RESOLUTION APPOINTING DAVID LEAMON TO THE LANDMARK PRESERVATION COMMISSION AS THE CULTURE COMMISSION REPRESENTATIVE WITH A TERM EXPIRATION OF JANUARY 1, 2020

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

WHEREAS, on December 6, 2016, the Culture Commission unanimously recommended David Leamon as its representative to the Landmark Preservation Commission.

WHEREAS, Mr. Leamon is qualified, willing and able to serve on the Landmark Preservation Commission,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the appointment of David Leamon as the Culture Commission representative to the Landmark Preservation Commission with a term expiration of January 1, 2020.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Landmark Preservation Commission, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 24th day of January, 2017, by Councilmember Madrigal,
who moved its adoption, which motion being duly seconded by Councilmember Grewal,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour,
Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

BY: [Signature]

ADAM U. LINDGREN, City Attorney
RESOLUTION REAPPOINTING TAMI KRAUSS TO THE GOLF COURSES
ADVISORY COMMITTEE AS THE MEMBER REPRESENTING THE
CREEKSIDE GOLF CLUB WITH A TERM EXPIRATION OF DECEMBER 31,
2020

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

WHEREAS, from March 1, 2013 through December 31, 2016, Tami Krauss
served one term on the Golf Course Advisory Committee as a representative of the
Creekside Golf Club, and

WHEREAS, Tammi Krauss has indicated that she is willing and able to serve a
second term on the Golf Course Advisory Committee, and

WHEREAS, reappointment to a second term would commence on January 1,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby reappoints Tami Kraus to the Golf Courses Advisory Committee, as the
member representing the Creekside Golf Club, with a term expiration of December 31,
2020.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to transmit
a copy of this resolution to the appointed members of the Golf Course Advisory
Committee, and the Secretary, thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of January, 2017, by Councilmember Kenoyer, who moved its adoption, which motion being duly seconded by Councilmember Zoslocki, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(Seal)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
RESOLUTION ACCEPTING THE SUBDIVISION IMPROVEMENTS AND APPROVING THE FINAL MAP OF HINTZE LANDING SUBDIVISION, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE SUBDIVISION AGREEMENT WITH HAHNCO HOLDING, INC., A CALIFORNIA CORPORATION, AND AUTHORIZING THE CITY CLERK TO CERTIFY THE FINAL MAP AND RECORD IT WITH THE STANISLAUS COUNTY RECORDER’S OFFICE

WHEREAS, HAHNCO HOLDING, INC., a California corporation ("SUBDIVIDER"), is in possession of a tract of land situated in the City of Modesto, County of Stanislaus, consisting of 1.81 acres, known as the HINTZE LANDING SUBDIVISION ("SUBDIVISION"), and

WHEREAS, a tentative map of said tract was approved by the Planning Commission of the City of Modesto on February 24, 2014, and

WHEREAS, the City Council approved the rezoning of this property to low density residential zone on April 8, 2014, and

WHEREAS, the Secretary of the Planning Commission of the City of Modesto and the City Engineer have certified that the final map of said SUBDIVISION substantially conforms to the approved tentative map, and

WHEREAS, the City Engineer of the City of Modesto has certified that the final map of said SUBDIVISION meets all of the provisions of the California Subdivision Map Act and the provisions of the Modesto Municipal Code relating to subdivisions, and the City Surveyor has determined that the map is technically correct, and

WHEREAS, the project has been completed and the faithful performance bond release has been requested upon approval of the improvements, and
WHEREAS, as required by Section 4-4.605 of the Modesto Municipal Code, the SUBDIVIDER has executed a Subdivision Agreement, and

WHEREAS, the SUBDIVIDER has furnished a warranty bond, as set forth in Section 4-4.605 of the Modesto Municipal Code, which shall secure the obligations set forth in Section 66499.3 of the Government Code of the State of California. Said securities are in forms acceptable to the City Attorney and in the amounts required by the City Engineer,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that said Final Map of Hintze Landing Subdivision is approved; that the dedications for public streets and easements as shown thereon within the boundaries of said SUBDIVISION be accepted on behalf of the public for public use; and that the City Manager or designee be authorized to execute the Subdivision Agreement.

BE IT FURTHER RESOLVED that the City Clerk be authorized to certify the map of said SUBDIVISION on behalf of the City of Modesto and allow City staff to deliver it to the County Recorder, and the City Clerk to release the faithful performance bond and release the warranty security one year and one day after acceptance of the improvements, if 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 24th day of January, 2017, by Councilmember Grewal, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk

2017-26
RESOLUTION REJECTING ALL BIDS FOR THE STREET IMPROVEMENTS SOUTHBOUND PRESCOTT ROAD TO WESTBOUND PLAZA PARKWAY PROJECT

WHEREAS, in April 2010, the City of Modesto applied for Congestion Mitigation and Air Quality (CMAQ) funds to construct a dedicated right turn lane on Southbound Prescott Road at Plaza Parkway, and

WHEREAS, the construction of this project will modify the existing curb return and the existing traffic signal and construct a right turn lane with in the City right-of-way, and

WHEREAS, these improvements will reduce the amount of southbound congestion, while providing a right turn lane consistent with City of Modesto Standard Specifications, and

WHEREAS, the original time line for construction of this project was for construction to begin in June, 2013 and be complete by December, 2013, and

WHEREAS, as part of the project the relocation of dry utilities by outside agencies was to be completed prior to the start of road construction improvements, and

WHEREAS, CMAQ funds were intended to pay for costs associated with dry utility relocation work which were not covered under either franchise agreements or by outside agencies, and

WHEREAS, in 2012 Caltrans determined that CMAQ funds were not eligible for reimbursement for relocating dry utilities, and
WHEREAS, with the determination made by Caltrans and local funds programmed for the project, the project was placed on hold until an agreement could be reached between the City of Modesto and Modesto Irrigation District (MID), and

WHEREAS, in 2015, an agreement between the City of Modesto and MID outlined the requirements necessary for the relocation of dry utilities at MID’s expense, and

WHEREAS, in late October, 2016 all dry utility relocation work was completed by the outside agencies, and on November 8, 2016 the project was advertised for bid, and

WHEREAS, bids were opened on December 6, 2016 and only two bids were received, and

WHEREAS, DSS Company dba Knife River Construction of Stockton, California was the apparent low bidder at 55.10% above the engineer’s estimate, and

WHEREAS, George Reed Inc. of Modesto, California was the second low bidder at 101.96% above the engineer’s estimate, and

WHEREAS, in analyzing the bids, staff believes that due to the project delay, its relatively small size and the time of year that bids were solicited may have resulted in high unit prices and fewer bidders, and

WHEREAS, City staff recommends that the City reject the bids, make some modifications to the scope of work and re-bid the project in early 2017 with the intention of attracting a higher number of contractors and additional bids.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby rejects all bids for the Street Improvements Southbound Prescott Road to Westbound Plaza Parkway project.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of January, 2017, by Councilmember Grewal, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
RESOLUTION AMENDING SECTION 7 (HOMEBUYER ASSISTANCE PROGRAM) AND ADDING SECTION 12 (LOAN & GRANT PORTFOLIO MANAGEMENT POLICY) TO THE HOUSING AND URBAN DEVELOPMENT POLICIES & PROCEDURES MANUAL

WHEREAS, on October 25, 2016, by Resolution No. 2016-425, the City Council consolidated all Housing and Urban Development policies & procedures into one comprehensive manual entitled Housing and Urban Development Policies & Procedures Manual (HUD Policies & Procedures Manual), and

WHEREAS, an amendment to Section 7 (Homebuyers Assistance Program) of the HUD Policies & Procedures Manual is proposed to reflect updated policies, and

WHEREAS, an addition of Section 12 (Loan & Grant Portfolio Management) to the HUD Policies & Procedures Manual is proposed to provide allowable subordination considerations, and

WHEREAS, on December 15, 2016, the City of Modesto’s Housing Rehabilitation Loan Committee reviewed, approved and forwarded an amended Section 7 (Homebuyers Assistance Program) and the addition of Section 12 (Loan & Grant Portfolio Management Policy) to the HUD Policies & Procedures Manual, to the City Council for review and approval.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto hereby amends Section 7 (Homebuyers Assistance Program) of the Housing and Urban Development Policies & Procedures Manual, as set forth in Exhibit A attached hereto and incorporated by reference.
BE IT FURTHER RESOLVED by the Council of the City of Modesto that
Section 12 (Loan & Grant Portfolio Management Policy) be added to the Housing and
Urban Development Policies & Procedures Manual, as set forth in Exhibit B attached
hereto and incorporated by reference.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 24th day of January, 2017, by Councilmember Grewal,
who moved its adoption, which motion being duly seconded by Councilmember
Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour,
Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
Section 7
Homebuyer Assistance Program

City of Modesto
Community Development Division
1010 10th Street, Suite 3100, Modesto, CA 95354
(209) 577-5211, TDD 209-
housing@modestogov.com

City of Modesto Housing Rehabilitation Loan Committee (HRLC) Approved
City of Modesto City Council Approved by Resolution

*These policies supersede any previously adopted policies and are subject to review and revision by the City of Modesto Housing Programs Loan Committee.
Homebuyer Assistance Program (HAP) Policies

1. APPLICABLE LAWS AND REGULATIONS
   1.1. All Housing Assistance Program (HAP) activities shall be conducted in compliance with all applicable federal, state, and local program funding sources, if any.

   1.2. All terms used within these policies shall be as defined by applicable funding source(s) or other locally approved HAP and acquisition program policies.

   1.3. All program applications will be processed in accordance to the date of receipt and are subject to available funding.

2. PROPERTY ELIGIBILITY
   2.1. Eligible property shall be located in a residentially zoned area within Modesto City limits.
       2.1.1. Eligible property shall not be located within a 100-year flood zone.
       2.1.2. Additional location requirements may be applicable depending on available funding source(s).

   2.2. Eligible property type may be:
       2.2.1. Single-family housing unit; or
       2.2.2. Condominium unit; or
       2.2.3. Townhouse unit; or

   2.3. Eligible property shall have the following occupancy characteristics:
       2.3.1. Currently occupied by the owner-seller of the property; or
       2.3.2. If a rental property, sold only to the existing tenant; or
       2.3.3. Vacant for ninety days or longer prior to submission of purchase offer by Borrower.

   2.4. Eligible property shall meet the following criteria:
       2.4.1. The housing unit shall have been constructed after 1978, unless the following standards for lead-based paint hazards have been met:
           2.4.1.1. The unit shall have been inspected by a certified lead-based paint inspector and, if any defective paint is discovered, the seller shall provide verification of lead-based paint abatement having been completed by a professional abatement contractor. Certification of inspection and abatement shall be provided by the seller in the form required by City of Modesto. The seller is responsible for the cost of all inspections and abatement.

           2.4.2. Property with an in-ground pool may not be eligible if the cost of pool maintenance, operations (utilities), and insurance causes the back-end debt to income ratio to exceed 45 percent. (See Section 5.0)

           2.4.3. Property shall meet or exceed HUD's Housing Quality Standards (HQS) prior to close of escrow, except when a HAP loan is approved for both HAP and Rehabilitation.

           2.4.3.1. The property shall be inspected by a rehabilitation specialist or other personnel authorized by the Community Development Manager for compliance with all applicable codes, ordinances, and standards. The seller is responsible for the cost of correcting any deficient items noted in the inspection, except when a HAP loan is approved for both HAP and Rehabilitation and the following criteria are met:

               2.4.3.1.1. Combined Loan-to-Value (CLTV) (primary financing, HAP and rehabilitation loan) shall not exceed 105% of the purchase price (except where the funding source used requires a lower CLTV);
2.4.3.1.2. Work to correct deficient items related to health and safety and/or code violations, must start within 30-days of escrow closing with the reasonable anticipation that work will be completed within sixty days of closing; and

2.4.3.1.3. All work to correct deficiencies shall be done by a California licensed contractor and with all applicable permits.

2.5. The following inspection reports are required and will be at the buyer's risk and expense, unless negotiated with the seller:

2.5.1. Termite inspection.
2.5.2. Home (whole house) inspection by a licensed property inspector.

3. MAXIMUM PURCHASE PRICE

3.1. The maximum purchase price of an assisted property shall not exceed 100% of the current median sales price of a single family home listed for City of Modesto. This information may be obtained from a minimum of three (3) sources including, but not limited to, Zillow, Trulia, Data Quick, Realty Trac, Real Quest, Eppraisal.com, or FHA 203(b) loan limits. In order to verify the purchase price, the following shall be provided to City of Modesto:

3.1.1. A copy of the signed purchase agreement, at the time of opening of escrow.
3.1.2. Prior to close of escrow, an appraisal prepared by a state-licensed residential property appraiser.

3.2. The following purchase price criteria shall be met when a HAP loan is approved for both HAP and Rehabilitation:

3.2.1. The maximum purchase price, prior to rehabilitation, shall not exceed the "as is" value as established by a California State-licensed residential property appraiser;
3.2.2. The after rehabilitation value may not exceed 100% of the current median sales price as identified in Section A above.
3.2.3. The Appraiser may use a single appraisal to show both values (sub-Sections i and ii) or the appraiser may use two separate appraisals, with the second one issued after completion of the rehabilitation work.

4. HOUSEHOLD/BORROWER ELIGIBILITY

4.1. The borrowing household shall have incomes at or below 80 percent (80%) of the Stanislaus County Area Medium Income (AMI), adjusted for household size, as published annually by the California State Department of Housing and Community Development (HCD) or United Stated Department of Housing and Urban Development (HUD) (depending on the HAP funding source used) unless a higher AMI is authorized by specific funding sources.

4.2. Borrowers shall qualify as first time homebuyers (FTHB) and shall occupy the property as a principal place of residence.

4.2.1. A FTHB is defined as a purchaser of a property who neither has, nor has had, present ownership in a principal residence at any time during the three (3) year period prior to the date on which a mortgage pursuant to this Program is executed, except as otherwise allowed by the specific funding source(s) utilized. All Borrowers to be listed on title to the property must meet the definition of a FTHB. Co-signers and co-mortgagors not meeting the definition of a FTHB and who do not intend to occupy the property are prohibited.

4.3. Borrowers shall meet the following credit worthiness criteria:

4.3.1. No outstanding judgments or liens at the time of HAP approval or HAP execution. As part of application for assistance, Borrower shall disclose any personal liens that may attach to the property (failure to disclose any pertinent information that may affect
eligibility and may be grounds for denial of assistance and application withdrawal). To identify any personal liens, a title search of Borrowers shall be conducted after Loan Committee approval.

4.3.2. Outstanding collections must be paid prior to HAP approval, unless the Loan Committee determines on a case by case basis that the circumstances that led to collection were outside of the applicant's control and the payment of the outstanding collection(s) will not impact the applicant's ability to financially undertake homeownership.

4.3.3. Late payments due to extenuating circumstances will be considered as part of the credit worthiness approval process. Factors leading to late payments will be reviewed and considered on a case by case basis.

4.3.4. Shall not have filed bankruptcy, or received a bankruptcy discharge, in the last 3 years prior to date of application.

4.3.5. Shall not have been foreclosed upon in the last 3 years prior to date of application.

4.3.6. Shall not have defaulted (including bankruptcy or foreclosure) on any HAP, acquisition, or rehabilitation program funding provided at any time by City of Modesto.

4.3.7. The Loan Committee may consider other factors impacting Borrower's creditworthiness.

4.4. The borrowing household shall, at a minimum, contribute the following amount toward the closing cost of the home purchase based on household AMI:

4.4.1. 50% or less, no contribution required.

4.4.2. 51% to 80%, the lesser of $1,350 or 1% of purchase price.

4.4.3. 81% to 120%¹, the lesser of $5,000 or 3% of purchase price.

4.5. Borrowers shall have completed a First Time Home Buyer education course from a HUD certified housing counseling agency and provide a copy of the certificate to City of Modesto prior to release of funds.

4.6. Borrowers must have the income and credit worthiness to qualify for primary financing, from a primary lender of their choice.

4.6.1. Primary financing shall be in the form of a 30-year fixed rate loan (no co-signers accepted).

4.6.2. There shall be no balloon payment requirements or prepayment penalties included in the terms of the first mortgage.

4.6.3. The monthly mortgage payment must include impound account costs for the payment of property taxes and property insurance as required by the program.

4.7. There is no asset limitation for participation in HUD assisted-housing programs. However, the definition of annual income includes net income from family assets.

4.7.1. Net Family Assets include the following:

¹ Assistance to households with AMI levels between 81% and 120% may only be available if funding source allowing said limits is available.
4.7.1.1. Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets.

4.7.1.2. Revocable trusts. Include the cash value of any revocable trust available to the family.

4.7.1.3. Equity in rental property or other capital investments. Include the current fair market value less;
   4.7.1.3.1. Any unpaid balance on any loans secured by the property; AND
   4.7.1.3.2. Reasonable costs that would be incurred in selling the asset (e.g., penalties, broker fees, etc.). NOTE: If the person’s main business is real estate, then count any income as business income. Do not count it both as an asset and business income.

4.7.1.4. Stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after rent is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received. The tenant may request an interim recertification at any time thereafter that a decrease in stock value may result in a decrease in rent.

4.7.1.5. Individual retirement, 401K, and Keogh accounts. These are included when the holder has access to the funds, even though a penalty may be assessed. If the individual is making occasional withdrawals from the account, determine the amount of the asset by using the average balance for the previous six months. (Do not count withdrawals as income.)

4.7.1.6. Retirement and pension funds.
   4.7.1.6.1. While the person is employed. Include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs.
   4.7.1.6.2. At retirement, termination of employment, or withdrawal. Periodic receipts from pension and retirement funds are counted as income. Lump-sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income, as provided below.
   4.7.1.6.2.1. If benefits will be received in a lump sum, include the lump sum receipt in net family assets.
   4.7.1.6.2.2. If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset.
   4.7.1.6.2.3. If the individual initially receives a lump-sum benefit followed by periodic payments, count the lump-sum benefit as an asset as provided in the example below and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.

NOTE: This paragraph and the example below assume that the lump-sum receipt is a one-time receipt and that it does not represent delayed periodic payments. However, in situations in which a lump-sum payment does represent delayed periodic
payments, then the amount would be considered as income and not an asset.

4.7.1.6.2.4. Cash value of life insurance policies available to the individual before death (e.g., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death.

4.7.1.6.2.5. Personal property held as an investment. Include gems, jewelry, coin collections, or antique cars held as an investment. Personal jewelry is NOT considered an asset.

4.7.1.6.2.6. Lump-sum receipts or one-time receipts. These include inheritances, capital gains, one-time lottery winnings, victim's restitution, settlements on insurance claims (including health and accident insurance, worker's compensation, and personal or property losses), and any other amounts that are not intended as periodic payments.

4.7.1.6.3. A mortgage or deed of trust held by an applicant.

4.7.1.6.3.1. Payments on this type of asset are often received as one combined payment of principal and interest with the interest portion counted as income from the asset.

4.7.1.6.3.2. This combined figure needs to be separated into the principal and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)

4.7.1.6.3.3. To count the actual income for this asset, use the interest portion due, based on the amortization schedule, for the 12-month period following the certification.

4.7.1.6.3.4. To count the imputed income for this asset, determine the asset value "as of the effective date of the certification". Since this amount will continually be reduced by the principal portion paid during the previous year, the owner will have to determine this amount at each annual recertification.

4.7.1.6.3.5. Net family assets DO NOT include the following:

**IMPORTANT:** The owner does not compute income from any assets in this paragraph.

4.7.1.6.3.5.1. Personal property (clothing, furniture, cars, wedding ring, other jewelry that is not held as an investment, vehicles specially equipped for persons with disabilities).

4.7.1.6.3.5.2. Interests in Indian trust land.

4.7.1.6.3.5.3. Term life insurance policies (i.e., where there is no cash value).

4.7.1.6.3.5.4. Equity in the cooperative unit in which the family lives.

4.7.1.6.3.5.5. Assets that are part of an active business. "Business" does NOT include rental of properties that are held as investments unless such properties are the applicant's or tenant's main occupation. **NOTE:** No revocable trusts (i.e., irrevocable trusts) are not covered by this paragraph.

4.7.2. Borrowers shall not be a person or the immediate relative of any person who is in a decision-making position relative to the HAP Program.

5. **QUALIFYING DEBT TO INCOME RATIOS:**

5.1. Front end (housing) debt-to-income ratio shall not exceed 35 percent (35%) and is the percentage of a borrower's gross monthly income (before deductions) that would cover the cost of the loan principal and interest payment, property taxes, property insurance, mortgage...
insurance, and HOA dues, if any.

5.2. Back-end (total) debt-to-income ratio shall not exceed 45 percent (45%) and is the percentage of the borrower’s gross monthly income that would cover the cost of housing as described in Section 5.0(A) above, plus any other monthly debt payments such as car loans, personal loans, credit card debt or child support and alimony payments.

6. **MAXIMUM AMOUNT OF PROGRAM ASSISTANCE:**

   6.1. HAP assistance shall be provided in the form of “gap” financing to assist the homebuyer purchase a home while keeping their housing costs affordable as defined in Section 5.0. Gap financing shall not exceed 60,000*. Up to 5 percent of the assistance provided may be used to pay non-recurring closing costs.

   6.2. Borrowers must receive the maximum first mortgage loan for which they qualify.

   6.3. **EXAMPLE** Gap Financing Loan Calculation

   
   | Contract Sales Price | $250,000 |
   | First Mortgage Pre-Approval (meets City terms) | $(200,000) |
   | Buyer's Minimum Contribution (81% to 120% AMI) | $(5,000) |
   | Gap Financing | $45,000 |

   MAXIMUM Down Payment Assistance (DPA) Available | $60,000 |
   Gap Financing | $(45,000) |
   Estimated Closing Costs* (5% of $250,000) | $(12,500) |
   Balance Available - DPA | $2,500 |
   Total DPA to Eligible Homebuyer | $57,500 |

7. **MAXIMUM COMBINED LOAN TO VALUE RATIO (CLTV):**

   7.1. The Combined Loan-to-Value (CLTV) ratio for a HAP Program loan, when combined with all other indebtedness to be secured by the property, shall not exceed 100 percent of the purchase price, plus a maximum of up to 5 percent of the purchase price, if allowed by funding source, to cover actual, non-recurring closing costs (except where the funding source used requires a lower CLTV).

8. **HAP LOAN TERMS:**

   8.1. The City of Modesto HAP loan term shall be 30 years.

   8.2. The following Lending Criteria shall apply based on the household’s Area Median Income (AMI) level:

   8.2.1. Very Low to Low-Income (0-80% AMI): The loan shall accrue interest at a rate of 3% simple interest for the first 20 years. The loan shall accrue zero percent (0%) interest for the remaining 10 year term. Payment shall be deferred for 30 years. Voluntary payments are encouraged.

   8.2.2. Median/Moderate Income (81% - 120% AMI – If funding source is available): The loan shall accrue interest at a rate of 3% for the first 20 years. The loan shall accrue zero percent (0%) interest for the remaining 10 year term. Simple interest payments shall begin at year 5 until year 20.

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*Closing costs in excess of 5% are the responsibility of the homeowner
8.3. All borrowers will be required to have impound accounts for the payment of taxes and insurance to ensure they remain current during the life of the Program loan.

8.4. The Program loan shall be secured by the property as a 2nd deed of trust.

8.5. The Program loan, principal and interest, shall be due and payable upon:
   8.5.1. Sale, transfer, rental or lease of the property.
   8.5.2. Borrower’s failure to occupy the Property as Borrower’s principal place of residence (Borrower must certify occupancy annually).
   8.5.3. The Program loan maturity date, however, if it is determined by the loan committee that repayment of the loan at maturity will cause a hardship to the Borrower, the Loan Committee may, at its option, elect to:
      8.5.3.1. Approve a one-time additional deferral period of up to 15 years in length at 0% additional interest; or
      8.5.3.2. Convert the debt (principal and accrued interest) to a 15 year amortized loan at 0% additional interest. The cost of loan servicing, if any, shall be added to the repayment cost of the amortized loan.
      8.5.3.3. Upon default under the HAP Program loan promissory note, deed of trust, the deed of trust rider or the covenants, or other recorded documents of record pertaining to the property.
      8.5.3.4. Refinancing of any superior mortgages and drawing cash from equity.

8.6. City of Modesto may accept voluntary payments on the loan. Loan payments will be credited to the interest first, then to principal. The borrower may repay the loan balance at any time with no pre-payment penalty.

8.7. Program loans are not assumable except under the following limited circumstances:
   8.7.1. The transfer of the Property to the surviving joint tenant under a will, descent or operation of the law, on the death of a joint tenant;
   8.7.2. A transfer of the Property where the spouse becomes an owner of the property;
   8.7.3. A transfer of the Property resulting from a decree of dissolution of marriage, legal separation or from an incidental property settlement agreement by which the spouse becomes an owner of the property.
   8.7.4. A transfer to an inter vivos trust in which the Borrower is and remains the beneficiary and occupant of the property.

8.8. Restrictions on Sale and Recapture of City of Modesto Funds:
   8.8.1. In any transaction in which the City loan is the only secondary financing, the Borrower cannot be restricted from selling the home at its fair market value at any time.
   8.8.2. Subsequent buyers, unless assisted with a City loan under this Program, do not need to meet the Eligible Household requirements set forth above, unless required by an affordability covenant resulting from original HAP loan on the same property (i.e. RDA loans).

8.9. City of Modesto shall recapture the entire HAP subsidy provided to the Borrower before the Borrower receives a return. The City’s recapture amount is limited to the net proceeds available from the sale.
   8.9.1. In cases where the net proceeds available at the time of sale are insufficient to recapture the entire direct HAP subsidy provided by the Borrower, City of Modesto will collect any and all net proceeds available resulting from the sale.
8.9.2. In applying the recapture provisions, the following formula shall be used to determine the net proceeds subject to recapture:

\[
\text{Net Proceeds subject to recapture} = \text{Sales Price of the Unit} - \text{Superior Non-HAP Debt} - \text{Closing Costs}.
\]

8.10. Subordination Policy (see Attachment 1)

8.11. When high housing market conditions require, the Loan Committee may approve subordinate financing to cover mortgage subsidy costs that exceed the HAP loan maximum, provided maximum combined loan to value limits are met, all subordinate liens must have payments deferred, and the term must be for at least as long as the term of the HAP loan.

9. ENVIRONMENTAL REVIEW

9.1. All assisted properties shall be subject to Federal environmental review as required by the funding source(s). No funds shall be released until all environmental reviews have been conducted to the satisfaction of City of Modesto.

10. AFFORDABILITY PERIOD

10.1. All assisted properties shall be subject to affordability periods as required by the funding source(s). If multiple funding source(s) are utilized, the affordability period shall be the longest of the all affordability periods. Affordability periods shall be reflected in a covenant to be recorded on the assisted property and may continue to run with the property even after sale or transfer by the Borrower.

11. HOUSING REHABILITATION LOAN COMMITTEE APPROVAL

11.1. All Down Payment Assistance activities shall be subject to majority vote approval by the City of Modesto Housing Rehabilitation Loan Committee. The Committee shall be comprised of the following voting members:

- 11.1.1. Councilmember (appointment by the Mayor) 4 years
- 11.1.2. Financial Institution – Representative 4 years
- 11.1.3. Service Provider – Representative 4 years
- 11.1.4. General Contractor (active or retired) 4 years
- 11.1.5. Housing Authority of Stanislaus County – Representative 4 years
- 11.1.6. Citizen-at-Large 4 years
- 11.1.7. Citizen-at-Large 4 years
- 11.1.8. Citizen’s Housing & Community Development Committee (alternate) 4 years

11.2. The Community Development Manager may appoint a substitute voting member using alternative criteria if existing circumstances do not allow for a Committee make-up as specified above and time constraints warrant a substitution.

11.3. All actions of the Housing Rehabilitation Loan Committee shall be reflected in meeting minutes to be prepared by staff of the City of Modesto Community Development Division.

12. APPROVAL CONTINGENCIES

12.1. All HAP activities approved by the loan committee shall be contingent on meeting the following requirements:
12.1.1. The borrower shall provide an American Land Title Association (ALTA) title insurance policy in the amount of the City loan to be paid via closing costs or at borrower’s expense.

12.1.2. All HAP loans shall be evidenced by the following documents and provisions:
   12.1.2.1. Loan Agreement;
   12.1.2.2. Promissory Notes (s) payable to City of Modesto in the principal amount of the loan and stating the terms and rate of interest;
   12.1.2.3. Deed of Trust(s) securing the Note (deed shall be recorded and shall secure City’s financial interest in the property);
   12.1.2.4. Declaration of Conditions, Covenants, and Restrictions (if applicable);
   12.1.2.5. Other appropriate security instrument naming City as beneficiary;
   12.1.2.6. Request for copy of “Request for Notice of Default” on first mortgage; and
   12.1.2.7. Any other documents determined necessary by the Community Development Manager.

12.1.3. The borrower shall provide and maintain fire insurance on the property for the duration of the program loan(s). This insurance must be adequate to cover all encumbrances on the property.
   12.1.3.1. The insurer must identify City of Modesto as Loss Payee for the amount of the program loans.
   12.1.3.2. A copy of the homeowner’s insurance policy shall be provided to City of Modesto at time of close of escrow.
   12.1.3.3. Borrower must cause for a copy of homeowner’s insurance policy to be provided to City of Modesto on an annual basis.

12.1.4. City of Modesto will annually monitor and certify in the loan file that the Borrower and housing unit are adhering to program requirements including but not limited to:
   12.1.4.1. Owner-occupancy;
   12.1.4.2. Good standing with property tax payment;
   12.1.4.3. Hazard insurance;
   12.1.4.4. Good standing on primary loan
Section 12
Loan & Grant Portfolio Management
1. **Subordinations**

   1.1. The City of Modesto may approve a request to subordinate a City of Modesto loan under any of the City’s housing programs, allowing the Borrower to refinance the property, under the following conditions (other conditions may apply based on funding source(s):

      1.1.1. The Combined Loan-to-Value Ratio shall not exceed 105% of the appraised value.

      1.1.2. The City of Modesto’s lien position will remain the same or be advanced (the City of Modesto will not give up a first lien position, when the City has provided 100% financing).

      1.1.3. The new primary loan is not greater than the balance of the loan being refinanced, except the costs of refinancing the loan may be added to the principal balance.

      1.1.4. The purpose of the new primary loan is to reduce the interest rate being paid and/or reduce the owner’s payments.

      1.1.5. If the purpose of the new loan is to reduce the loan term, (i.e. from a 30 year loan to a 15 year loan), the Borrower’s Debt to Income ratios may not exceed the program limits.

      1.1.6. No cash out from equity.

      1.1.7. The refinanced loan must have an impound account for taxes and insurances.

      1.1.8. The refinancing terms must be acceptable to the City of Modesto.
RESOLUTION ACCEPTING THE DESTINATION MODESTO REPORT FOR THE FIRST AND SECOND QUARTER OF FISCAL YEAR 2016-17

WHEREAS, on October 27, 2015, the City Council accepted the Destination Modesto Report – First Quarter Fiscal Year 2015-16 for the convention and tourism activity, and

WHEREAS, on March 1, 2016, the City Council accepted the Destination Modesto Report – Second Quarter Fiscal Year 2015-16 for the convention and tourism activity as well as activity at the McHenry Mansion, McHenry Museum, all three (3) City owned golf courses and City parks, and

WHEREAS, on June 7, 2016, the City Council accepted the Destination Modesto Report – Third Quarter Fiscal Year 2015-16 for the convention, tourism, McHenry Mansion, McHenry Museum, all three (3) City owned golf courses and City parks activity, and

WHEREAS, on September 13, 2016, CEDD staff prepared the Destination Modesto Report – Fourth Quarter Fiscal Year 2015-16 for the convention, tourism, McHenry Mansion, McHenry Museum, Modesto Centre Plaza, all three (3) City owned golf courses and City parks activity as well as an overview of each previous quarter to show overall data for Fiscal Year 2015-16, and

WHEREAS, the Destination Modesto Report – First and Second Quarter Fiscal Year 2016-17 for the convention, tourism, McHenry Mansion, McHenry Museum, Modesto Centre Plaza, all three (3) City owned golf courses and City parks activity omits
second quarter Convention & Tourism activity and modifies the Modesto Centre Plaza report to show revenues earned by the facility and DoubleTree Hotel.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the Destination Modesto Report – First and Second Quarter Fiscal Year 2016-17.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of January, 2017, by Councilmember Grewal, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [signature]

APPROVED AS TO FORM:

By: [signature]

ADAM U. LINDGREN, City Attorney
RESOLUTION AUTHORIZING THE GROUNDWATER SUSTAINABILITY AGENCY MEMORANDUM OF UNDERSTANDING, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE MEMORANDUM OF UNDERSTANDING, AND PREPARE AND SUBMIT NOTICE OF THE STANISLAUS AND TUOLUMNE RIVERS GROUNDWATER BASIN ASSOCIATION GROUNDWATER SUSTAINABILITY AGENCY’S ELECTION TO BE THE GROUNDWATER SUSTAINABILITY AGENCY FOR THE MODESTO SUB-BASIN TO DEPARTMENT OF WATER RESOURCES

WHEREAS, in September of 2014, Governor Edmund G. Brown signed into law, the Sustainable Groundwater Management Act of 2014 (SGMA), which changed the method for groundwater management, and

WHEREAS, SGMA is a comprehensive three bill package that sets the framework for statewide sustainable groundwater management by local agencies, and

WHEREAS, SGMA requires the formation of Groundwater Sustainable Agencies (GSA) and the preparation of Groundwater Sustainability Plans (GSP) with a focus on long-term sustainability, and

WHEREAS, formation of a GSA must occur no later than June 30, 2017, and development and adoption of a GSP must be adopted no later than January 31, 2022, for high and medium priority basins not currently in critical overdraft, and

WHEREAS, the Modesto Sub-basin (designated basin number 5-22.02 in DWR’s CASGEM groundwater basin system) is designated as a high-priority basin, and

WHEREAS, SGMA authorizes a local agency, or a combination of local agencies, overlying a groundwater basin to form a GSA, and

WHEREAS, multi-agency GSAs may be formed through either a Memorandum of Understanding (MOU) or other legal agreement, and
WHEREAS, the Stanislaus and Tuolumne Rivers Groundwater Basin Association (STRGBA) member agencies are all local agencies, pursuant to SGMA’s definition, and

WHEREAS, the STRGBA member agencies include the cities of Oakdale, Riverbank, Modesto, and Waterford; Stanislaus County; Oakdale Irrigation District; and Modesto Irrigation District, and

WHEREAS, since its inception in 1994, STRGBA has provided a forum for local agencies to work cooperatively to provide for coordinated planning in the pursuit of effective and sustainable management of the Modesto Sub-basin, and

WHEREAS, the STRGBA member agencies believe that the sustainable management of the Modesto Sub-basin pursuant to SGMA may best be achieved through the cooperation of the Member Agencies operating through the GSA MOU, and

WHEREAS, SGMA requires formal procedures be followed to become a GSA, and

WHEREAS, each of the local agencies electing to be a GSA must hold a noticed public hearing to receive public comment on the local agency’s decision to become the GSA for the Basin, and

WHEREAS, at the conclusion of this public hearing, it is anticipated that the governing board for each local agency will authorize the execution of the attached GSA MOU and adopt the attached resolution forming the GSA for the Basin,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizing the Groundwater Sustainability Agency Memorandum of Understanding, and authorizing the City Manager, or his designee, to execute the Memorandum of Understanding, and prepare and submit notice of the Stanislaus and
Tuolumne Rivers Groundwater Basin Association Groundwater Sustainability Agency’s
election to be the Groundwater Sustainability Agency for the Modesto Sub-basin to
Department of Water Resources.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby
authorized to execute said Memorandum of Understanding on behalf of the City, and
prepare and submit notice of the Stanislaus and Tuolumne Rivers Groundwater Basin
Association Groundwater Sustainability Agency’s election to be the Groundwater
Sustainability Agency for the Modesto Sub-basin to Department of Water Resources.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 24th day of January, 2017, by Councilmember Ridenour,
who moved its adoption, which motion being duly seconded by Councilmember Grewal,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour,
Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
MEMORANDUM OF UNDERSTANDING FORMING THE STANISLAUS AND TUOLUMNE RIVERS GROUNDWATER BASIN ASSOCIATION GROUNDWATER SUSTAINABILITY AGENCY

January 24, 2017

1. PARTIES. The Parties to this Memorandum of Understanding (MOU) are: the County of Stanislaus, a political subdivision of the State of California; the Oakdale Irrigation District, a California irrigation district; the City of Oakdale, a California public agency; the City of Riverbank, a California public agency; the City of Modesto, a California public agency; the City of Waterford, a California public agency; and the Modesto Irrigation District, a California irrigation district (each referred to individually as a "Party" or collectively as the "Parties").

2. RECITALS. This MOU is entered into with regard to the following facts and circumstances, among others:

2.1 Groundwater and surface water resources within the Modesto Sub-basin of the San Joaquin Valley Groundwater Basin (DWR Bulletin 118 No. 5-22.02) ("Sub-basin") are vitally important resources, in that they provide the foundation to maintain and fulfill current and future environmental, agricultural, domestic, municipal and industrial needs, and to maintain the economic viability, prosperity, and sustainable management of the Sub-basin.

2.2 Agriculture has been prominent in making Stanislaus County one of the world's foremost agricultural areas, and has played a major role in the development of the economy of Stanislaus County; in an era of increasing competition for the area's finite water resources, it is important to understand and plan for the local area's economic well-being.

2.3 Although each of the Parties overlies and has rights to extract groundwater from the Sub-basin, each Party's individual surface and groundwater rights, historical groundwater production, and groundwater recharge and conveyance activities vary greatly from one another.

2.4 The California Legislature has adopted, and the Governor has signed into law, the Sustainable Groundwater Management Act ("SGMA"), which authorizes local agencies to manage groundwater in a sustainable fashion.

2.5 The Parties intend to enter into this MOU in order to ensure that the Sub-basin remains locally and sustainably managed.

2.6 SGMA requires groundwater basins designated as either medium or high-priority to be managed by one or more Groundwater Sustainability Agencies ("GSA") by June 30, 2017 and that GSAs adopt a groundwater sustainability plan ("Plan") by January 31, 2022.

2.7 The Sub-basin is currently designated as a high-priority basin, and thus must comply with the deadlines in the previous recital.

2.8 Pursuant to SGMA, a combination of local agencies may form a GSA through a memorandum of understanding or other legal agreement.
2.9 Each of the Parties overlies a portion of the Sub-basin and is a local agency as defined by SGMA.

2.10 In order to coordinate groundwater management activities and to comply with SGMA, the Parties desire to form a GSA for the portion of the Sub-basin that lies within their collective jurisdictions.

2.11 This MOU is intended to be an agreement for formation of a GSA as authorized by section 10723.6(a)(2) of the Water Code.

2.12 The Parties further intend and will work cooperatively to develop a separate operating agreement for the Stanislaus and Tuolumne River Groundwater Basin Association ("STRGBA") GSA ("STRGBA GSA").

2.13 The Parties believe that cooperative and coordinated actions by local agencies and users within the Sub-basin will result in the continued sustainable use of the groundwater within the Sub-basin.

3. **DEFINITIONS.** The following terms, whether in the singular or the plural, and when used herein with initial capitalization, shall have the meanings specified below:

3.1 **Annual Budget.** The GSA budget developed annually, pursuant to Section 6.2, to fund certain project(s) to advance the goals and objectives of this MOU.

3.2 **Committee.** That body, consisting of one representative from each of the Parties, which governs the GSA, as established pursuant to Section 4.3 of this MOU.

3.3 **Coordinator.** The individual appointed by the Committee pursuant to Section 5.

3.4 **Funding Percentage.** A Party's Funding Percentage as set forth in Section 7.1 of this MOU.

3.5 **Governing Bodies.** The governing entities of the Parties to this MOU.

3.6 **GSA.** A Groundwater Sustainability Agency created pursuant to SGMA.

3.7 **MOU.** This Memorandum of Understanding creating the STRGBA GSA.

3.8 **Parties.** Each of those entities named in Section 1 of this MOU, or those Parties added pursuant to Section 4.5 of this MOU.

3.9 **Plan.** A Groundwater Sustainability Plan developed and adopted pursuant to SGMA.

3.10 **SGMA.** The Sustainable Groundwater Management Act of 2014.

3.11 **Stanislaus and Tuolumne River Groundwater Basin Association GSA or STRGBA GSA.** The GSA created pursuant to this MOU to manage the Sub-basin.
3.12 **Sub-basin.** The Modesto Sub-basin of the San Joaquin Valley Groundwater Basin (DWR Bulletin 118 No. 5-22.02), which is geographically defined as that area in the State of California bounded on the west by the San Joaquin River; on the north by the Stanislaus River, on the east by the base of the Sierra Nevada foothills; and on the south by the Tuolumne River, and includes the area of land overlying that Sub-basin and all tributaries therein as defined by the then-current Department of Water Resources Bulletin 118.

3.13 **Voting Percentage.** A Party’s Voting Percentage as set forth in Section 7.3 of this MOU.

4. **THE GSA.**

4.1 **Creation of GSA.** The Parties hereby establish the STRGBA GSA to manage the portion of the Sub-basin within the Parties’ collective jurisdictions.

4.2 **Purposes and Powers.** The purposes and powers of the STRGBA GSA are as follows:

4.2.1 This MOU is entered into by and between the Parties to, consistent with SGMA, exert local control over the management of the Sub-basin and to facilitate a cooperative and ongoing working relationship that will allow compliance with SGMA and state law, as amended from time to time.

4.2.2 The STRGBA GSA shall act on behalf of its members to coordinate the Parties’ activities and actions to further the sustainable management of the Sub-basin and facilitate compliance with SGMA. It shall in no way determine or modify the surface water rights or groundwater rights, if any, of any Party.

4.2.3 The STRGBA GSA shall determine and evaluate the Sub-basin’s existing groundwater supply;

4.2.4 The STRGBA GSA shall promote coordination of groundwater management planning activities within the Sub-basin;

4.2.5 The STRGBA GSA shall evaluate the Sub-basin’s need for additional or improved water extraction, storage, delivery, conservation, and recharge facilities;

4.2.6 The STRGBA GSA shall provide and share information and guidance for the management, preservation, protection and enhancement of groundwater quality and quantity in the Sub-basin; and

4.2.7 The STRGBA GSA shall have the powers and authorities granted to GSAs under SGMA.
4.3 **Committee.** The STRGBA GSA shall be governed by a Committee whose membership and responsibilities are set forth herein.

4.3.1 Each Party shall designate one staff person to serve as a member of the Committee, and one or more alternates. The names of the member and alternates will be submitted to the Coordinator. Each member of the Committee, and each alternate, shall serve at the pleasure of the Party appointing such member. A Party's alternate may serve in the place of that Party's member in the absence of such member and, in such case, the alternate shall have the powers of the member.

4.3.2 The Committee shall elect a chair and vice chair from its members at the first meeting of each calendar year. The chair shall be responsible for presiding over meetings of the Committee, and shall notify members and the Coordinator of meetings of the Committee. The Committee shall establish a date, time and place for its regular meetings, and may hold special meetings when required for the proper transaction of business. All meetings of the Committee will be held in accordance with the provisions of the Brown Act, California Government Code Section 54950 et seq. The Committee shall prescribe such procedures for the conduct of its business as it deems appropriate.

4.3.3 A quorum will consist of a simple majority of the Parties, subject to the provisions of section 6.5, except that less than a quorum may adjourn meetings of the Committee from time to time. Alternatively, the Coordinator may adjourn a meeting of the Committee to a specified time, date and place if there is less than a quorum of members present for a meeting.

4.3.4 The Committee shall have the following duties and responsibilities:

a. Develop and implement activities designed to achieve the objectives of SCMA.

b. Designate a Party that will enter into contracts, and approve all amendments thereto, for and on behalf of the STRGBA GSA, necessary to carry out the powers and duties of the STRGBA GSA.

c. Establish an Annual Budget for the STRGBA GSA, and approve proposed revisions to such budget, provided that no action of the STRGBA GSA shall be deemed to bind any party to contribute such funds absent approval of each Party's Governing Body.

d. Recommend for approval by each Party's Governing Body's Annual Budget(s) necessary to carry out proposed project(s).

e. Establish such committees as may be necessary or desirable to carry out the purposes of the STRGBA GSA, and to exercise general supervision over such committees.
4.3.5 Except for actions for which a different approval standard is set forth in this MOU, all actions of the Committee will be approved by a majority of the members present.

4.4 Staff. The staff of the STRGBA GSA shall be composed of staff from each Party. The STRGBA GSA shall also have the authority to hire or retain agents, contractors and consultants as the Committee shall determine necessary and appropriate.

4.5 New Parties. New parties may join the STRGBA GSA, provided that they meet the requirements set forth below:

4.5.1 Any county or local public agency that meets the definition of "local agency" as set forth in SGMA.

4.5.2 Application for membership will be subject to simple majority approval by the Committee.

4.5.3 As a condition of admission to the STRGBA GSA, any new Party to this MOU shall agree to be subject to the terms of this MOU and shall be required to first pay its proportionate share of back contributions or as otherwise determined appropriate by the Committee.

5. COORDINATOR.

5.1 Appointment. The Committee shall appoint a one of the Committee members as the Coordinator, who shall have the duties and responsibilities set forth in this Section 5.

5.2 Duties and Responsibilities. The Coordinator will have the following duties and responsibilities:

5.2.1 Develop and submit for review and approval by the Committee a work plan and schedule of activities designed to comply with the requirements of SGMA, or as may be otherwise directed by the Committee.

5.2.2 Propose an Annual Budget, and from time to time such revisions as the Coordinator may feel necessary or desirable, to the Committee for its review and approval.

5.2.3 Submit to the Committee, as directed by the Committee, a progress report as to the STRGBA GSA's activities and a report which compares actual expenditures with the Annual Budget, as adopted.

5.2.4 Execute and administer contracts as directed by the Committee.

5.2.5 Maintain proper records and accounts of work performed by the Committee.

5.2.6 Receive and disburse funds at or under the direction of the Committee.
5.2.7 Act as secretary/treasurer to the STRGBA GSA, and acting in that capacity, prepare, record and distribute minutes of all Committee meetings.

5.2.8 Perform such other actions as may be necessary or desirable to promote the work of the Committee and the STRGBA GSA.

6. **GSA BUDGET AND COSTS.**

6.1 **Budget Cycle.** The budget cycle of the STRGBA GSA shall be on a calendar year basis.

6.2 **Annual Budget.** The Coordinator shall prepare an Annual Budget for each calendar year that the Committee determines certain projects are necessary. The Coordinator's draft Annual Budget for the following year shall be delivered to the Committee members no later than June 1 of each year. The Committee shall approve or revise the draft Annual Budget and distribute the draft Annual Budget to each Party no later than July 1 of each year. The Committee shall meet to review input from the Parties' Governing Bodies no later than August 1 of each year, and shall approve a final budget no later than September 1 of each year for the following year. The respective Governing Bodies of the Parties shall review the Annual Budget no later than October 1 of each year and notify the Coordinator that it has allocated or appropriated its respective contribution to the Annual Budget no later than October 15 of each year. The Committee shall adopt and approve the Annual Budget and have it in place and effect by January 1 of each year, or as approved by the Parties.

6.3 **Allocation of Funds.** Within the Annual Budget adopted pursuant to Section 6.2, the Committee shall have the authority to make minor adjustments in the allocation of funds between budget categories; provided, however, that the cumulative change in the budget category does not exceed ten percent (10%) of the amount authorized in the Annual Budget and the total amount of the Annual Budget is not increased. Other budget adjustments require approval of the Governing Bodies.

6.4 **Budget Increases.** Increases in the total amount of a budget must be approved by the Governing Bodies of a simple majority of the Parties.

6.5 **Failure to Pay.** If any Party fails to pay its respective share of any Annual Budget or budget increase when due, whether or not that Party's Governing Body approved the Annual Budget or the budget increase, then that Party shall be ineligible to vote on any subject or issue unless such failure is excused by the Committee through formal action and majority approval of the Committee. During any period of time during which a Party is ineligible to vote on a matter by reason of the application of this Section 6.5, such Party shall not be counted as a Party in determining a quorum, or in determining a "majority" with regard to the approval of any action. In order to restore its eligibility to vote, a Party must be current on all amounts due, including any expenditures approved by the Committee while such Party was ineligible to vote.
6.6 **Expenditures.** STRGBA GSA funds may be properly expended for all costs approved by the Committee and properly incurred in the performance of the work approved by the Committee, or under such authority as may be delegated to the Coordinator by the Committee.

6.7 **Non Reimbursable Costs.** Costs incurred by any Party in connection with any functions of the STRGBA GSA, or any committee established by the Committee, and expenses of a Party’s personnel including, without limitation, the regular and alternate members appointed by a Party to any committee while performing such functions, shall not be reimbursed by the STRGBA GSA except through formal action and majority approval of the Committee provided that a Party shall be reimbursed for the services performed by such Party’s employees while serving as staff to the STRGBA GSA as approved through the Annual Budget process.

7. **FUNDING AND VOTING PERCENTAGES.**

7.1 **Funding Percentage.** Each Party shall be responsible for its proportionate share of the funding requirements of the STRGBA GSA. The proportionate shares of each Party shall be determined by dividing the funding requirements of the STRGBA GSA by the number of Parties. During Committee approval of certain projects that beneficially affect the Parties disproportionately, equitable project funding shall be determined through formal action and majority approval of the Committee.

The Parties shall provide funding consistent with the Annual Budget adopted by the Committee on the schedule set forth in such budgets, or pursuant to the Coordinator’s discretion. Funding needs of the STRGBA GSA payable by the Parties shall be determined by the Committee, and such funds shall be transmitted by the Party to the Coordinator within sixty (60) days of project approval. Upon receipt, the Coordinator will immediately deposit funds in an interest-bearing bank account, separate from other accounts of the Parties. The funds in such account shall remain the property of each contributing Party until spent, and interest earned thereon shall belong to each contributing Party.

7.2 **Payment Reduction.** Each Party agrees that the Parties’ respective obligations to make payments hereunder shall not be subject to any reduction, whether by offset, counter claim, recoupment or otherwise. A Party’s funding contributions to the STRGBA GSA, or a portion thereof, may be reimbursed upon termination of that Party’s participation in the STRGBA GSA and approval by a simple majority vote of the Committee.

7.3 **Voting Percentage.** Each Party’s representative on the Committee shall be entitled to one vote; provided however, that if a matter being decided by the Committee will have a disproportionate effect on the financial obligations of one or more Parties, as contemplated in Section 7.1, each Party shall be entitled to a weighted vote proportionate to the financial obligation or benefit of the Parties. The Voting Percentages set forth in this Section shall remain in effect only until voting percentages are established in the operating agreement for the STRGBA GSA.
7.4 Modification by Party. Funding Percentages and/or Voting Percentages may be changed only upon simple majority approval of the Committee.

8. RELATIONSHIP OF PARTICIPANTS.

8.1 Each Party's Action Independent. The obligation of each Party to make payments under Section 7.1 of this MOU is an individual and several obligation and not a joint obligation of the Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities under this MOU. No Party shall be under the control of or shall be deemed to control any other Party or the Parties collectively. No Party shall be the agent of or have the right or power to bind any other Party without such Party's express written consent, except as expressly provided in this MOU.

8.2 Indemnity. No Party, nor any officer or employee of a Party, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by another Party under or in connection with this MOU. The Parties further agree, pursuant to Government Code Section 895.4, that each Party shall fully indemnify and hold harmless each other Party and its agents, officers, employees and contractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any work delegated to or action taken or omitted to be taken by such Party under this MOU.

In no event, except for any claim, demand, liability, loss or damage arising out of or resulting from any action taken or not taken by one Party at the direction of its directors, officers, or employees of management or administrative responsibility, which is knowingly or intentionally taken or not taken with conscious indifference to the consequences thereof or with the intent that injury or damage would result or would probably result therefrom, shall a Party be liable to any other Party for any indirect or consequential damage claim, demand, liability, loss, expense (including attorney's fees), or damage arising out of or in any way connected with this MOU, including any negligence in connection therewith.

8.3 No Creation of a Joint Powers Authority. The Parties agree that by this MOU they do not intend to provide for the creation of an agency or entity which is separate from the Parties pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, relating to the joint exercise of powers.

9. TERMOFTHISMOU. The term of this MOU shall commence once all named parties have executed this MOU and shall remain in effect unless terminated by the mutual written consent of all Parties. Upon termination of this MOU, the Committee shall determine the assets and liabilities of the STRGBA GSA, make every effort to satisfy all obligations within sixty (60) days of the termination of this MOU, and equitably distribute any remaining fund balance to each Party in proportion to each Party's Funding Percentage.

10. GENERAL PROVISION GOVERNINGMOU.

10.1 Severability. In the event that any of the terms, covenants or conditions of this MOU or the application of any such term, covenant or condition shall be held
invalid as to any Party, person or circumstance by any court of competent jurisdiction, all other terms, covenants or conditions of this MOU and their application shall not be affected thereby, but shall remain in full force and effect unless any such court holds that those provisions are not separable from all other provisions of this MOU.

10.2 **No Third Party Beneficiaries.** This MOU is for the sole benefit of the Parties and shall not be construed as granting rights to any person other than the Parties or imposing obligations on any person other than another Party.

10.3 **Good Faith.** Subject to the right of a Party to withdraw or terminate its membership in the STRGBA GSA, each Party shall use its best efforts and work wholeheartedly and in good faith for the expeditious completion of the objectives of this MOU and the satisfactory performance of the terms and provisions contained herein.

10.4 **Withdrawal or Termination of Membership.** Except in the event of the termination of this MOU pursuant to Section 9, a Party who withdraws or terminates its membership in the STRGBA GSA shall not be entitled to a refund of its funding contributions. Any Party may terminate membership and withdraw from the STRGBA GSA upon thirty (30) days written notice of termination to the STRGBA GSA. If a Party withdraws from the STRGBA GSA when the Party is in arrears as to complying with its Funding Percentage, that Party's entitlement to use any groundwater model or other work product of the STRGBA GSA as provided for herein shall be determined by the Committee. Whenever a Party withdraws from the STRGBA GSA, it is the intent of the Parties and of the STRGBA GSA that the withdrawal shall remove the area within the Party's water service area from further management by the STRGBA GSA, provided that the withdrawal shall be in accordance with the requirements of SGMA and shall leave no area within the Basin unmanaged.

10.5 **Amendment.** Unless provided otherwise, this MOU may be amended upon the affirmative vote of the Governing Bodies of a simple majority of the Parties.

10.6 **Counterpart Execution.** This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.7 **Governance.** This MOU is made under and shall be governed by the laws of the State of California. Venue of any action arising from this MOU shall be in the County of Stanislaus.

10.8 **Reasonable Delivery of Documents.** The Parties agree to act in good faith to promptly execute any documents that are necessary, or may become necessary, to implement activities approved by the Governing Bodies in the Annual Budget, subject to the authority and the right of the Governing Bodies to terminate participation in this MOU.

10.9 **Attorney Fees.** If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this MOU, the prevailing Party shall be entitled to reasonable attorney's fees and costs that may be set by
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Memorandum of Understanding forming the Stanislaus and Tuolumne Rivers Groundwater Basin Association Groundwater Sustainability Agency in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2017-30, adopted by the Council of the City of Modesto on the 24th day of January, 2017.

CITY OF MODESTO,
A municipal corporation

By ________________________________
JAMES N. HOLGERSSON, City Manager

ATTEST:

By ________________________________
STÉPHANIE LOPEZ, City Clerk

(Seal)

APPROVED AS TO FORM:
ADAM U. LINDGREN, City Attorney

By ________________________________
JOSE M. SANCHEZ, Assistant City Attorney