Martini, Trustees of the Martini Revocable Trust under Instrument dated April 1, 1996

2. APN: 101-02-16 and 101-02-03  Owners: Varni Brothers, LLC, a California Limited Liability Company.
BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City Manager is hereby authorized and directed to sign any and all documents related to the sale and/or purchase of real property on behalf of the City of Modesto as it is required for the acquisition/exchange of properties for the Bus Maintenance Facility Project.

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:

MICHAEL D. MILICH, CITY ATTORNEY
MODESTO CITY COUNCIL  
RESOLUTION NO. 2003-144

A RESOLUTION ORDERING THE ENGINEERING AND TRANSPORTATION DIRECTOR TO PREPARE AND FILE AN ANNUAL REPORT FOR LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NO. 1 FOR DRY CREEK MEADOWS SUBDIVISION NOS. 1-6.

WHEREAS, Resolution No. 88-935 adopted by the Council of the City of Modesto on December 13, 1988, initiated proceedings for the formation of Landscape Assessment District No. 1 for the purpose of administering the maintenance of landscaping in the public right of way within the street medians and adjacent to the access control walls in Dry Creek Meadows Subdivisions Nos. 1-6.

WHEREAS, said assessment district was formed in accordance with the Landscaping and Lighting Act of 1972 (Streets and Highways Code Sections 22500 through 22679), and

WHEREAS, Section 22622 of the Streets and Highways Code requires the legislative body (the City Council) to adopt a resolution which shall generally describe any proposed new improvements or any substantial changes in existing improvements and order the engineer to prepare and to file a report accordingly,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that there being no proposed new improvements or any substantial changes in existing improvements in Dry Creek Meadows Subdivision Nos. 1-6 the Engineering and Transportation Director, the person designated by this Council as the Engineer of Work for Assessment District No. 1, is hereby directed to prepare and file an annual report in accordance with the provisions of the Landscaping and Lighting Act of 1972, as amended, (Streets and Highways Code Sections 22500 through 22679).
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 R, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-145

A RESOLUTION ORDERING THE ENGINEERING AND TRANSPORTATION DIRECTOR TO PREPARE AND FILE AN ANNUAL REPORT FOR LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NO. 2 FOR DRY CREEK MEADOWS SUBDIVISION NOS. 7-10, CREEKWOOD MEADOWS SUBDIVISION, AND YOSEMITE MEADOWS SUBDIVISION UNITS NO. 1 & 2.

WHEREAS, Resolution No. 89-460 adopted by the Council of the City of Modesto on April 4, 1989, initiated proceedings for the formation of Landscape Assessment District No. 2 for the purpose of administering the maintenance of landscaping in the public right of way within the street medians and adjacent to the access control walls in Dry Creek Meadows Subdivisions Nos. 7-10, Creekwood Meadows Subdivision, and Yosemite Meadows Subdivision Units No. 1 & 2, and

WHEREAS, said assessment district was formed in accordance with the Landscaping and Lighting Act of 1972 (Streets and Highways Code Sections 22500 through 22679), and

WHEREAS, Section 22622 of the Streets and Highways Code requires the legislative body (the City Council) to adopt a resolution which shall generally describe any proposed new improvements or any substantial changes in existing improvements and order the engineer to prepare and to file a report accordingly,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that there being no proposed new improvements or any substantial changes in existing improvements in Dry Creek Meadows Subdivision Nos. 7-10, Creekwood Meadows Subdivision, and Yosemite Meadows Subdivision Units No. 1 & 2, the Engineering and Transportation Director, the person designated by this Council as the Engineer of Work for Assessment District No. 2, is hereby directed to prepare and file an annual report in

03/25/03/E&T/R Granberg 1 2003-145
accordance with the provisions of the Landscaping and Lighting Act of 1972, as amended, (Streets and Highways Code Sections 22500 through 22679).

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

(SEAL)

APPROVED AS TO FORM:

By MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-146

A RESOLUTION ACCEPTING IMPROVEMENTS IN THE DAVANTE VILLAS PHASE I SUBDIVISION, IN THE VILLAGE ONE SPECIFIC PLAN AREA, AUTHORIZING THE CITY CLERK TO RECORD A NOTICE OF COMPLETION, AND AUTHORIZING RELEASE OF BONDS

WHEREAS, DAVANTE VILLAS, a California Limited Partnership, is the subdivider of the Davante Villas Phase I Subdivision, and

WHEREAS, DAVANTE VILLAS, has filed irrevocable subdivision bonds to secure faithful performance and payment for labor and materials in the amount of $1,046,900.00 and $523,450.00, respectively, and

WHEREAS, DAVANTE VILLAS, has filed a warranty bond in the amount of $104,700.00 to guarantee improvements in the Davante Villas Phase I Subdivision, and

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

WHEREAS, the Engineering & Transportation Director has indicated that it would be in order for the City Council to accept the improvements in said subdivision as complete, and authorize the City Clerk to file a Notice of Completion and release the bonds upon expiration of the statutory periods,

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

1. The improvements in Davante Villas Phase I Subdivision are hereby accepted and the City Clerk is hereby authorized to file a Notice of Completion for the improvements.
2. The City Clerk is hereby authorized to release the subdivision bond for faithful performance in the amount of $1,046,900.00 upon recordation of the Notice of Completion.

3. The City Clerk is hereby authorized to release the subdivision bond for labor and materials in the amount of $523,450.00 sixty (60) days following the filing of the Notice of Completion, provided no claim is made thereon.

4. The City Clerk is hereby authorized to release the warranty bond to guarantee improvements in the amount of $104,700.00 one year and one day after the effective date of this resolution, provided no claim is made thereon.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of March, 2003, by Councilmember Frohman, 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: Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad, Fisher

ATTEST: Jean Zahr

JEAN ZAH, City Clerk

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney

03/25/03/E&T/R Granberg 2 2003-146
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-147

A RESOLUTION ACCEPTING IMPROVEMENTS IN THE DAVANTE VILLAS
PHASE II SUBDIVISION, IN THE VILLAGE ONE SPECIFIC PLAN AREA
AUTHORIZING THE CITY CLERK TO RECORD A NOTICE OF
COMPLETION, AND AUTHORIZING RELEASE OF BONDS

WHEREAS, ROBERT D. CALCAGNO, an unmarried man, and DAVANTE
VILLAS L.P., a California Limited Partnership, are the subdividers of the Davante Villas
Phase II Subdivision, and

WHEREAS, ROBERT D. CALCAGNO, and DAVANTE VILLAS L.P., have
filed irrevocable subdivision bonds to secure faithful performance and payment for labor
and materials in the amount of $11,385.00 and $5,692.50, respectively, and

WHEREAS, ROBERT D. CALCAGNO, and DAVANTE VILLAS L.P., have
filed a warranty bond in the amount of $1,140.00 to guarantee improvements in the
Davante Villas Phase II Subdivision, and

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

WHEREAS, the Engineering & Transportation Director has indicated that it
would be in order for the City Council to accept the improvements in said subdivision as
complete, and authorize the City Clerk to file a Notice of Completion and release the
bonds upon expiration of the statutory periods,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that:
1. The improvements in Davante Villas Phase II Subdivision are hereby accepted and the City Clerk is hereby authorized to file a Notice of Completion for the improvements.

2. The City Clerk is hereby authorized to release the subdivision bond for faithful performance in the amount of $11,385.00 upon recordation of the Notice of Completion.

3. The City Clerk is hereby authorized to release the subdivision bond for labor and materials in the amount of $5,692.50 sixty (60) days after the filing date of the Notice of Completion, provided no claim is made thereon.

4. The City Clerk is hereby authorized to release the warranty bond to guarantee improvements in the amount of $1,140.00 one year and one day after the effective date of this resolution, provided no claim is made thereon.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 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:

By Michael D. Milich, City Attorney

03/25/03/E&T/R Granberg 2 2003-147
A RESOLUTION ACCEPTING IMPROVEMENTS IN THE DAVANTE VILLAS PHASE III SUBDIVISION, IN THE VILLAGE ONE SPECIFIC PLAN AREA AUTHORIZING THE CITY CLERK TO RECORD A NOTICE OF COMPLETION, AND AUTHORIZING RELEASE OF BONDS

WHEREAS, ROBERT D. CALCAGNO, an unmarried man, and DAVANTE VILLAS L.P., a California Limited Partnership, are the subdividers of the Davante Villas Phase III Subdivision, and

WHEREAS, DAVANTE VILLAS L.P., has filed irrevocable subdivision bonds to secure faithful performance and payment for labor and materials in the amount of $840,967.00 and $420,483.50, respectively, and

WHEREAS, DAVANTE VILLAS L.P., has filed a warranty bond in the amount of $84,100.00 to guarantee improvements in the Davante Villas Phase III Subdivision, and

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

WHEREAS, the Engineering & Transportation Director has indicated that it would be in order for the City Council to accept the improvements in said subdivision as complete, and authorize the City Clerk to file a Notice of Completion and release the bonds upon expiration of the statutory periods,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that:
1. The improvements in Davante Villas Phase III Subdivision are hereby accepted and the City Clerk is hereby authorized to file a Notice of Completion for the improvements.

2. The City Clerk is hereby authorized to release the subdivision bond for faithful performance in the amount of $840,967.00 upon recordation of the Notice of Completion.

3. The City Clerk is hereby authorized to release the subdivision bond for labor and materials in the amount of $420,483.50 sixty (60) days after the filing date of the Notice of Completion, provided no claim is made thereon.

4. The City Clerk is hereby authorized to release the warranty bond to guarantee improvements in the amount of $84,100.00 one year and one day after the effective date of this resolution, provided no claim is made thereon.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of March, 2003, by Councilmember Frohman, 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: Frohman, Jackman, Keating, O’Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad, Fisher

ATTEST: 

APPROVED AS TO FORM: 

By 

MICHAEL D. MILICH, City Attorney

WHEREAS, in 1985, the City and County (the “Contracting Communities”) formed a Joint Powers Agency and entered into a Service Agreement with the Stanislaus Waste Energy Company (now Covanta Stanislaus) to build a waste-to-energy facility, and

WHEREAS, on August 20, 1985, Pacific Gas and Electric Company (PG&E) entered into a Power Purchase Agreement with Stanislaus Waste Energy Company, now known as Covanta Stanislaus, and

WHEREAS, pursuant to this Agreement, Covanta is required to sell, and PG&E is obligated to pay for, electrical capacity and to purchase electrical energy generated by Covanta at its waste to energy facility in Stanislaus County through and including December 31, 2009, and

WHEREAS, the Contracting Communities are entitled to receive 90 percent of the monies paid by PG&E pursuant to the terms of the Contract, and

WHEREAS, a dispute arose as to the amount of money due and payable under the Power Purchase Agreement, and a Complaint, Cross Complaint, and Appeal were filed by the parties in relation to this matter, and

WHEREAS, the parties now wish to resolve the disputes and claims arising out of and relating to said Complaint, Cross Complaint, and Appeal, and
WHEREAS, the parties have negotiated a Settlement Agreement and General
Release of Claims, which, upon execution, would resolve the disputes and claims, and

WHEREAS, in April, 2001, PG&E filed a Chapter 11 Bankruptcy Petition in the
U.S. Bankruptcy Court for the Northern District of California, and

WHEREAS, as of February, 2001, PG&E had not paid for electricity provided to
it by the Facility for the period December 1, 2000 through April 6, 2001, and

WHEREAS, the amount PG&E owed the Contracting Communities and Covanta
for that period was $7,794,659.46, and

WHEREAS, PG&E’s bankruptcy filing put payment of this amount owed to the
Contracting Communities and Covanta on hold until its bankruptcy was resolved, and

WHEREAS, PG&E did resume normal payments to the project once it had filed
bankruptcy, and has remained current on its payments since that time, and

WHEREAS, Bankruptcy Counsels for the Contracting Communities and Covanta
have now negotiated new terms to a proposed Supplemental Agreement with PG&E that
will enable the facility to receive the money owed by PG&E in six (6) monthly
installments, and

WHEREAS, PG&E has also agreed to pay 5% per annum interest on the amount
owed, and

WHEREAS, these payments would begin 15 days after the execution of the
Supplemental Agreement, and

WHEREAS, it will be of benefit of the Contracting Communities to receive these
funds in a timely manner.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that the City hereby approves the Settlement Agreement and General Release of Claims
attached as Exhibit A hereto and the Supplemental Agreement attached as Exhibit B hereto.

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

(SEAL)

APPROVED AS TO FORM:

By MICHAEL D. MILICH, City Attorney
SETTLEMENT AGREEMENT
AND GENERAL RELEASE OF CLAIMS

This Settlement Agreement and General Release of Claims ("Settlement Agreement") dated _____________, 2003, is made by and between COVANTA STANISLAUS, INC. ("Covanta"), County of Stanislaus ("County"), City of Modesto ("Modesto") and Pacific Gas & Electric Company ("PG&E"). Covanta, County, Modesto and PG&E are referred to herein collectively as the "Parties" or singularly as a "Party".

WITNESSETH:

A. WHEREAS, on August 20, 1985, PG&E entered into a Power Purchase Agreement for Long-Term Energy and Capacity (the "Contract") with Stanislaus Waste Energy Company; and

B. WHEREAS, pursuant to said Contract, Covanta, as successor-in-interest to Stanislaus Waste Energy Company, is required to sell and PG&E is obligated to pay for electrical capacity and to purchase electrical energy generated by Covanta at its waste to energy facility in Stanislaus County through and including December 31, 2009; and

C. WHEREAS, the County and Modesto, in exchange for having assisted in the financing of the waste to energy facility, are entitled to receive the benefit of a certain percentage of the monies paid by PG&E pursuant to the terms of the Contract; and

D. WHEREAS, a dispute has arisen as to the amount of money due and payable under the terms of the Contract; and

E. WHEREAS, on October 31, 1997, the County and Modesto filed a Complaint for Declaratory Relief in the Superior Court for the County of Stanislaus, State of California, entitled County of Stanislaus, a political subdivision of the State of California, and City of Modesto, a municipal corporation, plaintiffs, v. Pacific Gas & Electric Company, a Public Utility; Ogden Martin Systems of Stanislaus, a California...
Corporation; and Does 1 through 20, inclusive, defendants, Stanislaus Superior Court No. 156011 (hereinafter referred to as the "Action"); and

F. WHEREAS, on March 9, 1998, the matter was ordered transferred to and added to a Coordinated Proceeding pending in the Superior Court for the City and County of San Francisco entitled In Re Power Purchase Agreement Cases, Judicial Counsel Coordinated Proceeding No. 3241; and

G. WHEREAS, on or about May 22, 1998, PG&E filed a Cross-Complaint in the Judicial Counsel Coordinated Proceeding No. 3241, entitled Pacific Gas & Electric Company, a California Corporation, Cross-Complainant, v. Ogden Martin Systems of Stanislaus, Inc., a California Corporation, and Roes 1 through 100, inclusive, Cross-Defendants (the "Cross-Complaint"); and

H. WHEREAS, on July 21, 1998, Judge Thomas J. Mellon, Jr., of the San Francisco Superior Court issued an Order sustaining PG&E's Demurrer to the First Amended Complaint of the County and Modesto without leave to amend; and

I. WHEREAS, on September 14, 1998, the Judge Mellon signed an Order of Dismissal and Judgment thereon in favor of PG&E as to the First Amended Complaint of the County and Modesto; and

J. WHEREAS, on November 12, 1998, the County and Modesto filed a Notice of Appeal (the "Appeal"); and

K. WHEREAS, PG&E filed a Chapter 11 bankruptcy petition pursuant to Title 11, United States Code §§101, et seq. (United States Bankruptcy Court for the Northern District of California, San Francisco Division (the "PG&E Bankruptcy Court"), case No. 01-20923-DM ("PG&E Bankruptcy Case")) on April 6, 2001; and

L. WHEREAS, Covanta filed a Chapter 11 bankruptcy petition pursuant to Title 11, United States Code §§101, et seq. (United States Bankruptcy Court for the Southern District of New York (the "Covanta
Bankruptcy Court"), jointly administered under case No. 02-40826 (CB) ("Covanta Bankruptcy Case") on April 1, 2002; and

M. WHEREAS, the Appeal filed by County and Modesto is still pending as is PG&E's Cross-Complaint in the Coordinated Proceedings; and

N. WHEREAS, the Parties wish to resolve the disputes and claims arising out of and relating to the Action, the Appeal, and the Cross-Complaint in exchange for the mutual promises and considerations set forth herein; and

O. WHEREAS, the Parties are concurrently executing a Supplemental Agreement ("Supplemental Agreement");

NOW, THEREFORE, in consideration of the premises described above and the terms and conditions set forth below, the Parties hereby agree as follows:

1. The County and Modesto expressly agree that, within fifteen (15) calendar days after the first date that all orders of the PG&E Bankruptcy Court and the QF Bankruptcy Court approving this Settlement Agreement and the Supplement Agreement are final and non-appealable, they will voluntarily dismiss the Appeal currently pending in the Court of Appeal of the State of California, First Appellate District No. 80-85074, with prejudice, provided, however, that it is expressly agreed by PG&E, on behalf of itself, its assigns, parents, subsidiaries, successors, representatives and trustees, that the Order sustaining the Demurrer of PG&E to the First Amended Complaint and the Judgment of the trial court thereon upon which the Appeal is based, shall not have any issue preclusive effect, whether through the application of doctrine of collateral estoppel, the doctrine of res judicata or any other means, on the issue of the standing of the County and/or Modesto to assert any future claims, including claims for declaratory relief, relating to the Power Purchase Agreement identified herein as the "Contract". The County and Modesto expressly represent and warrant to PG&E and County that they are the sole holders of all right, title and interest to the claims raised by them in the Appeal.
2. PG&E expressly represents and warrants to Covanta, County and Modesto that: (a) it is the sole holder of all right, title and interest to the claims raised in the Cross-Complaint in Judicial Counsel Coordinated Proceeding No. 3241; and (b) PG&E has not assigned, pledged or otherwise transferred its right, title and interest in the Cross-Complaint (or any right or claim to receive in its proceeds or distributions thereon to any third party or parties, for any purpose, whether it is an outright transfer or a transfer for security). PG&E further agrees to dismiss with prejudice the Cross-Complaint within fifteen (15) calendar days after the first date that all orders of the PG&E Bankruptcy Court and the QF Bankruptcy Court approving this Settlement Agreement and the Supplemental Agreement are final and non-appealable.

3. Each of the Parties agrees to waive and forego any and all claims for attorneys' fees and costs as to one another relating to the Action, the Appeal, the Cross-Complaint or any other aspect of the Judicial Counsel Coordinated Proceeding No. 3241.

4. This Settlement Agreement is subject to approval of the PG&E Bankruptcy Court and the Covanta Bankruptcy Court and shall not become effective until the date of entry of the later in time of the orders of the PG&E Bankruptcy Court and the Covanta Bankruptcy Court approving this Settlement Agreement and the Supplemental Agreement.

5. By the initialing of each one's authorized representative below, each of the Parties agrees to waive the application of the provisions of Civil Code §1542, which provides as follows:

A general release does not extend the 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 materially affected his settlement with the debtor.

County
City
PG&E
Covanta
IT IS AGREED AND UNDERSTOOD by the Parties that each one is waiving any and all claims, known and unknown, that each one presently or in the past has or had or may have, or may have had arising out of or relating to the Contract, except for the following:

(a) This waiver of Civil Code §1542, as well as the other provisions of this Settlement Agreement, shall not apply to any claims arising from or relating to the Contract that may arise after the date of this Agreement;

(b) This waiver of §1542, as well as the other provisions of this Settlement Agreement, do not apply to any claims arising out of or relating to the Assumption Agreement of July 13, 2001 between PG&E and Covanta or the Supplemental Agreement dated __________ 2002, between and among PG&E, Covanta, County and Modesto; and

(c) The waiver of Civil Code §1542, as well as the other provisions of this Settlement Agreement, shall not apply to any claims arising out of or relating to the Contract that are between the County or Modesto on one hand and Covanta on the other, except for any claims arising out of or relating to the Fixed Price Period dispute described in the First Amended Complaint filed in the Action, the proofs of claim filed in the PG&E Bankruptcy Case, and the negotiation and execution of this Agreement.

6. Each Party shall pay its own expenses, professional fees and other costs connected with or associated with the negotiation and execution of this Settlement Agreement except that in any action to enforce or interpret the terms of this Settlement Agreement, the prevailing Party or Parties shall be entitled to recover all costs and expenses (including attorneys' fees) incurred in connection with or arising out of such action.

7. This Settlement Agreement made and entered into in the State of California shall in all respects be interpreted and governed by the laws of the California, without regard to principles of conflicts of law.
3. This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto, including any trustee appointed in the PG&E Bankruptcy Case or the Covanta Bankruptcy Case.

9. Any modification or amendment to this Settlement Agreement must be in writing and must be signed and dated by the Parties, and must expressly state that it is intended to be an amendment to or modification of this Settlement Agreement.

10. Counsel for the respective Parties have reviewed and participated in the drafting of this Settlement Agreement. Consequently, the principle of construction of contracts that ambiguity shall be resolved against the drafter shall not be used or applied in the interpretation of this Settlement Agreement.

11. Each Party hereby represents and warrants to each of the Parties that: (a) the execution of this Settlement Agreement has been duly authorized by all necessary corporate, governmental, shareholder and similar actions; (b) this Settlement Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (c) the execution and delivery of this Settlement Agreement and the performance by such Party of its obligations hereunder do not and will not conflict with, contravene or breach, any law, judgment, order or material contract applicable to or binding on such Party.

12. This Settlement Agreement may be executed in separate counterparts, each of which when executed shall be an original by all of which, taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by or on behalf of Covanta, the County, Modesto and PG&E as of the date first written above by duly authorized representatives.
Covanta Stanislaus, Inc.,
A California Corporation

By: __________________________
Name: ________________________
Title: _________________________

County of Stanislaus

By: __________________________
Name: ________________________
Title: _________________________

Pacific Gas and Electric Company,
A California Corporation

By: __________________________
Name: ________________________
Title: _________________________

City of Modesto

By: __________________________
Name: ________________________
Title: _________________________
SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT, dated ____________, 2003, is made by and between COVANTA STANISLAUS, INC. (PG&E Log No. 16P052) ("QF"), COUNTY OF STANISLAUS (the "County"), CITY OF MODESTO ("Modesto") and PACIFIC GAS AND ELECTRIC COMPANY ("PG&E"). QF, County, Modesto and PG&E are sometimes referred to herein as the "Parties" or singularly as a "Party".

WITNESSETH:

A. WHEREAS, PG&E filed a Chapter 11 Bankruptcy Petition pursuant to Title 11 United States Code Sections 101, et. seq. ("Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of California, San Francisco Division (the "PG&E Bankruptcy Court") on April 6, 2001; and

B. WHEREAS, QF filed a Chapter 11 Bankruptcy Petition pursuant to Title 11 United States Code Sections 101, et. seq. ("Bankruptcy Code") in the United States Bankruptcy Court for the Southern Division of New York (the "Covanta Bankruptcy Court") on April 1, 2002; and

C. WHEREAS, QF and PG&E are parties to that certain Agreement dated as of July 13, 2001 ("Assumption Agreement") respecting, among other things, the assumption by PG&E of that Power Purchase Agreement for Long-Term Energy and Capacity Between Stanislaus Waste Energy Co. and Pacific Gas and Electric Company listed therein (the "Contract") and such Assumption Agreement has been approved by order of the PG&E Bankruptcy Court (the "Assumption Order"); and

D. WHEREAS, PG&E's Chapter 11 Bankruptcy case, Case No. 01-20323-DM ("PG&E Bankruptcy Case"), remains pending in the PG&E Bankruptcy Court; and

E. WHEREAS, QF's Chapter 11 Bankruptcy case, jointly administered under Case No. 02-40826(CB) (the "Covanta Bankruptcy Case") remains pending in the Covanta Bankruptcy Court;
and

F. WHEREAS, pursuant to the Assumption Order, PG&E assumed the Contract pursuant to 11 U.S.C. § 365(b) and (d)(2) and Rules 6006, 9014 and 9019 of the Federal Rules of Bankruptcy Procedure; and

G. WHEREAS, starting on or about February 2, 2001 (the "Initial Default Date"), PG&E failed to pay the full amount due to QF under the Contract for deliveries of energy and capacity for the period between December 1, 2000 and April 6, 2001; and

H. WHEREAS, the principal amount of payables for QF is set forth in Attachment A to the Assumption Agreement for a total principal amount due QF of Seven Million Seven Hundred Ninety-Four Thousand Six Hundred Fifty-Nine Dollars and Forty-Six Cents ($7,794,659.46), excluding interest thereon (the "Prepetition Payables"); and

I. WHEREAS, the Assumption Agreement provides that the Interest Rate, as defined in the Assumption Agreement, should be negotiated in good faith by the Parties; and

J. WHEREAS, the Parties have negotiated the provisions set forth in this Supplemental Agreement respecting the Interest Rate and payment of the Prepetition Payables; and

K. WHEREAS, the Parties are concurrently executing a Settlement Agreement and General Release of Claims ("Settlement Agreement"); and

L. WHEREAS, the Parties wish to resolve certain preexisting litigation pending in the California Court of Appeal, First Appellate District, and the California Superior Court in San Francisco;

NOW, THEREFORE, in consideration of the premises described above and the terms and conditions set forth below, the Parties hereby agree as follows:
1. Definitions.

Any capitalized term not defined herein shall have the meaning ascribed to it in the Assumption Agreement.

2. Calculation and Rate of Interest.

The outstanding principal balance of the Prepetition Payables shall bear interest at a rate of five percent (5%) per annum (the "Interest Rate") from the respective due dates of the principal amounts set forth on Attachment A to the Assumption Agreement until paid. Interest shall be calculated on the basis of a 365-day year with the actual number of days (excluding the first day and including the last day) occurring during the period for which interest is payable.

3. Payment Schedule.

(a) Interest. All accrued prepetition and postpetition interest due on the Prepetition Payables, shall be paid within fifteen (15) calendar days after the first date that all orders of the PG&E Bankruptcy Court and the QF Bankruptcy Court approving this Supplemental Agreement and the Settlement Agreement are final and non-appealable.

(b) Principal. Notwithstanding the terms of any plan of reorganization filed by PG&E or by any other Party in the PG&E Bankruptcy Case, PG&E shall pay the outstanding principal balance of the Prepetition Payables in six (6) equal monthly installments on the last PG&E business day of each month commencing ______________, 2003 and continuing at the end of each month thereafter until paid in full.

(c) Separate Payments. All payments of the sums set forth in Attachment A to the Assumption Agreement and the principal and interest due hereunder shall be made in accordance with all agreements by and among the Parties providing for payment of any amounts due and owing by PG&E pursuant to the Power Purchase Agreement for Long Term Energy and Capacity (the
"Contract") with the Stanislaus Waste Energy Co. which were in effect as of April 5, 2001 (unless designated to the contrary in writing by QF, the County and Modesto at least one (1) week in advance of the payment date), in the amounts set forth in Exhibit 1 attached hereto. Each of the payments above is subject to adjustment for rounding errors (either upward or downward) of up to but no more than one dollar ($1.00).

(d) Due on Plan Effective Date. If the Plan Effective Date of any plan confirmed in the PG&E Bankruptcy Case shall occur before the Prepetition Payables and all interest accrued thereon have been paid in full, the remaining balance of the Prepetition Payables and all interest accrued thereon shall be paid on such Plan Effective Date.

(e) Setoffs. To the extent that PG&E has or claims to have any right to assert any existing or future right of setoff as a defense to the reduction of any of its obligations to pay the Prepetition Payables and/or interest thereon, PG&E hereby waives such right of setoff with respect to such obligations, but only with respect to such obligations. Provided PG&E is not in default of its payment obligations under this Supplemental Agreement, QF shall not setoff any obligation owed to PG&E against such Party's right to receive payments under this Supplemental Agreement. Except as set forth above, each Party retains any and all setoff rights it may have, if any, under the Contract.

(f) Monthly Payments Under the Contract. For deliveries starting on February 1, 2002, QF hereby waives any right that it might have pursuant to California Public Utilities Commission ("CPUC") Decision 01-03-067 to receive semi-monthly payments in lieu of monthly payments pursuant to the Contract. All payments for deliveries starting on February 1, 2002 will be on a monthly billing cycle. Unless otherwise directed by the CPUC, PG&E shall make payments to QF within fifteen (15) days of the end of each monthly billing cycle.

(g) Other Terms. The right of QF to receive all payments hereunder shall be entitled to administrative expense priority under Bankruptcy Code Sections 503 and 507(a)(1). QF shall have standing and reserves the right to object or seek other relief in the PG&E Bankruptcy Court in the
event that PG&E's cash reserves fall below what is reasonably necessary to timely satisfy PG&E's postpetition obligations, including the obligations under this Supplemental Agreement. The obligations of PG&E under this Supplemental Agreement shall be binding on any trustee in a Chapter 7 or Chapter 11 bankruptcy case, and cannot be altered, amended or modified by any plan of reorganization or other order or ruling in the PG&E Bankruptcy Case.

4. Approval by County of Stanislaus and City of Modesto.

Pursuant to certain agreements by and among QF, the County and Modesto ("Fuel Supply Agreements"), transactions such as this Supplemental Agreement and the Settlement Agreement are subject to County and Modesto approval. The County and Modesto hereby certify that the appropriate governing body for each such entity has considered and approved this Supplemental Agreement and the Settlement Agreement.

5. Withdrawal of Claims.

Except for those administrative claims specifically provided for by Section 3(g) hereof, QF, the County and Modesto, and each of them, waive their respective right to file any Section 503 administrative expense claims based on services provided the PG&E estate through the date of this Supplemental Agreement. Furthermore, QF, the County, and Modesto, and each of them, agree to waive and withdraw any and all claims or proofs of claims each of them has filed in the PG&E Bankruptcy Case (including but not limited to Claims Nos. 8780, 9883 and 9884 filed by QF, Claim No. 12499 filed by the County, and Claim No. 12500 filed by Modesto) within fifteen (15) calendar days after the first date that all orders of the PG&E Bankruptcy Court and the QF Bankruptcy Court approving this Supplemental Agreement and the Settlement Agreement are final and non-appealsable. QF, the County, and Modesto, and each of them, further agree to forego any rights each of them may have in regard such claims, or to file new claims.
6. Dismissal of Appeal.

The County and Modesto expressly represent and warrant to PG&E that they are the sole holders of all right, title and interest to the claims raised by them in the appeal entitled County of Stanislaus, a political subdivision of the State of California, and City of Modesto, a municipal corporation v. Pacific Gas & Electric Company, a Public Utility; Ogden Martin Systems of Stanislaus, a California Corporation; and Does 1 through 20, inclusive, currently pending in the Court of Appeal of the State of California, First Appellate District (AO 89074) ("Appeal");

The County and Modesto agree that, within fifteen (15) calendar days after the first date that all orders of the PG&E Bankruptcy Court and the QF Bankruptcy Court approving this Supplemental Agreement and the Settlement Agreement are final and non-appealable, they will voluntarily dismiss the Appeal with prejudice; provided, however, that it is expressly agreed by PG&E, on behalf of itself, its assigns, parents, subsidiaries, successors, representatives, and trustees, that the judgment of the trial court upon which the Appeal is based shall not have any issue preclusive effect, whether through the application of the doctrine of collateral estoppel, the doctrine of res judicata or any other means, on the issue of the standing of the County and/or Modesto or their successors or assigns to assert any future claims, including claims for declaratory relief, relating to the Power Purchase Agreement identified herein as the "Contract".

It is further agreed and understood that each Party shall bear its respective costs and fees with respect to the Appeal and related proceedings before the Trial Court.

7. Dismissal of Cross-Complaint.

PG&E expressly represents and warrants to QF, County and Modesto that (a) it is the sole holder of all right, title and interest to the claims raised in the Cross-Complaint filed by PG&E against Ogden Martin Systems of Stanislaus, Inc. in the Judicial Council coordinated Proceeding No. 3241 before the Superior Court of California, County of San Francisco (the "Cross-Complaint"), and (b)
PG&E has not assigned, pledged, or otherwise transferred its right, title and interest in the Cross-Complaint (or any right or claim to received payments, proceeds, or distributions thereon) to any third party or parties for any purpose, whether as an outright transfer or as a transfer for security, PG&E further agrees to dismiss with prejudice the Cross-Complaint within fifteen (15) calendar days after the first date that all orders of the PG&E Bankruptcy Court and the QF Bankruptcy Court approving this Supplemental Agreement and the Settlement Agreement are final and non-appealable. The dismissal of the Appeal and the dismissal of the Cross-Complaint are also subject to the terms and conditions of the Settlement Agreement and General Release of Claims executed concurrently by the Parties hereto.

8. Bankruptcy Court Approval.

This Supplemental Agreement is subject to both PG&E Bankruptcy Court approval and QF Bankruptcy Court approval. This Supplemental Agreement shall not become effective until both the PG&E Bankruptcy Court and the QF Bankruptcy Court enter Orders approving this Supplemental Agreement. This Supplemental Agreement shall not become effective until both the PG&E Bankruptcy Court and the QF Bankruptcy Court enter orders approving this Supplemental Agreement and each of said orders becomes final. Covanta agrees to provide to counsel for PG&E and the City and County copies of any and all orders of the QF Bankruptcy Court approving this Supplemental Agreement and the Settlement Agreement and PG&E agrees to provide counsel for Covanta and the City and County copies of any and all orders of the PG&E Bankruptcy Court approving this Supplemental Agreement and the Settlement Agreement.


In the event that any payment required to be made under this Supplemental Agreement is not made on or before the date due, QF may make a motion to enforce this Supplemental Agreement or seek other appropriate relief before the PG&E Bankruptcy Court on seven (7) calendar days' notice. QF shall not be required to commence an adversary proceeding or other suit and may proceed by noticed motion on seven (7) calendar days' notice without the requirement of obtaining an order shortening time.
QF reserves the right to seek, as appropriate relief, that the entire amount of the Prepetition Payables and all interest thereon should be accelerated as a result of such nonpayment. PG&E reserves the right to assert that acceleration is not appropriate.

10. Entire Agreement.

This Supplemental Agreement, together with the Assumption Agreement, sets forth the entire agreement between the Parties relating to the Interest Rate and the payment by PG&E of the Prepetition Payables relating to the assumption by PG&E of the Contract and the payment of the Prepetition Payables and supersedes and replaces any prior understanding, correspondence, commitments or agreement, whether oral or written concerning the subject matters of this Supplemental Agreement, except that it is agreed and understood that the terms of the Assumption Agreement and the Contract remain in full force and effect, and any conflict between this Supplemental Agreement and the Assumption Agreement and/or the Contract shall be resolved in favor of this Supplemental Agreement. Any modification or amendment to this Supplemental Agreement must be in writing and must be signed and dated by the Parties, and must explicitly state that it is intended to be an amendment to or modification of this Supplemental Agreement.

11. Descriptive Headings.

The descriptive headings of this Supplemental Agreement are inserted for convenience of reference only and do not constitute a part of this Supplemental Agreement.

12. Expenses.

Each Party shall pay its own expenses, professional fees and other costs connected with or associated with the negotiation and execution of this Supplemental Agreement. In any action to enforce or interpret the terms of this Supplemental Agreement, the prevailing Party or Parties shall be entitled to recover all costs and expenses (including attorneys’ fees and expenses) incurred in connection with or arising out of such action.

This Supplemental Agreement is made and entered into in the State of California, and shall in all respects be interpreted and governed under the laws of California, without regard to principles of conflicts of law.

14. Binding Agreement.

This Supplemental Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto, including any trustee appointed in the PG&E Bankruptcy Case or the Covanta Bankruptcy Case.

15. Construction of Agreement.

Counsel for the respective Parties have reviewed and participated in the drafting of this Supplemental Agreement. Consequently, the principle of construction of contracts that ambiguities shall be resolved against the drafter shall not be used or applied in the interpretation of this Supplemental Agreement.

16. Representations.

Each Party hereby represents and warrants to each of the other Parties that (a) the execution of this Supplemental Agreement has been duly authorized by all necessary corporate, shareholder, official, public agency and similar actions; (b) this Supplemental Agreement has been duly executed and delivered and constitutes the legal valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (c) the execution and delivery of this Supplemental Agreement and the performance by such Party of its obligations hereunder do not and will not conflict with, contravene or breach, any law, judgment, order or material contract applicable to or biding on such Party or any of its properties or assets.

17. Transfer of Prepetition Payables.
QF expressly represents and warrants to PG&E: That the Prepetition Payables are to be paid in accordance with the terms of all agreements by and among QF, the County and Modesto which were in effect as of April 5, 2001 specifying, inter alia, the manner in which any amounts due and owing by PG&E pursuant to the Contract are to be paid (the "Agreements"). Accordingly, all payments due under this Supplemental Agreement shall be delivered by PG&E in accordance with said Agreements, unless and until PG&E receives notice of transfer from the QF, as well as a signed consent to the assignment executed by both the County and Modesto or their successors or assignees. Such notice shall be in writing to the attention of:

Director, Power Contracts
Pacific Gas and Electric Company
P.O. Box 770000, MC N12E
San Francisco, CA 94177
Fax: 415-973-9176

In the event that PG&E makes a payment of Prepetition Payables pursuant to the terms of said Agreements after the effective date of any transfer of right, title and interest in the Prepetition Payables, QF shall promptly cause such payment to be forwarded to the transferee of the right, title and interest in the Prepetition Payables, and indemnify and hold PG&E harmless from any claim, demand or action by the transferee to collect any such payment from PG&E.

18. Execution by Counterparts.

This Supplemental Agreement may be executed in separate counterparts, each of which when executed shall be an original, but all of which, taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Supplemental Agreement has been duly executed by or on behalf of QF, the County, Modesto and PG&E as of the date first written above.
COVANTA STANISLAUS, INC.,
A California Corporation

By: ______________________
Name: ____________________
Title: _____________________

COUNTY OF STANISLAUS

By: ______________________
Name: ____________________
Title: _____________________

PACIFIC GAS AND ELECTRIC CO.,
A California Corporation

By: ______________________
Name: ____________________
Title: _____________________

CITY OF MODESTO

By: ______________________
Name: ____________________
Title: _____________________
MODESTO CITY COUNCIL
RESOLUTION NO. 2003-150

WAS NOT USED