RESOLUTION APPROVING A FIRST AMENDMENT TO THE LEGAL SERVICES AGREEMENT DATED DECEMBER 21ST, 2016 WITH NORTON ROSE FULBRIGHT US LLP IN AN AMOUNT NOT TO EXCEED $47,500 TO CONTINUE REPRESENTING THE CITY OF MODESTO IN FINANCE MATTERS, AND AUTHORIZING THE INTERIM CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE AGREEMENT

WHEREAS, the City Attorney’s Office is in need of outside counsel services that relate to finance matters; and

WHEREAS, Norton Rose Fulbright US LLP has represented the City in finance matters since December of 2016; and

WHEREAS, additional essential legal work needs to be performed that will result in fees exceeding the agreed upon budget of $47,500; and

WHEREAS, the City Attorney’s Office desires to extend the agreement with Norton Rose Fulbright US LLP; and

WHEREAS, the City Attorney’s office has drafted a First Amendment to the Legal Services agreement with Norton Rose Fulbright US LLP to continue services.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the City of Modesto to execute a First Amendment to the Legal Services Agreement with Norton Rose Fulbright US LLP in an amount not to exceed $47,500 to continue representing the City of Modesto in finance matters, as provided in Exhibit A attached hereto and incorporated herein, and further authorizes the City Attorney to execute such agreement in a form substantially similar to Exhibit A.

BE IT FURTHER RESOLVED that the Interim City Manager or his designee, are hereby authorized to execute the agreement, in a form approved by the City Attorney.
The foregoing resolution was introduced in a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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
FIRST AMENDMENT TO LEGAL SERVICES AGREEMENT

This First Amendment for Legal Services (this “First Amendment”), is made and entered into on _____ day of ______ 2017 (“Effective Date”), by and between the CITY OF MODESTO, a California Municipal Corporation (“City”), and NORTON ROSE FULBRIGHT US LLP, a Texas limited liability partnership (“Attorney”), located at 580 California Street, Floor 16, San Francisco, California 94104. City and Attorney are hereinafter collectively referred to as the “Parties,” and singularly as “Party”.

RECITALS

WHEREAS, City and Attorney entered into a Legal Services Agreement (“Agreement”) for services for legal advice, representation and assistance on matters involving finance matters; and

WHEREAS, Attorney is specially trained, experienced and competent to perform such services; and

WHEREAS, the public interest, economy and general welfare will be served by the Agreement; and

WHEREAS, City and Attorney desire to amend the Agreement for further service by increasing the previously approved amount of fees from $47,500 to $95,000.

NOW, THEREFORE, it is hereby agreed that the Legal Services Agreement between the City of Modesto and Norton Rose Fulbright US LLP, dated December 21st, 2016, is amended as follows:

1. Section 2(a) of Paragraph 2, “Fees and Costs,” Hourly Rates is amended to state as follows:

   “The total of all fees paid to Attorney for the performance of all services set forth in Section 1 (thereafter the “Service”), and for all authorized Reimbursable Expenses (as defined hereafter), shall not exceed a total sum of ninety five thousand dollars ($95,000).”

2. Entire Agreement. The parties to this First Amendment understand and agree that except as stated herein all terms and conditions of the original Agreement, dated December 21st, 2016, remain in full force and effect to the extent they are not in conflict with this First Amendment. This document, including all exhibits, contain the entire amendment to the Agreement between the Parties and supersedes whatever oral or written understanding they may have had prior to the execution of this First Amendment. No alteration to the terms of this First Amendment shall be valid unless approved in writing by Attorney and by City, in accordance with applicable provision of the Modesto City Code.
3. **Authority.** The person signing this First Amendment for Attorney hereby represents and warrants that he/she is fully authorized to sign this First Amendment on behalf of Attorney and to bind Attorney to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the dates stated below.

CITY OF MODESTO,
A Municipal Corporation

By: ____________________________

Print name: Joseph P. Lopez

Title: Interim City Manager

APPROVED TO AS FORM:

______________________________
Adam U. Lindgren, City Attorney

ATTEST:

______________________________
Stephanie Lopez, City Clerk

[Signatures Continued on Next Page.]
Federal I.D. No.

State I.D. No.


TYPE OF BUSINESS ENTITY (check one):

- Individual/Sole Proprietor
- Partnership
- Corporation
- Limited Liability Company
- Other (please specify: ______)

Signature of Authorized Person

Title

Additional Signature (if required)

Title
RESOLUTION APPROVING AN AMENDED BOUNDARY MAP OF CITY OF MODESTO COMMUNITY FACILITIES DISTRICT 2016-1 (KIERNAN BUSINESS PARK EAST #2)

WHEREAS, the Kiernan Business Park Specific Plan Area encompasses approximately 614 acres and is comprised of regional commercial, office, medical campus, mixed use, medium high density residential and business park land uses, and

WHEREAS, within this specific plan area, there are three distinct sub-areas: Kiernan Business Park West, Kiernan Business Park South and Kiernan Business Park East (KBP East), and

WHEREAS, KBP East covers approximately 160 acres and is bounded Kiernan Avenue to the North, Pelandale Avenue to the South, Dale Road to the West and American Avenue to the East, and

WHEREAS, on January 26, 2016 the Council authorized staff to record the formation boundary map which included future annexation areas, and

WHEREAS, the formation boundary map was recorded on February 8, 2016 (Recorded Boundary Map) which did not include future annexation areas, and

WHEREAS, on March 8, 2016, the City Council approved the formation of Community Facilities District No. 2016-1 (Kiernan Business Park East #2), and

WHEREAS, when the City Council formed City of Modesto Community Facilities District No. 2016-1 (Kiernan Business Park East #2), the intent was to identify future annexation areas in the Recorded Boundary Map, and
WHEREAS, identification of future annexation areas would allow future annexations to be processed administratively and would reduce the cost and time to developers and/or property owners, and

WHEREAS, Resolution 2016-20 provided that the boundaries of the Community Facilities District include future annexation areas and it established the future annexation areas as shown on the map designated “Boundary Map of Proposed City of Modesto Community Facilities District No. 2016-1 (Kiernan Business Park East #2)”, and

WHEREAS, public convenience and necessity requires that additional property be annexed to the Kiernan Business Park East #2 in the future, and

WHEREAS, in 2016 by Resolution 2016-20 the Council found that Resolution 2016-20 did constitute a resolution of intention to annex territory to the Kiernan Business Park East #2 pursuant to Government Code Sections 53339.2 and 53339, and

WHEREAS, the Recorded Boundary Map provided by the engineer for recordation made some of the changes requested by City staff but inadvertently removed the future annexation area designation and the limits of future annexation area language from the map legend, and

WHEREAS, Streets and Highways Code of the State of California section 3113, states the legislative body shall not order a modification in the boundaries of a district shown on a previously filed map of the district unless the legislative body describes the proposed modification by reference to an amended map of the district boundary, and

WHEREAS, an Amended Boundary Map can be approved by a resolution adopted by the legislative body, and
WHEREAS, the clerk of the legislative body shall file the Amended Boundary Map showing the modification of boundaries of the district with the county recorder not later than fifteen days after the resolution of the legislative body approving the amended boundary, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that an amended boundary map of City of Modesto Community Facilities District No. 2016-1 (Kieman Business Park East #2) is hereby approved.

BE IT FURTHER RESOLVED that the City Clerk, or her designee, is hereby directed to sign the original amended boundary map of the Community Facilities District and record it with all proper endorsements thereon with the County Recorder of the County of Stanislaus within fifteen days after the adoption of this resolution, all as require by Section 3111 of the Streets and Highways Codes of the State of California.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Ridenour, who moved its adoption, which motion being duly seconded by Councilmember Kenoyer, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Grewal

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
RESOLUTION NO. 2017-310

RESOLUTION APPROVING A CAPITAL FACILITIES FEES PUBLIC IMPROVEMENT REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND FINDLAY SHACK PROP, LLC, FOR PUBLIC IMPROVEMENTS IDENTIFIED IN THE CAPITAL FACILITIES FEES PROGRAM THAT THE DEVELOPER WILL CONSTRUCT IN CONNECTION WITH THE NEW AUDI DEALERSHIP ON MCHENRY AVENUE NOT TO EXCEED $957,975 AND AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, in May 2013, City of Modesto adopted the Capital Facilities Fees Policies and Procedures (Resolution 2013-177), and

WHEREAS, the policy allows developers to install public improvements and be reimbursed for the work if certain parameters are met, and

WHEREAS, in June 2017, an application was submitted by Findlay Shack Prop LLC (Applicant) to develop the southwest corner of McHenry and Pelandale Avenues with 13,156 square foot Audi dealership and showroom and 15,162 square foot Audi auto service repair shop, and

WHEREAS, the proposed project includes the construction of public improvements on McHenry Avenue (south of the McHenry/Pelandale intersection) and on Pelandale Avenue (west of McHenry), and

WHEREAS, a Capital Facilities Fees Public Improvement Reimbursement Agreement between the City of Modesto and Findlay Shack Prop LLC, a California limited liability company (CFF Agreement) must be executed prior to commencement of work in order for the Applicant to be reimbursed for the public improvement costs associated with the project, and
WHEREAS, the proposed CFF Agreement has maximum reimbursement amount of $957,975, reimbursement will be based upon actual expenses incurred, and

WHEREAS, in no event will reimbursement exceed the maximum reimbursement amount. Reimbursement is strictly limited to funds from the Capital Facilities Fees – Streets Fund.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto hereby approves a Capital Facilities Fees Public Improvement Reimbursement Agreement between the City of Modesto and Findlay Shack Prop, LLC, a California limited liability company for public improvements in connection with the new Audi Dealership on McHenry Avenue (south of the McHenry/Pelandale intersection) and on Pelandale Avenue (west of McHenry), not to exceed $957,975.

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is hereby authorized to execute the agreement, in a form approved by the City Attorney.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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: 

SEAL 

APPROVED AS TO FORM:

By: 

ADAM U. LINDGREN, City Attorney
RESOLUTION APPROVING AN ACQUISITION AND SHORTFALL AGREEMENT BETWEEN THE CITY OF MODESTO, CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2004-1, AND BERBERIAN HOLDINGS, LP, IN THE AMOUNT NOT TO EXCEED $2,635,322, FOR CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS COMPLETED BY THE DEVELOPER AS PART OF THE DEVELOPMENT OF AN 18-ACRE NEIGHBORHOOD SHOPPING CENTER KNOWN AS THE MARKETPLACE AND AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE AGREEMENT IN BOTH THE CAPACITY OF INTERIM CITY MANAGER AND AS DISTRICT ADMINISTRATOR


WHEREAS, the policy allows developers to install public improvements which benefit properties within a proposed CFD, and be reimbursed for the work if certain parameters are met, and

WHEREAS, on April 6, 2004, the City of Modesto formed City of Modesto Community Facilities District No. 2004-1 (CFD No. 2004-1) to pay for various infrastructure improvements as well as the maintenance of parks, parkways and open space, storm drainage basin and related facilities that serve the Village One area, and

WHEREAS, a developer may construct identified improvements for CFD No. 2004-1 and be reimbursed, provided an agreement for such improvements is entered into with the City and CFD No. 2004-1 prior to commencement of work, and

WHEREAS, on April 26, 2017, Berberian Holdings, LP (Applicant) submitted an application to develop an 18-acre neighborhood shopping center known as “The
Marketplace” on property located at the southwest corner of Sylvan Avenue and Oakdale Road, and

WHEREAS, the proposed project includes the construction of certain public improvements at Sylvan Avenue and Oakdale Road intersection as well as improvements along Oakdale Road that are eligible for reimbursement, and

WHEREAS, an Acquisition & Shortfall Agreement between the City of Modesto, City of Modesto Community Facilities District No. 2004-1 (Village One #2) and Berberian Holdings, LP, must be executed prior to commencement of work in order for Applicant to be reimbursed for certain public improvements, and

WHEREAS, the proposed Acquisition and Shortfall Agreement has a maximum reimbursement amount of $2,635,322; however, reimbursement will be based upon actual expenses incurred and in no event will exceed the maximum reimbursement amount, and

WHEREAS, reimbursement is strictly limited to funds from the City of Modesto Community Facilities District No. 2004-1 (Village One #2), and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto hereby approves an Acquisition and Shortfall Agreement between the City of Modesto, City of Modesto Community Facilities District 2004-1, and Berberian Holdings, LP, in the amount not to exceed $2,635,322, for construction of certain public improvements completed by the developer as part of the development of the 18-acre neighborhood shopping center known as “The Marketplace” located at the southwest corner of Sylvan Avenue and Oakdale Road.
BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is hereby authorized to execute the agreement in both the capacity of Interim City Manager and as District Administrator, in a form approved by the City Attorney.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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 4 (HOME INVESTMENT PARTNERSHIPS PROGRAM) AND ADDING SECTION 13 (NEIGHBORHOOD STABILIZATION PROGRAM SUBRECIPIENT MANAGEMENT) AND SECTION 14 (ENVIRONMENTAL REVIEW PLAN) 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, on June 29, 2017, the City of Modesto’s Citizen’s Housing and Community Development Committee reviewed, approved and forwarded an amended Section 4 (Home Investment Partnerships Program) and added Section 13 (Neighborhood Stabilization Program Subrecipient Management) and Section 14 (Environmental Review Plan) to the HUD Policies & Procedures Manual, to the City Council for review and approval, and

WHEREAS, the updated Home Investment Partnerships Program Policies and Procedures reflect current policies and processes set forth in 24 Code of Federal Regulations and address eligible activities, ineligible activities, national objectives, grant administration, program income, sub recipient application and award process, program/sub-recipient monitoring, and compliance with specific program requirements, and

WHEREAS, the Neighborhood Stabilization Program Subrecipient Management Policies and Procedures reflect subrecipient management policies that comply with the
“Dodd-Frank Act” and address internal controls, subrecipient, developer, buyer, security, and construction related agreements and contracts, and

WHEREAS, the Environmental Review Plan reflects current policies and processes as set forth in 40 CFR Parts 1500-1508 and 24 CFR Parts 35, 51, 55, and 58 of the Code of Federal Regulations; helps address a process to collectively protect and enhance the environment by removing health and safety related concerns by providing citizens with the benefit of a healthier environment; and assists the City to meet HUD’s mission to provide “safe, decent and affordable housing.”

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto hereby amends Section 4 (Home Investment Partnerships Program) of and adds Section 13 (Neighborhood Stabilization Program Subrecipient Management) and Section 14 (Environmental Review Plan) to the HUD Policies & Procedures Manual, as set forth in Exhibit A, which is 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 8th day of August, 2017, by Councilmember Kenoyer, 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]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
Section 4

City of Modesto
Home Investment Partnerships Program

City Of Modesto
Community and Economic Development Department
1010 10th Street, Suite 3100
Modesto, CA 95354
www.cityofmodesto.com
housing@modestogov.com

Committee: Citizens Housing and Community Development Committee
City Council: Resolution No.
Approved:

These policies supersede any previously adopted policies and are subject to review and revision by the City of Modesto’s Citizens Housing and Community Development

City of Modesto
Home Investment Partnerships Program
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1. **INTRODUCTION**

1.1. The HOME Investment Partnerships Program (HOME) was created under Title II of the National Affordable Housing Act of 1990. The HOME program has been amended several times since then by subsequent legislation, most recently on December 2, 2016. Under the HOME program, the Department of Housing and Urban Development (HUD) allocates funds to Participating Jurisdictions (PJ) to be used to implement housing strategies in accordance with Federal HOME regulations (24 CFR Part 92). The City of Modesto has been designated as the Participating Jurisdiction (PJ) to receive HOME funds.

1.2. Through the use of HOME funds, the City of Modesto strives to encourage and stimulate neighborhood revitalization. As a HUD designated PJ, the City is charged with the proficient administration of HOME funds. In an effort to increase the efficiency in which HOME funds are utilized and increase the impact of these dollars on our community, the City has developed the following policies and procedures.

2. **OBJECTIVE**

2.1. The intent of the HOME program as established by HUD is to:

   2.1.1. Provide decent, safe, and affordable housing to low-income families, up to 80% of Area Median Income (AMI);
   2.1.2. Expand the capacity of non-profit housing providers;
   2.1.3. Strengthen the ability of local government to provide housing; and
   2.1.4. Leverage private sector participation through public, private and non-profit partnerships to address affordable housing.

2.2. HOME funds may be used for the purposes of creating, maintaining and expanding affordable rental and homeownership housing for low income families through the following eligible activities:

   2.2.1. Acquisition (including assistance to homebuyers);
   2.2.2. New construction (including adding additional units to an existing structure);
   2.2.3. Rehabilitation of non-luxury housing with suitable amenities including related costs such as:
     2.2.3.1. Property acquisition, Site improvements, Demolition, and
     2.2.3.2. Other eligible expenses including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations;
   2.2.3.3. Down payment and/or Closing Cost assistance;
   2.2.3.4. Operating expenses of Community Housing Development Organizations (CHDO's).

2.2.4. All housing supported with HOME funds must be permanent or transitional housing.

2.2.5. A HOME assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and will be...
subject to recapture by the City of Modesto.

3. Distribution of Funding

3.1. The City of Modesto distributes HOME funds geographically within its boundaries and among different categories of housing need, according to the priorities of housing need identified in its approved consolidated plan and HOME Program Description. The City of Modesto only invests HOME funds in eligible projects within its boundaries.

3.2. Applications for City of Modesto HOME funds are solicited on a continuous basis, with the exception of CHDO funds, (subject to fund availability) and reviewed competitively.

3.2.1. CHDO funds are available on annual basis. Existing CHDO's are required to submit a CHDO Recertification document to the City by June of each calendar year.

3.2.2. The City of Modesto only accepts applications for projects noted as "Eligible HOME Program Activities" in the adopted Annual Action Plan. Before committing funds to a project, the City of Modesto underwrites and evaluates the project and will not invest any more HOME funds, in combination with other governmental assistance, than is necessary to provide affordable housing.

3.2.3. The competitive selection criteria for projects, if applicable, will be published at the time applications are solicited.

4. Definitions


4.2. Adjusted Income: Adjusted income is annual (gross) income reduced by deductions for dependents, elderly households, medical expenses, handicap assistance expenses and childcare (these are the same adjustment factors used by the Section 8 Program). The low HOME rent in rental projects in which rents are based on 30% of a family's adjusted gross income.

4.3. Affordability: The requirements of the HOME Program that relate to the cost of housing both at initial occupancy and over established time frames, as prescribed in the HOME Final Rule. Affordability requirements vary depending upon the nature of the HOME assisted activity (i.e., homeownership or rental housing).

4.4. Annual Income: Annual income as defined in 24 CFR 5.609, referred to as "Part 5 annual income", also known as the rules for determining income under the Section 8 voucher program, or adjusted gross income as defined for the purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual tax purposes. Adjusted gross income as reported on Form 1040 shall be used for homebuyer, homeowner rehabilitation and down payment assistance programs.

4.5. Commitment: Commitment means (1) The participating jurisdiction has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) with a Community Housing Development Organization (CHDO), subrecipient, or a contractor to use a specific amount of HOME funds to produce affordable housing, provide down payment assistance; or has met the requirements to commit to a specific local project, as defined in paragraph (2) of this definition. (See § 92.504(c) for
minimum requirements for a written agreement.) An agreement between the participating jurisdiction and a subrecipient that is controlled by the participating jurisdiction (e.g., an agency whose officials or employees are official or employees of the participating jurisdiction) does not constitute a commitment.

4.6. Commitment to a specific local project: Commitment to a specific local project means that a legally binding agreement was executed meeting one of the following sets of requirements:

4.6.1. For rehabilitation or new construction projects, the PJ (or other entity) and the project owner will execute an agreement for an identifiable project for which all necessary financing has been secured, a budget and schedule have been established, and underwriting has been completed and under which construction is scheduled to start within 12 months of the agreement date. If the project is owned by the City of Modesto, the project must be set up in the disbursement and information system and construction reasonably expected to start within 12 months of the set-up date.

4.7. If the project consists of acquisition of standard housing by the PJ, the agreement must be a binding contract for the sale of an identifiable property and the property title must be transferred to the PJ (or other entity) within six (6) months of the date of the contract.

4.8. If the project involves the acquisition of standard housing and the City of Modesto is providing HOME funds to a purchaser, under the agreement, the title of the property must be transferred to the purchaser within six (6) months of the agreement date.

4.8.1. Note that preliminary or conditional "commitments" may be made, but no funds are considered committed under the rules unless the above conditions have been met.

4.9. Consolidated Plan: A plan prepared in accordance with the requirements set forth in 24 CFR Part 91 which describes community needs, resources, priorities and proposed activities to be undertaken under certain HUD programs, including HOME.

4.10. Community Housing Development Organization (CHDO): A private, nonprofit organization that meets a series of qualifications prescribed in the HOME regulations at 24 CFR Part 92.2. The HOME New Rule requires that CHDO's have paid staff with demonstrated capacity appropriate to the CHDO's role (this requirement cannot be met through volunteer, donated staff, shared staff, or board members). A participating jurisdiction must award at least 15 percent of its annual HOME allocation to CHDOs.

4.11. Draw-Down: The process of requesting and receiving HOME funds. The City of Modesto draws down funds from a line of credit established by HUD.


4.13. HOME-Assisted Units: A term that refers to the units
within a HOME project for which rent, occupancy and/or resale restrictions apply. The number of units designated as HOME-assisted affects the maximum HOME subsidies that may be provided to a project as such may be amended.

4.14. HOME Funds: All appropriations for the HOME Program, plus all repayments and interest or other returns on the investment of these funds.

4.15. Household: One or more persons occupying a housing unit.


4.17. Low-Income Families: Families whose annual incomes do not exceed 80 percent of the median income for the area (adjusted for family size).

4.18. Match: Match is the City of Modesto's contribution to the HOME Program - the local, non-Federal contribution to the partnership. The City of Modesto's match contribution must equal not less than 25 percent of the HOME funds drawn down for projects in that fiscal year.

4.19. New Construction: The creation of new dwelling units. Any project which includes the creation of new or additional dwelling units in an existing structure is considered new construction.

4.20. Participating Jurisdiction (PJ): The term given to any state, local government or consortium that has been designated by HUD to administer a HOME Program. HUD designation as a PJ occurs if a state or local government meets the funding thresholds, notifies HUD that they intend to participate in the program and has a HUD-approved Consolidated Plan.

4.21. Program Income: Gross income received by the City of Modesto, a CHDO that does not retain CHDO Proceeds, or a sub recipient directly generated from the use of HOME funds or matching contributions.

4.22. Project: A site or an entire building or two or more buildings, together with the site or sites on which the building or buildings is located, that are under common ownership, management and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking.

4.23. Project completion: All necessary title transfer requirements and construction work have been performed; the project complies with all HOME requirements; the final draw-down of HOME funds has been disbursed for the project; and the project completion information has been entered in the disbursement and information system established by HUD, except that with respect to rental housing project
completion, for the purposes of § 92.502(d) of this part, project completion occurs upon completion of construction and before occupancy.

4.24. Reconstruction (also rehabilitation): The rebuilding, on the same lot, of housing standing on a site at the time of project commitment. Except that housing that was destroyed may be rebuilt on the same lot if HOME funds are committed within 12 months of the date of destruction the number of housing units on the lot may not be changed as part of the reconstruction project, but the number of rooms per unit may change. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing.

4.25. Sub recipient: A public agency or nonprofit organization selected by the City of Modesto to administer all or a portion of the City of Modesto's HOME Program. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing (CHDO) is not a sub recipient.

4.26. Targeting: Requirements of the HOME Program relating to the income or other characteristics of households that may occupy HOME-assisted units.

4.27. Very-Low-Income Families: Families whose annual incomes do not exceed 50 percent of the median income for the area (adjusted for family size).

5. APPLICATION FOR FUNDS

5.1. Application Timeline

5.1.1. The City of Modesto accepts applications on a continuous basis, unless otherwise noted.

5.1.2. Prior to submitting applications to the City of Modesto, applicants are required to discuss project details with City of Modesto Community Development Division program staff to allow program staff to provide any Technical Assistance that may be needed to ensure the project application complies with HOME Program requirements. Complete applications must be submitted to the office of the Community Development Division. Faxed or emailed applications will NOT be accepted.

5.1.3. Three original proposals with original signatures including a hard copy of the required pro forma pages must be submitted to:

5.1.3.1. City of Modesto HOME Program Attention: Aaron Farnon

1010 Tenth Street, Suite 3100
Modesto, CA 95354

5.1.4. Applications will become the property of the City of Modesto and will not be returned. Inaccurate information contained in an application will disqualify the Applicant from consideration.

5.1.5. The Minimum Threshold Requirements for each HOME application are included in the Ranking Criteria. Applicants who fail to meet any minimum threshold requirement will not be considered for funding.

5.1.6. Minor corrections to applications may be allowed, but applications
6. Allocation

6.1.1. The amount for eligible activities on an annual basis is 90% of HUD allocated HOME funds, after allocating the allowable 10% administrative funding. Up to 90% of Program Income funds may also be used for eligible activities.

6.1.2. A minimum of 15% of the total HOME funds is available exclusively for certified Community Housing Development Organizations (CHDO) performing CHDO eligible activities. Please refer to the CHDO section of these policies to determine an organization's eligibility as a CHDO and also to determine eligible CHDO activities.

6.1.3. An additional 5% of the total annual HOME grant funding may be used for CHDO administrative expenses.

7. Maximum Funding Amount

7.1.1. When allocating funds, HOME considers the total amount of assistance from both public and private sources needed to ensure project feasibility.

7.1.2. Applicants are encouraged to request only the amount of HOME funds needed as gap financing to make the project feasible.

7.1.3. Requesting funds for administration is not allowed; however, applicants may request reasonable amounts for developer fees and soft costs in an amount corresponding to the following housing activities.

7.1.4. All HOME costs, including soft costs must be tied to specific housing addresses.

7.1.4.1. Eligible Project Related Soft Costs, as described in 24 CFR 92.206(d), area costs that can be directly tied to an address of the project or individual being assisted. These costs must be reasonable and necessary costs associated with the financing or development (or both) of new construction, rehabilitation, or acquisition of housing assisted with HOME funds. These include the following:

7.1.4.1.1. Project-specific fees for a HOME-assisted project (such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorney's fees, private appraisal fees, and fees for an independent cost estimate);

7.1.4.1.2. Architectural, engineering, or related professional services required to prepare plans, drawings or specifications of a project;

7.1.4.1.3. Preparation of work write-ups, work specifications, and cost estimates or review of these items if an owner has had them independently prepared;

7.1.4.1.4. Construction inspection and oversight;

7.1.4.1.5. Project document preparation;

7.1.4.1.6. Costs to process and settle the mortgage financing for
7.1.4.1.7. Pre-purchase homebuyer counseling for a HOME-assisted home buyer;
7.1.4.1.8. Costs to inspect property for compliance with property standards or to conduct a visual assessment for deteriorated paint;
7.1.4.1.9. Cost of inspection units for the presence of lead hazards or defective paint;
7.1.4.1.10. Developer fees (limited).
7.1.4.1.11. NOTE: Indirect costs are not eligible soft costs.

7.1.4.2. Applicants should request only the level of funding necessary to carry out their projects and must be in combination with other proposed funding sources, to complete the proposed activities within the contract period.

7.2. Eligible Applicants/Sponsors and Capacity

7.2.1. Applicants/Sponsors must have prior experience in developing and managing the type of project they plan to undertake. Applicants/Sponsors must demonstrate that they or their development team has the skills, experience, and capacity needed to develop and operate the property for a minimum period of affordability. Collaborative efforts with experienced parties and/or experienced development teams will be considered.

7.2.2. The following types of organizations are eligible to apply for funds:

7.2.2.1. Non-profit organizations, including Community Housing Development Organizations (CHDO). The CHDO must be certified by the City of Modesto.

7.2.2.2. For profit entities, including individuals, partnership, corporation and limited liability companies.

7.2.2.3. Housing Authority of the County of Stanislaus or a controlled affiliate thereof.

7.3. Joint Applicants

7.3.1. Two or more eligible applicants may submit one application under the following conditions:

7.3.1.1. One joint applicant is designated as the Lead Applicant during the term of the HOME project and period of affordability. The lead applicant must accept full responsibility for application submission and for administrative, regulatory, and financial management requirements.

7.4. Eligibility Requirements

7.4.1. Applicants, including all entities of a joint application, currently administering a HOME project are eligible to apply for additional HOME funds if:

7.4.1.1. The applicant is in compliance with the project implementation schedule contained within its HOME funding agreement with the City for any open HOME-assisted housing project.

7.4.1.2. There are no unresolved audit, monitoring, or performance findings for any previous HOME funding allocations to the
7.4.1.3. All projects three years or older are completed and conditionally closed out (have submitted the final draw and may just be awaiting the submittal of demographic information) before applying for additional funds.

7.5. Consolidated Plan

7.5.1. HOME program applicants must submit proposals that are consistent with the City's current Consolidated Plan (Con Plan) and HOME Program Description. Before submitting an application, the applicant must review the Con Plan and HOME Program Description (found on the Community Development Division website, https://www.modestogov.com/1849/Five-Year-Consolidated-Plan) to ensure that the activities are in conformance with the Plan and Description. Additionally, applicants are required to discuss the project and receive Technical Assistance from Program staff prior to submitting an application.

7.6. Disclaimers

7.6.1. The City of Modesto reserves the right to recommend to the Citizens Housing and Community Development Committee (CH&CDC) and City Council to not award all available funds if submitted proposals do not meet the project threshold, evaluation and funding criteria, or do not address the program priorities.

7.6.2. Funds not allocated during a funding cycle may be awarded during a subsequent application cycle. The City of Modesto also reserves the right to allocate these funds to projects during the course of the year, prior to the next application round.

7.6.3. The City of Modesto reserves the right to reserve and allocate HOME funds to any project. The City of Modesto may deny HOME funds for any project, regardless of the ranking score under the project selection criteria, if applicable, if it determines, in its sole discretion, the project is unacceptable based on, but not limited to the following:

7.6.3.1. Negative comments or lack of support from community organization(s) and stakeholder(s), or
7.6.3.2. Information that a particular market is saturated with affordable housing projects, or
7.6.3.3. The likelihood that the project may not comply with HOME program requirements in a timely manner, or
7.6.3.4. The applicant's (including any related party) lack of or unacceptable prior experience and performance related to compliance with housing assistance or other government-sponsored programs, regardless of type and location.

7.7. Use of Contractors

7.7.1. In accordance with federal regulations, HOME funds may not be used to directly or indirectly employ, award contracts to, or otherwise engage the services of any contractor or Sub-recipient during any period of debarment, suspension, or placement of ineligibility status.
7.7.2. The City of Modesto will require participants in lower-tier transactions to certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntary excluded from any equity from a federally funded transaction.

7.7.3. Any participant that remains on a debarred or suspended condition shall be prohibited from participation in the City of Modesto HOME as long as they are classified in this manner.

7.7.4. The City of Modesto will verify this information by requiring that the applicant submit its Dun and Bradstreet (DUNS) number with the project application.

8. Project Threshold Criteria

8.1. All projects submitted for funding consideration through the HOME Investment Partnership Program must meet the following threshold criteria to be eligible for a funding commitment:

8.2. Contributes To Implementation Of Strategic Goals Of The Consolidated Plan

8.2.1. Proposed projects must match one or more of City of Modesto Funding Priorities as listed in the Consolidated Plan. Applicants must familiarize themselves with the City of Modesto Consolidated Plan. The current plan will expire June 30, 2020. The next Consolidated Plan will cover the period of July 1, 2020 - June 30, 2025.

8.3. Site Control

8.3.1. For projects that require site control, applicant must have site control or the opportunity of site control for all properties necessary for project completion. Applicant must provide proof of site control with its application for funding.

8.4. Financially Feasible Project

8.4.1. Applicants must submit a Project Development Pro Forma, which must cover the entire HOME affordability period of the proposed project. The development proforma must provide evidence of a financially feasible project, evidenced by a complete listing of committed and anticipated funding sources available to the project and illustrate reasonable assumptions regarding interest rates, confidence in availability of funds, and evidence of market need. For homeownership projects, cost, sales, and market analyses are required. For rental projects, reasonable rent and operating cost assumptions are required.

8.4.2. If the applicant has applied for tax credits, a copy of the Subsidy Layering Review must be included with the application.

8.5. Project Time Frame

8.5.1. Applicant must submit a timeline for project completion that makes reasonable assumptions concerning land acquisition and site-preparation, funding cycles and parameters for all funding sources, construction time, sales absorption or rent-up period, and capacity of the development team. An applicant's history in project development/completion will also be considered.

8.6. Leverage Of Home Funds

8.6.1. Priority consideration will be given to projects with budgets that
require less than 50% of permanent funds from the sum of HOME and CDBG sources. Although projects that serve very low-income households may require higher public subsidies, leveraging other funds with HOME and CDBG is strongly encouraged. For awarded projects, the City of Modesto may make conditional commitments early in the project development process to assist the developer in seeking funds from other sources.

8.6.2. Commitment of HOME funding (in the form of the signed Funding Agreement) will not occur until all project financing has been secured and a budget and project time frame provided. The Project must also be ready to expend funds within 12 months of project commitment.

8.7. Evidence And Capacity Of Development Team

8.7.1. The Applicant must have a track record of successful project development, timely completion and projects-in-service, or in the case of a new or emerging developer, evidence of real estate development and project management expertise. The Application must indicate what skills and roles the non-profit staff will be assuming and any other members of the project development team.

8.7.2. Note: The City of Modesto is interested in investing HOME Partnership Funding only in viable projects that will provide quality affordable housing in an efficient, and timely manner. Housing developers with minimal development experience are encouraged to partner with experienced developers to enhance their ability to produce and deliver housing efficiently. All applications for HOME funding will be reviewed for tangible evidence that the capacity of the development and construction team is solid. Projects with strong development capability will receive higher consideration for HOME funding.

9. General Policies and Procedures

9.1. Minimum Subsidy

9.1.1. The minimum HOME subsidy for any project is $1,000 per unit in accordance with HOME regulations.

9.2. Types Of Housing

9.2.1. HOME funds may be used for the construction or purchase of single-family (one unit) homes, doubles (two units sharing a common wall but owned individually), townhomes, cooperatives, and/or multi-unit rental apartments. All housing units developed with HOME assistance (homeownership and rental) must be affordable to buyer and renter households earning 80% of Area Median Income (AMI) or below.

9.2.2. Construction may be one or a combination of several methods including stick-built, panelized, or modular. Mobile and manufactured homes are not eligible for HOME funding assistance. For the purposes of this manual, the following definitions apply:

9.2.2.1. **Stick-Built** - a house that is constructed primarily on-site from raw
9.2.2.2. **Panelized** - a house that is brought to the construction site in pre-built panels (wall sections), assembled on-site, and finished. Panelized houses are stick built houses with some of the components constructed off-site.

9.2.2.3. **Modular** - a home which is stick-built in modules (two or more boxes) in a factory, transported to the site by truck, and placed on a permanent basement or crawl space foundation. The modules are bolted together, finished and may also involve on-site additions i.e. porches, garages, and other customization. These houses are essentially the same as stick-built on-site only the majority of the construction is accomplished in a controlled factory environment.

9.2.2.4. **Mobile** - a house that is fully constructed in a factory on a steel chassis, brought to the site on wheels, but not permanently affixed to a foundation.

9.2.2.5. **Manufactured** - a house that is fully constructed as a single unit in a factory, brought to the site by truck and placed on a fixed foundation.

9.3. **Expenditure Time Frames**

9.3.1. Unless otherwise noted, all HOME funds for a project must be expended within twelve (12) months of project commitment (see information above relative to project commitment).

9.3.2. Exceptions may be made by the City of Modesto HOME program under special circumstances. Projects must be closed out (completion and demographic data submitted) within 90 days of the final HOME request for funds.

9.4. **PROJECT MAXIMUMS**

9.4.1. **Rent Limits**

9.4.1.1. HOME rent limits apply to all rental housing projects. HOME rent limits are published each year by HUD. The current rent limits can be found at [https://onecpd.info/resource-library/home-rent-limits/](https://onecpd.info/resource-library/home-rent-limits/).

9.4.2. **Per Unit Subsidy - Rental**

9.4.2.1. HUD establishes maximum per unit subsidy, known as the 221(d)3 limits. The maximum per unit subsidy can be requested from CDD staff. HOME funding may not be utilized on projects that exceed these maximum per unit subsidies.

9.4.3. **Homeownership Value Limit**

9.4.3.1. HUD establishes, and updates periodically, the maximum allowable value for homeownership housing units. This is the after-rehab value for units that are either acquired or rehabilitated utilizing HOME funding. This is called the Homeownership Value Limits or the 95% limit. Section 92.254(a)(2)(iii) states that two (2) values will be established for the median purchase price/after rehab value. One is for newly constructed housing and one for existing housing.
HOME funds may not be utilized on any property that exceeds these values. The current limits can be accessed at: https://www.onecpd.info/resource/2312/home-maximum-purchase-price-after-rehab-value/.

9.4.4. SECTION 504 AND FAIR HOUSING ACT
9.4.4.1. All projects receiving HOME funds must comply with section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act of 1988. It is the applicant's responsibility to become familiar with these legislative acts. The applicant may be asked to submit certification from a certified access specialist that the funded project design and construction complies with this requirement.

9.4.5. MONITORING
9.4.5.1. Quarterly Status Reports
9.4.5.1.1. Quarterly progress reports must be submitted to the City of Modesto by the tenth (10th) working day of October, January, April, and July. Completion Reports must be provided to the City of Modesto within ninety (90) days of the final draw of funds allocated for a project. Failure to submit reports in a timely manner could result in retention of future funds.

9.4.5.2. Annual Monitoring
9.4.5.2.1. At a minimum, City of Modesto staff will conduct a "desk monitoring" of all HOME funded projects on an annual basis. Rental Projects, in accordance with the updated 2013 Final Rule, will be monitored a minimum of every 3 years. Construction projects will be monitored more frequently at the discretion of City of Modesto. Follow-up monitoring and inspections will be completed in accordance with HUD guidelines. There will be a physical inspection of all HOME projects every 3 years.

9.4.5.2.2. During the Affordability Period, rental projects that contain 10 or more HOME-assisted units will be required to submit financial reports annually to the City of Modesto. Financial reports may include copies of the Operating Budget, Balance Sheet and Profit and Loss Statement, Rent Roll, as well as certified Audits. The City will assess the financial condition of the project to ensure continued compliance with HOME Program requirements and to prevent project failure and repayment of HOME funds. Where feasible, the City is required to take action to correct problems that threaten the project's financial viability. City of Modesto actions may consist of technical assistance, increased oversight, financial modifications, consultations with HUD and other project stakeholders, foreclosure, transfer of project ownership, or
9.4.6. Payment Requests

9.4.6.1. At a minimum, entities receiving HOME funding commitments must submit requests for payment on a quarterly basis, or as such time as specified in funding agreement. Failure to draw funds in a timely manner could result in a reduction of funding. Requests for payment may be made as often as needed (i.e. does not necessarily need to be done by the 1st of the month).

9.4.6.2. Requests for payment must be on the prescribed City of Modesto form or forms acceptable to the City of Modesto.

9.4.7. Income Determination and Eligibility

9.4.7.1. Individuals receiving assistance through the HOME program must be determined income eligible using the most current definition of IRS Form 1040 Adjusted Annual Gross Income. Individuals receiving rental assistance must be determined income eligible using the most current definition of the "Part 5" Annual Income as defined at 24 CFR 5.609. The income eligibility determination is the responsibility of the entity providing the assistance, not that of the City of Modesto.

9.4.7.2. Initial income must be verified via third-party documentation. Income must be re-certified annually in accordance with HOME regulations, utilizing third-party documentation. A minimum of three (3) months of income source documentation shall be reviewed when determining income.

9.4.7.3. Applicant requirements and documentation must be consistent for all participants of a project (i.e. criminal history checks, credit reports, etc.)

9.4.8. Record Retention

9.4.8.1. All records must be maintained and accessible for a minimum of five (5) years beyond the end of the affordability period.

9.4.9. General

9.4.9.1. The City of Modesto will not accept proposals from any applicant for previously approved projects that have not commenced and that received previous years' City of Modesto HOME funding commitments.

9.4.10. In the event there is a turnover in agency staff administering any HOME funded project, the City of Modesto must be notified within thirty (30) days in order to provide technical assistance to new and/or reassigned staff to ensure program compliance.

9.4.11. All applications for either homeownership projects containing more than one unit or rental projects, must be accompanied by a 10-year (or longer) operating Pro Forma, as well as, a "Sources and Uses Statement". Applications not containing this information may not be reviewed or funded.

9.5. Match Requirements

9.5.1. All projects for HOME assistance must provide a minimum of 25% match. Homebuyer projects will be subject to Section 92.221(d).
9.5.2. Eligible forms of project match include:

9.5.2.1. Cash contributions from non-federal sources
9.5.2.2. Participation of Federal Home Loan Bank Affordable Housing Program, Trust Fund, State and other public or private sources
9.5.2.3. Grants contributing to a below-market interest rate loan
9.5.2.4. Waived fees for a HOME-eligible project
9.5.2.5. Donation of real property
9.5.2.6. Donated labor and/or sweat equity

9.5.3. Ineligible forms of match include:

9.5.3.1. Owner equity or investment in a project
9.5.3.2. Interest rate subsidy attributable to the Federal tax-exemption on financing or Federal tax credits
9.5.3.3. Cash or other forms of contributions from applicants or recipients of HOME assistance (with the exception of sweat equity).
9.5.3.4. Documentation of match must be submitted to the City of Modesto upon

9.5.4. Agencies must also maintain documentation of match for a minimum of five (5) years after the completion of the project.

9.6. Affordability Period

9.6.1. HOME project owners/buyers are required to maintain HOME funded properties as affordable for a minimum affordability period based on the amount of HOME funds spent on the project. The guidelines are as follows:

<table>
<thead>
<tr>
<th>Under $15,000 per unit</th>
<th>5 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>$15,000 - $40,000 per unit</td>
<td>10 years</td>
</tr>
<tr>
<td>Over $40,000</td>
<td>15 years</td>
</tr>
<tr>
<td>New construction or acquisition within one year of construction (for rental)</td>
<td>20 years</td>
</tr>
</tbody>
</table>

HOME rental project owners are subject to a minimum 15 year affordability period (but more typically 20 years), regardless of funds invested, (See 92.206(b)(2)).

9.6.2. A deed restriction and/or restrictive covenant will be prepared by the City of Modesto, a subrecipient, or a CHDO, and must be signed by the owner/buyer. The agreement will establish the occupancy and affordability requirements for the property as well as the owner's obligations to the City of Modesto.

9.6.3. In signing the agreement, the owner will agree to the restrictions on the use of the property set forth in the document. This agreement will be recorded by the City of Modesto, its sub-recipient, or CHDO, in the office of the Stanislaus County Clerk Recorder and bind the project owner and all subsequent owners for the full term of the agreement.

9.6.4. In the event the Property or any interest therein is sold, refinanced, conveyed or transferred without advanced written consent of CITY during the period of the Affordable Housing Covenant, CITY shall be entitled to share in the sale proceeds under the recapture provision.
9.6.5. Pursuant to 24 CFR 92.254 (a) (5) (ii), CITY requires that HUD Funds be recaptured if the Property does not continue to be the principal residence of BUYER for the duration of the Affordable Housing Covenant. If all or any portion of the Property or any interest in it is sold, refinanced, conveyed or transferred the “Equity” as hereafter defined, in the Property shall be shared between BUYER and CITY on the following basis:

<table>
<thead>
<tr>
<th>Number of Years After Date of Purchase</th>
<th>BUYER's Equity Share</th>
<th>CITY's Equity Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-5</td>
<td>25%</td>
<td>75%</td>
</tr>
<tr>
<td>6-10</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>11-15</td>
<td>75%</td>
<td>25%</td>
</tr>
<tr>
<td>Thereafter</td>
<td>100%</td>
<td>0%</td>
</tr>
</tbody>
</table>

9.6.6. If, for example, the Property is sold, rented, refinanced (outside the City's allowable terms), conveyed, or transferred in the first year of the Affordable Housing Covenant, BUYER shall receive fifty percent (50%) of the Equity in the Property and the CITY shall receive fifty percent (50%) of the Equity. “Equity” is defined as the dollar amount that constitutes the difference between the sales price of the Property and the sum of the following amounts:

9.6.7. a. The principal on a Promissory Note and Deed of Trust from private financing; and

9.6.8. b. The principal on the Promissory Note, and Deed of Trust to CITY; and

9.6.9. c. All costs of sale, including costs of brokers’ commissions, escrow fees, title costs and fees, recording charges, etc.; and

9.6.10. d. Current year taxes, including all pro-rata real estate taxes calculated to the date of sale; and

9.6.11. e. BUYER's down payment or cash contribution not including the Assumed Debt; and

9.6.12. f. the costs of any improvements to the Property, provided such improvements were approved by the CITY prior to construction and provided that such improvements have been documented to the satisfaction of CITY.

9.6.13. In the event that no Equity exists at the time of transfer or sale, the current balance of the Debt under the Promissory Note and Deed of Trust will still be due and payable.
9.6.14. In the event that a negative Equity exists at the time of transfer or sale, and the full amount of the current balance of the Promissory Note is not available to be recaptured, the amount of the HUD Funds required to be repaid to CITY shall be as set forth in 24 CFR 92.254(a) (ii) (A) (3). The formulas are as follows:

\[
\frac{\text{HUD Funds}}{\text{Net Proceeds}} = \text{HUD Funds amount to be recaptured}
\]

\[
\frac{\text{BUYER’S Investment}}{\text{Net Proceeds}} = \text{Amount to BUYER}
\]

HUD Funds means the amount of Debt assumed under the Promissory Note and Deed of Trust.

9.6.15. BUYER’s Investment means the amount of down payment or other cash contribution towards purchase of the Property and the amount of any capital improvements made by BUYER to the Property since BUYER’s purchase. Capital improvements must be documented with receipts and provided to CITY at time of recapture proceedings.

9.7. **Lead-based Paint**

9.7.1. Housing that is purchased, rehabilitated or assisted in some way with HOME is subject to the Lead-based Paint Poisoning Prevention Act, the Residential Lead-based Paint Hazard Reduction Act and the implementing regulations for these Acts.

9.7.2. HUD maintains a website for the Office of Healthy Homes and Lead Hazard Control where lead-based paint requirements are described as they apply to HUD programs. The website is [www.hud.gov/offices/lead/index.cfm](http://www.hud.gov/offices/lead/index.cfm).

9.7.3. Applicants for HOME funds shall discuss acquisition projects where units that are older than 1978 are being purchased with City of Modesto program staff prior to purchase.

9.7.4. Testing for lead, an assessment of its presence, and a plan for stabilization or removal will be required if HOME funds are used to acquire pre-1978 units. Testing for lead, an assessment of its presence, and a plan for stabilization or removal will be required if HOME funds are used to acquire pre-1978 units, and as otherwise required to comply with all applicable HUD regulations.

9.8. **Useful Life of Major Systems and Capital Needs Assessments**

9.8.1. The 2013 Final Rule requires a Capital Needs Assessment to estimate the useful life of major systems when HOME funds assist a project. To this extent, the City of Modesto is required to estimate the remaining useful life of majors systems (based on age and current condition). Where it is estimated that the useful life is less than the affordability period, the City through project underwriting is required to ensure that a replacement reserve is established and
annual payments made to the replacement reserve are adequate to replace and/or replace major systems when needed. The City reserves the right to inspect Major Life Systems and may require owner to conduct Capital Needs Assessment periodically during affordability period, as necessary to comply with HUD requirements.  

9.8.2. HOME funds are not eligible to fund replacement reserve accounts, but a larger HOME subsidy may be permitted to reduce debt payments and overall operating expenses, allowing a larger share of operating revenue to fund the replacement reserves.

9.8.3. For homeowner acquisition and/or rehabilitation projects and rehabilitation of owner-occupied housing, the City of Modesto is required to ensure that each major system has a remaining useful life of at least five (5) years at the time of project completion.

9.8.4. Major systems with a useful life of less than five years after project completion would be required to be rehabilitated or replaced to meet this requirement.

10. CHDO  

10.1. Federal regulations require a minimum of 15% of the annual HOME allocation to the City be set aside for housing projects that are owned, sponsored or developed by CHDOs. A CHDO is a non-profit organization that meets a variety of criteria outlined in the HOME regulations. HUD has specific requirements to qualify as the owner, sponsor, or developer.

10.2. Rental Housing  

10.2.1. OWNER - A CHDO that is an owner is required to own the HOME project during the development and throughout the period of affordability, and is required to hire a project manager or have a contract with a development contractor to oversee all aspects of the development.

10.2.2. DEVELOPER - A CHDO that is a developer of rental housing must arrange for the construction financing and is in sole charge of the construction, and must own the HOME-assisted housing throughout the period of affordability.

10.2.3. SPONSOR - A CHDO that is a sponsor of HOME-assisted rental housing "owns" and "develops" the rental housing project that it agrees to convey to a private non-profit organization at a predetermined time after completion of the development of the project.

10.2.4. Homebuyer Projects  

10.2.4.1. DEVELOPER - Housing is developed by a CHDO if it is the owner (in fee simple absolute, or long-term ground leases) and developer of new housing that will be constructed or existing substandard housing that is owned or will be acquired by the CHDO and rehabilitated for sale to low-income families, in accordance with 92.254. The CHDO must arrange financing of the project and be in sole charge of the construction.

10.2.4.2. Sole General Partner  

10.2.4.2.1. 24 CFR 92.300(a)(a1) requires that if a CHDO owns a
10.3. **CHDO Commitment of Funds**

10.3.1. **CHDO Commitment of Funds**

CHDO funds must be committed by City of Modesto within 24 months of the obligation of HOME funds from HUD. Funds may not be committed to a project until all necessary project financing is secured, a budget and time schedule are established and underwriting and subsidy layering review are completed, as noted in Appendix 2. Construction must commence within 12 months of the project commitment.

10.3.2. The City of Modesto urges CHDOs, which plan to submit applications for projects, to plan well in advance so that all financing is secured and the budget and time schedule are completed. This ensures that HOME funding may be utilized and that no funds will be withdrawn from the project for lack of being able to move forward and meet the HOME requirements.

10.3.3. The City of Modesto will not undertake the underwriting and subsidy layering review until all funding has been identified.

10.3.4. The CHDO and City of Modesto will enter into a written agreement which will stipulate all of the conditions of the HOME funding as well as the legal documents that will need to be signed and/or recorded for the project.

10.3.5. CHDOs must apply for certification as a City of Modesto CHDO at the time of project application. It is recommended to begin work on this process prior to application submission as it may take some time for the City to certify.

10.3.6. **CHDO Certification**

10.3.6.1. An organization that meets the requirements of a CHDO found at 24 CFR 92.300 may apply for City CHDO Certification. This application must be done at the same time that application for funding is made. City of Modesto will certify only those organizations applying for CHDO set-aside funding each year. City of Modesto reserves the right to make the final determination on whether an organization meets all of the requirements of the HOME regulations.

10.3.7. **CHDO Policies and Procedures**

10.3.7.1. CHDO Policies and Procedures are reviewed and modified as needed on an annual basis. Those policies and procedures are included as a part of the ZoomGrants application process. The applications and information should be made available to the City as well.

11. **Rental Projects**

11.1. HOME funds may be used for acquisition, new construction or rehabilitation of affordable rental housing. Owners of the rental housing may be small property owners, for-profit developers, non-profit housing providers, CHDOs or government agencies. Owners will be "desk monitored" on an annual basis by
the City of Modesto to ensure compliance in occupancy, rent restrictions, affordability requirements, and property standards. Additionally, an on-site inspection will be required to be conducted a minimum of once every three (3) years.

11.2. **General Requirements**

11.2.1. Funds may not be committed to a project until all necessary project financing is secured, a budget and time schedule are established and underwriting and subsidy layering review (if necessary) are completed, as noted in Appendix 1. Construction must commence within 12 months of the project commitment. Agreements will not be signed until this information has been submitted to and approved by the City of Modesto.

11.2.2. Project records must be maintained by the owner for a minimum of five (5) years beyond the required affordability period.

11.2.3. Owners must adopt a written tenant selection policy. A copy of the policy must be on file with the City of Modesto. Any changes to an existing policy must be provided to the City of Modesto immediately.

11.2.4. Tenant files must be maintained on all HOME units. Files must contain a current lease signed by the tenant, documentation of income, application and household information including family composition, documentation of Section 8 subsidy showing tenant and subsidized portions and documentation of correspondence with tenant, yearly income verifications, as well as any other pertinent information on the tenant (i.e. background/criminal checks, etc.)

11.2.5. Third party documentation of income must be verified to determine eligibility prior to family moving in. Income documentation must be no more than three (3) months old. The tenant selection policy must conform with HUD requirements and must be approved in writing by the City.

11.2.6. Income must be verified annually to ensure compliance and maintained in the tenant's files. Third-party documentation must be performed every six (6) years.

11.2.7. Tenant files must be maintained for a minimum of five (5) years after the tenant vacates the unit.

11.2.8. All units must be maintained in compliance with HUD Housing Quality Standards and City of Modesto Minimum Housing Rehabilitation Standards and/or other governing jurisdiction building codes.

11.2.9. Owner must adhere to Equal Opportunity, Affirmative Marketing and Fair Housing (contained within these policies) practices in all marketing efforts, eligibility determinations and other transactions. Owners must solicit applications from persons in the housing market not likely to apply without special outreach efforts. All marketing efforts must be documented. The Owner may be required to complete an Affirmative Fair Housing Marketing Plan, to comply with HUD requirements.

11.2.10. The Equal Housing Opportunity Logo or statement must be used in
all written communication and advertising of vacant units and must be displayed in the housing/rental office.

11.2.11. No bidding or contracting may occur prior to written authorization of the City of Modesto. Failure to follow these requirements will cause the funding agreement to become void.

11.2.12. Progress inspections will be conducted by the City of Modesto in order to ensure that work is progressing in a timely manner, that the work is completed in accordance with the codes and construction contract and documents, and to initiate a progress payment. No final payment of HOME funds will be made until all construction is complete and the unit is ready for occupancy.

11.2.13. City of Modesto will monitor the project during the period of affordability. This will include on-site inspections to determine that the unit(s) continues to meet the property standards as well as a monitoring of files as required by HOME regulations. The Owner may be required to pay a fee that will be invoiced to the Owner by the City of Modesto to cover the cost of on-going monitoring.

11.3. PROPERTY STANDARDS

11.3.1. New Construction

11.3.1.1. All newly constructed rental units must meet the applicable State and Local residential and building codes upon project completion.

11.3.1.2. All newly constructed rental units must also meet the accessibility requirements of 24 CFR Part 8 (implements Section 504 of the Rehabilitation Act of 1973) and Titles II and II of the Americans with Disabilities Act implemented at 28 CFR Parts 35 and 36, as applicable. Covered multifamily dwellings, (buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of 4 or more dwelling units) must also meet design and construction requirements at 24 CFR 100.205.

11.3.2. Rehabilitation

11.3.2.1. City of Modesto has adopted a modified version of the Minimum Housing Quality Standards (HQS) as the standard for all rehabilitation work.

11.3.2.2. Eligible projects may be existing one or more multifamily buildings with rental units on a single site; or multiple sites that are under common ownership, management and financing. In no case shall funding be provided for a unit to be converted to a rental unit if the existing use or former use was owner-occupied housing.

11.3.2.3. A Capital Needs Assessment is required for rehabilitation projects with a total of 26 or more units. The City will require that the scope of the rehabilitation work and replacement reserves deposits are sufficient to ensure the useful life of essential building components throughout the required Affordability Period.
11.3.3. Occupancy

11.3.3.1. Upon initial occupancy, renters must be at or below 50% of the Area Median Income (AMI). If after initial occupancy the family's income increases above 80% AMI, the family may continue to occupy the unit with the stipulation that they pay at least thirty percent (30%) of their adjusted monthly income as rent. An exception is made for units financed with Low Income Housing Tax Credits, in which case tax credit regulations apply.

11.3.3.2. In rental project of five (5) or more units, at least twenty percent (20%) of the HOME assisted units must be occupied by families with an annual gross income at or below fifty percent (50%) of the AMI. Rents for these units must be at or below the Low HOME rents. The City of Modesto's current policy is that all HOME assisted units in rental projects are subject to Low HOME rents.

11.3.3.3. All HOME assisted units must be fully occupied within 18 months of construction/rehab completion. Project completion is specified below. If a unit is not occupied within 18 months, the Owner will be required to repay the HOME funds that have been invested on that unit.

11.3.3.4. All tenants in HOME assisted units must have a lease that meets all the requirements of the HOME program.

11.3.3.5. Leases

11.3.3.5.1. Lease must be for at least one year

11.3.3.5.2. Lease may not contain any of the following provisions:

11.3.3.5.2.1. Agreement to be sued: Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.

11.3.3.5.2.2. Treatment of property: Agreement by the tenant that the owner may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to disposition of personal property left by a tenant who has vacated a property.

11.3.3.5.2.3. Excusing owner from responsibility: Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.

11.3.3.5.2.4. Waiver of notice: Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.

11.3.3.5.2.5. Waiver of legal proceedings: Agreement of the tenant that the owner may evict the tenant or household members without instituting a civil
court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

11.3.3.5.2.6. Waiver of jury trial: Agreement by the tenant to waive any right to a trial by jury.

11.3.3.5.2.7. Waiver of right to appeal court decision: Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease.

11.3.3.5.2.8. Tenant chargeable with cost of legal actions regardless of outcome: Agreement by the tenant to pay attorney's fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

11.3.3.5.2.9. Mandatory supportive services: Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

11.3.3.5.3. Owners may terminate tenancy or refuse to renew a lease upon 30 days' written notice, and only for: serious or repeated violation of the terms and conditions of the lease; violation of applicable federal, state, or local law; completion of the tenancy period for transitional housing or for other good cause in accordance with 24 CFR 92.253(c).

11.3.4. Tenant Selection

11.3.4.1. The Owner must comply with the Affirmative Marketing Policy (Appendix 1). The Owner must also adopt and follow written tenant selection policies and criteria (24 CFR 92.253 (d)). The Owner must submit the tenant selection policies and criteria to the City of Modesto with the funding agreement. These policies and criteria must be approved by the City of Modesto prior to the leasing/renting of any properties.

11.3.5. Fixed/Floating Units

11.3.5.1. For properties with both HOME-assisted and Non-HOME-assisted units (which is usually the case in the City HOME Program's funding history), HOME regulations require that a choice between fixed and floating unit designation must be determined at the time of project commitment.

11.3.5.2. A fixed unit designation requires that specific units be identified for HOME rent and occupancy restrictions. A floating unit designation indicates that the HOME-assisted units may change over time as long as the total number of HOME-assisted units in the project remains constant.

11.3.5.3. It is the policy of the City HOME Program to always fund only floating units and this designation is to be understood in all new City HOME Program funded rental projects.
11.3.6. Rent Restrictions

11.3.6.1. Owners of HOME projects must keep units affordable to low-income tenants during the entire affordability period. Maximum rent limits are published by HUD annually and distributed to recipients of funds. Current rent limits are contained in Appendix 1. In the event that limits go below the rate published at the time of contract execution, owners will not be required to lower rents and may retain their current rates.

11.3.6.2. Owners may request an increase in rent as rent limits change. However, the owners may not change a tenant’s rent prior to the expiration date on the lease agreement. Owners must provide tenants at least thirty (30) days notification of rent increases. The City of Modesto shall review and approve all proposed rent increases.

11.3.7. Site and Neighborhood Standards

11.3.7.1. New construction rental projects must ensure that the project conforms to the "Site and Neighborhood Standards" as described in 24CFR 983.6(b).

11.3.8. Project Completion

11.3.8.1. Rental projects are considered complete once construction is completed and the units are ready for occupancy. All HOME units within a rental projects must be rented to an initial occupant within 18 months of project completion. All HOME funding will be required to be repaid to HUD for units not occupied within the 18 month time frame.

11.3.8.2. All HOME assisted units must be completed within four (4) years of signing the funding agreement between the Owner and the City of Modesto. Funds expended on units that are not complete within the required 4 years will result in the repayment of all HOME funding to the City of Modesto for reimbursement to HUD. Funding agreements must be signed within 12 months of the beginning of the program year.

11.3.9. Funding Levels

11.3.9.1. The minimum amount of funding that can be applied to a HOME assisted unit is $1,000.

11.3.9.2. The maximum amount of funding that can be applied to a HOME assisted unit is the 221(d)(3) limit as published each year and provided to the City of Modesto by HUD. The current limit is available upon request.

12. Homeownership Activities

12.1. Construction/Rehab of Homeownership Units for Resale

12.1.1. City of Modesto HOME funds may be utilized by entities for the construction or rehabilitation of units for resale for homeownership to qualified low-income (up to 80% of AMI) individuals and/or families.

12.1.2. Environmental and historical reviews must be conducted by City of Modesto on every project. City of Modesto will notify the agency of
documentation needed to complete the review. It is the responsibility of the owner/developer to insure that City of Modesto has all information necessary to complete the reviews. Environmental and historical reviews will be completed prior to the award of a Grant Agreement.

12.1.3. Projects may not commence and funds may not be expended (federal or non-federal) until the review is completed and HUD releases the project.

12.1.4. Grant agreements will only be signed upon the submission of project timeline and final commitment and proof of all other funding sources.

12.1.5. Construction plans and/or work specifications must be submitted to City of Modesto to be reviewed prior to the execution of the HOME Grant Agreement between the City of Modesto and the owner/developer (non-profit). All plans must be approved prior to commencement of construction. Any changes to the approved plans must be submitted to City of Modesto for approval.

12.1.6. Funds may not be committed to a project until all necessary project financing is secured, a budget and time schedule are established and underwriting and subsidy layering review (if necessary) are completed, as noted in Appendix 2. Construction must commence within 12 months of the project commitment. Grant agreements will not be signed until this information has been submitted to and approved by the City of Modesto.

12.1.7. The City of Modesto will not approve a grant agreement until a buyer is pre-approved to purchase the property upon completion.

12.1.8. HOME Grant Agreements must be signed within fourteen (14) days of the receipt of the funding agreement from the City of Modesto.

12.1.9. Construction must begin within three (3) months of plans and/or work specification approval by the City of Modesto.

12.2. For projects that require acquisition of land or property, the agency may obtain a purchase option agreement in lieu of full ownership. The agreement must state that the purchase of the property is contingent upon the results of the environmental review and the release of funds by HUD.

12.2.1. All legal notices and advertisements pertaining to construction of the project must be reviewed by the City of Modesto prior to publication.

12.2.2. All new construction projects must meet the federal energy efficiency standards and must meet or exceed building codes as established by City of Modesto.

12.2.3. All rehabilitation projects must meet the City of Modesto Minimum Housing Quality Standards adopted by the City of Modesto and adopted local applicable building codes.

12.2.5. Construction files must be maintained and accessible for a minimum of five (5) years beyond the affordability period

12.3. Bid Procedures

12.3.1. All projects, except for CHDO projects, must be sent out for public
bid regardless of other funding sources in the project. (Projects involving Low-Income Housing Tax Credit (LIHTC) funding may request a waiver of this requirement.) Bid documents must be approved by the City of Modesto prior to advertisement. Failure to receive prior approval will result the project non-compliance and termination of the funding agreement.

12.3.2. Bid packets must be available for pickup for a minimum of two (2) weeks.

12.3.3. Bids must be sealed when submitted to the agency. All bids will be opened by the agency at a pre-designated date and time.

12.3.4. City of Modesto staff and all bidders must be notified of date and time of bid opening.

12.3.5. Normally the lowest, responsive bidder will be awarded the contract. In the event the agency selects a bid other than the lowest, they must submit the bids along with documentation to support the selection to the City of Modesto for approval. This may or may not be approved by the City of Modesto.

12.4. Payment/Release of funds

12.4.1. Funds are disbursed on a reimbursement basis. If the Agency is unable to meet the cost of construction and/or services on a reimbursement basis, payment terms must be discussed and approved by City of Modesto CDD staff prior to construction.

12.4.2. Agencies must submit one copy of a CDD Request for Payment form along with copies of the invoice from the contractor or service provider. Claims submitted without proper back-up documentation will be returned to the Agency. No faxed copies of the "Request for Payment" form will be accepted. However, a scanned copy with an original signature in blue ink will be accepted.

12.4.3. The City of Modesto may hold payment including final payment for the project pending inspection and approval by the City of Modesto for possible Davis Bacon and all other federal requirements as well as requirements of the Grant Agreement. The funds will not be released until the City of Modesto has received and approved all required documentation. All new construction projects must have a Certificate of Occupancy from City of Modesto or other governing jurisdiction. All rehab projects must be inspected by a City of Modesto housing inspector and have documentation indicating the property complies with building code regulations.

12.5. Relocation

12.5.1. HOME projects must comply with the Uniform Relocation Act (URA) whenever displacement occurs as a direct result of HOME-assisted rehabilitation, demolition or acquisition, including acquisition for homebuyer activities. If the proposed project is occupied at the time of application, contact the City of Modesto for detailed regulations. Failure to do so may result in disqualification of your application as you may be required to submit notifications as part of your application. It is the expressed policy of City of Modesto to strictly comply with the URA and to minimize displacement.
12.6. **Cost Overruns**

12.6.1. Applicants should make every effort to be realistic when developing the construction and development budgets. Construction budgets should be comprehensive and should consider items such as the removal of lead based paint and asbestos, the effect of cost estimating now for work to be performed some months into the future, and contingencies.

12.6.2. The City of Modesto does not keep a reserve account for cost overruns. Funds will not be available to pay for cost overruns. Overruns will be the responsibility of the owner or developer. The protocol for payment of HOME funds to the project is:

12.6.3. **GAP**

Cannot exceed the result of the maximum subsidy layering calculation, and the City of Modesto reserves the right to provide gap funding in an amount below the maximum subsidy layering calculation cap.

12.6.4. **Contingency**

Contingency may not exceed 12% of the total project costs.

12.6.5. **Developer Fee**

Developer fees may not exceed 15% of the total project costs. The final payment of Developer fees will be the last funds paid for a project. In the event of cost overruns, developer fees must be used as a contingency fund if no other funds are available.

12.7. **Project Completion**

12.7.1. A Homeownership housing project is considered complete when:

12.7.2. - all necessary title transfer requirements and construction work are complete; and

12.7.3. the project complies with the property standards under 24 CFR 92.251; and the final payment of HOME funds has been disbursed; and

12.7.4. all project completion data has been submitted to City of Modesto including demographic information on the homeowner and City of Modesto has approved and entered the completion data into IDIS (Integrated Disbursement Information System).

12.7.5. **Project must be completed within four (4) years of the signing of the Grant Agreement with the City of Modesto.**

12.7.6. **The 2013 amended HOME Final Rule requires that all units must be sold within nine (9) months of a certificate of occupancy (6 months for projects funded with 2012 HOME funds). Units not sold within this time frame must be converted to rental units. The City's HOME policy is that homeownership units are preferred over rental units. Therefore, the City will not enter into a grant agreement until a buyer is prequalified, and there is a pool of alternate buyers (92.254).**

12.7.7. **Owner must provide a market study to ensure that the units will be sold within the required time frame, along with documentation of a prequalified buyer and pool of alternate buyers.**

12.8. **Funding Levels**

12.8.1. The minimum amount of funding that can be applied to a HOME
assisted unit is $1,000.

12.8.2. The maximum amount of funding that can be applied to a HOME assisted unit is determined by the HOME Homeownership Value Limits as published each year and provided to the City of Modesto by HUD. The current limit is attached as Appendix 2.

12.9. Labor Standards
12.9.1. Davis-Bacon wage compliance and other federal laws and regulations pertaining to labor standards apply to all construction and rehabilitation contracts that are financial in whole or in part with HOME funds for residential property consisting of 12 or more assisted units.

12.9.2. Davis-Bacon and Related Acts (40 USC 276a-276a-7; Contract Work Hours and Safety Standards Act (40 USC 327-333); Copeland (Anti-Kickback) Act (18 USC 874; 40 USC 276c); Fair Labor Standards Act of 1938, as amended (29 USC 201, et.seq.)

13. Owner Occupied Housing Rehabilitation
13.1. The City of Modesto manages and operates an in-house owner occupied housing rehabilitation program. The Rehabilitation Loan Program provides assistance for owner-occupied single family homes to rehabilitate their homes through a deferred loan.

13.2. Loans up to a maximum of $60,000, and $10,000 ($20,000 mobile homes) grants are available based on property equity, less any existing mortgage balances.

13.3. Applicants are required to have proof of Homeowner's insurance, be current with any existing mortgage payments and not be tax-delinquent. Applicants will be required to permit the City to inspect the interior and exterior of their property and to conduct a HQS assessment.

13.4. All identified lead paint hazards and violations of the City's Property Maintenance Code will be required to be completed through the loan program. Additionally, major building components such as roofing, windows, furnaces and water heaters will be evaluated to ensure a useful life of at least five (5) years. Where the useful life of a major building component is determined to be less than five years, replacement or repair shall be required.

13.5. The maximum after-rehab value of a property assisted with HOME funds may not exceed the HOME Homeownership Value Limits as published each year by HUD.

13.6. Repayment will not be required until the applicant no longer resides at the property or upon transfer of the property to a new owner. Repayment will consist of the principal balance of the loan, 3% deferred interest.

14. Down Payment Assistance
14.1. The City of Modesto, a subrecipient, or a CHDO may provide a Homebuyer Assistance Loan to eligible homebuyers through HOME Program funds. The Homebuyer Assistance Loan requires the homebuyer to provide a minimum of 25% of the required down payment amount, or $1000, whichever is greater. Additional Homebuyer Assistance Program (HAP) guidelines can be found within the City of Modesto's HAP Policies and Procedures.
Appendix 1

1. Affirmative Marketing Policy

1.1 Policy:
14.1.1. The City shall use a variety of public service announcements to inform persons of all genders, races, ages, ethnic groups, religious orientation, employment status, sources of income, marital status and sexual orientation of the availability of the housing opportunities made under the HOME Program.

1.2 Actions:

1.2.1 By virtue of the above policy, the City of Modesto:
1.2.1.1 Will continue to periodically publish information about programs it is implementing. Such information will include reference to the Affirmative Marketing Policy; Federal, State and local fair housing laws; and contain information on the program and housing units. New programs are introduced to the community through special news releases and as such call attention and impart information about them.
1.2.1.2 Does include in its contractual agreement with sub-recipients in the HOME Program, the requirements of an Affirmative Marketing Policy for a period of time equal to their HOME loan term.

1.2.1.2.1 This policy is to include the following requirements:

1.2.1.2.1.1 Inform the Housing Authority of the County of Stanislaus (HACS) and those community organizations offering referral services when a unit becomes available.

1.2.1.2.1.2 Maintain a log of all households and applications received for occupancy in vacant units and to assess marketing effectiveness.

1.2.1.2.1.3 Use the Equal Housing Opportunity logo, slogan, or statement in all advertising:
1.2.1.2.1.3.1 Equal Opportunity Logo
1.2.1.2.1.3.2 Slogan: "Equal Housing Opportunity"
1.2.1.2.1.3.3 Statement: "We are pledged to the letter and spirit of US policy for achievement of equal housing opportunity throughout the nation.

1.2.1.2.1.4 We encourage and support an affirmative advertising and
marketing program in which there are no barriers to obtaining housing because of race, color, religion or national origin."

1.2.1.2.1.5 This information will be provided individually unless the advertisement appears in publication which carries a blanket Equal Opportunity logo, slogan, or statement.

1.2.1.2.1.6 Maintain a nondiscriminatory hiring policy.

1.2.1.3 Display the Equal Housing Opportunity logo (in office or where there is a project sign).

1.2.2 Requires that in support of the Affirmative Marketing Policy, the sub-recipient makes every effort to solicit applications from persons not likely to apply for the housing without special outreach.

1.2.3 This shall include in addition to notifying the HACS of occurring vacancies, and any other community organizations the City identifies as providing housing referral services.

1.2.4 Review sub-recipient efforts to affirmatively market their units on an annual basis and suggest corrective action for sub-recipients who fail to follow the affirmative marketing requirements.

1.2.5 Through the Community Development Division, the City will develop and distribute informative materials through community outlets to aid in the affirmative marketing effort of these units.

1.3 Records

1.3.1 As a result of the Affirmative Marketing Policy and the actions outlined above, the City of Modesto will:

1.3.1.1 Document its good faith efforts to inform persons about vacant units and how they can be occupied.

1.3.1.2 Conduct evaluations of assisted units to ensure compliance with the Affirmative Marketing Policy and to determine the policy's impact.

1.3.1.3 Maintain and make available records which will detail affirmative marketing actions by the City of Modesto. The City also maintains documentation and communication with the Equal Housing and Equal Opportunity Office of the Milwaukee Area HUD office.

1.3.1.4 Maintain and make available the following data from each program-assisted project:

1.3.1.4.1 The race, family size, gender, and income of households moving into assisted projects.

1.3.1.4.2 The race, gender family size, and income of any household displaced as a result of program activities.

1.3.1.5 This data will be reviewed annually or periodically as determined by the City to effectively and efficiently report...
such information to HUD. This data will be used to assess the program's impact, households benefiting from program activities and the sub-recipients efforts to affirmatively market the assisted units. Any sub-recipient found not marketing the units in an affirmative manner will face actions outlined in this policy.

1.4 Affirmative Marketing And Outreach To Minority And Women Owned Businesses Policy

1.4.1 The City of Modesto shall administer its HOME Program in a manner that will further the purposes of federal, state, and local affirmative marketing and equal opportunity requirements. To that end, the City of Modesto will:

1.4.1.1 Conduct its affirmative marketing and outreach to minority (MBE) and women owned businesses (WBE) in conformance with 24 CFR Part 85.36 (e).

1.4.1.2 Compile and utilize a listing of all known MBE's and WBE's, their capabilities, services, supplies and/or products in the Modesto area.

1.4.1.3 Encourage MBE's and WBE's to participate in the City of Modesto's HOME Program.

1.4.1.4 Require HOME sub-recipients to take affirmative steps to use MBE's and/or WBE's in HOME funded projects.

1.4.1.5 Require HOME sub-recipients to maintain appropriate records to document the number and types of contracts and subcontracts it awards, the dollar value of each award, and the gender and ethnic/racial status of the management/ownership of the business.

1.4.1.6 Compile an annual record of MBE's and WBE's participating in the HOME Program and conduct an annual review to assess the effectiveness of efforts to encourage participation by minority and women owned businesses.

1.4.1.7 Section 3: Requires that employment and other opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low and very low income persons, particularly those who are recipients of government assistance by the City of Modesto.
Appendix 2

1. **Subsidy Layering Review and Underwriting Guidelines:**

1.1. As described in 24 CFR 92.250, the City of Modesto is required to:

   1.1.1. Evaluate subsidy layering and conduct or examine the underwriting of all projects to ensure that the HOME subsidy is not excessive and does not result in an undue or excessive return to the owner; and

   1.1.2. Assess, at a minimum, the current market demand in the neighborhood in which the project will be located, the experience of the developer, the financial capacity of the developer, and firm financial commitments for the project.

1.2. Underwriting capacity does not apply to owner-occupied rehabilitation projects where assistance is provided as a grant or deferred, forgivable loans to owner-occupants, or to homebuyer assistance projects that do not involve development or rehabilitation of housing, such as down payment assistance.

1.3. Underwriting capacity does apply to owner-occupied rehabilitation projects with an amortizing HOME-funded rehabilitation loan.

1.4. The City of Modesto also will not be required to perform neighborhood market analyses or evaluate developer capacity for owner-occupied rehabilitation projects, or projects involving HOME-funded down payment assistance, but no HOME-funded development.

1.5. The City of Modesto will use the following types of subsidy layering review before committing HOME program funds to any project:

   1.5.1. A subsidy layering review produced by HUD, when the source of funding is provided by HUD, and HUD conducts a subsidy layering review;

   1.5.2. Subsidy layering analysis produced when Low-Income Housing Tax Credit (LIHTC) is used, and an evaluation to determine whether there are excess tax subsidies;

   1.5.3. A subsidy layering analysis produced by the developer and reviewed by the City of Modesto in accordance with the guidelines in HUD Notice CPD 98-1

1.6. **Documentation Needed:**

   1.6.1. Project Pro Forma including sources and uses of funds statement, operating pro forma (rate of return on equity investment) that covers the entire HOME affordability period of the proposed project, project development budget along with certification of federal assistance. The pro forma should include achievable rent levels, market vacancies, and operating expenses.

1.7. **Sources of Funds**

   1.7.1. Commitment letters with all terms and conditions for all mortgages, grants, subordination agreements, bridge (interim) loans and investment tax credits (historical, low-income, if applicable); and

   1.7.2. If a partnership, a copy of the partnership agreement, which indicates the cash contribution by the general partner(s) and/or limited partner(s)

1.8. **Uses of Funds**

   1.8.1. Earnest money agreement; option or closing statement for land and/or buildings

   1.8.2. Construction cost estimate including acquisition costs, rehabilitation or new
1.8.3. construction costs, financing costs and professional fees
1.8.4. Construction contract or preliminary bid(s)
1.8.5. Agreements governing the various reserves which are capitalized at closing (to verify
1.8.6. that the reserves cannot be withdrawn later as fees or distributions)
1.8.7. Appraisal (to substantiate the value of the land and the value of the property after
1.8.8. rehabilitation or construction of the structure being built)
1.8.9. If low-income tax credits are utilized, documentation on the syndication costs (legal,
1.8.10. accounting, tax opinion, etc) from the organization/individual who will syndicate and sell the offering to ensure that the project can support the fees necessary to syndicate/fund the project
1.8.11. Supporting documentation for all other costs specified in the Sources/Uses of Funds statement

1.9. Certification of Federal Assistance
1.9.1. Formal certification concerning any other governmental assistance provided or to be provided to the project - one certification for each funding source
1.9.2. If no other governmental assistance, certification to this affect
1.9.3. If this changes during the course of the project, the City of Modesto needs to be informed immediately in the form of a new certification.

1.10. Project Development Budget
1.10.1. The City of Modesto will review the project development budget to determine that the development costs are necessary and "reasonable". The budget will include all costs associated with the development, regardless of the funding sources.
1.10.2. "Reasonableness" of costs shall be based on the following factors:
   1.10.2.1. Cost of comparable projects in the same geographical area;
   1.10.2.2. The qualifications of the cost estimators for the various budget line items; and
   1.10.2.3. Comparable costs published by recognized industry cost index services.

1.11. Underwriting Standards
1.11.1. City of Modesto HOME projects will utilize the underwriting criteria as set forth below. Generally underwriting will review the risk analysis of the project including: market risk, developer risk, and project risk. Market risk is defined as the likelihood that the units can be sold. Developer risk is defined as the likelihood that the developer can complete the project on-time and budget. Project risk is defined as the adequacy and reasonableness of the costs and sources to complete and sell the project.
1.11.1.1. Developer fees & overhead and any consultant fees may not exceed the sum of:
   1.11.1.1.1. 15% of total rehabilitation and new construction eligible basis; and
   1.11.1.1.2. 5% of total acquisition eligible basis; however a fee up to 10% of total acquisition eligible basis will be permitted for projects that require the approval of HUD for the transfer of
the property.

1.11.1.2. Limits for Contractor Fee, Contractor Overhead and General Requirements will be calculated as follows:

1.11.1.2.1.1. Contractor Fee = 6% of hard construction costs
1.11.1.2.1.2. Contractor Overhead = 2% of hard construction costs
1.11.1.2.1.3. General Requirements = 6% of hard construction costs.

1.11.1.2.2. Total soft costs may not exceed 35% of total eligible basis. Total soft costs equal the sum of general requirements, contractor overhead, contractor profit, architectural fees, survey costs, engineering fees, permanent loan fees, cost of tax-exempt bond issuance, taxes, appraisal, market study, environmental report, rent-up/marketing costs, title & recording fees, non-syndication legal fees, accounting fees, developer fees & overhead, consultant fees, organizational fees, and syndication expenses.
Section 13

City of Modesto

Neighborhood Stabilization Program 3

Subrecipient Management Policies and Procedures

City Of Modesto
Community and Economic Development Department
1010 10th Street, Suite 3100
Modesto, CA 95354
www.cityofmodesto.com
housing@modestogov.com

Committee: Citizens Housing and Community Development Committee
City Council: Resolution No.

Approved: 06/29/2017

These policies supersede any previously adopted policies and are subject to review and revision by the City of Modesto’s Citizens Housing and Community Development

City of Modesto
Neighborhood Stabilization Program 3
NSP3 Subrecipient Management Policies and Procedures
(2 CFR Part 225 appendix A (C)(J)(c))

1. During the period of affordability, the City of Modesto will perform annual on-site compliance or desk monitoring inspections of all single-family and multi-family developments utilizing NSP3 funds to determine compliance with the applicable regulations and requirements outlined below utilizing NSP3 regulations to govern activities.

1.1. This monitoring will consist of the following parties and unit types:

1.1.1. All participating NSP Developers
1.1.2. All NSP Rental Properties
1.1.3. All NSP Re-Sale Properties

1.2. Developers will be notified of their monitoring date and time through a formal letter no less than 2 weeks prior to the date of monitoring. The letter contains information notifying the developer as to which program is being monitored, which properties are being reviewed, and the type of monitoring being conducted.

1.2.1. Type of monitoring is dependent on which program component is being monitored by City of Modesto Staff. Types of monitoring are as follows:

1.2.1.1. "Windshield" Inspection - Upon sale of the property to a qualified buyer, notification of annual inspection and guarantee of general property upkeep is agreed to by the buyer for the life of the affordability covenant.

1.2.1.1.1. A "Windshield" inspection is done annually to ensure that the exterior of the home is adequately maintained and that the property does not become blight to the neighborhood. This 10 point visual inspection is done by a City of Modesto Housing Rehabilitation Specialist (HRS).

1.2.1.2. Physical Monitoring - Every property shall be physically inspected by city staff no less than every three (3) years for property damage, code violations, and maintenance issues and concerns (primarily Rental Properties).

1.2.1.2.1. The Developer/Property management firm informs the current tenant of the time and date of the city inspection.

1.2.1.2.2. A City of Modesto Housing Rehabilitation Specialist does a full Housing Quality Standards (HQS) walkthrough of the facility and grounds. For multi-unit properties HOME guidelines are followed and 10% of the units are reviewed.

1.2.1.2.3. The property is given a Pass/Fail/Inconclusive check on all health and safety components of the inspection. Once completed, the HRS determines if any of the deficiencies are severe enough for a FAIL result on the property as a whole or if the item is a "Concern" to reinsert at the next monitoring.

1.2.1.2.4. An electronic copy of the report is given to the Housing Finance Specialist (HFS) and to the developer representative for signature. If the items that are discovered are easily remedied, and the developer says that they will fix the items immediately, a 2 week period of time will be allowed before an unresolved finding is recorded.
1.3. **Subrecipient/Developer File Monitoring:**

1.3.1. Developers are expected to annually provide to City Staff a completed “Rental Housing Project Compliance Report” (City of Modesto Monitoring Form 2-A) prior to staff conducting a monitoring session. Form 2-A is a program summary containing all pertinent data for the monitoring and serves as a starting point for data verification.

1.3.2. Developer monitoring will be conducted at the developer’s place of business or at the City of Modesto (optional).

1.3.2.1. Monitoring Form 1-A: Developer Compliance (File Monitoring), is a checklist utilized by the City of Modesto to verify developer specific information and documentation dealing with:

- Program Compliance
- Rental Compliance

1.3.2.2. Monitoring Form 1-C: Acquisition & Rehab (File Monitoring), is a checklist utilized by the City of Modesto to verify property specific information and documentation dealing with:

- Property Acquisition
- Construction/Rehabilitation
- Property Financials

1.3.3. **NSP Rental Property Monitoring:**

1.3.3.1. Developers are expected to annually provide to City Staff a completed “Recertification Packet” for every tenant at the time of lease renewal. This information will be used in conjunction with Monitoring Form 2-A to provide a basis for monitoring of the developer’s tenant files. The “Recertification Packet” consists of:

- Part V Income Certification (Section 8 method)
- Household Characteristics form

1.3.4. Monitoring Form 1-B: Tenant Compliance & Verification (File Monitoring), is a checklist utilized by City of Modesto Monitoring Staff to verify that the developer is complying with program guidelines for rent and occupancy.

2. **Monitoring Follow-Up**

2.1. When both the Physical and File Monitoring have been completed, staff will draft one of 2 letters and send them to the developer stating the results of the findings: Finding Letter or Clearance Letter. As clarification, a “finding” is an element which does not comply with a Federal or State statute or regulation; whereas a “concern” represents a potential finding or a program deficiency that should be improved before it leads to a finding.

2.2. **Finding Letter**

2.2.1. This letter notifies the developer that one or more serious issues were uncovered during the course of monitoring. It will identify whether the finding was discovered during the Physical Monitoring or the File Monitoring, the nature of the finding and the remedy available.

2.2.2. The developer has 30 days to respond to the City of Modesto with their corrective actions at which point an additional inspection will be done within a reasonable timeline.

2.2.3. **Clearance letter**

2.2.3.1. This letter informs the developer that there were no findings discovered during the monitoring and their property has been cleared for 1 year.

2.2.3.2. If there are any concerns that were discovered during the monitoring, the letter will disseminate the details. Any concerns will be inspected at the next monitoring, and staff will determine if the concern had graduated to a finding.
## Neighborhood Stabilization Program Monitoring Documentation – Developer Compliance

<table>
<thead>
<tr>
<th>Monitoring Date:</th>
<th>Reviewer:</th>
<th>Developer Name:</th>
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</table>

<table>
<thead>
<tr>
<th>Program:</th>
<th>NSP1</th>
<th>NSP2</th>
<th>NSP3</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Monitoring Type:</th>
<th>Initial</th>
<th>Annual</th>
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<tr>
<th>Total NSP Allocation:</th>
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<thead>
<tr>
<th>Number of NSP Units:</th>
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</table>

<table>
<thead>
<tr>
<th>Affordability Period:</th>
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</table>

### PROGRAM COMPLIANCE:

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<tr>
<th>CRITERIA</th>
<th>Y/N</th>
<th>COMMENT/ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Does Developer have a copy of fully executed MOU with the City of Modesto?</td>
<td></td>
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<tr>
<td>2. Does Developer have a copy of the Program Pro-Forma for their rental units? (If applicable)</td>
<td></td>
<td></td>
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<tr>
<td>3. Has Developer maintained current insurance requirements?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Has Developer maintained all necessary licenses/certifications?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Has Developer submitted a completed Project Compliance Report within the last 12 months? (HOME Monitoring Checklist 6-D)</td>
<td></td>
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<tr>
<td>6. Has Developer received/completed any NSP specific trainings in the last 12 months?</td>
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<tr>
<td>7. Has Developer Provided copies of tax returns for the last 2 years?</td>
<td></td>
<td></td>
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<tr>
<td>8. Has Developer provided proof of payment of any taxes due?</td>
<td></td>
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</tbody>
</table>

### RENTAL COMPLIANCE:

<table>
<thead>
<tr>
<th>CRITERIA</th>
<th>Y/N</th>
<th>COMMENT/ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Does Developer have tenant selection procedures that are non-discriminatory?</td>
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<tr>
<td>2.</td>
<td>Does Developer provide adequate information to program applicants about program rules and expectations?</td>
<td></td>
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<tr>
<td>3.</td>
<td>Does Developer monitor rents in NSP units and enforce proper rent limits for all properties?</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Are tenant incomes properly documented during occupancy?</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Is there a copy of the lease in every tenant file?</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Are all leases free of prohibited provisions?</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Does developer conduct regular property inspections?</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Does Developer affirmatively market the NSP Units?</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Does Developer follow their tenant selection policy?</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Does Developer properly maintain applicant records and history?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>a. Intake/Applications</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. Letter of Denial/Rejection</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. Contact Log</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Does Developer properly maintain and administer an active waiting list?</td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Do Properties exhibit a high level of vacancy?</td>
<td></td>
</tr>
</tbody>
</table>

**ADDITIONAL NOTES & COMMENTS:**
# Neighborhood Stabilization Program
## Monitoring Documentation – Tenant Compliance & Verification

<table>
<thead>
<tr>
<th>Monitoring Date:</th>
<th>Reviewer:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developer Name:</td>
<td></td>
</tr>
<tr>
<td>Property Address:</td>
<td></td>
</tr>
<tr>
<td>Affordability Period:</td>
<td>Multiple Unit Property</td>
</tr>
<tr>
<td>Program:</td>
<td>NSP1</td>
</tr>
<tr>
<td>Monitoring Type:</td>
<td>Initial</td>
</tr>
<tr>
<td>Has Tenant been Reviewed/Approved by City?</td>
<td>Yes</td>
</tr>
<tr>
<td>Tenant/Head of Household:</td>
<td></td>
</tr>
<tr>
<td>AMI Qualification:</td>
<td>&lt;30%</td>
</tr>
<tr>
<td>Does Tenant Meet a Special Needs Criteria?</td>
<td>Yes</td>
</tr>
<tr>
<td>Is Tenant currently living in the unit?</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### INITIAL RENT AND OCCUPANCY COMPLIANCE:

<table>
<thead>
<tr>
<th>CRITERIA</th>
<th>Y/N</th>
<th>COMMENT/ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Is the following documentation complete and present in the file?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Tenant Intake/Application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Household Characteristic Form <em>(In toolbox)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Tenant Income Certification</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Income supporting documentation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. Lease/Lease with addendums</td>
<td></td>
<td></td>
</tr>
<tr>
<td>f. Lead-based paint compliance documentation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Does Tenant File project Developer maintains &amp; adequately documents income determinations?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Pay Stub in file?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. W-2 or comparable tax form?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Additional income documentation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Is Part IV of Income Certification – Income From Assets, properly filled out?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Are bank accounts clearly acknowledged?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Are vehicles clearly acknowledged?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Are additional assets listed?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Is Tenant Lease free of all prohibited provisions?</td>
<td></td>
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<tr>
<td>5.</td>
<td>Is Tenant Lease for a minimum of 1 year? <em>(NSP regulatory requirement)</em></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Does Tenant Lease support that rents reported in Tenant File, Income Certification, &amp; submitted to City of Modesto are accurate?</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Were proper utility allowances used to calculate maximum rent levels?</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Is Tenant being charged &lt;30% of their adjusted monthly income as rent?</td>
<td></td>
</tr>
</tbody>
</table>
| 9. | If Tenant receives Section 8 assistance:  
   a. Is the appropriate tenant payment (30% of adjusted income) charged to the tenant?  
   b. Is there proper documentation of the rental assistance in the file? |
| 10. | Is the Gross Rent being charged to Tenant below maximum allowable rent? |
| 11. | Are all contributions to rent in Part V of the Income Certification properly displayed and calculated? |
| 12. | Does file document that the property meets ongoing property standard requirements? |

**ADDITIONAL NOTES & COMMENTS:**

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Updated 06/26/2017
Page 2 of 2
**Neighborhood Stabilization Program**  
**Monitoring Documentation – Acquisition & Rehab**

Monitoring Date: __________________  Reviewer: __________________
Developer Name: ___________________________________________________
Property Address: ___________________________________________________
Program:  □ NSP1  □ NSP2  □ NSP3
Monitoring Type: □ Initial  □ Annual

**FILE MAINTENANCE COMPLIANCE:**

<table>
<thead>
<tr>
<th>CRITERIA</th>
<th>Y/N</th>
<th>COMMENT/ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Property Acquisition</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Does file have environmental review documentation?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Does file have purchase contract with addendums?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Does file have copy of Appraisal (within 60 days of offer)</td>
<td></td>
<td></td>
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<tr>
<td>4. Does file have copy of initial pest inspection/report?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Does file have copy of initial home inspection?</td>
<td></td>
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<tr>
<td>6. Does file have documentation to show that property was abandoned/foreclosed at the time of purchase?</td>
<td></td>
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</tr>
<tr>
<td>7. Does file have a copy of the Final HUD 1</td>
<td></td>
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<tr>
<td>8. Does file have documentation showing that existing tenants were properly notified of the following:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Change of Ownership</td>
<td></td>
<td></td>
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<tr>
<td>b. Effects of Rehabilitation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Program Qualification Requirements</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Construction/Rehabilitation**

<table>
<thead>
<tr>
<th>CRITERIA</th>
<th>Y/N</th>
<th>COMMENT/ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Does file contain a copy of the initial work write-up and cost estimate?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Does file have documentation addressing Lead Based Paint concerns (if built prior to 1978)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Does file contain contractor agreement/contract and bid documents (if applicable)?</td>
<td></td>
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</table>

Updated 06/27/2017
Page 1 of 2
4. Does file demonstrate that the Developer ensured that contractors and sub-contractors were properly licensed, insured, and not debarred?

5. Does File contain a copy of signed City of Modesto Preliminary Inspection Report?

6. Does file contain copies of all necessary permits with notice of completion?

7. Does file contain progress payment documentation?
   a. Receipts/Invoices
   b. Copies of checks issued
   c. Copies of checks received

8. Does file contain documentation of any change orders? (if applicable)

9. Does file contain final LBP Clearance Report? (if applicable)

10. Does file contain any additional hazard abatement reports? (if applicable)

11. Does file contain copies of any lien releases, or contractor waivers?

12. Copies of any contractor warranties (if applicable)

13. Does file contain copy of signed City of Modesto Final Inspection

**Property Financials**

1. Does file have copy of fully executed loan documents:
   a. Deed of Trust
   b. Loan Agreement
   c. Promissory Notes
   d. Regulatory Agreement

2. Does file have copies of any loan document amendments?

3. Does file have copy of property pro-forma?

4. Does file have copy of True-up documentation?

5. Does file have copy of current and valid property Title Insurance?

**ADDITIONAL NOTES & COMMENTS:**
# Neighborhood Stabilization Program
## Rental Housing Project Compliance Report

**Program:**  
- [ ] NSP1  
- [ ] NSP2  
- [ ] NSP3  

**Reporting Period:** _____ to _____

**Developer/Agency:** _____

<table>
<thead>
<tr>
<th>Project # (From Invoice)</th>
<th>Tenant Name/Head of Household</th>
<th># Pers. in Home</th>
<th># Bed Rm.</th>
<th>Date of Last Income Cert.</th>
<th>Max Rent</th>
<th>Actual Rent</th>
<th>Utility Allowance</th>
<th>Tenant's Annual Gross Income</th>
<th>Temp. Compliance (verified @ Monitoring)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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**Reviewer:** __________________________  
**Date:** ______________

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*Updated 06/27/2017*  
*Page 1 of 1*
Section 14

City of Modesto
Environmental Review Plan
For HUD Programs

City Of Modesto
Community and Economic Development Department
1010 10th Street, Suite 3100
Modesto, CA 95354
www.cityofmodesto.com
housing@modestogov.com

Committee: Citizens Housing and Community Development Committee
City Council: Resolution No.

Approved: 06/29/2017

These policies supersede any previously adopted policies and are subject to review and revision by the City of Modesto's Citizens Housing and Community Development
Environmental Review Process — City of Modesto

City of Modesto Environmental Review Process for Activities Utilizing Funding From the U.S. Department of Housing and Urban Development

1. Overview of Environmental Review
   1.1. All Federal Agencies must comply with the National Environmental Policy Act of 1969 (NEPA). This means that all activities proposed to receive Federal funding must be reviewed for compliance with applicable Federal laws and authorities (including Executive Orders and Agency regulations) which collectively protect and enhance the environment by removing healthy and safety related concerns and providing citizens with the benefits of a healthy environment. A few of these laws and authorities are: the Endangered Species Act, the National Historic Preservation Act, the Clean Air Act, the Flood Insurance Reform Act, as well as regulations and policies implemented by other federal agencies. These laws and authorities help the Department of Housing and Urban Development (HUD) in its mission to provide "safe, decent and affordable housing."

   1.2. NEPA provides the basic requirements for the review process. Title II of the Act established the Council on Environmental Quality (CEQ) within the White House. The CEQ regulations that implement NEPA are spelled-out in the Code of Federal Regulations (CFR) at 40 CFR Parts 1500 – 1508.

   1.3. Each federal agency has their own regulations that implement NEPA and fall in line with those of the CEQ. For HUD, regulations listed at 24 CFR apply to their programs and operations as a whole. Within 24 CFR there are numerous "Parts." Of particular importance to the environmental review process are Parts 35, 51, 55, and 58.

   1.4. Generally, Federal agencies have their own staff to conduct their environmental reviews; the one notable exception is HUD. Due to the vast number of projects and activities that HUD assists, they delegate many, but not all environmental review responsibilities to states and units of local government. In this capacity each is referred to as a "Responsible Entity" (RE). As an RE, the City of Modesto, California, acts as an official agent of HUD, taking-on legal obligations on behalf of HUD, and overseeing the ongoing implementation and monitoring of grant funded activities. The specific portion of HUD's regulation that outline's the City's obligations and procedures for the environmental review process is 24 CFR Part 58.
1.5. As an entitlement community, Modesto, California must review large numbers of activities. These include projects funded through the following programs:

1.5.1. Community Development Block Grant Program (CDBG)
1.5.2. HOME Investment Partnerships Program (HOME)
1.5.3. Neighborhood Stabilization Program (NSP)
1.5.4. Emergency Solutions Grant Program (ESG)
1.5.5. Any local funds that are to be repaid with these Federal funds (Section 108 Loans)

1.6. The City's Community & Economic Development Department (CEDD) is tasked with managing the expenditure and oversight of any of these HUD funds and programs that are provided through the City. The City's Environmental Review Specialist (ERS) is responsible for carrying-out the review process and determining whether activities are compliant with NEPA and related laws and authorities. The ERS enlists the assistance of others who have specific knowledge or skills pertinent to the process, such as the City's CEDD staff, the City's Planning Department, Stanislaus County Appraiser's Office, Development Management staff, Plans Review staff, and staff of the City's Parks and Recreation, Water Services and Public Works Departments. Additionally, the U.S. Fish and Wildlife Service and other non-municipal resources are brought into the process.

1.7. Frequently, non-profit agencies become direct recipients of other HUD grant funds. In these circumstances, such grantees must request the City to act as Responsible Entity for the purposes of performing environmental review. The grantee must provide the ERS with a formal request to act as RE and provide full project information. The grants typically involved are:

1.7.1. Supportive Housing Program (SHP);
1.7.2. Self-Help Homeownership Opportunity Program (SHOP);
1.7.3. Public Housing Authority (Capital Fund Program, etc.) grants, and
1.7.4. Housing Opportunities for Persons with AIDS Program (HOPWA)
1.7.5. A complete listing of programs that REs review can be found at 24 CFR 58.1(b)

2. The Environmental Review Process

2.1. Early Documentation

2.1.1. Once applications (proposals) have been received by the City, copies are provided to the ERS by CEDD staff and a cursory review is conducted to determine whether there are items that would require clarification in the environmental review process. If warranted, a follow up to the applicant may be provided to help avoid conflicts.
with statutory or regulatory requirements, should their proposal be selected for inclusion in the Consolidated Action Plan. However, it is the responsibility of applicants to understand the limitations and requirements that are placed on HUD funds at the time of application. ("Choice-limiting actions," are not allowed per 24 CFR 58.22).

2.1.2. The environmental review process starts with good information about projects or programs being considered for funding. As part of the Consolidated Planning RFP process, applicants must provide detailed descriptions of projects that clearly state all proposed uses for HUD funds as well as Non-HUD funds. Applicants must also provide a budget associated with all related activities and all funding sources. "Activities" include such things as tenant based rental assistance, acquisition, public services, sidewalk replacement (Curb Improvements, Street Improvements, etc.), preparation of vacant lots for new construction, construction of Energy Star for New Homes rated housing, and multi-family housing, etc.

2.1.3. Once a project, program or activity has been identified for inclusion in the Consolidated Action Plan, the ERS will generate an Environment Review Record for such activities. The ERS will contact the sponsors of those activities to ensure that they are aware of the level of review necessary, and to request any further clarification and documentation necessary to begin the review. Additional documentation that may be requested includes maps; photographs with a key which shows, on a project site map, the locations where photos were taken and in which direction they were taken; and existing Environmental Site Assessments.

2.1.4. Note: An Environmental Site Assessment or ESA is a site investigation conducted to determine the presence of contamination, and should not be confused with an Environmental Assessment which is a NEPA defined level of review (discussed later).

2.1.5. For all project types, the review process can only progress only once the necessary information has been received by the ERS.

2.1.6. CEDD staff is responsible for communicating to the ERS, all changes in project scope as they happen.

2.1.7. HUD's regulations specify the activities that can be undertaken using particular program funds. Various portions of the regulations define those activities. Part 58 of the regulations tie program definitions to
NEPA definitions. This is crucial, as it allows activities to be grouped together in the environmental review process.

2.1.8. Aggregation (24 CFR 58.32) - A responsible entity may group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions. [24 CFR Sec. 58.32(a)]. This is done so that we address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions; and consider reasonable alternative courses of action; and schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects; and prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities. [24 CFR Sec. 58.32(c)].

2.1.9. Once the types of projects have been identified, the ERS determines the level of environmental review needed for those projects and records that determination in the Environmental Review Record (ERR). Again, this can only be done if the project is defined well enough and its activities appropriately aggregated (24 CFR 58.32).

3. Determination of Level of Review

3.1. Environmental reviews can range from very simple documentation for "Exempt" activities, to a Finding of Significant Impact (FOSI) which would require that an Environmental Impact Statement (EIS) be conducted as prescribed by NEPA. [Note: given the range of activities typically associated with HUD funding, an EIS is highly improbable, which is an indication that suitable alternatives have been found for large scale projects during the course of the environmental review.

3.2. Exempt

3.2.1. "Exempt" activities (listed at 24 CFR 58.34) require clear notation of a project's activities and funding. They include environmental and other studies, development of plans and strategies; information and financial services; administrative and management activities; public services that will not have a physical impact or result in any physical changes; inspections and testing of properties for hazards or defects; purchase of insurance; purchase of tools; engineering or design costs; technical assistance and training; payment of principal and interest on loans made or obligations guaranteed by HUD, etc. "Exempt" means the activity is not considered capable of having a
direct impact on the environment and is therefore exempt from a NEPA proscribed review [the full range of project activities must be considered in making such a determination].

3.3. **Categorically Excluded**

3.3.1. "Categorically Excluded" means that the activity is one of a category of activities that, by their nature, do not have the potential to cause a significant impact to the environment and are therefore excluded from the NEPA Environmental Assessment requirements. Though, because they can have an impact, they must be reviewed for compliance with all applicable laws and authorities to determine what must be done in order for the project or activity to comply with those laws. Within this general group of activities there are two subgroups: CENST and CEST. Their differences are significant.

3.4. **CENST (Categorically Excluded and are Not Subject To)**

3.4.1. This level of determination is associated with activities which are "Categorically Excluded [from an Environmental Assessment] and are Not Subject to" authorities listed at 24 CFR 58.5 (CENST). Over the course of several years, HUD has determined that CENST activities should be treated much like Exempt activities because they do not themselves have a physical impact on the environment. However, because these activities are associated with physical locations, they do require review for compliance with the requirements listed at 58.6. These activities (listed at 24 CFR 58.35(b)) include tenant-based rental assistance; supportive services such as short term payment of utilities or rent; operational support of homeless facilities and daycare facilities; activities to assist homebuyers in purchasing an affordable dwelling that is existing or under construction; etc. Compliance with the Flood Insurance stipulations must be documented for Tenant Based Rental Assistance and Homebuyer Assistance activities. CENST activities are documented in the ERR and do not require any further review or authorization by HUD (discussed later).

3.5. **CEST (Categorically Excluded and are Subject To)**

3.5.1. The next level of determination is associated with activities which are "Categorically Excluded [from an Environmental Assessment] and are Subject To" authorities listed at 24 CFR 58.5 (CEST). These activities (listed at 24 CFR 58.35(a)) include acquisition (including leasing) or disposition of land and improvements; rehabilitation of housing and other property; new construction of single family housing where there are four (4) or fewer units being developed on any one site; a
project of five (5) or more new housing units being developed on scattered sites when each of the sites is at least 2,000' from any one of the other sites and, there are not more than four (4) housing units on any one site. Because these activities are of a physical nature or are committing HUD funds to a property that may or may not be suitable, these activities must be reviewed for compliance with the laws listed at 58.5. HUD regulations are very specific about what scale of activity is accepted into this category of review. Housing density, for example, can mean a great deal in determining whether the environment will be suitable for a project or, vice versa.

3.5.2. CEST activities are documented in the ERR and require public notification, completion of a Request for Release of Funds (RROF) (only if there is a mitigation measure (otherwise, converts to exempt), and subsequent authorization by HUD.

3.5.3. As noted at 24 CFR 58.34(a)(12) some CEST activities may "convert" to Exempt if, after the environmental review process has been completed, they have been found not to trigger any of the 58.5 Statutory Authorities. In these cases, CEST activities are documented in the ERR but do not require the completion of a RROF and subsequent authorization by HUD. Such projects must still comply with Requirements set forth at 24 CFR 58.6.

4. Environmental Assessment

4.1. If a project does not fit within one of the above classifications, an Environmental Assessment (EA) is required. The EA, in turn, forms the basis for determining whether the project/activity will have a significant impact on the environment. This determination results in either:

4.1.1. the requirement to perform an EIS as mentioned previously; or
4.1.2. a finding that the project/activity will have no finding of significant impact on the environment (FONSI).

4.2. To get to a FONSI, the EA will take into consideration many more factors than the CEST level review. Included are: review for consistency with area plans; land use and zoning requirements; stated policies of City Council; federal, state and local recommended best practices for such developments; possible infrastructure needs; etc.

4.3. Additionally, alternatives including the "No Action" alternative must be considered along with alternative sites. On-going NEPA compliance must be maintained (see "On-going Compliance with Related Federal Authorities" below). Once the level of review has been determined, the next step is a full review for compliance with 24 CFR Part 58.

5. Review Process Environmental Review Focus
5.1. Compliance with Federal environmental statutes and regulations listed at 58.5 include compliance with Section 106 of the National Historic Preservation Act (Often referred to as the "Section 106 Review," the regulation implementing this compliance process is found at 36 CFR Part 800), floodplain regulations set-out in 24 CFR Part 55, HUD noise regulations set-out in 24 CFR Part 51, Subpart B, Executive Order 11990 Protection of Wetlands, the Endangered Species Act, the Clean Air Act, the Clean Water Act, as well as other requirements. [for specific citations refer to 24 CFR 58.5]

5.2. Additionally, projects are reviewed for compliance with State and Local laws that govern the environmental conditions relevant to the project site or activities. All activities undertaken using HUD funds must comply with the authorities listed at 58.6 as well; these include the Flood Disaster protection Act which requires that, for those properties located within the 100 Year Floodplain, flood insurance be obtained and maintained for the life of the property that is receiving HUD assistance. [for specific citations refer to 24 CFR 58.6]

5.3. Compliance can be determined through review of on-line resources (as in the case of Wild and Scenic Rivers or Sole Source Aquifers), through consultation with authorities who track data associated with a given subject (e.g. Clean Air Act and the State Implementation Plan), or through appropriate procedures that involve legally proscribed consultation (e.g. Section 106 review or Endangered Species and Habitat).

5.4. The environmental review must be concluded before clearance can be gained and funding provided. To reach conclusion, all compliance issues must be adequately addressed. This does not always mean that the statutory or regulatory issues have been fully resolved prior to release of funds. Indeed, there may be on-going requirements that are needed to insure that outstanding issues are resolved prior to completion of the program or project (e.g. - nesting birds cleared prior to tree removal). This means that, in some cases, the program developer must satisfy compliance steps as properties are identified for inclusion in a program (e.g. is the property located in the floodplain or within proximity to a major roadway). In some cases, full evaluation of potential contamination cannot be undertaken until the site has been further prepared for development. In these cases, Conditions of Approval are made to prescribe specific actions required to ensure that the property is safe for its intended reuse. It is important to note that the type of activity or program drives the determination that no significant impact would result and therefore some issues are weighed more heavily in the decision-making process.

5.5. Most often, issues are resolved prior to release of funds. As part of the review process the ERS and developer work together to find solutions that ensure the protection and enhancement of the environment that will eventually benefit residents or patrons. This process is crucial and always
results in a better project (Is bicycle parking being provided? Is the playground protected from highway noise? What steps have been taken to protect the historic integrity of the building? Is there enough street lighting or sidewalks?). In all cases there must be a clear path to compliance for any outstanding issues that may remain at the time of clearance.

5.6. Note: Once an application has been submitted for a project that anticipates the use of Department of Housing & Urban Development (HUD) funding, neither HUD funds or non-HUD funds can be committed to that project until the environmental review has been approved by HUD or the Release of Funds obtained. No choice limiting action can be taken until the environmental review is approved (24 CFR 58.22) and Release of Funds obtained. Choice limiting actions include real property ACQUISITION, DEMOLITION, SITE CLEARANCE, REPAIR, REHABILITATION, CONSTRUCTION and LEASING activities. If you are not certain about where your project stands with regard to this statement, please contact the Environmental Review Specialist.

5.7. Once the project has been reviewed and a determination has been made that a project can proceed, the City must publish a notice for the project/activity, and a RROF must be completed and submitted to HUD, with subsequent approval by HUD.

6. Categorical Exclusion Approval Process

6.1. Public Notice & Comment Period

6.2. Once the environmental review has been concluded, CEST activities require that the City publish what is called a "Notice of Intent to Request Release of Funds" (NOI-RROF), which is published in the local paper of general circulation. Typically the publication is run in the public notice section of the Modesto Bee and the Vida en el Valle. This notice provides the public with a 7-day window within which they can comment on the proposed use of funds. Comments received in the specified time will be responded to and any appropriate modifications will be incorporated into the ERR.

6.3. Submittal of Request for Release of Funds to HUD

The day after the expiration of the comment period, a "Request for Release of Funds and Environmental Certification" form is sent to HUD for authorization. This RROF is signed by the City's Certifying Officer, Cynthia Birdsill, or her designee.

6.4. Objection Period & HUD Approval of RROF

The day after HUD receives the RROF, they open a 15-day Objection Period, during which time the public can object to the release of funds - if such objections meet criteria specified at 24 CFR 58.75. The day after expiration of the Objection Period, HUD approves the RROF and transmits their "Authority to Use Grant Funds" form (AUGF) to the City. Once received, the City notifies grant sub-recipients that they can commit funds to, and undertake actions authorized via the environmental review. That
authorization includes any stipulations identified in the review - these conditions become legal obligations of any contractual agreements associated with the project.

7. Environmental Assessment Approval Process

7.1. The approval process for an EA is nearly the same as the process for CEST activities. The difference is that the City must publish its Finding of No Significant Impact or FONSI, as well as a NOI-RROF. Typically this is accomplished through what is called a "combined notice" which simply publishes the two together. This notice provides the community a 15-day Comment Period rather than a 7-day period. Under exceptional circumstances, a 30 day Period may be necessary. Because there are many more aspects to an EA review, the process may result in several "Conditions of Approval." Those conditions become legal obligations of any contractual agreements associated with the project, and must be adhered to in order for the grantee or sub-recipient to remain in compliance with their grant obligations.

8. On-going Compliance with Related Federal Authorities

8.1. Some CEST or EA reviews are associated with programs involving multiple properties over the course of time. These programs are designed to assist properties not identified at the time of program inception. In these cases, as sites are identified, they must be reviewed to ensure compliance with statutory or regulatory requirements not fully addressed at the time clearance was provided to the program. This "site-specific" review is in line with the NEPA concept of "Tiering." This approach allows compliance issues to be reviewed once they are "ripe," expediting what would otherwise be successive reviews for similar projects that would each require their own release of funds.

8.2. Examples of program-based activities that require such on-going review and compliance for site-specific projects include the following:

8.2.1. Programs
8.2.1.1. Property Acquisition
8.2.1.2. New Housing Construction
8.2.1.3. Housing Rehabilitation
8.2.1.4. Commercial Rehabilitation
8.2.1.5. Demolition

8.2.2. Compliance Issues
8.2.2.1. Floodplains
8.2.2.2. Historic preservation (i.e., Noise Impacts)
8.2.2.3. Explosive hazards
8.2.2.4. Hazardous substances
8.2.2.5. Lead-Based Paint
8.2.2.6. Asbestos Containing Materials

9. Grant recipients and sub-recipients must ensure that the Conditions of Approval or other required actions are carried out as part of any executed contracts associated
with HUD-funded activities. Documentation of such compliance must be maintained in program / project files.
RESOLUTION APPROVING AN AGREEMENT WITH TRANSYSTEMS OF LAKE FOREST, CA FOR CONSULTANT SERVICES FOR THE ENGINEERING PLAN CHECK AND DESIGN REVIEW OF THE PLANS, SPECIFICATIONS AND ESTIMATES (PS&E) FOR THE SR-132 WEST FREEWAY/EXPRESSWAY – PHASE 1 PROJECT IN AN AMOUNT NOT TO EXCEED $375,459 FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $37,550 FOR ADDITIONAL SERVICES (IF NEEDED) FOR A TOTAL AMOUNT OF $413,009; AND AUTHORIZING THE INTERIM CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE CONTRACT

WHEREAS, Stanislaus Council of Governments (StanCOG), City of Modesto, Stanislaus County and the California Department of Transportation (Caltrans) are completing the formal studies for the Project Approval and Environmental Document (PA&ED) Phase for the State Route 132 West Freeway/Expressway Project (Ultimate Project), and

WHEREAS, the Ultimate Project is presently in the final stage of the environmental approval process, with approval expected in the January of 2018, and

WHEREAS, the SR132 West Freeway/Expressway – Phase 1 Project (Phase 1 Project) proposes to construct a two-lane highway on a new alignment in Stanislaus County and the City of Modesto from State Route 99 just south of Kansas Avenue to Dakota Avenue, and

WHEREAS, delivery of the PA&ED phase of the Ultimate Project has been slowed due to problems with gaining environmental clearance of contaminated soils stockpiles, and Project construction must commence on or before June 30, 2019, and

WHEREAS, the combination of environmental clearance delay along with a shortened window for startup of construction has resulted in the need to accelerate
supporting services of the final design (PS&E) phase of the Phase 1 Project to meet the construction startup deadline of June 2019, and

WHEREAS, this acceleration must be performed so that approximately $71,500,000 of programmed construction funds will not be lost, and

WHEREAS, it is anticipated that Caltrans will complete CEQA and NEPA review in January 2018 as part of the current PA&ED Phase and select a Project alternative at that time. It is anticipated that Caltrans will select one of the two build alternatives, but there is potential risk that Caltrans will select the no-build alternative, which would mean no Project would go forward, and

WHEREAS, the design phase must proceed “at risk” to progress the final design concurrently with the Final Environmental Document approval, and

WHEREAS, Staff proceeded through an RFP process pursuant to Administrative Directive 3.1 and the City solicited for proposals for Engineering Plan Check & Design Review Services for the SR132 Freeway/Expressway - Phase 1 Project on May 12, 2017 in compliance with Modesto Municipal Code section 8-3.401 – 8-3.404, and

WHEREAS, proposals were received, evaluated and ranked, and

WHEREAS, City entered into negotiations with the top ranked firm, TranSystems on July 7, 2017, and

WHEREAS, TranSystems has agreed to a contract for professional services in the amount of $375,458.44 to provide the Engineering Plan Check & Design Review Services for the SR132 Freeway/Expressway - Phase 1 Project, and

WHEREAS, Staff recommends approval of the agreement with TranSystems for the SR132 West Freeway/Expressway-Phase 1 Project, and
WHEREAS, City of Modesto previously committed $4,000,000 of funds to support the design PS&E phase of the Phase 1 Project, and

WHEREAS, City staff has worked diligently in coordination with Stanislaus County and StanCOG to agree to a financing strategy to support the remainder of funding required to support the PS&E design phase, and

WHEREAS, City will provide $4,000,000 of CFF money and StanCOG will provide $6,000,000 of Measure L Regional Account money to support the PS&E design phase, and

WHEREAS, on April 19, 2017 StanCOG Policy Board approved Resolution 16-36 designating the State Route 132 West Freeway/Expressway Project as the top regional project to receive Measure L Regional funding up to $10,000,000 to be used to support the total PS&E project cost, and

WHEREAS, the Director of Community and Economic Development and the Interim City Manager have recommended that the bid of $375,458.44 received from TranSystems be accepted as fair and reasonable and the contract be awarded to TranSystems of Lake Forest, CA.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with TranSystems of Lake Forest, CA for consultant services for the Engineering Plan Check & Design Review Services for the SR132 Freeway/Expressway - Phase 1 Project in an amount not to exceed $375,458.44 for the identified scope of services, plus $37,550 for additional services (if needed) for a total amount of $413,008.44.
BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is hereby authorized to execute the contract, in a form approved by the City Attorney, in a form approved by the City Attorney as may be necessary to ensure compliance with state and federal grant requirements.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2017-314

RESOLUTION APPROVING AN AGREEMENT WITH CPSI OF FRESNO, CA FOR RIGHT OF WAY CONSULTANT SERVICES FOR STATE ROUTE 132 WEST FREEWAY/EXPRESSWAY PHASE 1 PROJECT IN AN AMOUNT NOT TO EXCEED $735,000 FOR THE IDENTIFIED SCOPE OF SERVICES, PLUS $73,500 FOR ADDITIONAL SERVICES (IF NEEDED) FOR A TOTAL AMOUNT OF $808,500; AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, Stanislaus Council of Governments (StanCOG), City of Modesto, Stanislaus County and the California Department of Transportation (Caltrans) are completing the formal studies for the Project Approval and Environmental Document (PA&ED) Phase for the State Route 132 West Freeway/Expressway Project (Ultimate Project), and

WHEREAS, the Ultimate Project is presently in the final stage of the environmental approval process, with approval expected in the January of 2018, and

WHEREAS, the SR132 West Freeway/Expressway – Phase 1 Project (Phase 1 Project) proposes to construct a two-lane highway on a new alignment in Stanislaus County and the City of Modesto from State Route 99 just south of Kansas Avenue to Dakota Avenue, and

WHEREAS, delivery of the PA&ED phase of the Ultimate Project has been slowed due to problems with gaining environmental clearance of contaminated soils stockpiles, and Project construction must commence on or before June 30, 2019, and

WHEREAS, the combination of environmental clearance delay along with a shortened window for startup of construction has resulted in the need to accelerate supporting services of the final design (PS&E) phase of the Phase 1 Project to meet the construction startup deadline of June 2019, and
WHEREAS, this acceleration must be performed so that approximately $71,500,000 of programmed construction funds will not be lost, and

WHEREAS, it is anticipated that Caltrans will complete CEQA and NEPA review in January 2018 as part of the current PA&ED Phase and select a Project alternative at that time. It is anticipated that Caltrans will select one of the two build alternatives, but there is potential risk that Caltrans will select the no-build alternative, which would mean no Project would go forward, and

WHEREAS, the design phase must proceed “at risk” to progress the final design concurrently with the Final Environmental Document approval, and

WHEREAS, Staff proceeded through an RFP process pursuant to Administrative Directive 3.1 and the City solicited for proposals for Right of Way Consultant Services for State Route 132 West Freeway/Expressway Phase 1 Project on May 26, 2017 in compliance with Modesto Municipal Code section 8-3.401 – 8-3.404, and

WHEREAS, proposals were received, evaluated and ranked, and

WHEREAS, City entered into negotiations with the top ranked firm, CPSI on July 17, 2017, and

WHEREAS, CPSI has agreed to a contract for professional services in the amount of $735,000 to provide the Right of Way Consultant Services for State Route 132 West Freeway/Expressway Phase 1 Project, and

WHEREAS, the Interim City Manager and Staff recommend approval of the agreement with CPSI for the SR132 West Freeway/Expressway-Phase 1 Project, and

WHEREAS, City of Modesto previously committed $4,000,000 of funds to support the design PS&E phase of the Phase 1 Project, and
WHEREAS, City staff has worked diligently in coordination with Stanislaus County and StanCOG to agree to a financing strategy to support the remainder of funding required to support the PS&E design phase, and

WHEREAS, City will provide $4,000,000 of CFF money and StanCOG will provide $6,000,000 of Measure L Regional Account money to support the PS&E design phase.

WHEREAS, on April 19, 2017 StanCOG Policy Board approved Resolution 16-36 designating the State Route 132 West Freeway/Expressway Project as the top regional project to receive Measure L Regional funding up to $10,000,000 to be used to support the total PS&E project cost, and

WHEREAS, the Director of Community and Economic Development and the Interim City Manager recommend that the bid of $735,000 received from CPSI be accepted as fair and reasonable and the contract be awarded to CPSI of Fresno, CA,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with CPSI of Fresno, CA for consultant services for the Right of Way Consultant Services for State Route 132 West Freeway/Expressway Phase 1 Project in an amount not to exceed $735,000 for the identified scope of services, plus $73,500 for additional services (if needed) for a total amount of $808,500.

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is hereby authorized to execute the contract, in a form approved by the City Attorney as may be necessary to ensure compliance with state and federal grant requirements.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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]

SEAL

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
RESOLUTION ACCEPTING THE DESTINATION MODESTO REPORT FOR THE THIRD AND FOURTH QUARTER OF FISCAL YEAR 2016-17

WHEREAS, in 2015, the City absorbed the functions of the Convention & Visitor’s Bureau within the Community & Economic Development Department and a Destination Modesto Task Force was created to promote travel, tourism and entertainment, and

WHEREAS, the Destination Modesto report for the convention and tourism activity are periodically submitted to the City Council for their consideration, and

WHEREAS, subsequent Destination Modesto reports have been expanded to also include activity from the McHenry Mansion, McHenry Museum, all three (3) City-owned golf courses, and City parks, and

WHEREAS, the Destination Modesto Report – Third and Fourth Quarter Fiscal Year 2016-17 reflects activity from all Destination Modesto assets in addition to second quarter Convention & Tourism activity that was not included in earlier reports.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the Destination Modesto Report – Third and Fourth 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 8th day of August, 2017, by Councilmember Kenoyer,
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]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney

STEFHANIE LOPEZ, City Clerk
RESOLUTION APPROVING THE APPLICATION FOR GRANT FUNDS FOR THE CALIFORNIA URBAN RIVERS GRANT PROGRAM UNDER THE WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014 (PROPOSITION 1) FOR REMOVAL OF THE REMNANT DENNETT DAM PROJECT IN THE AMOUNT OF $368,183 AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, AS AGENT TO CONDUCT ALL NEGOTIATIONS, EXECUTE AND SUBMIT ALL DOCUMENTS INCLUDING BUT NOT LIMITED TO APPLICATIONS, AGREEMENTS, PAYMENT REQUESTS, WHICH MAY BE NECESSARY FOR THE COMPLETION OF THE AFOREMENTIONED PROJECT

WHEREAS, the Tuolumne River Trust applied for a grant from the California Urban Rivers Grant Program and it is in the best interest of all parties that the City of Modesto replaces the Tuolumne River Trust as the applicant for this grant, and

WHEREAS, the Legislature and Governor of the State of California have provided Funds for the California Urban Rivers Grant Program, and

WHEREAS, the California Natural Resources Agency has been delegated the responsibility for the administration of this grant program, establishing necessary procedures, and

WHEREAS, said procedures established by the California Natural Resources Agency require a resolution certifying the approval of application(s) by the Applicants governing board before submission of said application(s) to the State, and

WHEREAS, the City of Modesto, if selected, will enter into an agreement with the State of California to carry out the Project.

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

08/08/2017/PRN/NHoax/Item 15
1. Approves the filing of an application for the Remnant Dennett Dam Removal Project;

2. Certifies that the City of Modesto understands the assurances and certification in the application; and

3. Certifies that City of Modesto or title holder will have sufficient Funds to operate and maintain the Project(s) consistent with the land tenure requirements; or will secure the resources to do so; and

4. Certifies that it will comply with all provisions of Section 1771.5 of the California Labor Code; and

5. Certifies that the project will comply with any laws and regulations including, but not limited to, the California Environmental Quality Act (CEQA), legal requirements for building codes, health and safety codes, disabled access laws, and, that prior to commencement of construction, all applicable permits will have been obtained; and

6. Certifies that the City of Modesto will work towards the State Planning Priorities intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety as included in Government Code Section 65041.1, and

7. Appoints the Interim City Manager, or his designee, as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, payment requests, which may be necessary for the completion of the aforementioned Project(s).
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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
RESOLUTION APPROVING AN APPLICATION FOR OUTDOOR ENVIRONMENTAL EDUCATION FACILITIES GRANT FUNDS FROM THE STATE OF CALIFORNIA DEPARTMENT OF PARKS AND RECREATION FOR THE TUOLUMNE RIVER REGIONAL PARK (TRRP) RIVER CENTER PAVILION AND LEARNING THEATER IN THE AMOUNT OF $500,000 AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO CONDUCT ALL NEGOTIATIONS, SIGN AND SUBMIT DOCUMENTS, INCLUDING, BUT NOT LIMITED TO APPLICATIONS, AGREEMENTS, AMENDMENTS, AND PAYMENT REQUESTS, WHICH MAY BE NECESSARY FOR THE COMPLETION OF THE GRANT SCOPE

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Outdoor Educational Education Facilities Grant Program, setting up necessary procedures governing the application, and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the Applicant to certify by resolution the approval of the application before submission of said application to the State, and

WHEREAS, successful Applicants will enter into a contract with the State of California to complete the Grant Scope project.

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

Approves the filing of an application for the Tuolumne River Regional Park (TRRP) River Center Pavilion and Learning Theater; and

1. Certifies that the City of Modesto has or will have available, prior to commencement of any work on the project included in this application, sufficient funds to complete the project; and
2. Certifies that if the project is awarded, the City of Modesto has or will have sufficient funds to operate and maintain the project; and

3. Certifies that the City of Modesto has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide; and

4. Delegates the authority to the Interim City Manager, or his designee, to conduct all negotiations, sign and submit all documents, including but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Grant Scope; and

5. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer,
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)

ATTEST: [Signature]

STEFANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2017-318

RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING
BETWEEN THE SHADOWCHASE RUNNING CLUB (SCRC) AND THE CITY
REGARDING THE INSTALLATION OF SIX FITNESS EQUIPMENT
STATIONS ALONG THE VIRGINIA CORRIDOR TRAIL AND AUTHORIZING
THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE
MOU

WHEREAS, in late 2016, ShadowChase Running Club approached the City of
Modesto to seek approval to install six outdoor fitness equipment stations along the
Virginia Corridor Trail, and

WHEREAS, the ShadowChase Running Club wants to donate the fitness stations
to the City and has agreed to maintain the fitness stations, and

WHEREAS, City staff has prepared a Memorandum of Understanding (MOU) to
allow the ShadowChase Running Club to install and maintain the donated fitness stations
on City property, and

WHEREAS, the MOU outlines the terms of the agreement for both parties.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves a Memorandum of Understanding between the ShadowChase
Running Club and the City of Modesto regarding the installation of six outdoor fitness
equipment stations along the Virginia Corridor Trail.

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is
hereby authorized to execute the MOU, in a form approved by the City Attorney.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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: 

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney

STEFANIE LOPEZ, City Clerk
RESOLUTION NUMBER 2017-319

RESOLUTION APPROVING THE TERMS AND CONDITIONS OF THE NON-EXCLUSIVE NON-CONSENSUAL FRANCHISE TOWING SERVICES AGREEMENT

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

WHEREAS, in September 2016, Police Department staff embarked on formulating an improved contract for the City that would provide optimum service, greater accountability and a tiered fees structure that would offset the growing cost of the City’s Non-Exclusive Non-Consensual Towing Program, and

WHEREAS, a Non-Exclusive Non-Consensual Franchise Towing Service Agreement with specific requirements, including a tiered fee structure and implementation of dispatching and tracking software will ensure safe, prompt, reliable and professional service to the Police Department and the citizens of Modesto, and

WHEREAS, on April 4, 2017, City Council approved extending the current Non-Exclusive Non-Consensual Franchise Towing Services agreement for a six month period, which was set to expire on April 13, 2017, to allow staff time to complete the Request for Application (RFA) process, and

WHEREAS, on May 23, 2017, the Purchasing Division solicited Request for Applications (RFA) No. 1617-37, for City generated Non-Exclusive Non-Consensual Franchise Towing Services, and

WHEREAS, on June 22, 2017, applications were opened in City Clerk’s Office, and
WHEREAS, eleven (11) applications were received and opened, all of which were local vendors; and

WHEREAS, the applicants have passed all financial, business and insurance requirements, site equipment verification and background checks as required,

WHEREAS, the Non-Exclusive Non-Consensual Franchise Towing Services Agreement contains the terms and conditions under which the franchise agreements may be granted.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the terms and conditions of the Non-Exclusive Non-Consensual Franchise Towing Services Agreement, attached hereto.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDREN, City Attorney
CITY OF MODESTO

REQUEST FOR APPLICATIONS (RFA) NO. 1617-37
FOR

CITY GENERATED NON-EXCLUSIVE NON-SENSUAL FRANCHISE TOWING SERVICES

APPLICATION RESPONSE DUE:

Date June 20, 2017 - Before 11:00 a.m.

APPLICATION DEPOSIT FEE: $500.00

CITY CONTACT: Cindy Medley, Buyer
PHONE: 209-571-5164
E-MAIL ADDRESS: cmedley@modestogov.com
REQUEST FOR APPLICATIONS NO. 1617-37

For

CITY GENERATED NON-EXCLUSIVE NON-CONSENSUAL FRANCHISE TOWING SERVICES

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**ATTACHMENTS**
- Exhibit A Sample
  Non-Exclusive, Non-Consensual Tow Service Franchise Agreement: 22-43
NOTICE FOR APPLICATIONS

NOTICE IS HEREBY GIVEN that the City of Modesto, County of Stanislaus, State of California is accepting applications for City generated non-exclusive non-consensual franchise towing services for vehicle towing, impound services, street sweeps, and vehicle storage as directed by the Modesto Police Department. To be eligible for a non-exclusive franchise, applicants must: Submit a completed application packet, meet any and all requirements identified in the request for application, agree to comply with the terms and conditions of the non-exclusive non-consensual towing services franchise agreement and meet any other terms and conditions imposed by the City of Modesto for the granting of a non-exclusive franchise.

All Costs associated with the preparation of an application shall be borne by the Applicant.

Applications must be submitted on the application form prescribed by the City of Modesto. An application form is included with the Request for Application or may be downloaded from the City’s website at: http://www.modestogov.com/257/contracting-bidopportunities under Bid Opportunities.

Each application packet shall be sealed and filed with the City Clerk’s Office, 1010 Tenth Street, Suite 6600, Modesto, CA 95354 no later than Tuesday, June 20, 2017 at 11:00 A.M. at which time application packets will be opened and announced. Application packets will be received only at the City Clerk’s Office address shown above, and prior to the date and time indicated. Any application packet received at or after said date and time or at a place other than the stated address shall not be considered and will be returned to the applicant unopened.

All application packets will be on file for review, following the City Manager’s recommendation for granting of a non-exclusive non-consensual franchise to Modesto City Council, at the City Clerks Office, 1010 Tenth St., Suite 6600, Modesto Ca. 95354 and at the Modesto Police Department Office-Tow Administrator, 600 Tenth St., Modesto Ca. 95354.

All application packets, whether delivered by the applicant or agent of the applicant, U.S. Postal Service, courier or package delivery service must be received and time stamped by the date and time stated, at the stated address. The City Clerk’s time stamp shall be considered the official timepiece for the purpose of establishing the actual date and time of receipt of the application packet. The City of Modesto assumes no responsibility for delay in the delivery of the application packet. It is solely the applicants responsibility to ensure that the application packet has been delivered to the proper location prior to the date and time indicated on this notice for application. On the outside of the application packet envelope, the applicant shall indicate the following:

NAME AND ADDRESS OF APPLICANT
REQUEST FOR APPLICATION NO. 1617-37
NON-EXCLUSIVE NON-CONSENSUAL FRANCHISE TOWING SERVICES
APPLICATION OPENING TIME AND DATE: JUNE 20, 2017 AT 11:00AM

UNITED STATES POSTAL SERVICE
MAIL TO: CITY CLERK
CITY OF MODESTO
P.O. BOX 642
MODESTO, CA 95353

COURIER SERVICE / HAND DELIVERY
TO: CITY CLERK
CITY OF MODESTO
1010 TENTH ST., SUITE 6600
MODESTO, CA 95354

The City reserves the right to reject any or all applications or to waive any informalities or minor irregularities in any application.
CITY CONTACTS

All questions regarding the application process shall be submitted in writing to: Cindy Medley at cmedley@modestogov.com

Questions regarding the application process shall be submitted to the Purchasing Division. Attempts by the applicant to contact other City representatives may result in disqualification of the applicant from the application process. Application process related questions should be directed to Cindy Medley, Buyer, in writing before 5:00 p.m. on May 30, 2017. Questions can be emailed to cmedley@modestogov.com

CALENDAR OF EVENTS

<table>
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<td>Request For Applications Issued</td>
<td>May 22, 2017</td>
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<td>June 6, 2017</td>
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NOTE: EXCEPT WHERE OTHERWISE STATED, ALL DATES ARE APPROXIMATES

NOTE: It is the responsibility of each applicant to be familiar with all terms, conditions and specifications of this RFA. The applicant agrees to and acknowledges all RFA specifications, terms, and conditions and indicates the ability to perform by submission of an application packet. By the submission of an application packet, the applicant certifies that if awarded a non-exclusive non-consensual towing service franchise, applicant will make no claim against the City based upon ignorance or misunderstanding of the terms, conditions or specifications.
REQUEST FOR APPLICATION (RFA) NO. 1617-37
For
CITY GENERATED NON-EXCLUSIVE NON-CONSENSUAL FRANCHISE TOWING SERVICES

SECTION 1

1.1 BACKGROUND

The main goal of the program is to provide safe, responsible and reliable towing of vehicles on behalf of the City of Modesto. In addition, California Vehicle Code (CVC) 12110 authorizes a fee in connection with the award of a franchise for towing vehicles on behalf of the CITY. However, the fee may not exceed the amount necessary to reimburse the CITY for its actual and reasonable costs incurred in connection with the towing program.

1.2 SCOPE OF WORK

The City of Modesto is accepting applications for City generated non-exclusive non-consensual towing services on behalf of the Modesto Police Department. Non-consensual towing services include but are not limited to:

1) Vehicles impounded by The City of Modesto for investigation, as evidence in a criminal case, asset forfeiture or vehicle forfeiture;

2) Vehicles involved in collisions, stalled vehicles, illegally parked vehicles, vehicles whose driver is incapacitated or physically unable to drive or has been arrested or detained;

3) Vehicles towed under any authority section of the California Vehicle Code or Modesto Municipal Code including but not limited to, 30 day impounds, abandoned vehicles, inoperative vehicles or abated vehicles from any street, alley, highway, or any other private or public property in the City of Modesto;

4) Any other towed vehicle or vessel as may be ordered by any police officer, police employee, or any other employee or agent of the City of Modesto who is properly authorized to order such removal.

1.3 ELIGIBILITY REQUIREMENTS

To be eligible for a non-exclusive non-consensual towing services franchise applicants must:

1) Submit a completed application packet.

2) Meet any and all requirements identified in this request for application.

3) Agree to comply with the terms and conditions of the non-exclusive non-consensual towing services franchise agreement.

4) Meet any other terms and conditions imposed by the City of Modesto for the granting of a non-exclusive, non-consensual tow franchise.

All Costs associated with the preparation of an application packet shall be borne by the Applicant.
Applications must be submitted on the application form prescribed by the City of Modesto. An application form has been included with this Request for Application in Section 4, or may be downloaded from the City’s purchasing website at: http://www.modestogov.com/257/contracting-bidopportunities Bid Opportunities.

Each application packet shall be sealed and filed with the City Clerk’s Office, 1010 Tenth Street, Suite 6600, Modesto, CA 95354 prior to 11:00 a.m. on June 20, 2017, at which time the applications will be opened and announced.

All application packets will be on file for review, following the City Managers recommendation for granting of a non-exclusive non-consensual towing services franchise agreement to the Modesto City Council, at the City Clerks Office, 1010 Tenth St., Suite 6600, Modesto Ca. 95354 and at the Modesto Police Department Office-Tow Administrator, 600 Tenth St., Modesto Ca. 95354

Applications will be received only at the City Clerk’s Office address shown above, and prior to the date and time indicated. Any application received at or after said date and time or at a place other than the stated address shall not be considered and will be returned to the applicant unopened.
2.1 APPLICATION PACKET AND APPLICATION PROCESS:

The submission of an application is a two (2)-phase process. Each application packet shall consist of two (2) parts.

2.1.1 Application Packet

Each application packet shall consist of the following two (2) parts.

**Part 1:** The required Business and Insurance documents as defined in Section 3 of this Request for Application shall be placed in a sealed envelope. The outside of the envelope shall be marked “Business/Insurance Documents, Part 1” Failure to provide all documents as required in Section 3 will result in the rejection of the application and the application will be returned to the applicant with no further consideration.

**Part 2:** The completed Franchise Application, all required documents listed in section 4 and the Franchise application deposit of $500 (MMC 11-2.03), shall be placed in a sealed envelope marked “Franchise Application, Part 2”. Incomplete applications and/or failure to submit all required documents listed in Section 4 will result in the rejection of the application and the application will be returned to the applicant with no further consideration.

A complete application packet shall consist of the Business/Insurance requirements envelope, Part 1, and the Franchise Application envelope, Part 2. Both application parts shall be placed in an envelope with the following information on the outside of the envelope:

- NAME AND ADDRESS OF APPLICANT
- REQUEST FOR APPLICATION NO. 1617-37
- NON-EXCLUSIVE NON-CONSENSUAL FRANCHISE TOWING SERVICES
- APPLICATION OPENING TIME AND DATE: JUNE 20, 2017 at 11:00 a.m.

The complete application packet shall be submitted at the place, date and time specified in the Notice for Applications.

2.1.2 Application Process

The application process consists of two phases.

**Phase 1:** The Finance Director and the Risk Manager will open and review the Business/Insurance Documents, Part 1 envelope. The envelope marked “Franchise Application, Part 2” will remain sealed until it has been demonstrated that the Business/Insurance requirements have been met. If the documents submitted by the applicant do not satisfy all the requirements as detailed in Section 3, the entire Application Packet will be rejected and returned to the applicant and receive no further consideration. Applicants meeting all Financial/Business and Insurance requirements will proceed to phase 2 of the application process.

**Phase 2:** The Police Department will open and review all documents and statements in the Franchise Application, Part 2 envelope. If the submitted Franchise Application does not satisfy all the requirements as
detailed in Section 4, the entire Application packet will be rejected and returned to the applicant and receive no further consideration.

Applicants satisfying all requirements in both Phase 1 and Phase 2 shall be presented to the Modesto City Council for referral to the City Manager for his recommendation and report.

2.2 REQUIRED DOCUMENTS:

Applicants shall submit one (1) “inked” (preferably blue inked) signed original application packet, plus four (4) copies of a signed original application packet. Original application packets are to be clearly marked, “Original”. Photocopies do not constitute an original application packet.

A complete application packet shall consist of the Business/Insurance requirements envelope, Part 1, and the Franchise Application envelope, Part 2. Both application parts shall be placed in an envelope.

FAILURE TO FURNISH ONE (1) “INKED” SIGNED ORIGINAL APPLICATION PACKET WILL RESULT IN DISQUALIFICATION.

It is the responsibility of the Applicant to identity information in their application responses that they consider to be confidential under the California Public Records Act. To the extent that the City agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

All costs associated with the preparation of this application packet shall be borne by the Applicant.

2.3 REJECTION OF IRREGULAR APPLICATIONS:

Application packets shall be rejected if they show alterations of form, additions not called for, conditional applications, incomplete application packets, erasures or irregularities of any kind.

All required documents as stated in this Request for Application must be submitted at the time of application. Failure to submit all required documents will result in the rejection of your application packet and your application packet will be eliminated from the application/award process.

Any of the following may be considered cause to disqualify an applicant without further consideration:

A. Any attempt to improperly influence any staff person reviewing the applications;

B. Any applicant having a governmental agency-generated towing services agreement cancelled or terminated within the past 5 years.

2.4 NON-DISCRIMINATION:

a. During the performance of this non-exclusive franchise, Franchisee shall not unlawfully discriminate against any employee or applicant for employment because of race, color, ancestry, religion, sex, national origin, marital status, age, medical condition (cancer related), physical handicap (including AIDS), or sexual orientation. Equal employment opportunity extends, but is not limited to recruitment, compensation, benefits, layoff, termination, and all other conditions of employment. Franchisee shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractor/franchisee and
subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated hereunder (California Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this Request for Application and non-exclusive non-consensual towing services franchise agreement by reference and made a part thereof as if set forth in full.

b. Franchisee shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

c. Franchisee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the franchise.

d. Franchisee shall permit access by representatives of the Department of Fair Employment and Housing and the City upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or City shall require to ascertain compliance with this clause.

NON-DISCRIMINATION OF THE HANDICAPPED:

Policy Statement

In compliance with Section 51.55, Office of Revenue Sharing, Department of the Treasury, it is the policy of the City of Modesto that it will not aid or perpetuate discrimination against a qualified handicapped individual by funding an agency, organization, or person that discriminates on the basis of handicap in providing an aid, benefit, or service to beneficiaries of the program or activity.

CERTIFICATION OF BIDDER REGARDING NON-DISCRIMINATION OF THE HANDICAPPED

By executing a non-exclusive non-consensual towing services franchise agreement, the applicant hereby certifies that he/she is in compliance with the Americans with Disabilities Act of 1990, the applicable administrative requirements promulgated in response thereto, and any other applicable Federal laws and regulations relating to handicap discrimination and participation, and will continue to do so for at least the duration of the agreement and any extensions thereof.

2.5 DRUG FREE WORKPLACE:

Applicant certifies that he/she is in compliance with Sections 8350 - 8355 of Chapter 5.5 of the Government Code, Drug Free Workplace Act. Every person or organization awarded a contract/purchase order or grant for the procurement of any property or service from any state agency (city) shall certify to the contracting or granting agency that it will provide a drug free workplace.

2.6 CONSEQUENCE OF SUBMISSION OF APPLICATION

The City shall not be obligated to respond to any application packet submitted nor be legally bound in any manner by the submission of an application packet.
Acceptance by the City of an application packet obligates the applicant to enter into a non-exclusive non-consensual towing services franchise agreement with the City.

Statistical information contained in these documents is for informational purpose only. The City shall not be responsible for the accuracy of said data. City reserves the right to increase or decrease the project scope.

2.7 AWARD

The CITY intends to award a non-exclusive non-consensual towing services franchise to all applicants who meet all CITY requirements outlined below.

A. Business, and Insurance requirements as defined in Section 3 of this Request for Application as determined by the City of Modesto Finance and Risk Management Departments.

B. Complete Franchise application with all required documentation and application deposit as determined by the Modesto Police Department.

C. Verification of applicant’s statements and documentation, including but not limited to; Public restrooms in compliance with all applicable federal, state and local laws and ordinances, public phone, storage and fleet as determined by the Modesto Police Department.

D. In the event a material change is made to the agreement, applicant will be given written notice of the material change, and the ability to withdraw from the application process, without penalty, within ten (10) calendar days of the noticed material change.
SECTION 3

3.1 BUSINESS / INSURANCE REQUIREMENTS

All information, documentation, deposits and attachments required in this section must be provided by the applicant and submitted as part of the Business/Insurance requirements, Part 1 envelope. Failure to include all Business/Insurance information, documentation, deposits and attachments will be cause for rejection of your application packet and your application packet will be eliminated from the application/award process.

3.1.1 Business Experience Requirement

Applicants shall have a minimum of three (3) verifiable years for hire towing experience, as an owner or principal in the State of California immediately preceding the date of application packet submission. Applicant shall provide and submit as part of the Financial/Business/Insurance requirements part 1 envelope, a copy of the business license/s that was/were filed during the three (3) years with the jurisdiction in which they were/are licensed to operate if they were/are a partnership or sole proprietorship form of ownership, or for a corporate entity, a copy of the applicant’s annual filing with the secretary of state that shows the listing of officers must be provided in addition to a copy of the business license/s that was/were filed during the two (3) years with the jurisdiction in which they were/are licensed to operate.

3.1.2 Insurance Requirements

The applicant shall provide and submit as part of the Financial/Business/Insurance requirements part 1 envelope, evidence (Acord Certificate) of valid insurance to the CITY in the coverage limits listed below. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the CITY by registered mail, return receipt requested, for all of the following stated insurance policies.

A. **Workers' Compensation** - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of $1,000,000.

B. **General Liability** - insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury, property damage and personal injury. This insurance shall indicate on the certificate of insurance the following coverage's and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent consultants and subcontractors; products and completed operations; and professional liability.

C. **Commercial Business Automobile Liability** - Bodily injury and property damage with a combined single limit of not less than One Million Dollars ($1,000,000) shall be maintained. These minimum standards are to include scheduled, non-owned, and hired auto coverage.

D. **Uninsured Motorist** - Legal minimum combined single limit.

E. **On-Hook Coverage** - Insuring the vehicle in tow with limits based on the size of the tow truck.

1. Class-A tow truck- One Hundred Thousand Dollars ($100,000)
2. Class B tow truck- One Hundred Fifty Thousand Dollars ($150,000)
3. Class C tow truck- Two Hundred Thousand Dollars ($200,000)
F. **Garage Liability** - Includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of not less than One Million Dollars ($1,000,000).

G. **Garage Keepers Liability** - Shall be the same minimum as on hook coverage for vehicles in the care, custody, and control of the FRANCHISEE in the storage yard.

If at any time any of said policies shall be unsatisfactory to the CITY, as to form or substance or if a company issuing such policy shall be unsatisfactory to the CITY, the FRANCHISEE shall promptly obtain a new policy, submit the same to Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the FRANCHISEE to furnish, deliver or maintain such insurance and certificates as above provided, this FRANCHISE, at the election of the CITY, may be forthwith declared suspended or terminated. Failure of the FRANCHISEE to obtain and/or maintain any required insurance shall not relieve the FRANCHISEE from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the FRANCHISEE concerning indemnification. The CITY, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the CITY, its agents, officers, employees, and volunteers for losses arising from work performed by FRANCHISEE for the CITY. The FRANCHISEE’S insurance policy(ies) shall include a provision that the coverage is primary as respects the CITY; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager.

For any claims related to this project, the FRANCHISEE’S insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Franchisee’s insurance and shall not contribute with it.

FRANCHISEE shall either require any subcontractor to procure and to maintain during the term of the subcontract all insurance in the amounts specified above, or shall insure the activities of subcontractors in the policy specified above. The limits of liability required may vary, depending on the type of permit or contract.

Proof of insurance shall be in the form of a certificate of insurance and separate endorsements naming the City as an additional insured for all insurances except Workers’ Compensation. Policy expiration or cancellation will immediately nullify the agreement. FRANCHISEE’S insurance policy should provide for a thirty (30) day advance notice to City in the event the insurance policy will expire or be cancelled. FRANCHISEE shall also immediately notify the Tow Administrator in the event the insurance policy has expired or is canceled. Failure to maintain insurance or to notify the City and Tow Administrator of insurance lapses shall constitute a material breach of contract and City shall have the right to suspend and/or terminate the contract or agreement as determined by the Chief of Police or his designee.

The ultimate responsibility of any damage to a vehicle or property or the loss of a vehicle or any property contained in the vehicle while the vehicle and/or property are in the FRANCHISEE’S care and custody rests with the FRANCHISEE. The FRANCHISEE shall reimburse the vehicle or property owner for any loss or damage which has been identified in a Modesto Police Department Motor Vehicle Report or other official document and is not covered by FRANCHISEE’S insurance.
Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by the City of Modesto Risk Manager.

3.2 SAMPLE AGREEMENT

In the event a material change is made to the agreement, applicant will be given written notice of the material change, and the ability to withdraw from the application process, without penalty, within ten (10) calendar days of the noticed material change.
Section 4

NON-EXCLUSIVE, NON-CONSENSUAL FRANCHISE TOW SERVICES VERIFIED APPLICATION

All information, documentation and attachments in this section must be provided by the applicant and submitted in the Franchise Application, Part 2 envelope. Statements must be complete and accurate in the form requested and included in the envelope identified as Franchise Application, Part 2. Omission, inaccuracy, or misstatement will be cause for rejection and the application will not be considered any further in the application/award process.

A. APPLICANT (Business Name): (as it is to appear on the contract if awarded)


B. BUSINESS LOCATION/ADDRESS: (Location where applicant will conduct business)


MAILING ADDRESS (if different from above)


C. BUSINESS PHONE NUMBER: ______________ Fax: ______________

Email: (if none, write ‘none’): ________________________________

D. BUSINESS OWNERSHIP/PRINCIPALS:

Name: __________________________ Phone: __________________________
Address: ________________________________

Name: __________________________ Phone: __________________________
Address: ________________________________

Name: __________________________ Phone: __________________________
Address: ________________________________

Name: __________________________ Phone: __________________________
Address: ________________________________
E. ALL APPLICANTS MUST HAVE THE FOLLOWING PERMITS AND LICENSING:

(1) Motor Carrier Permit: You must attach a copy of your company’s current/valid Department of Motor Vehicles Motor Carrier Permit to this application. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

(2) Pull Notice Program Enrollment: You must attach a copy of your current/valid Pull Notice Contract with the Department of Motor Vehicles. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

(3) City of Modesto Business License: You must attach a copy of your company’s current/valid City of Modesto Business License to this application. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

(4) Other Business Licenses: If your primary business or any storage facility for your business is located outside the City of Modesto, you must attach a copy of the current/valid business license for that jurisdiction to this application. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

F. FLEET:

At a minimum, applicant must own or lease and possess at the time of application, and at all times thereafter, two (2) fully operational Tow Trucks with a Gross Vehicle Weight Rating (GVWR) of at least 14,000 pounds, a minimum of one (1) truck shall be capable of towing all vehicles with a (GVWR) up to and including 10,000 pounds. All trucks must be currently registered with the California Department of Motor Vehicles. Failure to meet these requirements will result in the rejection of your application and your application will be eliminated from the application/award process.

1. How many tow trucks do you own or lease: ____________________________

2. You must attach and submit with this application a copy of all current valid vehicle registrations and a photograph of all tow-trucks that will be used for the purposes of towing under the Non-Exclusive Non-Consensual Tow Service Franchise Agreement. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

3. Modesto Police Department will physically verify possession, registration and operational status of all tow trucks listed in your application. Failure to possess a minimum of two (2) currently registered, fully operational tow trucks with a GVWR of at least 14,000 pounds, including one (1) truck capable of towing all vehicles with a GVWR up to and including 10,000 pounds will result in the rejection of your application and your application will be eliminated from the application/award process.

G. FACILITIES

The Applicant must maintain an office facility with a primary storage yard and interior storage facility within two (2) miles of the city limits of Modesto. Secondary storage locations may be used; secondary storage lots must be within two (2) miles of the City limits of Modesto. Failure to meet these requirements at time of application will result in the rejection of your application and your application will be eliminated from the application/award process.
Outdoor storage lots shall be fenced with a solid wall or chain link fence at least six (6) feet in height for maximum security and lighted during hours of darkness. Fencing shall be in accordance with all applicable building and zoning codes. The lot must have an improved surface (e.g., gravel, concrete, paved). The storage facility shall have interior storage used exclusively for the storage of impounded/stored vehicles.

Failure to meet these requirements at time of application will result in the rejection or your application and your application will be eliminated from the application/award process.

Applicant’s facilities must be neat and clean in appearance. You must attach and submit two (2) photographs of the interior lobby/public access area of your facility and two (2) photographs of your storage area to this application. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

Applicants’ facility must have a working public restroom in compliance with all applicable federal, state and local laws and regulations and a working telephone accessible to customers. You must attach two (2) photographs of the public restroom and telephone to this application. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

(1) What is the approximate total square footage of your exterior vehicle storage area (including secondary storage facility if applicable): _______________ _______________ square feet.

(a) Do you have more than one vehicle storage facility? ____________

(b) If yes, what is the address/location of your secondary storage facility: ______________________________________________________

(2) Do you have an accessible public restroom in compliance with all federal, state and local laws and regulations, and a telephone accessible to the public? ____________

Modesto Police Department will physically inspect the applicant’s facilities for compliance with the requirements for storage, restrooms and a working telephone. Failure to meet any of the requirements as defined in this application will result in the rejection of your application and your application will be eliminated from the application/award process.

H. FRANCHISE APPLICATION DEPOSIT-(MMC11-20.3)

This application for a franchise shall be accompanied by a cash deposit of five hundred dollars ($500.00) or by a certified check for said amount, payable to the City, as a fund out of which to pay all expenses connected with the application.

The deposit of the applicant shall be retained until the acceptance of the franchise and the filing of any bond or other security required, or until the Council determines not to grant the franchise. Whereupon the remainder, if any, of the amount deposited shall be returned after the payment therefrom of all expenses incurred by the City in connection with the advertising, engineering, clerical work and awarding of such franchise.

In the event that the amount of the deposit is insufficient to pay the expenses incurred by the City in connection with the advertising, engineering, clerical work and processing of such franchise, the applicant shall be held liable for such costs as are in excess of the amount deposited.
I. APPLICANT BACKGROUND

Applicant understands and agrees that a background investigation shall be conducted on all applicants. A release and waiver is included with this application and shall be signed by the applicant and returned as part of this application. Failure to sign and return the Release and Waiver will result in the rejection of your application packet and your application packet will be eliminated from the application/award process.

In addition, any of the following will result in the rejection of your application packet and your application packet will be eliminated from the application/award process.

Any applicant under the age of eighteen (18) years;

Any applicant who is currently required to register pursuant to Section 290 of the California Penal Code;

Any applicant who has been convicted of a crime involving any misdemeanor or felony driving offense, any crime involving stolen or embezzled vehicles, fraud, stolen or embezzled property, crimes of violence, possession and/or sales of drugs or crimes of moral turpitude, unless a period of not less than five (5) years shall have elapsed since the date of conviction or the date of release from confinement for such offense, whatever is later;

Any applicant who has been convicted of driving a vehicle recklessly within the two (2) years immediately preceding application;

Any applicant who has been convicted of driving a vehicle while under the influence of intoxicating liquors or drugs within the five (5) years immediately preceding application.

Any applicant not possessing a valid driver’s license, issued by the State of California;

Do you have a valid drivers license issued by the California Department of Motor Vehicles? ________ . CDL # ____________________________

J. APPLICANT’S REPRESENTATION

Applicant understands, agrees, and warrants the following:

(1) Applicant has carefully read and fully understands the information that was provided by the City to serve as a basis for submission of this application to provide City-generated non-exclusive non-consensual franchise towing services on behalf of the City of Modesto.

(2) All statements, answers, and representations made in this questionnaire and in the Application are true and accurate, including all supplementary statements attached hereto.

(3) Applicant did not receive unauthorized information from the City during the application period except as provided for in the Request for Application document package and addenda thereto.

(4) By submission of this Application, Applicant acknowledges that City has the right to make any inquiry it deems appropriate to substantiate the information supplied by Applicant, and Applicant hereby grants the City
permission to make such inquiries and further agrees to provide any and all documentation requested in
furtherance of such inquiry in a timely manner.

(5) Applicant understands and acknowledges any required information not attached to the application packet,
including omissions of information will result in the rejection of the application packet and the application
packet will be eliminated from the application/award process.

(6) Applicant acknowledges receipt of the non-exclusive non-consensual towing services franchise agreement
included with this application and agrees to the terms of the contract in the event that a non-exclusive non-
consensual towing services franchise is awarded to the applicant. In the event a material change is made to the
agreement, applicant will be given written notice of the material change, and the ability to withdraw from the
application process, without penalty, within ten (10) calendar days of the noticed material change.

(7) Application must be signed by owner or officer having authority to negotiate on behalf of the Applicant.

Questions regarding the application requirements should be directed to:
Purchasing Division, Cindy Medley, Buyer, (209)-571-1564

K. PURPOSE

The purpose of a non-exclusive non-consensual towing services franchise agreement is to provide for City
generated non-exclusive non-consensual towing services on behalf of the Modesto Police Department. Non-
consensual towing services include, but are not limited to:

1) Vehicles impounded by The City of Modesto for investigation, as evidence in a criminal case, asset forfeiture
or vehicle forfeiture;

2) Vehicles involved in collisions, stalled vehicles, illegally parked vehicles, vehicles whose driver is
incapacitated or physically unable to drive or has been arrested or detained;

3) Vehicles towed under any authority section of the California Vehicle Code or Modesto Municipal Code
including 30 day impounds, abandoned vehicles, inoperative vehicles or abated vehicles from any street, alley,
highway, or any other private or public property in the City of Modesto;

4) Any other tow of a vehicle or vessel as may be ordered by any police officer, police employee, or any other
employee or agent of the City of Modesto who is properly authorized to order such removal.

L. TERM

The initial term of the non-exclusive non-consensual towing services franchise agreement shall be three (3)
years. The City reserves the right to extend the non-exclusive non-consensual towing services franchise
agreement for two (2) additional, one-year extensions at the sole discretion of the City. Either party may
terminate the franchise agreement by giving the other party thirty (30) days written notice.

M. FRANCHISE FEE

In the event the applicant is awarded a non-exclusive franchise, commencing with the start date and for the first
year of the non-exclusive non-consensual towing services franchise agreement, the FRANCHISEE shall pay to
the CITY a fee in the sum of $60.00 for each and every non-consensual tow. Commencing on the third year (i.e.
the 731st day from the start date) the franchise fee will increase to $70.00 for each and every non-consensual
tow.
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<tr>
<th>FIRM</th>
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19
CITY OF MODESTO NON-EXCLUSIVE NON-CONSENTUAL
TOW FRANCHISE APPLICANT
AUTHORIZATION TO RELEASE INFORMATION/HOLD HARMLESS

TO WHOM IT MAY CONCERN:

I, the owner and operator of , am an applicant for a Non-Exclusive Non-Consensual Tow Franchise with the City of Modesto. As part of the Non-Exclusive Non-Consensual Tow Franchise application process the Modesto Police Department is required to conduct a background investigation. I fully understand that personnel of the Modesto Police Department will conduct a reasonable investigation into my personal, driving, arrest and criminal investigation records.

I hereby direct you, your organization, its Custodian of Records, and/or persons in your employ to release any and all information which you may have concerning me, including information which may be of a confidential, privilege, and/or derogatory nature, including, but not limited to: driving, arrest, or criminal investigation records, administrative and/or local criminal history information (pursuant to Penal Code Section 13300[b]10), and/or any other information that you possess.

I hereby exonerate, release and discharge you, your organization, the City of Modesto, the Modesto Police Department, its officers, agents, and assigns, from any and all liability, claims or damages, of every nature or kind, whether in law or in equity, now or in the future arising out of or for the furnishing of any information or documents, and/or records whatsoever requested by the bearer of this authorization form. This release shall be binding on my legal representatives, heirs and assigns.

I hereby waive my right, now and in the future, to examine, review, or otherwise discover the contents of this investigation and all documents and responses related thereto. I further exonerate, release, and discharge the City of Modesto, the Modesto Police Department and their officers, agents, or assigns for their refusal to make available any and all information and/or documentation contained in this background investigation, including but not limited to, the identity of any person or organization who may have supplied information in the course of this investigation, as well as the substance of such information supplied, even where such information has been the basis for my disqualification for a tow driver permit.

I have specifically and permanently waived any rights I may have to review and inspect any and all information developed in this investigation so your response will be completely confidential. You may retain this form for your files.

I further hereby knowingly, voluntarily, specifically and permanently waive all my legal rights and causes of action to the extent that this background investigation violates or infringes upon my legal rights and causes of action. I agree to hold harmless and release from any and all liability under any and all possible causes of legal action against the City of Modesto, the Modesto Police Department, and their officers, agents, employees and assigns for any statement, question, interview, act, or omission in the course of the investigation into my background, personal habits and reputation.

CERTIFICATION:

I CERTIFY THAT I HAVE HAD ADEQUATE TIME TO REVIEW THIS FORM, I UNDERSTAND IT'S MEANING AND PURPOSE AND HAVE BEEN FURNISHED A COPY OF IT. I MAY REVOKE THIS AUTHORIZATION AT ANY TIME BY DELIVERING, IN WRITING, SUCH REVOCATION TO YOU/YOUR ORGANIZATION.

20
NOTARIZATION OF APPLICANTS SIGNATURE REQUIRED.

A photocopy of this release is to be considered as valid as an original. This release is valid for 180 days from the date of signature.

Dated this ______ day of ____________________, 20_____

In the County of ________________________________
Within the State of California.

__________________________________  ________________________________
Applicant Signature                  Notary Public Signature
EXHIBIT A
NON-EXCLUSIVE NON-CONSENSUAL TOWING SERVICE FRANCHISE AGREEMENT

1. SCOPE OF WORK

FRANCHISEE shall furnish all labor, materials, and equipment necessary to provide non-exclusive non-consensual towing services as specified in the Notice for Application, Request for Application #1617-37 Non-Exclusive Non-Consensual Franchise Towing Services Verified Application, and all documents requested in response thereto, all of which are incorporated herein by this reference, and this Agreement (which collectively shall constitute the Non-Exclusive Non-Consensual Towing Service Franchise Agreement and which is referred to herein as "this Agreement"). All non-consensual towing services shall be furnished and performed in strict compliance with the terms and conditions of this Agreement. Non-Consensual towing services include, but are not limited to;

A. Towing of all vehicles impounded by the City of Modesto (CITY) for investigation, as evidence in a criminal case, asset forfeiture, and vehicles towed pursuant to the California Vehicle Code ("CVC") including, but not limited to, CVC Section 14607.6.

B. Towing of vehicles involved in collisions, and/or stalled vehicles obstructing traffic, and/or vehicles illegally parked, and/or vehicles whose driver is incapacitated or physically unable to drive the vehicle, and/or vehicles whose driver has been arrested and/or detained and cannot drive the vehicle, and/or vehicles under the 30-day impound authority including, but not limited to, CVC Section 14602.6, and/or vehicles with five (5) or more outstanding parking citations;

C. Towing of all vehicles necessitating special procedures to ascertain vehicle identification numbers, VIN tows, in compliance with the requirements of the CVC;

D. Towing of any abandoned vehicle, inoperative vehicle, or abated vehicle, from any street, alley, highway, or any other private or public property in the CITY pursuant to the Modesto Municipal Code ("MMC") and CVC including, but not limited to, MMC Section 3-2.1006 and CVC Section 22669 respectively;

E. Towing any other vehicle or vessel as may be ordered by any police officer, police employee, or any other employee or agent of the CITY who is properly authorized to order such tow. This shall include, but is not limited to, any vehicle that is submerged, either wholly or in part. This shall also include, but is not limited to, the removal and storage of any abandoned vessel from city streets/property, whether or not said vessel is attached to a trailer;

F. Towing trailers, boats, motor homes, etc.

2. TERM OF AGREEMENT

The initial term of this Agreement shall be for three (3) years, commencing __________, 2017. The CITY reserves the right to extend this Agreement for two (2) additional, one-year terms, at the sole discretion of CITY. This Agreement is an "at will" agreement; either party may terminate this Agreement by giving the other party thirty (30) days written notice.
3. **PAYMENT/FRANCHISE FEES PAYABLE TO CITY**

A. FRANCHISEE agrees to pay to CITY a franchise fee in accordance with the terms of this Agreement.

B. Commencing with the start date and for the first two (2) years this Agreement, the FRANCHISEE shall pay CITY a franchise fee of $60.00 for each and every non-consensual tow, as defined in this Agreement, performed by FRANCHISEE on behalf of or at the request of CITY. **The $60.00 franchise fee will not apply to abandoned and stolen vehicles towed by the Modesto Police Department.**

C. Commencing with the third year of this Agreement (i.e. the 731st day from the start date) the FRANCHISEE shall pay CITY a franchise fee of $70.00 for each and every non-consensual tow, as defined in this Agreement, performed by FRANCHISEE on behalf of or at the request of CITY.

D. All franchise fees owed to CITY for each and every non-consensual tow performed by the FRANCHISEE shall be due and payable on a monthly basis as set forth in the invoice detailing the franchise fees owed. CITY shall receive payment no later than thirty (30) days proceeding each month as illustrated in Paragraph 3(E). Payment shall be made in the form of a preprinted company bank check or cashier’s check payable to the City of Modesto.

E. CITY/TFA shall mail an itemized bill/invoice of the franchise fees owed by FRANCHISEE to CITY on or before the 10th of each month, for the preceding month’s non-consensual tows. Payment on the invoice is due to the CITY by the 1st day of the following month. (E.g. FRANCHISE fees for the month of January will be invoiced and mailed by February 10th. Payment of the total amount invoiced shall be post marked or received by CITY no later than March 1st, everyday thereafter the invoice is delinquent.)

F. Payments shall not be made contingent on any payments due or payable to the FRANCHISEE by either CITY or the registered owner.

G. If any itemized bill/invoice is more than five (5) calendar days delinquent, the Chief of Police or his designee shall have the authority to immediately suspend the FRANCHISEE until payment of any and all billed/invoiced amounts are paid in full to CITY. Furthermore, if any itemized bill/invoice is more than sixty (60) calendar days delinquent, the Chief of Police or his designee shall have the authority to immediately terminate this Agreement.

4. **INSURANCE**

FRANCHISEE shall provide, at its own expense, and maintain at all times, the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to CITY as may be required by the City Clerk of CITY. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be sent by registered mail to the Risk Manager of CITY, 1010 10th St. Modesto, Ca. 95354, return receipt requested, for all of the following stated insurance policies.

A. **Workers’ Compensation** - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of $1,000,000.

B. **General Liability** - insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury, property damage, and bodily injury. This insurance shall indicate on the certificate of insurance the following coverage’s and indicate the policy aggregate limit applying to: premises and
operations; broad form contractual; independent consultants and subcontractors; products and completed operations; and/or professional liability.

C. **Automobile Liability** insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury, property damage, and personal injury. This insurance shall cover any automobile for bodily injury and property damage.

D. **Commercial Business Automobile Liability** - Bodily injury and property damage with a combined single limit of not less than One Million Dollars ($1,000,000) shall be maintained. These minimum standards are to include scheduled, non-owned, and hired auto coverage.

E. **Uninsured Motorist** - Legal minimum combined single limit.

F. **On-Hook Coverage** - Insuring the vehicle in tow with limits based on the size of the tow truck.
   - Class A tow truck - One Hundred Thousand Dollars ($100,000)
   - Class B tow truck - One Hundred Fifty Thousand Dollars ($150,000)
   - Class C tow truck - Two Hundred Thousand Dollars ($200,000)

G. **Garage Liability** - Includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of not less than One Million Dollars ($1,000,000).

H. **Garage Keepers Liability** - Shall be the same minimum as on-hook coverage for vehicles in the care, custody and control of the FRANCHISEE in the storage yard.

   i. If at any time any of said policies shall be unsatisfactory to the CITY, as to form or substance or if a company issuing such policy shall be unsatisfactory to the CITY, the FRANCHISEE shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the FRANCHISEE to furnish, deliver or maintain such insurance and certificates as above provided, this FRANCHISE, at the election of the CITY, may be forthwith declared suspended or terminated. Failure of the FRANCHISEE to obtain and/or maintain any required insurance shall not relieve the FRANCHISEE from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the FRANCHISEE concerning indemnification. The CITY, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the CITY, its agents, officers, employees, and volunteers for losses arising from work performed by FRANCHISEE for the CITY. The FRANCHISEE'S insurance policy (ies) shall include a provision that the coverage is primary as respects the CITY; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A: VII or with approval of the Risk Manager.

   ii. For any claims related to the work performed pursuant to this Agreement the FRANCHISEE'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be in excess of the FRANCHISEE'S insurance and shall not contribute with it.
iii. FRANCHISEE shall either require any subcontractor to procure and to maintain during the term of the subcontract all insurance in the amounts specified above, or shall insure the activities of subcontractors in the policy specified above. The limits of liability required may vary, depending on the type of permit or contract.

iv. Proof of insurance shall be in the form of a certificate of insurance and separate endorsements naming the CITY as an additional insured for all insurances except Workers’ Compensation. Policy expiration or cancellation will immediately nullify this Agreement. FRANCHISEE’S insurance policy shall provide for a thirty (30) day advance notice to CITY in the event the insurance policy will expire or be cancelled. FRANCHISEE shall also immediately notify the Tow Administrator in the event the insurance policy has expired or is cancelled. Failure to maintain insurance or to notify the CITY and Franchise Tow Administrator of insurance lapses shall constitute a material breach of this Agreement and CITY shall have the right to immediately suspend and/or terminate this Agreement as determined by the Chief of Police or his designee.

v. The ultimate responsibility for any damage to any vehicle or property or the loss of any vehicle or any property contained in the vehicle while the vehicle and/or property is in the FRANCHISEE’S care and/or custody rests with the FRANCHISEE. The FRANCHISEE shall reimburse the vehicle or property owner for any loss or damage which has been identified in a Modesto Police Department Motor Vehicle Report or other official document and is not covered by FRANCHISEE’S insurance.

vi. Any deductibles or self-insured retention must be declared to and approved by the City of Modesto Risk Manager.

5. HOLD HARMLESS AGREEMENT

FRANCHISEE shall hold CITY, its agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities and damages from every cause, including but not limited to, injury to person or property or wrongful death, with the indemnity to include reasonable attorney’s fees, and all costs and expenses, arising directly or indirectly out of any act or omission of FRANCHISEE, whether or not the act or omission arises from the sole negligence or other liability of CITY, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this Agreement.

6. PROHIBITION OF GIFTS

A. FRANCHISEE shall be subject to CITY’s prohibition against acceptance of any gift by a CITY officer or employee.

B. FRANCHISEE agrees not to offer any CITY officer or employee any gift. In addition to any other remedy(ies) CITY may have at law or equity, CITY may immediately terminate this Agreement for a violation of this Paragraph notwithstanding any provision of this Agreement to the contrary.

7. DRIVERS

A. FRANCHISEE shall, at a minimum, maintain the following information for each employee/driver providing services to CITY pursuant to this Agreement.

   i. Full name
ii. Date of birth.

iii. Valid California Driver’s License number and photocopy of said driver’s license.

iv. Copy of Social Security Card


vi. Current home address

vii. Current phone number.

viii. Copy of employment application.

ix. Medical certificate (if applicable)

B. It is the responsibility of FRANCHISEE to maintain a sufficient number of employees and/or properly licensed and permitted drivers to meet all the terms and conditions set forth in this Agreement. Any violation of CVC Section 12500 or 14601 through 14601.5, by a FRANCHISEE or FRANCHISEE’S employee/driver which is committed while in the process of providing towing service for the CITY under the terms of this Agreement, may be grounds for immediate suspension of this Agreement, notwithstanding any provisions of this Agreement to the contrary.

C. At the start of this Agreement, FRANCHISEE shall provide to the Tow Franchise Administrator a current list of its employees who will be providing services under the terms of this Agreement. Any drivers hired thereafter that will provide services to CITY pursuant to the terms of this Agreement and/or any change in the employment status of any driver including, but not limited to, suspension or dismissal from employment, shall be reported to the Franchise Tow Administrator within twenty-four (24) hours.

D. FRANCHISEE and all tow truck drivers providing services to CITY pursuant to the terms of this Agreement shall be enrolled in the Pull Notice Program with the Department of Motor Vehicles. FRANCHISEE shall enroll all newly hired tow truck drivers in the Pull Notice Program within fifteen (15) calendar days of hire.

E. All drivers providing services for the CITY under this Agreement shall be covered under the Workers Compensation Insurance Policy required under section 3(A) of this agreement.

8. TOW DRIVERS PERMIT / IDENTIFICATION BADGES

A. FRANCHISEE tow driver(s) who provide services under this Agreement shall apply for and obtain a Tow Driver Permit / Identification Badge annually from the Modesto Police Department. A Tow Driver Permit fee will be charged for each permit applied for and shall be paid by the FRANCHISEE at the time of permit application. The fee, which may be amended from time to time, will be established by resolution of the Modesto City Council.

B. FRANCHISEE’S tow driver(s) shall wear a valid Modesto Police Department issued Tow Driver Identification Badge in plain view, at all times when responding to a CITY generated tow. If a tow truck driver responds to a scene without his authorized name badge, the tow truck driver will be
dismissed from the scene and the next Tow Operator in rotation will be called. Failure to obtain a Tow Driver Permit / Identification Badge shall, at a minimum, be deemed a failure to provide adequate service. The purpose of these badges will be to identify those employees of the FRANCHISEE who have been fingerprinted by the City and have passed the record check by the Department of Justice.

C. A Tow Driver Permit application can be obtained from the Tow Franchise Administrator at the Modesto Police Department, 600 10th St., Modesto Ca. 95354. The Tow Driver Permit will be valid for one year from the date of issuance. It is the responsibility of the FRANCHISEE to ensure that all drivers maintain a valid Tow Driver Permit.

D. If a Tow Driver’s Permit / Identification Badge is lost or stolen, the tow driver must contact the Tow Franchise Administrator for a replacement. The cost of the replacement will be $10.00 per card.

E. A Tow Driver Permit shall NOT be issued to any of the following persons:
   i. Any person under the age of eighteen (18) years.
   ii. Any person who is currently required to register pursuant to Section 290 of the California Penal Code;
   iii. Any person who has been convicted of a crime involving any misdemeanor or felony driving offense, any crime involving stolen or embezzled vehicles, fraud related to the towing business, stolen or embezzled property, crimes of violence, possession and/or sales of drugs or crimes of moral turpitude, unless a period of not less than five (5) years shall have elapsed since the date of conviction or the date of release from confinement for such offense, whichever is later;
   iv. Any person not possessing a valid class specific driver’s license issued by the State of California
   v. Any person on current probation or parole.

F. The requirement to currently possess a Tow Driver Permit shall be waived for a period of sixty (60) calendar days following the start date of this Agreement, to provide the CITY sufficient time to process all Tow Driver Permit applications. FRANCHISEE shall ensure that all tow drivers who are to provide services under this agreement, and who do not possess a Tow Driver Permit at the start of this agreement apply for a Tow Driver Permit within ten (10) calendar days following the start date of this Agreement Failure to do so shall, at a minimum, be deemed a failure to provide adequate service.

G. All identification badges are the property of the City and will be returned by the FRANCHISEE to the City within forty-eight (48) hours of an employee’s separation. FRANCHISEE will provide a current list of all drivers. Anytime there are any changes to this list, the City is to be notified by the next business day and provided with an updated and current list of drivers.

H. Any employee of the FRANCHISEE that has left employment with said FRANCHISEE and returned and been rehired must complete an additional background check before performing services pursuant to this Agreement.

I. Nothing herein shall prohibit the Chief of Police, or his designee from denying the issuance of, or imposing an immediate suspension and/or termination of, any Tow Driver Permit when the applicant’s/permit holder’s conduct, in the opinion of the Chief of Police, or his designee, is considered
to be a danger to the motoring public or who has engaged in conduct constituting a violation of this Agreement.

9. **DEMEANOR AND CONDUCT**

While providing towing services pursuant to this Agreement, the FRANCHISEE, its employee(s) and/or agents shall refrain from any of the following acts of misconduct:

A. Rude or discourteous treatment of the public or CITY employees.

B. Lack of service or refusal to provide service to the public or CITY employees.

C. Any act of sexual harassment or sexual impropriety.

D. Unsafe driving practices.

E. Exhibiting any objective symptoms of alcohol and/or drug intoxication. FRANCHISEE/tow truck driver shall submit to a Preliminary Alcohol Screening Test upon demand of a peace officer.

F. Appearing at the scene of a CITY-generated tow with the odor of an alcoholic beverage emitting from his/her breath or person. FRANCHISEE/tow truck driver shall submit to a Preliminary Alcohol Screening Test upon demand of a peace officer.

G. Appearing at the scene of a CITY-generated tow without being attired in the FRANCHISEE’S established uniform and Identification Badge. A description of which shall be provided to the Tow Franchise administrator in writing prior to the commencement of this Agreement. At a minimum, the name of the tow business and the name of the employee shall be displayed on the uniform shirt.

H. **However, nothing herein shall prohibit the Chief of Police, or his designee, from imposing an immediate suspension and/or termination on any FRANCHISEE and/or employee(s) whose conduct, in the opinion of the Chief of Police, or his designee, is considered to be a danger to the motoring public or who has engaged in conduct constituting a gross violation of this Agreement.**

I. All complaints received by the Modesto Police Department against the FRANCHISEE or its agent(s) or employee(s) will be accepted and investigated in a fair and impartial manner. At a minimum, any substantiated complaint will be deemed a failure to provide adequate service. Furthermore, as a result of the investigation, the Chief of Police or his designee may initiate such disciplinary action as he or she deems appropriate.

J. FRANCHISEE must notify CITY of all contracts with other cities or governmental agencies to provide tow services within California. Any FRANCHISEE that is under contract with any other city or agency and who is either suspended or terminated by that city or agency shall notify in writing the CITY/ Tow Franchise Administrator within twenty-four (24) hours of such suspension or termination. Failure to do so shall, at a minimum, be deemed a failure to provide adequate service.

10. **FACILITIES**

A. FRANCHISEE shall maintain an office facility with a primary storage yard and interior storage within two (2) miles of the Modesto City limit.
B. **Hours of Operation:**

i. The business office shall be open to the public, staffed and available for vehicle releases, storage, inquiries, telephone calls and all other business purposes during business hours. Business hours are defined as Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., except the following observed holidays: New Year’s Day, Martin Luther King Jr. Day, Presidents Day, Cesar Chavez Day, Memorial Day (observed), Independence Day, Labor Day, Veterans’ Day (observed), Thanksgiving Day, Day after Thanksgiving and Christmas Day.

ii. In order to ensure that the vehicle owner or his/her agent may claim vehicles towed on behalf of the CITY at any time, on any day and to promptly release CITY towed vehicles, the FRANCHISEE must have an employee available after business hours, who can arrive at the primary office facility within thirty (30) minutes of a request by the CITY or a citizen. Vehicle owners or their agents who request entry to the storage facilities after business hours may be assessed an after-hour gate fee. CITY shall not be assessed an after-hour gate fee.

11. **BUSINESS OFFICE**

A. FRANCHISEE shall have an accessible public restroom that complies with all federal, state and local laws and regulations and FRANCHISEE shall have a telephone available for customers to use.

B. FRANCHISEE shall display the FRANCHISEE’S business name, address and telephone number at the primary business and secondary storage lot/facility location with a sign clearly visible day and night from the street.

C. Shall be neat and clean in appearance.

D. The following documents, printed in a minimum of 12-point type (unless otherwise stated or required by the California Vehicle Code) shall be posted by FRANCHISEE in the Primary business office in a conspicuous location clearly visible to the public

i. Name and address of FRANCHISEE’S insurance broker carrying the insurance required pursuant to this Agreement;

ii. A notice explaining the procedure by which unclaimed vehicles are sold at public auction stating that all in attendance at such auction shall have an equal opportunity to bid. Notice shall include the locations of such auctions and publications in which such auctions are advertised.

iii. “Vehicle Impound Rights and Obligations” informing the public of their rights pursuant to CVC Section 22852.

iv. A notice advising that complaints against FRANCHISEE related to CITY generated non-consensual tows can be made by contacting the Modesto Police Department, Tow Franchise Administrator, 600 10th St., Modesto Ca. 95354, (209) 572-9500. This notice shall be displayed in a conspicuous place clearly visible to the public in lettering not less than 1” in size.

v. Maximum Fee/Rate Schedule for CITY generated non-consensual tows. This notice shall be displayed in a conspicuous place clearly visible to the public in lettering not less than 1” in size.
E. The facility shall have a telephone, on site fax machine and the necessary computer equipment to properly run DTS software and to send and receive email.

F. If an operator’s place of business is staffed with only one employee, the business office may be closed for one hour at lunch.

i. A sign shall be posted which reflects a lunch closure and phone number where a request by a vehicle’s owner/agent shall result in an immediate response to release property and/or vehicle.

ii. Response to the office shall be within thirty (30) minutes.

12. STORAGE LOT

A. FRANCHISEE’S lot(s) must have an improved surface (e.g., gravel, concrete, paved) and the storage lot(s) shall be free of litter, debris and weeds.

B. The storage lot(s)/facilities must be adequately lit during hours of darkness.

C. The storage lot(s) must comply with all applicable local, state and federal rules, regulations and laws.

D. Stored vehicles shall be parked with a minimum of two (2) feet of clearance on each side and one (1) foot of clearance in the front and one foot of clearance in the rear.

E. The storage lot(s)/facility(ies) shall have interior storage used exclusively for the storage of impounded/stored vehicles.

F. Secondary storage locations may be utilized, however, neither customers nor CITY shall be charged any additional fees for vehicles stored at a secondary facilities. Secondary storage lots/facilities must be within two (2) miles of the Modesto City limit. In addition, all vehicles must be released to the registered owner or their agent at the primary business location. Both primary and secondary storage lots shall be enclosed by a solid wall or chain link fence at least six (6) feet in height for maximum security. Said wall or fence shall comply with all local, state and federal rules, ordinances, codes and regulations.

G. All towed vehicles shall be stored on private property only. At no time shall a towed vehicle be deposited, placed, left standing or stored on a public roadway or right of way.

H. A request for outside or inside storage on a CITY generated non-consensual tow by a customer shall be honored. If no request is made, the vehicle shall be stored in the least costly manner to the customer.

I. It is the responsibility of the FRANCHISEE to determine and maintain a sufficient amount of storage to meet all the terms and conditions of this Agreement.

13. TRUCKS

A. FRANCHISEE shall own or lease, and have in their possession a minimum of two (2) fully operational Tow Trucks, as defined in Section 615(a) of the California Vehicle Code, with a minimum GVWR of 14,000 pounds, a minimum of one (1) tow truck shall be capable of towing all vehicles with a (GVWR) up to and including 10,000 pounds. All tow trucks must be currently registered with the California Department of Motor Vehicles and must display a current Modesto Police Department inspection sticker.
B. Tow Truck Classifications and Equipment Specifications:

i. To properly and safely tow and service the wide variety of vehicles being operated on the highway, a towing procedure may require the use of auxiliary equipment specifically designed for the purpose. This auxiliary equipment shall be used when appropriate.

ii. Tow truck equipment and specifications listed are the minimum acceptable. Auxiliary equipment will be required in each class.

iii. Equipment Limitations: All towing equipment, recovery equipment, and carrier ratings are based on structural factors only. Actual towing, carrying, and recovery capacity may be limited by the capacity of the chassis and the optional equipment selected.

iv. Towing Limitations:

The criteria to use in determining the safe towing limits for a tow truck are:

a. The total weight of the tow truck, including the lifted load, must fall within the manufacturer's GVWR and not exceed either the Front or Rear Axle Weight Ratings (FAWR/RAWR).

b. The tow truck must meet all applicable local, state and federal standards, regulations and laws.

c. For proper steering and braking, the front axle load must be at least 50% of its normal or unladen weight after the load is lifted.

v. Identification Label

Each piece of towing equipment shall have a label or identification tag permanently affixed to the equipment in a prominent location to identify the manufacturer, serial number, model and rated capacity when applicable.

vi. Recovery Equipment Rating

The basic performance rating of the recovery equipment is the weight the equipment can lift in a winching mode when the boom is static at a 30-degree elevation with the load lines vertical and the lifting cables sharing the load equally, measured with a live load (weight or load cell).

a. The structural design of the recovery equipment must have a higher load capacity than the performance rating(s).

b. Winches shall conform to or exceed the specifications set forth by the Society of Automotive Engineers (SAE) Handbook, SAE J706.

c. All ratings for cable and chain assemblies are for the undamaged assembly condition. All cable and chain assemblies shall be the same type, construction, and rating as specified by the Original Equipment Manufacturer (OEM) for the equipment.

vii. Safety Chains:

Safety chains shall be rated at no less than the rating specified by the OEM.

viii. Control/Safety Labels:

All controls shall be clearly marked to indicate proper operation as well as any special warnings or cautions.
ix. Wire Rope (Cable):
Wire rope shall be maintained in good condition. Only wire rope with swaged ends with metal sleeves in the loops shall be approved for use on CITY generated tows. Wire rope is not in good condition when it is stranded, knotted, crushed, excessively rusty, kinked, badly worn, when there are two or more wires broken in lay length, or when there is other visible evidence of loss of strength.

x. Class A - Light Duty: For the purposes of this Agreement, a Class A tow truck is defined as a tow truck that has a manufacturer’s GVWR of at least 14,000 pounds.

xi. Class B - Medium Duty: For the purposes of this Agreement, a Class B tow truck is defined as a tow truck with a GVWR of at least 26,001 pounds. The tow truck shall be equipped with air brakes and a tractor protection valve or device, and be capable of providing and maintaining continuous air to the towed vehicle.

xii. Class C - Heavy Duty: For the purposes of this Agreement, a Class C tow truck is defined as a tow truck with a GVWR of at least 48,000 pounds. The tow truck shall be equipped with air brake and a tractor protection valve or device, and be capable of providing and maintaining continuous air to the towed vehicle.

C. All tow trucks utilized by FRANCHISEE to provide CITY generated non-consensual tow services shall pass a California Highway Patrol (CHP) Level One inspection annually. FRANCHISEE shall notify the Tow Administrator of the date and time of their scheduled CHP inspection as soon as practicable, and no later than two (2) weeks prior to the scheduled inspection date.

D. An inspection sticker will be issued by the Modesto Police Department Franchise Tow Administrator for each tow truck once the tow truck has passed CHP inspection. FRANCHISEE shall place the Modesto Police Department inspection sticker on the exterior windshield, upper left hand corner. Failure to display a valid inspection sticker shall, at a minimum, be deemed a failure to provide adequate service and may at the discretion of the officer or agent on scene result in the tow being cancelled. Storage lots/facilities will also receive a bi-annual inspection by the Modesto Police Department at no additional cost to the FRANCHISEE.

E. All tow trucks shall maintain a broom, shovel, reflective triangles, fire extinguisher and a covered container with a minimum of 5 gallons of absorbent at all times.

F. FRANCHISEE hereby allows the Modesto Police Department to inspect any and all storage lots/facilities, used to store CITY generated tows, business office(s), and all equipment owned by FRANCHISEE at any time and for any reason, with or without notice. FRANCHISEE shall not utilize a tow truck on a CITY generated tow that has not been inspected and issued a valid inspection sticker by the Modesto Police Department.

G. All tow trucks shall be clearly marked with the FRANCHISEE’S business name, address and telephone number on both sides of the vehicle. FRANCHISEE shall not display any sign or engage in any advertisement indicating an official connection with the CITY or the Modesto Police Department; (e.g., “Official Modesto Police Tow,” “Approved by MPD,” etc.). This will not preclude the Chief of Police, or his designee, from implementing a system of marking and/or identifying particular tow trucks as having passed a Modesto Police Department inspection or as being certified as a FRANCHISEE for CITY generated tows.
H. Towed vehicles shall be loaded, secured and transported in compliance with this Agreement and all applicable local, state and federal rules, regulations and laws. Any violation of local, state or federal rules, regulations or laws, including, but not limited to a violation of the GVWR, safe loading requirements or a violation of the equipment requirements shall, at a minimum, be deemed a failure to provide adequate service.

I. It is the responsibility of the FRANCHISEE to provide a sufficient number of tow trucks to meet all the terms and conditions of this Agreement. The number of tow trucks listed in this Agreement is a minimum. It is the FRANCHISEE’s responsibility to determine the number and type of tow trucks required to fulfill all the requirements of this Agreement.

14. **DTS REQUIREMENTS**

A. FRANCHISEE shall utilize the most recent, updated and upgraded DTS software program, to dispatch and track, via a web-based Internet connection. FRANCHISEE will be required to enter the towed vehicle information as instructed by the City. At no time will a vehicle be released, subject to lien, or junked from impound without all required data fields being entered into the DTS system by the FRANCHISEE. The FRANCHISEE shall clearly identify and enter into DTS the name of the person to whom the vehicle was actually released. All City tow requests shall be made utilizing this program.

B. Failure at any time to have the DTS program in full operation shall cause the immediate removal of the FRANCHISEE from the tow rotation and be grounds for immediate termination by the City. This does not include technical issues that occur from DTS software and/or internet provider.

C. FRANCHISEE must enter into a separate agreement, or license for the DTS software program with the owner of the proprietary software. The City shall not provide the DTS software program, any licensing or sub-licensing thereof or any intermediary services for the procurement by the FRANCHISEE of the DTS software program. This Agreement shall not be executed by the City until the FRANCHISEE has demonstrated to the City’s satisfaction compliance with the requirements set forth herein. FRANCHISEE shall be liable for all fees, charges, prices, rates and service charges required from DTS.

D. DTS shall be utilized in “real time” and all entries should reflect as such. Invoices shall be used from DTS when releasing vehicles and be pursuant to section 22651.07 of the CVC. The only FRANCHISEE personnel authorized to utilize and access DTS are those that have fully complied with the provisions set forth in Section 8, “Tow Driver’s Permit / Identification Badges” of this Agreement. If the FRANCHISEE is not in FULL compliance with the above stated requirement, the FRANCHISEE will be removed from the City towing rotation. Third party dispatch call center personnel shall be exempt from the completion of the background process to utilize the DTS program.

E. In the event that DTS fails to provide software services, or the City elects to utilize a new software provider, the FRANCHISEE will be required to use the replacement towing software system. If that occurs, all references to DTS in this Agreement shall instead be interpreted as references to the new software program.

15. **TOWING AND STORAGE CHARGES**

A. The following schedule reflects the maximum rates established for services or materials in connection with any vehicle towed pursuant to a CITY generated non-consensual tow which includes but is not limited to the following.
i. Towing of all vehicles impounded by the CITY for investigation, as evidence in a criminal case, asset forfeiture or vehicles towed under the CVC including, but not limited to, CVC Section 14607.6 (vehicle forfeiture);

ii. Towing of vehicles involved in accidents, and/or stalled vehicles obstructing traffic, and/or vehicles illegally parked, and/or vehicles whose driver is incapacitated or physically unable to drive the vehicle, and/or vehicles whose driver has been arrested and/or detained and cannot drive the vehicle, and/or vehicles under the 30-day impound authority including, but not limited to, CVC Section 14602.6, and/or vehicles with five (5) or more outstanding parking citations;

iii. Towing of all vehicles necessitating special procedures to ascertain vehicle identification numbers, VIN tows, in compliance with requirements of the CVC;

iv. Towing of any abandoned vehicle, inoperative vehicle, or abated vehicle, from any street, alley, highway, or any other private or public property in the CITY pursuant to the MMC and CVC including, but not limited to, MMC 3-2.1006 or CVC 22669 respectively;

v. Towing any other vehicle or vessel as may be ordered by any police officer, police employee, or any other employee or agent of the CITY who is properly authorized to order such tow. This shall include, but is not limited to, any vehicle that is submerged, either wholly or in part. This shall also include, but is to, the removal and storage of any abandoned vessel from city streets/property, whether or not said vessel is attached to a trailer.

vi. Towing trailers, boats, motor homes, etc.

B. **MAXIMUM CHARGES**

Time expended on a CITY generated tow shall be charged at a rate not to exceed the rates set forth hereinafter. There shall be no additional charge(s) for towing after 5 p.m., weekend tows, holiday tows, use of a dolly or any other equipment, mileage and labor, which includes, but is not limited to, crane charges, winching and recovery from areas not accessible to the tow truck. FRANCHISEE shall collect all towing and storage charges from the vehicle owner unless otherwise stated in this Agreement.

**Tow Fees**

<table>
<thead>
<tr>
<th>Year 1</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A tow (GVWR - 14,000 pounds)</td>
<td>$220.00</td>
</tr>
<tr>
<td>Class B tow (GVWR - 26,001 pounds)</td>
<td>$345.00</td>
</tr>
<tr>
<td>Class C tow (GVWR - 48,000 pounds)</td>
<td>$390.00</td>
</tr>
<tr>
<td>Recovered Stolen Vehicles tow</td>
<td>$160.00</td>
</tr>
<tr>
<td>Evidence Vehicle tow</td>
<td>$100.00 (any vehicle towed to MPD)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Year 2</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A tow (GVWR - 14,000 pounds)</td>
<td>$225.00</td>
</tr>
<tr>
<td>Class B tow (GVWR - 26,001 pounds)</td>
<td>$350.00</td>
</tr>
<tr>
<td>Class C tow (GVWR - 48,000 pounds)</td>
<td>$400.00</td>
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<tr>
<td>Recovered Stolen Vehicles tow</td>
<td>$160.00</td>
</tr>
<tr>
<td>Evidence Vehicle tow</td>
<td>$105.00</td>
</tr>
</tbody>
</table>
Year 3
Class A tow (GVWR - 14,000 pounds) $230.00
Class B tow (GVWR - 26,001 pounds) $355.00
Class C tow (GVWR - 48,000 pounds) $410.00
Recovered Stolen Vehicles tow $160.00
Evidence Vehicle tow $110.00

In the event that CITY exercises its right to extend the term of this Agreement pursuant to Paragraph 2, Term of Agreement, the maximum amount allowed for towing shall be:

Year 4
Class A tow (GVWR - 14,000 pounds) $235.00
Class B tow (GVWR - 26,001 pounds) $360.00
Class C tow (GVWR - 48,000 pounds) $420.00
Recovered Stolen Vehicles tow $165.00
Evidence Vehicle tow $115.00

Year 5
Class A tow (GVWR - 14,000 pounds) $240.00
Class B tow (GVWR - 26,001 pounds) $365.00
Class C tow (GVWR - 48,000 pounds) $430.00
Recovered Stolen Vehicles tow $170.00
Evidence Vehicle tow $120.00

Additional Charge for 2\textsuperscript{nd} tow truck required for removal of a vehicle. $75.00 (Must have direct approval by MPD officer on scene and must be itemized on the invoice.)

Storage Fees:

Year 1
Outside Daily Storage Fee ......................... $55.00
Inside Daily Storage Fee ......................... $60.00
Class B/C Storage Fee ......................... $65.00

Year 2
Outside Daily Storage Fee ......................... $57.00
Inside Daily Storage Fee ......................... $62.00
Class B/C Storage Fee ......................... $67.00

Year 3
Outside Daily Storage Fee ......................... $59.00
Inside Daily Storage Fee ......................... $64.00
Class B/C Storage Fee ......................... $69.00
After business hours gate fee ............... $100.00

In the event that the CITY exercises its right to extend the term of this Agreement pursuant to Paragraph 2, Term of Agreement, the maximum amount allowed for storage fees shall be:
Year 4
Outside Daily Storage Fee.............................. $60.00
Inside Daily Storage Fee................................ $65.00
Class B/C Storage Fee................................ $70.00

Year 5
Outside Daily Storage Fee.............................. $62.00
Inside Daily Storage Fee................................. $67.00
Class B/C Storage Fee................................ $72.00
After business hours gate fee............................. $100.00

City of Modesto Vehicle Release Fee:
Illegal Parker / Abandoned Vehicle $120.00
Unlicensed Driver / Expired Registration $160.00
Suspended / Revoked Driver / Arrested Driver $250.00
DUI Driver $450.00

The above rates represent the maximum a FRANCHISEE may charge on a CITY generated non-consensual tow. A FRANCHISEE is not precluded from charging less when deemed appropriate. No FRANCHISEE, or their employee or agent, shall refer to any rate as the minimum required or set by CITY.

C. Time expended in excess of sixty (60) minutes on-scene may be charged in one-minute increments at a rate of $90.00 per hour and shall be properly documented on the FRANCHISEE’S invoice. These additional-service fees may be charged only under the following conditions or circumstances:

i. When directed to “stand-by” by an authorized CITY employee or agent. “Stand-by” fees shall be billed to the Modesto Police Department on a separate invoice and shall include the name of the CITY employee or agent who authorized the charge and the Modesto Police Department case number.

ii. Necessary accident and/or recovery operations and when directed and approved by an authorized CITY employee or agent. This fee is the responsibility of the registered owner and shall be listed on the invoice with the name of the CITY employee or agent authorizing this charge

D. Lock out fees: When directed by an authorized CITY employee or agent to unlock a vehicle. Lock out fees may be charged at a rate of $55.00 per vehicle. Lock out fees shall be billed to the Modesto Police Department on a separate invoice and shall include the name of the CITY employee or agent who authorized the charge and the Modesto Police Department case number. (Ex. FRANCHISEE is called out to only unlock a vehicle so a search warrant can be executed.) Lock out fees cannot be charged in addition with towing fees. This type of call will count as the FRANCHISEE’S rotation call.

E. The schedule of rates charged by FRANCHISEE shall be available in the tow truck, and shall be presented upon demand to the person(s) for whom the non-consensual tow services were provided or his/her agent at the scene.

F. Vehicles stored twenty-four (24) hours or less shall be charged for no more than one-day storage. Each day of storage thereafter shall be calculated by calendar day (Civil Code Section 3068.1).

G. If a request for a non-consensual tow is cancelled by the CITY or vehicle’s owner/agent prior to the FRANCHISEE taking possession of the vehicle, there shall be no charge to the CITY or to the vehicle owner by the FRANCHISEE
H. FRANCHISEE may charge a fee for lien sale preparations in compliance with California Vehicle Code Section 22851.12. All lien preparations and/or sales performed by FRANCHISEE shall be done in strict compliance with all applicable laws. All forms shall be accurate and complete.

I. Notwithstanding any other provision of this Agreement to the contrary, any violations of sections 15(A) through 15(G) shall, at a minimum, be deemed a failure to provide adequate service and a material breach of this Agreement, and shall constitute grounds for up to immediate termination of this Agreement.

J. FRANCHISEE shall furnish a fully itemized billing to the vehicle owner or agent at the time of payment and/or upon request of the vehicle owner or agent. Failure to do so shall, at a minimum, be deemed a failure to provide adequate service.

K. FRANCHISEE shall accept a valid bank credit card or cash tendered by the registered owner, legal owner or the owner’s agent claiming the vehicle for payment of towing and/or storage (CVC Section 22651.1). Appropriate credit card equipment shall be located at the primary business location and available for immediate processing from each tow truck. Failure to do so shall, at a minimum, be deemed a failure to provide adequate service.

L. A record of all vehicles towed by FRANCHISEE under this Agreement shall be retained by the FRANCHISEE and shall be readily available for inspection and/or transcription or copying at the primary business location of the FRANCHISEE for a minimum of three (3) years. Failure to retain and provide complete and accurate records upon request of the CITY shall, at a minimum, be deemed a failure to provide adequate service. All records shall contain the following information:

   i. Date and time vehicle towed
   ii. Modesto Police Department Case Number
   iii. License Plate/Vehicle Identification Number
   iv. Date and time of vehicle release
   v. Year, Make and Model of Vehicle
   vi. Copy of Modesto Police Dept. Vehicle Release (if applicable)
   vii. Date Lien Filed (if applicable)
   viii. Date Lien Sale (if applicable)
   ix. All Lien Documents (if applicable)
   x. All DMV paperwork (if applicable)

M. FRANCHISEE shall post the Modesto Police Department case number on the windshield of any and all vehicles towed and stored by CITY. Failure to do so shall at a minimum be deemed a failure to provide adequate service.

N. A trailer with a vessel as a load (e.g. boat, motorcycle, jet ski,) shall be considered one vehicle for the purposes of the maximum rate allowed for tow and storage.
16. **RELEASE OF VEHICLES**

An authorized Modesto Police Department employee will authorize the release of a vehicle through the DTS System. Once the DTS System authorizes the release of a stored or impounded vehicle, it is the FRANCHISEE's responsibility for the vehicle's release. The FRANCHISEE is hereby granted authority to release to the registered owner, legal owner, or authorized representative, pursuant to section 22850.3 of the CVC.

17. **RELEASE OF MULTI-DAY IMPOUNDS**

A vehicle impounded with a multiple day hold (ex: 30 day hold) may only be released prior to the impound period with written authorization by the City in the DTS System. The DTS System will automatically schedule the release date of an impounded vehicle.

18. **UNAUTHORIZED RELEASE**

Unauthorized release of an impounded vehicle, accidental or otherwise, not officially released by the City, and determined to be the fault of the FRANCHISEE, will result in the issuance of a violation as set forth in this Agreement.

19. **RESPONSE / RESPONSE TIMES**

A. FRANCHISEE shall respond to a dispatch order for a CITY generated tow and be on-scene within thirty (30) minutes of the time of dispatch by a Stanislaus Regional 911 dispatcher, a police officer, a community service officer, employee, agent, or other officer of the CITY who has been duly authorized to request tow services. The dispatcher shall record the time of dispatch into the incident history. The dispatcher's computer entry record shall be the official time piece for the time of dispatch. If the tow truck arrives on scene after the thirty (30) minute requirement, the dispatcher or the officer on scene shall log the time of arrival into the incident history. The officer's or dispatcher's computer entry record shall be the official time piece for the time of arrival of the tow truck.

Failure of the FRANCHISEE to respond to a call with necessary towing equipment (i.e. flat bed, conventional rig etc.) at the designated point of the tow within thirty (30) minutes may, at the discretion of the officer on scene result in the FRANCHISEE being cancelled. Three (3) failures by the FRANCHISEE to respond to a call at the designated point of tow within thirty (30) minutes in a calendar year, commencing April 13, 2014, shall result in a failure to provide adequate service

**Exception:** Tows requested off the Over Weight Vehicle List shall respond to a dispatch order and be on scene within forty-five (45) minutes of the time of dispatch by a Stanislaus Regional 911 dispatcher, a police officer, community service officer, employee, agent, or other officer of the CITY who has been duly authorized to request such tow services. Three (3) failures by the FRANCHISEE to respond to a tow request from the Over Weight Vehicle List and furnish a tow truck capable of towing the vehicle at the designated point of tow within forty five (45) minutes shall be deemed a failure to provide adequate service.

B. Any officer or CITY employee may at his/her discretion cancel a tow that in his/her opinion is unable to provide the necessary equipment to safely tow the vehicle.
C. FRANCHISEE shall maintain a phone line dedicated to Stanislaus Regional 911. Said phone line will be staffed twenty-four (24) hours a day, seven (7) days a week, including weekends and holidays. If the FRANCHISEE fails to answer the dedicated phone, they will be passed and fall to the bottom of the list. Three (3) failures by the FRANCHISEE to answer their designated phone line in a calendar year, commencing __________, 2017, shall result in a failure to provide adequate service.

20. NON-RESPONSE

The FRANCHISEE shall update the DTS System at the time of dispatch to a tow rotation request. If the FRANCHISEE is either unable to respond or unable to meet the maximum response time, the tow operator shall immediately update the DTS System accordingly. If, after accepting the call, the FRANCHISEE is unable to respond or will be delayed in responding, the FRANCHISEE shall immediately update the DTS system accordingly.

To decline or refuse to respond will be considered a non-response. Each non-response will be immediately documented in the DTS system. Each non-response will be logged by the DTS System and reviewed by the City. Three (3) failures to respond to a City generated tow in a calendar year, commencing __________, 2017, shall result in a failure to provide adequate service.

21. ROTATION TOW LIST

A. The CITY will make a good faith effort to provide an even distribution of work among the FRANCHISEES. A list shall be established for non-consensual towing of all vehicles with a GVWR of 10,000 pounds or less. FRANCHISEE agrees to the rotation system established by CITY.

B. A separate list (Over Weight Vehicle List) will be established for non-consensual towing of vehicles with a GVWR of 10,001 pounds or more. FRANCHISEES who own or lease a tow truck with a minimum GVWR of 26,001 pounds may be placed on the Over Weight Vehicle List on a voluntary basis. However, once placed on the Over Weight Vehicle List FRANCHISEE shall give thirty (30) calendar days written notice to the Franchise Tow Administrator in order to be removed from the Over Weight Vehicle List.

C. This Agreement applies to non-consensual towing as defined in this Agreement. Nothing contained herein shall be construed to regulate consensual tows.

D. CITY reserves the right to request any tow company, regardless of its position on the rotation tow list.

22. AUDITING OF CHARGES AND SERVICES

A. The CITY reserves the right to audit all records, charges, and/or services provided by FRANCHISEE pursuant to this Agreement. CITY’s duly authorized representative shall have access to and the right to examine, transcribe, and/or copy, during business hours, as defined in Section 10 (B) (i), any and all reports, records, documents, and/or files necessary in order to audit and verify charges and services provided by FRANCHISEE under this Agreement. A complete record of all vehicles towed by FRANCHISEE pursuant to this Agreement, including, but not limited to; date and time of tow, Modesto Police Department case number, license plate number, vehicle identification number, date and time of release, year, make and model of vehicle, copy of Modesto Police Department vehicle release (if applicable), all lien and sale documents (if applicable) and vehicle disposition, shall be readily available for inspection at the primary business location of the FRANCHISEE and provided to CITY promptly upon request, and shall be retained for a minimum of three (3) years.
23. **RESPONSIBILITY**

A. FRANCHISEE shall be responsible for the protection of all CITY generated towed and/or stored vehicles in its possession until the vehicle has been released to its owner, or disposed of through the legal process, and shall be responsible for safeguarding all articles or property left in the towed and/or stored vehicle.

B. FRANCHISEE shall release personal property from a towed/stored vehicle at the request of the vehicle owner or his/her agent, subject to the below listed exceptions. (Personal property is considered to be items, which are not affixed to the vehicle; i.e. papers, cell phones, pull out stereos, clothes, luggage, tools, cargo, etc.) EXCEPTION: No personal property shall be released from vehicles impounded by CITY for evidence, investigation, asset forfeiture or vehicle forfeiture without prior authorization from the towing officer or the Tow Franchise Administrator.

C. Any vehicle towed by the Modesto Police Department for evidence, investigation, asset forfeiture and vehicle forfeiture (CVC Section 14607.6) and stored by the FRANCHISEE shall be stored at the primary storage facility and shall not be moved until authorized by the Chief of Police, the Tow Franchise Administrator or their designee. The need for inside storage shall be indicated on the tow sheet. Vehicles towed by the Modesto Police Department for evidence, investigation, asset forfeiture and vehicle forfeiture (CVC Section 14607.6) shall not be lien sold until such time as the Modesto Police Department Tow Franchise Administrator provides the FRANCHISEE with a written release of the vehicle.

D. FRANCHISEE shall not release any vehicle that is marked as an “Agency Hold” on the Vehicle Report without the release in the DTS program and/or signed Modesto Police Department Vehicle Release form.

E. FRANCHISEE shall ensure that all debris and fluids are cleared from the scene of a CITY generated tow prior to leaving the scene.

24. **COMPLIANCE WITH THE LAW**

A. FRANCHISEE and its tow truck driver(s) and employees must be in compliance with all terms and conditions of this Agreement and all applicable federal, state, and local laws, rules, and regulations which are in force or become effective during the franchise period which, in any manner, affect towing and storage of vehicles, including, without limitation, the requirement that any person who drives a tow truck for FRANCHISEE is properly licensed and permitted and that all tow trucks meet any and all applicable Vehicle Code requirements.

B. In the event that FRANCHISEE is cited, arrested, charged, or convicted for any misdemeanor or felony driving offense, any crime involving stolen or embezzled vehicles, fraud related to the towing business, stolen or embezzled property, crimes of violence, driving while under the influence of alcohol and/or drugs, possession and/or sales of drugs or crimes of moral turpitude, FRANCHISEE may be immediately suspended or terminated at the discretion of the Chief of Police. FRANCHISEE shall notify the Tow Administrator within seventy-two 72 hours of any citation, arrest or conviction of the FRANCHISEE.

C. In the event that FRANCHISEE’s employee is cited, arrested and/or charged and/or convicted for any misdemeanor or felony driving offense, any crime involving stolen or embezzled vehicles, fraud related to the towing business, stolen or embezzled property, crimes of violence, driving while under the
influence of alcohol and/or drugs, possession and/or sales of drugs or crimes of moral turpitude, notwithstanding any provision of this Agreement to the contrary, the employees Tow Driver Permit may be immediately suspended or revoked. FRANCHISEE shall notify the Tow Administrator within seventy-two (72) hours of FRANCHISEE becoming aware of any such citation, arrest, charging or conviction.

D. In the event that any FRANCHISEE employee is cited for any two (2) infractions while operating a tow truck within a rolling 12 month period, the employee’s tow driver’s permit may, at the discretion of the Chief of Police, be suspended or terminated. The FRANCHISEE shall notify the Tow Administrator within seventy-two (72) hours of becoming aware of any such citation having been issued to an employee.

E. Nothing in Paragraph 19 of this Agreement shall in any way affect the “at will” nature of this Agreement, or the right of any party to this Agreement to terminate it without cause on thirty (30) day written notice, as provided in Paragraph 2, above.

25. **FAILURE TO PROVIDE ADEQUATE SERVICE/DISCIPLINARY ACTION**

A. Except as otherwise provided in this Agreement, FRANCHISEE’S failure to meet any of the terms and conditions of this Agreement shall be deemed a failure to provide adequate service. Any failure to provide adequate service is a violation of the terms of this Agreement and shall result in the following disciplinary action unless otherwise stated in this Agreement:

i. First violation within a calendar year commencing with the start date of the agreement, __________, 2017, Written Notice via certified mail

ii. Second violation within any calendar year commencing __________, 2017 Written Warning via certified mail.

iii. Third violation within any calendar year commencing __________, 2017, thirty (30) Day Suspension.

   a. Upon serving a suspension of any length the FRANCHISEE must pay a reinstatement fee of five hundred dollars ($500.00). The suspension will not be lifted until the reinstatement fee is received by the Chief of Police or his/her designee through the Franchise Tow Coordinator.

B. Nothing herein shall be deemed to prohibit the Chief of Police, or his designee, from imposing an immediate suspension and/or termination on any FRANCHISEE and/or employee(s) whose conduct, in the opinion of the Chief of Police, or his designee, is considered to be a danger to the motoring public or who has engaged in conduct constituting a gross violation of this Agreement.

C. Nothing in Paragraph 20 of this Agreement shall in any way affect the “at will” nature of this Agreement, or the right of any party to this Agreement to terminate it without cause on thirty (30) day written notice, as provided in Paragraph 2, above.

26. **FRANCHISEE’S REVIEW/APPEAL**

A. FRANCHISEE may request a review of a violation within ten (10) calendar days of receipt of the notice of violation by submitting a request in writing to the Administrative Services Supervisor. If a review is
requested by FRANCHISEE, it shall be done as soon as practicable by the Administrative Services Supervisor or his/her designee. FRANCHISEE shall be notified in writing of the Administrative Services Supervisor’s decision(s) within ten (10) calendar days of the date of completion of the review. The Administrative Services Supervisor’s decision on review of the violation shall be final.

B. Following receipt of a notice of suspension, FRANCHISEE may appeal the suspension by submitting a request in writing to the Chief of Police within ten calendar days of receipt of the decision. If an appeal is requested, it shall be done as soon as practicable. On appeal, the FRANCHISEE may raise the alleged invalidity of any violation upon which the CITY relies in imposing the suspension for which review has previously been sought. The appeal shall be decided in a hearing conducted in accordance with the provisions of section 1-6.504 through 1-6.507 of the Modesto Municipal Code by an Administrative Hearing Officer appointed by the City Manager or his/her designee.

C. A suspension resulting from a violation shall not be imposed until the review and/or appeal process for that violation or suspension, if it has been timely requested, has been exhausted, except where this Agreement permits an immediate suspension or termination or where a FRANCHISEE’S conduct is deemed to be a danger to the motoring public or who has engaged in conduct constituting a gross violation of this Agreement. Failure to request a review or appeal in writing within the time specified or failure of FRANCHISEE to appear at a scheduled review or appeal hearing shall constitute a waiver of his or her right to a review or appeal and adjudication of the violation and/or disciplinary action and the violation and/or disciplinary action shall become final.

27. **MOTOR CARRIER PERMIT/OTHER PERMITS AND LICENSES**

A. FRANCHISEE must possess a current/valid Department of Motor Vehicles Motor Carrier Permit.

B. FRANCHISEE and his/her officers, officials, employees and agents shall obtain and maintain during the term of this Agreement all necessary licenses, permits and certificates required by law for the conduct of FRANCHISEE’S activities and for the provision of services hereunder, including a business license issued by the City of Modesto.

C. Failure to comply with any provision of Paragraph 23 shall be grounds for immediate suspension and/or termination of this Agreement.

28. **EXPERIENCE/SALE OR TRANSFER OF BUSINESS**

A. FRANCHISEE must have owned a towing business in the State of California for a minimum of two (2) years immediately preceding the date of its application for a non-exclusive non-consensual towing service franchise.

B. FRANCHISEE agrees that sale or transfer of the controlling interest in FRANCHISEES Tow Company shall immediately terminate this Agreement.

29. **ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding among the parties with regard to the matters herein. The terms of this Agreement are contractual and not a mere recital. There have been no representations, promises, or inducements of any kind made by any party other than those that appear as signatories hereto. Each covenant and condition mentioned in this Agreement is material consideration for each party to enter into this Agreement.
30. **PARTIES TO AGREEMENT.**

This Agreement is intended to confer rights and benefits only on the signatories hereto and is not intended to confer any right or benefit upon any other person or entity. No person or entity other than the signatories hereto shall have any legally enforceable right under this Agreement. All rights of action of any breach of this Agreement are hereby reserved to the signatories hereto.

31. **VOLUNTARY AND KNOWING AGREEMENT.**

Each of the parties hereto states that this Agreement voluntarily and with knowledge of its significance and legal effect.

32. **AUTHORITY AND COMPETENCY.**

Each party hereto expressly warrants and represents that the person executing this Agreement on its behalf is legally competent to and is authorized to enter into this Agreement and to bind said party to their representations, terms, conditions, and covenants as set forth herein.

33. **BINDING EFFECT.**

This Agreement shall be binding upon and shall insure to the benefit of the signatories and their respective heirs, executors, administrators, trustees, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives, and all persons, firms, associations, and/or corporations connected with them including, with limitation, their insurers, sureties, and/or attorneys.

34. **SEVERABILITY.**

If any provision or any part of any provision of this Agreement is for any reason held to be invalid, unenforceable, or contrary to any public policy, law, statute and/or ordinance, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

35. **ASSIGNMENTS.**

The **TOWING CARRIER** shall not assign, subcontract or transfer by operation of law any obligation hereunder without prior written consent of the **CITY**.

36. **INDEPENDENT CONTRACTOR.**

The **TOWING CARRIER** is and shall at all times remain as to the **CITY** a wholly independent contractor. Neither the **CITY** nor any of its officers, employees nor agents shall have control over the conduct of the **TOWING CARRIER** nor any of the **TOWING CARRIER'S** officers, employees nor agents, except as herein set forth. The **TOWING CARRIER** shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers or agents of the **CITY**.

37. **NOTICE** This Agreement may be terminated by either party, without prejudice, upon thirty (30) days written notice to the other party. Any notice to be given pursuant to this Agreement by either party to the other shall be deposited with the United States Postal Service, postage prepaid.
RESOLUTION ACCEPTING THE INTERIM CITY MANAGER'S RECOMMENDATION FOR AWARD OF THE NON-EXCLUSIVE NON-CONSENSUAL FRANCHISE TOWING SERVICES CONTRACT TO ELEVEN (11) APPLICANTS; DECLARING CITY COUNCIL'S INTENTION TO CONSIDER THE APPLICATIONS AT THE SEPTEMBER 5, 2017, CITY COUNCIL MEETING; AND DIRECTING THE CITY CLERK TO PUBLISH NOTICE OF THE HEARING IN ACCORDANCE WITH MODESTO MUNICIPAL CODE SECTIONS 11-2.01 ET SEQ.

WHEREAS, on April 4, 2017, City Council approved extending the current Non-Exclusive Non-Consensual Franchise Towing Services agreement for a six month period, which was set to expire on April 13, 2017, to allow staff time to complete the Request for Application (RFA) process, and

WHEREAS, on May 23, 2017, the Purchasing Division solicited Request for Applications (RFA) No. 1617-37, for City Generated Non-Exclusive Non-Consensual Franchise Towing Services, and

WHEREAS, on June 22, 2017, applications were opened in City Clerk’s Office, and

WHEREAS, eleven (11) applications were received and opened, all of which were local vendors; and

WHEREAS, the applicants have passed all financial, business and insurance requirements, site equipment verification and background checks, with the exception of those still pending background and/or DOJ fingerprint processing, as noted on the Applicant List with an asterisk on the list attached hereto, and

WHEREAS, the list of eleven (11) applicants were forwarded to the Interim City Manager on July 14, 2017, for review and recommendation to City Council.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the Interim City Manager’s recommendation to consider the award of Non-Exclusive Non-Consensual Franchise Towing Services contracts to the applicants in the list attached hereto.

BE IT FURTHER RESOLVED, the City Council declares its intent to consider the applications at the public hearing which shall be held at 5:30 p.m. on September 5, 2017, in City Council Chambers located in City Hall, at 1010 10th Street, Modesto, CA 95354 and the City Clerk is directed to publish the notice of said hearing in accordance with Modesto Municipal Code Section 11-2.01 et seq.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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: ____________________________

STEFANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ________________________________

ADAM U. LINDGREN, City Attorney
Non-Exclusive Non-Consensual Franchise Towing Services Applicants  
(RFA 1617-37)

1. Anderson’s Tow, Ceres, California  
2. Central Valley Tow, Ceres, California  
3. Ceres Pro Tow, Ceres, California  
4. Dizney & Wise, Modesto, California *  
5. E-Tow, Modesto, California  
6. Four Star Recovery, Modesto, California  
7. Myers Towing, Modesto, California *  
8. Ramont’s Tow, Modesto, California  
9. Scenic Tow, Modesto, California  
10. Stanislaus Tow, Modesto, California *  
11. Tow One, Modesto, California

*Pending background and/or DOJ fingerprint processing
MODESTO CITY COUNCIL
RESOLUTION NO. 2017-321

RESOLUTION APPROVING A FOUR MONTH RENTAL AGREEMENT WITH PACIFIC GAS & ELECTRIC COMPANY (PG&E), FOR THE RENTAL OF REAL PROPERTY AT SUTTON COMMUNITY PARK CONSISTING OF 2.07 ACRES FOR AN AREA TO STORE AND STAGE CONSTRUCTION MATERIALS, LOCATED AT CLAUS ROAD AND YOSEMITE MEADOWS DRIVE (APN: 009-001-025), IN THE AMOUNT OF $3,400 FOR A PG&E GAS LINE RELOCATION PROJECT, AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto owns Sutton Community Park on Claus Road and Yosemite Meadows Drive (APN 009-001-025), and

WHEREAS, Pacific Gas and Electric Company (PG&E) requires temporary use of an area at this park for a construction project, and

WHEREAS, PGE’s construction project requires a secure area to store its materials and construction equipment for a four-month period, and

WHEREAS, PG&E’s project will relocate an existing buried natural gas pipeline and perform maintenance and safety checks on its facilities, and

WHEREAS, PG&E will use the City’s property to store materials and construction equipment for its project, and

WHEREAS, staff determined the rental rate to be reasonable given the temporary nature of the access and it is consistent with past rental agreements with PG&E.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the rental agreement for a 2.07-acre portion (90,000 square feet) of Sutton Community Park, located at Claus Road and Yosemite Meadows Drive (APN 009-001-025).
BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is hereby authorized to execute the Rental Agreement for a temporary rental of City property in a form approved by the City Attorney.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
RESOLUTION APPROVING THE SUBMITTAL OF A GRANT APPLICATION TO THE FEDERAL TRANSIT ADMINISTRATION (FTA) REQUESTING $300,000 IN FTA SECTION 5339 FUNDS FOR BUS STOP SHELTERS AND RELATED BUS STOP IMPROVEMENTS AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL GRANT AGREEMENT DOCUMENTS

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

WHEREAS, the City of Modesto has provided all annual certifications and assurances required by the FTA to be eligible for funding under 49 U.S.C. Section 5339,

and

WHEREAS, the FTA has made available funding under 49 U.S.C. Section 5339 for transit agencies to purchase bus stop facilities, and

WHEREAS, Section 5339 funds will be used to purchase new bus stop shelters and related improvements for the Modesto Area Express bus system, and

WHEREAS, Modesto is eligible to use federally approved Transportation Development Funds, known as Toll Credits, in lieu of a local match.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the submittal of an application to the FTA for $300,000 in Section 5339 funds for bus stop shelters and related bus stop improvements.

BE IT FURTHER RESOLVED, the Interim City Manager, or his designee, is hereby authorized to execute all grant related application documents.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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: 

APPROVED AS TO FORM:

By: 

ADAM U. LINDGREN, City Attorney
RESOLUTION ACCEPTING THE GRANT FROM THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR $255,849 IN FY 2016-17 LOCAL AND REGIONAL FUNDING UNDER THE LOW CARBON TRANSIT OPERATIONS PROGRAM (LCTOP) FOR IMPROVEMENTS AND UPGRADES TO THE DOWNTOWN TRANSIT CENTER, AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL GRANT AGREEMENT DOCUMENTS

WHEREAS, the City was awarded a grant from the California Department of Transportation (Caltrans) in the amount of $255,849 in local and regional funding under the Low Carbon Transit Operations Program (LCTOP) for improvements and upgrades to the downtown Transit Center, and

WHEREAS, these funds will be used to make improvements and upgrades to the Transportation Center located in downtown Modesto, and

WHEREAS, the plans for this project are to reconfigure and enlarge the existing customer service and operational administrative space to provide for a better customer service experience and a better work environment for the contractor operating the MAX system, and

WHEREAS, the additional space may allow for future StaRT and the Altamont Commuter Express (ACE) customer service and administrative space.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the grant award from the Low Carbon Transit Operations Program.

BE IT FURTHER RESOLVED that the Interim City Manager is authorized to execute all necessary grant documents with the California Governor's Office of Emergency Services on behalf of the City of Modesto.
BE IT FURTHER RESOLVED that the Interim City Manager may designate the Transit Manager to execute all grant application and grant agreement documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2017-324

RESOLUTION APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF $307,019 TO FUND THE IMPROVEMENTS AND UPGRADES TO THE DOWNTOWN TRANSIT CENTER

WHEREAS, certain budgetary transactions are necessary in the amount of $307,019, in order to fund the improvements and upgrades to the downtown transit center, and

WHEREAS, the City was awarded a grant from the California Department of Transportation (Caltrans) in the amount of $255,849 in local and regional funding under the Low Carbon Transit Operations Program (LCTOP) for improvements and upgrades to the downtown Transit Center, and

WHEREAS, Local Transportation Funds (LTF) in the amount of $52,000 will be used as match for this project, and

WHEREAS, the Fiscal Year 2017-2018 Capital Improvement Program Budget must be amended as shown in Exhibit A, attached hereto and incorporated by reference.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the amendment of the Fiscal Year 2017-2018 Operating Budget as shown in Exhibit A.

BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is hereby authorized to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
Amend the FY 17/18 Capital Improvement Program Budget to fund the improvements and upgrades to the Downtown Transit Center:

1. Increase appropriations in Capital Improvement Program CIP# 101045 – Downtown Transit Center Improvements as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineering/Design/Administration</td>
<td>$46,053</td>
</tr>
<tr>
<td>Construction</td>
<td>$214,913</td>
</tr>
<tr>
<td>Construction Contingency</td>
<td>$15,351</td>
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<tr>
<td>Construction Administration</td>
<td>$30,702</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>$307,019</strong></td>
</tr>
</tbody>
</table>

2. To fund this purchase, recognize revenue in the amounts of:
   - $255,849- Low Carbon Transit Operations Program (LCTOP) – Capital Related
   - $51,170 – Local Transportation Fund (LTF) – Capital Related
MODESTO CITY COUNCIL
RESOLUTION NO. 2017-325

RESOLUTION APPROVING AN INCREASE OF $547,823 OVER A FIVE YEAR PERIOD TO THE PURCHASING AGREEMENT WITH DC FROST ASSOCIATES, WALNUT CREEK, CA., TO INCLUDE PARTS FOR THE PHASE 2 TERTIARY TREATMENT PLANT, FOR A TOTAL AGREEMENT AMOUNT OF $1,069,205

WHEREAS, the City uses a tertiary treatment process for its wastewater, which utilizes several different types of equipment requiring specific parts that are only available from one vendor, and

WHEREAS, these specific parts are purchased through DC Frost Associates, and

WHEREAS, on December 6, 2016, by Resolution No. 2016-483, Council authorized the purchase of UV Lamps as a sole source from DC Frost for five years at a total cost of $521,382, and

WHEREAS, DC Frost and Associates is the local exclusive distributor for Sanitaire, Parson and Trojan parts that are used by staff to maintain our tertiary treatment equipment, and

WHEREAS, Attachments A1, A2 and A3 are the quotations for repair parts that are required to maintain the tertiary treatment equipment, and

WHEREAS, staff has added the column in red to indicate the anticipated annual costs for the quantity required by staff for each piece of equipment, and

WHEREAS, the City has negotiated with DC Frost Associates to hold the cost of these parts for three years; the following two years there will be an increase of 5% each year, and

WHEREAS, staff recommends an increase of the purchasing agreement with DC Frost and Associates since they are the sole provider of these parts and should be exempt
from the formal bidding process in accordance with Modesto Municipal Code 8-3.204(b), and

WHEREAS, MMC 8-3.204(b) provides that a purchase may be exempted from the City’s formal bidding requirements where the Purchasing Agency’s requirements can be met solely by a single article or process; this purchase qualifies for exemption from formal bidding for that reason.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an increase of $547,823 over five years to the purchasing agreement with DC Frost Associates, Walnut Creek, CA, for a total agreement amount of $1,069,205.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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]

SEAL

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
Attachment A1 shows the recommended replacement parts for the Sanitaire Aeration System. The Aeration System is used to distribute air into the aeration basins for Tertiary Phase 2.

The attached quotation shows the basic costs from DC Frost. The red Annual Usage on the right indicates the anticipated Annual Costs for the Sanitaire Parts.

Total Annual Costs for Sanitaire Parts is anticipated to be $645.
**QUOTATION**

TO:  City of Modesto  
     Cindy Fosi  
Phone #: 209-577-6291  
Cell #:  
Fax #:  
Email: cfosi@modestogov.com

NUMBER: WC- 27518 -Q  
DATE: June 2, 2017  
PAGE: 1 of 1

EQUIPMENT: Sanitaire  
MODEL: 9-inch Membrane Diffuser  
REF #: 12-7830S

---

We are pleased to offer our quotation on the equipment listed herein for the above project.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>QUANTITY</th>
<th>DESCRIPTION</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>1</td>
<td>Membrane Diff, 9-Inch, part #2251-WB9</td>
<td>$6.00</td>
<td>$6.00</td>
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<tr>
<td>B</td>
<td>1</td>
<td>Retaining Ring, 9-Inch, part #2300-2P9</td>
<td>$4.00</td>
<td>$4.00</td>
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<tr>
<td>C</td>
<td>1</td>
<td>Lubricant, Silicone, 8lb Pail (for 2000 diffusers), part #HVS350-S</td>
<td>$245.00</td>
<td>$245.00</td>
</tr>
</tbody>
</table>

1) Prices for Items A-C will remain unchanged for FY18 thru FY20.  
2) Prices will increase by 5% for FY21 & FY22.  
3) Freight is not included & will be prepaid & added to invoice.  
4) Lead times will be advised when ordering.

---

Sub Total: $255.00  
Sales Tax: Stanislaus County of 7.2750% $20.08  
Freight Terms: F.O.B. Factory, Prepay and Add  
Grand Total: $275.08

Submittals/Drawings: _BB_ weeks after receipt of order with complete information.  
Shipment: _TBA_ weeks after receipt of purchase order or approved drawings.  
Prices quoted herein are firm for your acceptance for a period of five (5) years w/price adjustments as noted.  
If prices quoted herein do not include sales or use tax, such taxes, if required, are to be paid by the purchaser.  
This quotation and any resulting order will be subject to our standard terms of sale.  
PAYMENT TERMS: Net 30 days  
BY: Catherine M. Frost
Attachment A2 shows the recommended replacement parts for the Parkson Fine Screens. The Fine Screens are used to screen primary influent in Tertiary Phase 1 and 2.

The attached quotation shows the basic costs from DC Frost. The red Annual Usage on the right indicates the anticipated Annual Costs for the Parkson Parts.

Total Annual Costs for Parkson Parts is anticipated to be $27,891.
TO: City of Modesto  
Cindy Fosi  
Phone #: 209-577-5291  
Cell #:  
Fax #:  
Email: cfosi@modestogov.com

EQUIPMENT: Parkson  
MODEL: Rotomesh & Helixpress  
REF #: 610202 & 410336

We are pleased to offer our quotation on the equipment listed herein for the above project.

<table>
<thead>
<tr>
<th>ITEM</th>
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<th>DESCRIPTION</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
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<tbody>
<tr>
<td>A</td>
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<td>Chain 6000, 20' strand, part #3039-042/CS-ST</td>
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<td>B</td>
<td>1</td>
<td>Drive Sprocket, part #3038-111-001/CS</td>
<td>$962.00</td>
<td>$962.00</td>
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<tr>
<td>C</td>
<td>1</td>
<td>Driven Sprocket 606, part #4013-043/CS</td>
<td>$3,913.00</td>
<td>$3,913.00</td>
</tr>
<tr>
<td>D</td>
<td>2</td>
<td>Pad, Stabilizer 6000, part #1415-011/P</td>
<td>$136.00</td>
<td>$272.00</td>
</tr>
<tr>
<td>E</td>
<td>16</td>
<td>Spray Nozzle, part #3035-001/6</td>
<td>$49.00</td>
<td>$781.00</td>
</tr>
<tr>
<td>F</td>
<td>4</td>
<td>Wheel Subassy w/2 Bearings, part #4025-014/A6</td>
<td>$708.00</td>
<td>$2,832.00</td>
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<tr>
<td>G</td>
<td>4</td>
<td>Trough Liner, Wheel Shaft, 316SS, part #1227-025/6</td>
<td>$508.00</td>
<td>$2,032.00</td>
</tr>
</tbody>
</table>

Helixpress SPR260 - Ref. #410336

<table>
<thead>
<tr>
<th>ITEM</th>
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<th>DESCRIPTION</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>H</td>
<td>1</td>
<td>Brush Attachment, part #3815-006</td>
<td>$438.00</td>
<td>$438.00</td>
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<tr>
<td>I</td>
<td>1</td>
<td>Seal Packing Material, part #3577-004</td>
<td>$162.00</td>
<td>$162.00</td>
</tr>
<tr>
<td>J</td>
<td>1</td>
<td>Hinge, Spring Loaded, part #3528-024</td>
<td>$606.00</td>
<td>$606.00</td>
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<tr>
<td>K</td>
<td>1</td>
<td>Trough Liner, 60&quot;, UHMWPE, part #1651-023-060</td>
<td>$871.00</td>
<td>$871.00</td>
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<tr>
<td>L</td>
<td>1</td>
<td>Bagger Magazine, part #3591-091</td>
<td>$207.00</td>
<td>$207.00</td>
</tr>
</tbody>
</table>

Notes:
1) Prices will remain unchanged for FY18 thru FY20.
2) Prices will increase by 10% for FY21 & FY22.
3) Freight is not included & will be prepaid & added to invoice.
4) Lead times will be advised when ordering.

Subtotal: $18,065.00
Sales Tax: Stanislaus, County of 7.8750%: $1,107.62
Freight Terms: F.O.B. Factory, Prepay and Add

Grand Total: $19,172.62

Total Annual Estimated Costs: $27,891

PAYMENT TERMS: Net 30 days

BY: Catherine M. Frost
Attachment A3 shows the recommended replacement parts for the Trojan UV System. The Ultra Violet System is used for disinfection for Tertiary Phase 2.

The attached quotation shows the basic costs from DC Frost. The red Annual Usage on the right indicates the anticipated Annual Costs for the Trojan Parts.

Total Annual Costs for Trojan Parts is anticipated to be $77,786.
TO: City of Modesto  
    Cindy Fosi  
Phone #: 209-577-6291  
Email: cfosi@modestogov.com  
DATE: June 7, 2017  

EQUIPMENT: Trojan  
MODEL: UV3000Plus 2007  

We are pleased to offer our quotation on the equipment listed herein for the above project.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>QUANTITY</th>
<th>DESCRIPTION</th>
<th>UNIT PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>1</td>
<td>Sleeve, Quartz 4-pack, part #316136-004</td>
<td>$400.00</td>
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<tr>
<td>B</td>
<td>1</td>
<td>Ballast Kit, part #917341-100 (old part #915378)</td>
<td>$740.00</td>
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<tr>
<td>C</td>
<td>1</td>
<td>Hydraulic Wiper Cylinder, part #326411</td>
<td>$5,146.00</td>
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<tr>
<td>D</td>
<td>1</td>
<td>Sensor Assembly, part #015393-8-158NB</td>
<td>$1,944.00</td>
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<td>E</td>
<td>1</td>
<td>Communication Control Board (CCB) Kit, part #931096</td>
<td>$1,449.00</td>
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<tr>
<td>F</td>
<td>1</td>
<td>Acticlean Gel, 4x1 gallon containers, part #901507</td>
<td>$162.00</td>
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<tr>
<td>G</td>
<td>1</td>
<td>Seal Kit, part #327122</td>
<td>$23.00</td>
</tr>
<tr>
<td>H</td>
<td>1</td>
<td>Wiper Seal, part #327021</td>
<td>$7.60</td>
</tr>
<tr>
<td>I</td>
<td>1</td>
<td>Vent Kit, part #327795 (replaces part #445044)</td>
<td>$5.00</td>
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<td>J</td>
<td>1</td>
<td>Sleeve Cup Nut (Ryton), 10-pack, part #316148P</td>
<td>$15.00</td>
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<tr>
<td>K</td>
<td>1</td>
<td>Sensor Sleeve, part #015239</td>
<td>$120.00</td>
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<tr>
<td>L</td>
<td>1</td>
<td>Canister Assembly UV3, part #327125-180PLGTOP</td>
<td>$60.00</td>
</tr>
<tr>
<td>M</td>
<td>1</td>
<td>Canister Assembly UV3, part #327125-180STDMID</td>
<td>$60.00</td>
</tr>
<tr>
<td>N</td>
<td>1</td>
<td>Canister Assembly UV3, part #327125-020STDMID</td>
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<td>O</td>
<td>1</td>
<td>Canister Assembly UV3, part #327125-020STDCYL</td>
<td>$60.00</td>
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<tr>
<td>P</td>
<td>1</td>
<td>Canister Assembly UV3, part #327125-180PLGBOT</td>
<td>$60.00</td>
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<tr>
<td>Q</td>
<td>1</td>
<td>Canister Assembly UV3, part #327125-180SNRRCYCL</td>
<td>$56.00</td>
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<tr>
<td>R</td>
<td>1</td>
<td>Canister Assembly UV3, part #327125-180SNRMID</td>
<td>$56.00</td>
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</tbody>
</table>

Notes:  
1) Prices will remain unchanged for FY18 thru FY20.  
2) Prices to increase by 5% for FY21 & FY22.  
3) Freight is not included & would be prepaid & added to invoice.

Sub Total $10,423.60  
Sales Tax: Stanislaus, County of 7.8750% $820.86  
Freight Terms: F.O.B. Factory, Premix and Add  
Grand Total $11,244.46  

If prices quoted herein do not include sales or use tax, such taxes, if required, are to be paid by the purchaser.  
This quotation and any resulting order will be subject to our standard terms of sale.  
PAYMENT TERMS: Net 30 days

BY: Catherine M. Frost
MODESTO CITY COUNCIL
RESOLUTION NO. 2017-326

RESOLUTION APPROVING THE AWARD OF BID FOR THE PURCHASE OF FERRIC CHLORIDE FROM KEMIRA WATER SOLUTIONS, LAWRENCE, KS, FOR A TWO-YEAR AGREEMENT WITH THREE ONE-YEAR EXTENSION OPTIONS, AT AN ANNUAL COST OF $32,276 AND OVER FIVE YEARS OF $161,381, AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE A PURCHASING AGREEMENT

WHEREAS, the City Manager’s Office authorized the Purchasing Division to issue a Request for Bids (RFB) for Ferric Chloride and RFB No. 1617-31 was issued on April 25, 2017, and

WHEREAS, the bids were publicly opened on May 23, 2017, and four companies; California Water Tech, Santa Fe Springs, CA, Kemira Water Solutions, Lawrence, KS, Sierra Chemical Co, Sparks, NV and Thatcher Company of California, Inc., Sacramento, CA, all provided bids, and

WHEREAS, based on providing the overall lowest responsive and responsible bid, staff and the Interim City Manager recommend the award of bid for the purchase of Ferric Chloride to Kemira Water Solutions, Lawrence, KS, at an annual cost of $32,276 and over five years of $161,381, and

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

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid for the purchase of Ferric Chloride from Kemira Water Solutions, Lawrence, KS, for a two-year agreement with three one-year
extension options at the sole discretion of the City Manager for annual cost of $32,276
and over five years of $161,381.

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

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer,
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: 

APPROVED AS TO FORM:

By: 

ADAM U. LINDGREN, City Attorney
RESOLUTION APPROVING A LICENSE AGREEMENT AND A COMMON USE AGREEMENT BETWEEN THE MODESTO IRRIGATION DISTRICT AND THE CITY FOR THE CODONI TRANSMISSION MAINS PROJECT AND AUTHORIZING THE INTERIM CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENTS, IN A FORM APPROVED BY THE CITY ATTORNEY

WHEREAS, the City and the Modesto Irrigation District (MID) continue to make improvements for the delivery of drinking water for its users, and

WHEREAS, the City will construct two 24-inch diameter transmission pipelines for this purpose, and

WHEREAS, MID requires a License Agreement and a Common Use Agreement to install, maintain and operate the two transmission pipelines, and

WHEREAS, the License Agreement is needed to construct a pipeline through a portion of MID’s Lateral No. 1 property, and

WHEREAS, the Common Use Agreement is needed to construct a pipeline through a portion of MID’s Highline Lateral, and

WHEREAS, the Agreements will allow for the completion of the Codoni Transmission Mains Project.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a License Agreement and a Common Use Agreement with the MID for the purpose of installing, maintaining and operating the two transmission pipelines located on MID property.
BE IT FURTHER RESOLVED that the Interim City Manager, or his designee, is hereby authorized to execute the License Agreement and the Common Use Agreement, in a form approved by the City Attorney.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Kenoyer, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2017-328

RESOLUTION RESCINDING DIRECTION TO STAFF, REGARDING BOUNDARIES FOR A GENERAL PLAN AMENDMENT, BY PRIOR CITY COUNCIL ACTIONS OF JANUARY 28 AND MARCH 25, 2014, AND AUTHORIZING A RETURN TO THE 1995 ADOPTED GENERAL PLAN AND SPHERE OF INFLUENCE BOUNDARIES FOR FINALIZATION OF THE GENERAL PLAN AMENDMENT ANALYSIS, PROVIDED THAT THE RESIDENTIAL LAND USE DESIGNATION AT THE NORTHEAST CORNER OF OAKDALE ROAD AND FLOYD AVENUE BE MAINTAINED

WHEREAS, on January 28, 2014, the City Council of the City of Modesto provided certain direction to planning staff regarding land use designations and boundaries associated with a general plan amendment project, and

WHEREAS, on March 25, 2014, the City Council of the City of Modesto provided additional direction and clarification to planning staff regarding land use designations and boundaries associated with a general plan amendment project, and

WHEREAS, on June 8, 2016, the Healthy Economy Committee of the City Council of the City of Modesto voted to recommend that the City Council of the City of Modesto rescind the prior direction of 2014 described above and return the general plan amendment boundaries to those of the 1995 adopted general plan, and

WHEREAS, the "Residential" land use designation shown on the adopted 1995 general plan land use diagram at the northeast corner of Oakdale Road and Floyd Avenue should not be changed to "Commercial" as was included in the prior City Council direction from 2014.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby rescinds direction to staff, regarding boundaries for a General Plan Amendment, by prior City Council actions of January 28 and March 25, 2014, and
authorizing a return to the 1995 adopted General Plan and Sphere of Influence boundaries for finalization of the General Plan Amendment analysis, provided that the residential land use designation at the northeast corner of Oakdale Road and Floyd Avenue be maintained.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Ridenour, who moved its adoption, which motion being duly seconded by Councilmember Kenoyer, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: Ah You

ABSENT: Councilmembers: Grewal

ATTEST: [Signature]

(STEPHANIE LOPEZ, City Clerk)

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
RESOLUTION FINDING THAT THE FOLLOWING SUBSEQUENT PROJECT IS WITHIN THE SCOPE OF THE PROJECT COVERED BY THE MODESTO URBAN AREA GENERAL PLAN MASTER ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 2007072023): AMENDMENT OF SECTION 16-3-9 OF THE CITY OF MODESTO ZONING MAP TO REZONE FROM PLANNED DEVELOPMENT ZONE P-D(237) TO PLANNED DEVELOPMENT ZONE P-D(602) TO ALLOW FOR SENIOR ASSISTED AND INDEPENDENT LIVING HOUSING, PROPERTY LOCATED AT 1192 NORWEGIAN AVENUE (HARLESS PROPERTIES INC.)

WHEREAS, on October 14, 2008, the City Council of the City of Modesto certified the Final Master Environmental Impact Report ("Master EIR") (SCH No. 2007072023) for the Modesto Urban Area General Plan, and

WHEREAS, Harless Properties Inc. has proposed the rezone of property located at 1195 Norwegian Avenue from Planned Development Zone P-D(237) to Planned Development Zone P-D(602) to allow for a senior assisted and independent living housing project, and

WHEREAS, pursuant to Section 21157.1 of the Public Resources Code, the City of Modesto’s Community & Economic Development Department prepared an Environmental Assessment Initial Study EA/C&ED 2017-09 ("Initial Study") which analyzed whether the subsequent project may cause any significant effect on the environment that was not examined in the Master EIR and whether the subsequent project was described in the Master EIR as being within the scope of the report, and

WHEREAS, in accordance with CEQA guidelines beginning July, 18, 2017, the City caused to be published a 20-day notice of the City’s intent to make a finding that the subsequent project conforms with the Master EIR, and
WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on August 8, 2017, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council has reviewed and considered the Initial Study prepared for the proposed rezone, a copy of which is attached hereto as Exhibit “A”, and incorporated herein by reference, and based on substantial evidence in the Initial Study makes the following findings:

1. An Initial Study was prepared by the City of Modesto that analyzed whether the subsequent project may cause any significant effect on the environment that was not examined in the Master EIR and whether the subsequent project was described in the Master EIR as being within the scope of the report.

2. The subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158 of the Public Resources Code, that was not identified in the Master EIR.

3. No new or additional mitigation measures or alternatives are required.

4. The subsequent project is within the scope of the project covered by the Master EIR.

5. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the subsequent project or otherwise made conditions of approval of the subsequent project.

6. No substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, and no new information, which was not known and could not have been known at the time that the Master EIR was certified as complete, has become available.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Community & Economic Development Director is hereby authorized and directed to file a notice of approval or determination within five (5) business days with the Stanislaus County Clerk pursuant to Section 21152 of the Public Resources Code.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2017, by Councilmember Grewal, who moved its adoption, which motion being duly seconded by Councilmember Kenoyer, 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)

**ATTEST:**

[Signature]

STEFANIE LOPEZ, City Clerk

(SEAL)

**APPROVED AS TO FORM:**

By: [Signature]

ADAM U. LINDGREN, City Attorney
EXHIBIT A

Initial Study

EA/C&ED 2017-09
City of Modesto

Finding of Conformance to General Plan Master EIR:

Initial Study Environmental Checklist
C&ED No. 2017-09

For the proposed:

PDZ-17-001: Planned Development Zone to Allow for Senior Independent and Assisted Living Condominiums

TSM-17-001: Tentative Subdivision Map for Airspace Condominium Purposes; 16 units plus seven common-area lots

1192 Norwegian Avenue

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

March 7, 2017

Updated: September 2013
City of Modesto
Master EIR Initial Study Environmental Checklist

I. PURPOSE

CEQA allows for the limited environmental review of subsequent projects under the City’s Master Environmental Impact Report ("Master EIR" or "MEIR"). This Initial Study Environmental Checklist ("Initial Study") is used in determining whether the proposed Planned Development Zone and concurrent tentative maps to facilitate senior assisted and independent living housing ("Project") are "within the scope" of the project analyzed in the Modesto Urban Area General Plan Master EIR (SCH# 2007072023) (Public Resources Code section 21157.1). When the Initial Study supports this conclusion, the City will issue a finding of conformance.

A subsequent project is "within the scope" of the Master EIR when:

1. it will have no additional significant effects on the environment that were not addressed as significant effects in the Master EIR; and

2. no new or additional mitigation measures or alternatives are required.

"Additional significant effects" means a project-specific effect that was not addressed as a significant effect in the Master EIR. [Public Resources Code Section 21156(d)]

The determination must be based on substantial evidence in the record. "Substantial evidence" means facts, reasonable assumptions predicated upon facts, or expert opinion based on facts. It does not include speculation or unsubstantiated opinion. (CEQA Guidelines Section 15384)

II. PROJECT DESCRIPTION

A. Title: Planned Development Zone to facilitate senior assisted and independent living condominiums

B. Address or Location: 1192 Norwegian Avenue (APN 120-048-013)

C. Applicant: Harless Properties, c/o Gerald Hughes
   945 Coffee Road, Suite 1; Modesto, CA 95355

D. City Contact Person: Katharine Martin, Associate Planner
   Project Manager: Katharine Martin
   Department: Community and Economic Development, Planning Division
   Phone Number: 209-577-5465
   E-mail address: kamartin@modestogov.com

E. Current General Plan Designation(s): Mixed Use (MU)

F. Current Zoning Classification(s): Planned Development Zone P-D(237), Radio Broadcasting Studio
G. Surrounding Land Uses:
   North: Low Density Residential (R-1) Zone, single family residential; Planned Development Zone P-D(86), Residential Condominiums
   South and East: Planned Development Zone P-D(208), The House Church (formerly Calvary Temple), open space, soccer playing fields
   West: Low Density Residential (R-1) Zone, single family residential; Planned Development Zone P-D(208), The House Church (formerly Calvary Temple), driveway to church facility parking lots.

H. Project Description, including the project type listed in Section II.C (Anticipated Future Projects) of the Master EIR (Attach additional maps/support materials as needed for complete record):

Proposal to redevelop a site formerly used as a radio broadcasting station facility (station building since demolished, radio broadcasting tower with cellular equipment in a 30-ft by 37-ft lease area to remain) into a new senior independent and assisted living housing complex comprised of two residential buildings on a 1.1-acre parcel. The site plan provides for 28 parking spaces and 16 storage units for the use of the residents.

Project involves:
- Planned Development Zone to allow for senior independent and assisted living housing within two single-story buildings on the 1.1-acre site. Each building to consist of eight residential condominium units and three interior common areas, with exterior common area consisting of parking areas, landscaping, and a 16-unit storage building for use by the site's residents. Planned Development Zone would also allow for existing radio broadcasting tower and cellular equipment.
- Tentative Subdivision Map of 1.1-acre site for airspace condominium units and seven common areas, including interior common areas, and exterior common area comprised of parking area, landscaping and 16-unit storage building.
SITE PLAN FOR PLANNED DEVELOPMENT
SENIOR INDEPENDENT AND ASSISTED LIVING HOUSING
PDZ-17-001
TENTATIVE SUBDIVISION MAP FOR AIRSPACE CONDOMINIUMS
TSM-17-001

I. Other Public Agencies Whose Approval is Required: None.

Planned Development Zone for Senior Housing
General Plan Master EIR Finding of Conformance 4

Initial Study EA No. 2017-09
March 7, 2017
III. FINDINGS/DETERMINATION (SELECT ONE ON THE BASIS OF THE ANALYSIS IN SECTION IV)

1. **Within the Scope** - The project is within the scope of the Master EIR and no new environmental document or Public Resources Code Section 21081 findings are required. All of the following statements are found to be true:

A. The subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158 of the Public Resources Code, that was not identified in the Master EIR.

B. No new or additional mitigation measures or alternatives are required.

C. The subsequent project is within the scope of the project covered by the Master EIR.

D. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the subsequent project or otherwise made conditions of approval of the subsequent project.

E. No substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, and no new information, which was not known and could not have been known at the time that the Master EIR was certified as complete, has become available.

2. **Mitigated Negative Declaration Required** - On the basis of the above determinations, the project is not within the scope of the Master EIR. A mitigated negative declaration will be prepared for the project. The following statements are all found to be true:

A. The subsequent project is within the scope of the project covered by the Master EIR.

B. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the subsequent project or otherwise made conditions of approval of the subsequent project.

C. The project will have one or more potential new significant effects on the environment that were not addressed as significant effects in the Master EIR. New or additional mitigation measures are being required of the project that will reduce the effects to a less-than-significant level.

D. No substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, and no new information, which was not known and could not have been known at the time that the Master EIR was certified as complete, has become available.

3. **Focused EIR Required** - On the basis of the above determinations, the project is not within the scope of the Master EIR. A Focused EIR will be prepared for the project. All of the following statements are found to be true:

A. The subsequent project is within the scope of the project covered by the Master EIR.
B. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the subsequent project or otherwise made conditions of approval of the subsequent project.

C. The project will have one or more new significant effects on the environment that were not addressed as significant effects in the Master EIR. New or additional mitigation measures or alternatives are required as a result.

D. No substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, and no new information, which was not known and could not have been known at the time that the Master EIR was certified as complete, has become available.
4. Within the Scope Analysis of this Document:

The Master EIR allows projects to be found within the scope of the MEIR if certain criteria are met. If the following statements are found to be true for all 21 impact categories included in this Initial Study, then the proposed project is addressed by the MEIR analysis and is within the scope of the MEIR. Any “No” response must be discussed.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>YES NO</td>
</tr>
<tr>
<td>(1)</td>
<td>The lead agency for subsequent projects shall be the City of Modesto or a responsible agency identified in the Master EIR.</td>
</tr>
<tr>
<td>(2)</td>
<td>City policies which reduce, avoid, or mitigate environmental effects will continue to be in effect and, therefore, would be applied to subsequent projects where appropriate. The policies are described in the list of policies in place and mitigation measures attached to the Initial Study template. Project impacts would be mitigated to a less-than-significant level using MEIR mitigations only.</td>
</tr>
<tr>
<td>(3)</td>
<td>Federal, State, regional, and Stanislaus County regulations do not change in a manner that is less restrictive on development than current law (i.e., would not offer the same level of protection assumed under the Master EIR).</td>
</tr>
<tr>
<td>(4)</td>
<td>No specific information concerning the known or potential presence of significant resources is identified in future reports, or through formal or informal input received from responsible or trustee agencies or other qualified sources.</td>
</tr>
<tr>
<td>(5)</td>
<td>The development will occur within the boundaries of the City’s planning area as established in this Urban Area General Plan.</td>
</tr>
<tr>
<td>(6)</td>
<td>Development within the project will comply with all appropriate mitigation measures contained and enumerated in the 2008 General Plan Master EIR.</td>
</tr>
</tbody>
</table>

5. Currency of the Master EIR Document

The MEIR should be reviewed on a regular basis to determine its currency, and whether additional analysis/mitigation should be incorporated into the MEIR via a Supplemental or Subsequent EIR (CEQA Section 21157.6). Staff has reviewed Sections 1 through 21 of this document in light of the criteria listed below to determine whether the MEIR is current. The analysis contained within the Master EIR is current as long as the following circumstances have not changed. Any “no” response must be explained.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>YES NO</td>
</tr>
<tr>
<td>(1)</td>
<td>Certification of the General Plan Master EIR occurred less than five years prior to the filing of the application for this subsequent project.</td>
</tr>
<tr>
<td>(2)</td>
<td>This project is described in the Master EIR and its approval will not affect the adequacy of the Master EIR for any subsequent project because the City can make the following findings:</td>
</tr>
<tr>
<td>(a)</td>
<td>No substantial changes have occurred with respect to the circumstances under which the Master EIR was certified.</td>
</tr>
<tr>
<td>(b)</td>
<td>No new information, which was not known and could not have been known at the time the Master EIR was certified as complete, has become available.</td>
</tr>
<tr>
<td>(c)</td>
<td>Policies remain in effect which require site-specific mitigation, and avoidance or other mitigation of impacts as a prerequisite to future development.</td>
</tr>
</tbody>
</table>
Discussion:

(1) The General Plan Master EIR was certified on October 14, 2008, so more than five years has passed since the MEIR was certified. However, the analysis contained in the MEIR is still adequate for subsequent projects, as documented in the discussion below.

(2) The project is consistent with the analysis contained in the MEIR. This is documented in the discussion of the individual issue areas of this initial study.

(2)(a) There have been no substantive changes to the General Plan since the MEIR was certified that would create additional significant environmental effects that were not analyzed by the MEIR.

(2)(b) There has been no new information that would affect the adequacy of the analysis contained in the MEIR.

(2)(c) All policies contained in the MEIR that require site-specific mitigation or avoidance of impacts remain in effect and will be applied to the project as appropriate.

IV. ENVIRONMENTAL ANALYSIS

This Initial Study, in accordance with Section 21157.1(b) of the Public Resources Code, discloses whether the proposed project may cause any project-specific significant effect on the environment that was not examined in the Final Master EIR (MEIR) for the General Plan and whether new or additional mitigation measures or alternatives may be required as a result. The Initial Study thereby documents whether or not the project is “within the scope” of the Master EIR.

Pursuant to Public Resources Code Section 21157.1, no new environmental document or findings are necessary for projects that are determined to be within the scope of the MEIR. Adoption of the findings specified in Section III.1, above after completion of the Initial Study fulfills the City's obligation in that situation.

All environmental effects cited reflect 2025 conditions resulting from the Urban Area General Plan, as identified in the Master EIR.

The environmental impact analysis in the Master EIR for the Urban Area General Plan is organized in twenty-one subject areas. The following analysis is based on the impact analyses contained in Chapter V of the Master EIR. For ease of reference, the sections are numbered in the same order as the analyses in Chapter V.
1. TRAFFIC AND CIRCULATION

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable traffic and circulation impacts expected after application of mitigations/policies:

**Direct Impacts**

**Effect:** Increased automobile traffic will result in roadway segments (see MEIR on Table 1-7, pages V-1-32 to V-1-34) operating at LOS D, Modesto’s significance threshold for automobile traffic, or lower (LOS E or F).

**Effect:** The substantial increase in traffic relative to the existing load and capacity of the street system will cause, either individually or cumulatively, the violation of automobile service standards established by StanCOG’s Congestion Management Plan for designated roads and highways.

**Effect:** A substantial increase in automobile vehicle miles traveled and automobile vehicle hours of travel and a decrease in average automobile vehicle speed (see MEIR Table 1-6, page V-1-31).

**Cumulative Impacts**

**Effect:** Potential for growth inducement or acceleration of development resulting from highway and local road projects.

**Effect:** Substantial increase in traffic in relation to the existing traffic load and capacity of the street system, including a violation, either individually or cumulatively, of an automobile LOS standard established by the Congestion Management Plan for designated roads and highways.

**Effect:** Increased demand for capacity-enhancing alterations to existing roads or automobile traffic reduction.

Other impact categories affected by Traffic and Circulation are addressed throughout this Initial Study (see also Section 2, Degradation of Air Quality; Section 3, Generation of Noise; Section 7 Loss of Sensitive Wildlife and Plant Habitat; Section 8, Disturbance of Archaeological/Historic Sites; Section 14 Increased Demand for Fire Services; Section 18, Energy; Section 19, Visual Resources; Section 20, Land Use and Planning, and Section 21, Climate Change).

b. Master EIR and/or New Mitigation Measures Applied to the Project

Traffic and Circulation mitigation measures pertinent to this project are found on MEIR pages V-1-9 through V-1-28. All mitigation measures appropriate to the project, including any new measures, will be incorporated into or made conditions of approval of this project and are listed in Section V, Mitigation Measures Applied to Project.

**Discussion:**

No mitigation measures regarding traffic from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.
c. **Project-Specific Effects**

Section V-1.B of the Master EIR provides analysis of Traffic and Circulation impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

**Significance Criteria:** A subsequent development project will have a new significant effect on the environment if it would exceed the following criteria:

<table>
<thead>
<tr>
<th>1. TRAFFIC AND CIRCULATION</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project exceeds traffic generation assumptions in the Master EIR for the site by 100 trips or more and City Engineering and Transportation staff has determined that the project would have additional potentially significant project-specific effects that are not avoided or reduced by the Master EIR's mitigation measures.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>3) The proposed project would cause additional roadway segments in the General Plan area to exceed LOS D and/or cause additional violations of standards in the Congestion Management Plan, and/or cause an increase in automobile vehicle miles or vehicle hours of travel or a decrease in automobile travel speed, as compared to the impacts disclosed in the Master EIR.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>4) The proposed project would cause emergency response times to exceed acceptable standards established by the Fire Department, as compared to impacts disclosed in the Master EIR (see Section 14, Increased Demand for Fire Services).</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>5) The proposed project would result in less parking than required by the Municipal Code or as determined by staff.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>6) The proposed project would conflict with adopted policies, plans, or programs that support alternative transportation, including, but not limited to the Regional Transportation Plan, the Sustainable Communities Strategy, the Bicycle Action Plan, and so on.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
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</tr>
<tr>
<td>7) The proposed project would result in an increase</td>
<td>☐</td>
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<tr>
<td>Impact</td>
<td>Potentially Significant Impact</td>
<td>Less Than Significant with Mitigation Incorporated</td>
<td>Less Than Significant Impact</td>
<td>No Impact</td>
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<td>-----------------------------------------------------------------------</td>
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<tr>
<td>in automobile vehicle miles traveled on a per capita basis, in excess of that considered in the Urban Area General Plan MEIR</td>
<td></td>
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</tr>
</tbody>
</table>

**Discussion:**

1. The project consists of the development of approximately 1.1 acres within the Baseline Urbanized Area for senior independent and assisted living housing. The site was formerly the location of a radio broadcasting studio, of which the studio building has been since demolished but the radio tower with cellular equipment is to remain within a 30x37-ft lease area. The development would allow for a total of sixteen residential units. The project was referred to Land Development Engineering, Traffic, who indicated no concerns with traffic volumes exceeding 100 trips.

2. The project would not exceed a level of service standard established by the county congestion management agency (StanCOG).

3. There are no significant changes in the level of service or the volume-capacity ratio as a result of the project, and therefore there are no significant cumulative (long-term) traffic impacts.

4. Police and Fire Staff have reviewed this proposal and have not indicated that there is an emergency access problem.

5. The proposed single-family dwellings will provide parking in accordance with the Municipal Code.

6. Traffic Staff have reviewed this proposal and indicated no issues with adopted plans for alternative transportation. A bus stop is located on Norwegian Avenue at the northeast corner of the site.

7. The proposed project would not result in a significant increase in automobile vehicle miles traveled (per capita) in excess of what was considered in the Urban Area General Plan.

2. DEGRADATION OF AIR QUALITY

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable air quality impacts expected after application of mitigations/policies:

**Direct Impacts**

**Effect:** Expected automobile traffic will result in increased operational emissions of reactive organic gases (ROG) and oxides of nitrogen (NOx) (see MEIR Table 2-8, page V-2-27).

**Effect:** Expected automobile traffic will result in increased emissions of particulate matter 10 microns or less (PM_{10}) and 2.5 microns or less in diameter (PM_{2.5}) (see MEIR Table 2-8, page V-2-27).
Effect: Expected automobile traffic will result in increased carbon monoxide (CO) levels in the project area (see MEIR Table 2-7, page V-2-26, and Table 2-8, page V-2-27).

Cumulative Impacts

The Master EIR indicates the same impacts identified as direct impacts above will contribute to regional impacts on air quality for the criteria pollutants ROG, NOx, PM10, and PM2.5.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Air quality mitigation measure(s) pertinent to the proposed project are found on pages V-2-13 through V-2-24 of the Master EIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project and are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

The appropriate mitigation to be applied to this project includes AQ-42 through AQ-50 from the MEIR. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-2.B of the Master EIR is the analysis of air quality impacts resulting from development of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not analyzed in the Master EIR.

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

<table>
<thead>
<tr>
<th>2. DEGRADATION OF AIR QUALITY</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project exceeds the project-level emissions thresholds established for CO, ROG, NOx, PM10, and PM2.5 by the San Joaquin Valley Air Pollution Control District (SJVAPCD) and is not consistent with the development assumptions for the project site, as established in the Urban Area General Plan and Master EIR.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project does not incorporate the best management practices established by the SJVAPCD for CO, ROG, NOx, PM10, and PM2.5.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>3) The proposed project does not comply with the air quality policies in the Modesto Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>Potential Impact</td>
<td>Less Than Significant with Mitigation Incorporated</td>
<td>Less Than Significant Impact</td>
<td>No Impact</td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------</td>
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<td></td>
</tr>
<tr>
<td>4) The proposed project would expose sensitive receptors to pollutant concentrations in excess of those expected to occur as a result of implementation of the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
<td></td>
</tr>
<tr>
<td>5) The proposed project would create objectionable odors affecting a substantial number of people.</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
<td>☑</td>
</tr>
</tbody>
</table>

Discussion:

(1) The project consists of the development of approximately 1.1 acres for senior independent and assisted living housing with a total of sixteen residential units. The subsequent development would not exceed emissions thresholds established by the SJVUAPCD, and is consistent with the development standards for a residential use as established by the General Plan.

(2) Development of the site will be required to adhere to applicable City Zoning Ordinances, Standards, and applicable best management practices during the construction process.

(3-5) The project would comply with the air quality policies in the General Plan, and would not expose sensitive receptors to pollutants or odors in excess of assumptions for residential uses.

3. GENERATION OF NOISE

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable noise impacts expected after application of mitigations/policies:

Direct Impacts

Effect: Future automobile traffic noise levels and roadway construction and maintenance activities resulting from development of the Urban Area General Plan will exceed the City's noise thresholds at various locations, but particularly in areas adjacent to heavily traveled roadways (see MEIR Table 3-3, page V-3-10, and Figure VII-2 and Table 3-6, pages V-3-18 and V-3-19).

Effect: Expected noise from airport operations and airport construction projects may expose up to 468 dwellings and three churches to noise levels of 65 dB CNEL and up to eight dwellings to noise levels of 70 dB CNEL.

Effect: Expose noise-sensitive land uses to noise from the construction of bicycle and transit projects.

Effect: Expose noise-sensitive land uses to noise from freight and passenger rail operations.

Cumulative Impacts
Effect: Traffic from development in the City of Modesto would, when combined with traffic from new development in the County and other cities, contribute to a cumulative increase in roadside noise levels on major roads and highways throughout Stanislaus County.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Noise policies and mitigation measures pertinent to the project being analyzed in this Initial Study are found on pages V-3-11 through V-3-15 of the Master EIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project and any new measures are listed in Section V, Mitigation Applied to Project.

Discussion:
The appropriate mitigation to be applied to this project includes N-1 through N-3 from the Master EIR. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-3.B of the MEIR discloses noise impacts resulting from development of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not analyzed in the Master EIR.

Significance Criteria: Determination of the proposed project’s effects are based on the following thresholds. Project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>3. GENERATION OF NOISE</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project will exceed the standards for noise level and hours of operation established by the Modesto noise ordinance.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project will not comply with the noise policies of, or otherwise be inconsistent with, the Modesto Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>3) The proposed project will result in an increase in ambient noise levels in the project vicinity above those disclosed in the Master EIR.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>4) The proposed project will result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels disclosed in the Master EIR implementation of the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
</tr>
</tbody>
</table>

Discussion:
The project consists of the development of approximately 1.1 acres for senior independent and assisted living housing with a total of sixteen residential units. The subsequent development would be required to adhere to the City's noise ordinance.

The development would not be inconsistent with the noise policies of the General Plan, nor result in ambient noise levels above those assumed by the General Plan for a residential use. Any increase in ambient noise levels would be construction-related and temporary in the process of developing the residential units.

4. EFFECTS ON AGRICULTURAL LANDS

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on agricultural lands expected after application of mitigations/policies:

**Direct Impacts**

**Effect:** Between 1995 and 2025, development of the Urban Area General Plan may convert up to approximately 26,000 acres of farmland in various categories in the Planned Urbanizing Area to urban uses.

**Effect:** Approximately 1,200 acres of urban development along a 28.5-mile boundary 350 feet wide between urban and agricultural uses could be affected by continued agricultural operations, including noise, dust, and chemical overspray or drift.

**Cumulative Impacts**

**Effect:** Growth within Modesto’s planning area would contribute considerably to the loss of agricultural land within Stanislaus County, accounting for the conversion of as much as approximately 26,000 acres of farmland in various categories in the Planned Urbanizing Area from 1995 to 2025.

b. Master EIR and/or New Mitigation Measures Pertinent to the Project

Agricultural land mitigation measures pertinent to the proposed project are found on pages V-4-6 to and V-4-8 of the Master EIR. All mitigation measures appropriate to the project and any new mitigation to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project.

**Discussion:**

No mitigation measures regarding agricultural lands from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-4.B of the Master EIR discloses the impacts resulting from the implementation of the Urban Area General Plan on agricultural lands. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the Master EIR.
Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th>Potential Significantly Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. EFFECTS ON AGRICULTURAL LANDS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) The proposed project is inconsistent with the Urban Area General Plan’s policies relating to agricultural land.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>2) The proposed project will either directly or indirectly result in the development of land outside the 2008 Urban Area General Plan’s planning area boundary.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>3) The proposed project will conflict with existing zoning for agricultural use, or there is an existing Williamson Act contract on the project site.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>4) The proposed project will involve other changes in the existing environment not anticipated in the Master EIR which, due to their location or nature, could result in conversion of farmland to non-agricultural use.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

Discussion:

(1) The project is a vacant infill area within the Baseline Developed Area not in agricultural production, and is completely surrounded by urbanized area consisting of residential uses and the House Church of Modesto. The project would therefore not be inconsistent with the General Plan’s policies related to agricultural land.

(2-4) The project site is not zoned for agricultural use, and no Williamson Act contract is in place on the property. The site is surrounded by urban area and would not cause the conversion of farmland to a non-agricultural use.

5. INCREASED DEMAND FOR LONG-TERM WATER SUPPLIES

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on long-term water supplies expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts have been disclosed in the Master EIR.
Cumulative Impacts

**Effect:** Operational yields of the Modesto and Turlock subbasins, both of which underlie the City of Modesto, are unknown, although the City is participating in a study with the United States Geological Survey in order to quantify the operational yields of both subbasins. Groundwater withdrawals from both basins by the City, when combined with other users’ withdrawals, may result in overdrafting both subbasins.

**Effect:** Despite available options, during drought years, significant water shortages are forecast for the San Joaquin River basin, which includes both the Modesto and Turlock subbasins, by 2020. Modesto would make a cumulatively considerable contribution to the cumulative impact on water supply under drought conditions.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Water supply mitigation measures pertinent to the proposed project are found on pages V-5-6 through V-5-12 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

No mitigation measures regarding water supply from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-5.B of the Master EIR discloses impacts on long-term water supplies resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

<table>
<thead>
<tr>
<th>5. INCREASED DEMAND FOR LONG-TERM WATER SUPPLIES</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with water supply policies in the Urban Area General Plan.</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
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</tr>
<tr>
<td>2) Water demand for the proposed project will exceed estimates for similar projects or for development on the project site anticipated in the Urban Area General Plan or sufficient water supplies are not otherwise available to serve the project from existing entitlements and resources.</td>
<td>[ ]</td>
<td>[ ]</td>
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<td>[ ]</td>
</tr>
</tbody>
</table>
6. INCREASED DEMAND FOR SANITARY SEWER SERVICES

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on sanitary sewer services after application of mitigations/policies:

Direct Impacts

**Effect:** Development resulting from implementation of the Urban Area General Plan will require substantial new sewage treatment and disposal capacity, treatment plant improvements, sewer mains and collection lines, and pump stations. The Wastewater Master Plan anticipates the need for these facilities and its EIR evaluates the impact of developing those facilities. Potential impacts include degradation of water quality through erosion and chemical releases; localized flooding; construction noise; exposure of construction workers and the public to hazardous materials; and on the habitat of the elderberry longhorn beetle, burrowing owl, and Swainson's hawk, as well as certain other regulated habitats. All of these impacts are mitigated to a less-than-significant level.

Additional impacts that are not mitigated to a less-than-significant level include loss of farmland caused by construction of the Phase IA tertiary treatment facility at the Jennings Road Secondary Treatment Facility, an increase in pollutant loads from increased wastewater flows to the San Joaquin River, and an increase in noise and criteria air pollutants due to construction activities, including traffic.

Cumulative Impacts

**Effect:** No additional cumulative impacts were identified in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project
Sewer service mitigation measures pertinent to the proposed project are found on pages V-6-3 through V-6-8 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project.

Discussion:
No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-6.B of the Master EIR discloses impacts on the Increased Demand for Sanitary Sewer Service resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

<table>
<thead>
<tr>
<th>6. INCREASED DEMAND FOR SANITARY SEWER SERVICES</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with wastewater policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project will generate sewage flows greater than those anticipated in the Urban Area General Plan for the project site.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>3) The proposed project will result in a determination by the wastewater treatment provider which serves or may serve the project that it has inadequate capacity to serve the project’s projected demand in addition to the provider’s existing commitments.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>

Discussion:

(1) The project consists of the development of approximately 1.1 acres for senior independent and assisted living housing with a total of sixteen residential units. The project would be consistent with the General Plan's policies relating to wastewater and conform to applicable City Zoning Codes and Standards.

(2-3) The project would not generate sewage flows greater than estimates for a project of similar residential uses. The project was referred to Land Development Engineering, who indicated no concerns with the project.
7. LOSS OF SENSITIVE WILDLIFE AND PLANT HABITAT

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on sensitive wildlife and plant habitat expected after application of mitigations/policies:

**Direct Impacts**

**Effect:** No residual significant impacts on sensitive wildlife and plant habitat are expected to occur with the application of the policies contained in the Urban Area General Plan.

**Cumulative Impacts**

**Effect:** Implementation of the Urban Area General Plan will contribute to the cumulative impact of habitat loss in the San Joaquin Valley. Requiring density development than has occurred in the past or that is expected in the future would minimize the City's contribution to the cumulative loss of habitat. Nonetheless, this is a significant and unavoidable impact.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Wildlife and plant habitat mitigation measures pertinent to the proposed project are found on pages V-7-17 through V-7-24 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project.

**Discussion:**

No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-7.B of the Master EIR discloses impacts on the Loss of Sensitive Wildlife and Plant Habitat resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

<table>
<thead>
<tr>
<th>7. LOSS OF SENSITIVE WILDLIFE AND PLANT HABITAT</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The project is inconsistent with the policies pertaining to the loss of sensitive wildlife and plant</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td></td>
<td>Potentially Significant Impact</td>
<td>Less Than Significant with Mitigation Incorporated</td>
<td>Less Than Significant Impact</td>
<td>No Impact</td>
</tr>
<tr>
<td>------------------------------</td>
<td>--------------------------------</td>
<td>-----------------------------------------------</td>
<td>-------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>habitat contained in the Urban Area General Plan.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2) Consultation with the California Department of Fish and Game or the U.S. Fish and Wildlife Service determines that the project would have a significant effect on a candidate, sensitive, or special status species in excess of the impact disclosed in the Master EIR.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>3) The proposed project would have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act through direct removal, filling, hydrological interruption, or other means, in excess of the impact disclosed in the Master EIR.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>4) The proposed project would substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>5) Conflict with local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>6) The proposed project would conflict with provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>

**Discussion:**

(1) The project consists of the development of approximately 1.1 acres for senior independent and assisted living housing with a total of sixteen residential units. The project would not be inconsistent with General Plan policies pertaining to wildlife and plant habitat.

(2-4) The project site is located within the Baseline Developed Area of the City and is completely surrounded by developed urban area consisting of residential uses and the House Church of Modesto. It is not a biologically sensitive site as defined by Figure V-7-1 of the MEIR. The California Department of Fish and Game and the U.S. Fish and Wildlife Service were consulted in the production of the MEIR.

(5-6) The project is not in conflict with any local policies or ordinances protecting biological resources, nor is in conflict with any adopted habitat conservation plan.
8. **DISTURBANCE OF ARCHAEOLOGICAL/HISTORICAL SITES**

a. **Significant Effects Identified in the Master EIR**

The Master EIR discloses the following residual significant and unavoidable impacts on archaeological/historical sites expected after application of mitigations/policies:

**Direct Impacts**

**Effect**: Modification resulting in a substantial adverse change in the significance of a historic resource or the demolition of a listed or eligible historic resource.

**Effect**: The modification or demolition of a structure more than 50 years in age may be significant.

**Effect**: Discovery of archaeological resources in areas outside of the riparian corridors, as a result of construction activities.

**Effect**: Construction in an area of high archaeological sensitivity.

**Cumulative Impacts**

**Effect**: No additional cumulative impacts were disclosed in the Master EIR.

b. **Master EIR and/or New Mitigation Measures Applied to the Project**

Archaeological or historic mitigation measures pertinent to the project being analyzed in this Initial Study are found on page V-8-16 through V-8-20 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project:

**Discussion:**

No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. **Project-Specific Effects**

Section V-8.B of the MEIR discloses impacts on archaeological/historical resources resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

<table>
<thead>
<tr>
<th>Planned Development Zone for Senior Housing</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Plan Master EIR Finding of Conformance</td>
<td>8. DISTURBANCE OF ARCHAEOLOGICAL/</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Historical Sites

<table>
<thead>
<tr>
<th>Impact Description</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with the archaeological/historical resource policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>2) The proposed project would demolish a building eligible for listing as a historic resource or remove a landmark from the Modesto inventory.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>3) The proposed project would modify or demolish a structure more than 50 years in age.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>4) The project would adversely affect a cultural resource that is either listed or eligible for listing in the California Register of Historical Resources.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>5) The project would adversely affect a Tribal Cultural Resource identified and/or defined consistent with Public Resources Code section 5024.1(c).</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
</tbody>
</table>

**Discussion:**

1) The project would not be inconsistent with General Plan policies pertaining to archaeological or historic resources.

2-4) The project site is vacant infill land surrounded by urban uses. The site is not classified as being of state or federal historic status nor is eligible for listing for such status.

5) The project does not conflict with local policies affecting biological resources.

### 9. Increased Demand for Storm Drainage

#### a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on storm drainage expected after application of mitigations/policies:

**Direct Impacts**

**Effect:** No residual significant direct impacts were disclosed in the Master EIR.

**Cumulative Impacts**

**Effect:** The population of Stanislaus County is projected to increase in a fashion similar to that of Modesto, resulting in additional urban development and associated increases in impervious surface area and associated increases in storm water runoff. Cumulative hydrologic impacts of storm water...
flows from Modesto urban areas and other areas of the County could occur due to the fixed capacity of MID and TID irrigation canals to convey drainage west to the San Joaquin River. If drainage channels in some areas prove insufficient to handle the increased drainage discharges, existing storm water runoff from urban and agricultural areas during large storm events would have to be interrupted until water levels receded to a point allowing the resumption of discharges to the channel. Ceasing discharges to drainage channels could cause inundation in and around the drainage conveyance pipeline systems, surface drainage channels, detention basins, and other urban areas. This cumulative impact is considered significant and unavoidable.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Storm Drainage mitigation measures pertinent to the project being analyzed in this Initial Study are found on pages V-9-4 through V-9-9. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project:

Discussion:

The appropriate mitigation to be applied to this project includes SD-9 from the MEIR. City Engineering staff has reviewed the project and required conditions of approval to implement General Plan Policies for development including compliance with the Storm Drain Management Plan and the utilization of low impact strategies and meet the standards contained in the “Guidance Manual for New Development-Storm Water Quality Control Measures.” No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-9.B of the MEIR discloses impacts on the demand for storm drainage resulting from development of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

<table>
<thead>
<tr>
<th>9. INCREASED DEMAND FOR STORM DRAINAGE</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with the storm drainage policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project would substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or offsite, as compared to impacts anticipated to result from the Urban Area General Plan or create substantial unanticipated sources of polluted runoff.</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
</tr>
</tbody>
</table>

Planned Development Zone for Senior Housing
General Plan Master EIR Finding of Conformance 24
Initial Study EA No. 2017-09 March 7, 2017
<table>
<thead>
<tr>
<th></th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>3) The proposed project does not utilize Low Impact Development strategies to reduce runoff from the site and increase infiltration, resulting in no net increase in runoff before and after development.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>

Discussion:

(1) Construction activities will comply with the requirements of the City's Storm Water Management Plan under its municipal NPDES stormwater permit, and the State Water Resources Control Board's General Permit for Discharges of Storm Water Associated with Construction Activity (MIER Policy SD-9). In addition, the City will ensure that new development complies with the City of Modesto's Stormwater Management Program: Guidance Manual for New Development Stormwater Quality Control Measures (MIER Policy SD-11). These policies will be implemented as conditions of project approval.

(2) The project is not located in an area that has a positive storm drainage system. The project will be required to manage storm water impacts on-site as required in accordance to current City Standards and its amendments, as a condition of approval.

(3) The project will utilize low impact strategies and meet the standards contained in the "Guidance Manual for New Development-Storm Water Quality Control Measures." This requirement will be implemented as a condition of project approval.

10. FLOODING AND WATER QUALITY

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on flooding and water quality expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

Cumulative Impacts

Effect: No residual significant cumulative impacts were disclosed in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Flooding and Water Quality mitigation measures pertinent to the project being analyzed in this Initial Study are found on pages V-10-6 through V-10-9 of the Master EIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project:
Discussion:

The appropriate mitigation to be applied to this project includes: FWQ-13 from the Master EIR. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-10.B of the Master EIR provides analysis of Flooding and Water Quality impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the Master EIR.

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

<table>
<thead>
<tr>
<th>10. FLOODING AND WATER QUALITY</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with the flooding and water quality policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project does not comply with the regulatory requirements of the federal Clean Water Act or the State Porter-Cologne Act.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>3) The proposed project would place more housing within a 100-year flood hazard zone than assumed in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>4) The proposed project would place structure within a 100-year flood hazard area so that they would impede or redirect floodwater or would substantially alter the existing on-site drainage pattern or a watercourse, in such a way as to cause flooding on- or offsite.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>5) The proposed project does not comply with Modesto's Guidance Manual for New Development Storm Water Quality Control Measures.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>6) The proposed project would violate water quality standards or waste discharge requirements.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>7) The proposed project would substantially alter the existing drainage pattern of the site or area or a watercourse in a manner that would result in substantial erosion or siltation on- or offsite in excess of the assumptions of the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>
8) The proposed project would create or contribute runoff, which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff, not expected as part of Urban Area General Plan implementation.

<table>
<thead>
<tr>
<th>Impact</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>8) The proposed project would create or contribute runoff, which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff, not expected as part of Urban Area General Plan implementation.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>

Discussion:

(1) The proposed project is consistent with the flooding and water quality policies in the Urban Area General Plan.

(2) The project would comply with the Federal Clean Water Act and the Porter Cologne Act requirements.

(3) The project site is not within a 100-year flood hazard zone as established by the Federal Emergency Management Agency (FEMA) Flood Rate Insurance Map 06099C0340E dated September 26, 2008.

(4) The project will comply with the Guidance Manual for New Development Storm Water Quality Control Measures (MIER Policy SD-11). This will be implemented as a condition of project approval.

(5) The project will comply with the Guidance Manual for New Development Storm Water Quality Control Measures (MIER Policy SD-11). This will be implemented as a condition of project approval.

(6) The project will not violate water quality standards or waste discharge requirements.

(7) The project would not substantially alter the existing drainage pattern of the site, area or a watercourse in a manner that would result in erosion or siltation.

(8) The project is not located in an area that has a positive storm drainage system. The project will be required to manage storm water impacts on-site as required in accordance to current City Standards and its amendments, as a condition of approval.

11. INCREASED DEMAND FOR PARKS AND OPEN SPACE

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on parks and open space expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.
Cumulative Impacts

Effect: No residual significant cumulative impacts were disclosed in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Parks and open space mitigation measures pertinent to the proposed project are found on pages V-11-3 through V-11-9 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project:

Discussion:

No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-11.B of the MEIR discloses impacts of the Urban Area General Plan on parks and open space. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

<table>
<thead>
<tr>
<th>11. INCREASED DEMAND FOR PARKS AND OPEN SPACE</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with the parks and open space policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project would eliminate parks or open space.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>3) The proposed project would cause an increase in the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility in question would occur or be accelerated or the proposed project would include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>

Discussion:

(1) The project is consistent with the parks and open space policies in the General Plan.
(2) The project would not eliminate an existing park or designated open space. The project is on a vacant site that was previously developed with a radio broadcasting station, since demolished.

(3) The project would not cause an increase in use of existing local and regional parks.

12. INCREASED DEMAND FOR SCHOOLS

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on school facilities expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR. By statute, the impact of new students is considered to be mitigated below a level of significance by payment of school impact fees and the exercise of any or all of the financing options set out in Government Code Section 65997.

Cumulative Impacts

Effect: Similar to direct impacts of implementation of the Urban Area General Plan, no residual significant direct impacts were disclosed in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Mitigation relies upon the implementation of the policies in place under the Modesto Urban Area General Plan. As long these policies are applied to all subsequent projects, no new mitigation is necessary. Further, payment of school impact fees and compliance with SB 50 is statutorily deemed to be full mitigation of school impacts (Government Code Section 65995).

The following schools mitigation measures on pages V-12-5 through V-12-7 of the Master EIR are pertinent to the proposed project. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures are listed in Section V, Mitigation Applied to Project.

Discussion:

No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-12.B of the Master EIR discloses impacts resulting from implementation of the Urban Area General Plan associated with increased demand for schools. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.
Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:

<table>
<thead>
<tr>
<th></th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>12. INCREASED DEMAND FOR SCHOOLS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) The proposed project is inconsistent with the policies relating to schools in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>❌</td>
</tr>
<tr>
<td>2) The proposed project does not comply with SB 50/Proposition 1A funding provisions, or succeeding measures which state that compliance results in less-than-significant impacts on schools.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>❌</td>
</tr>
</tbody>
</table>

Discussion:

(1) The project is consistent with the policies relating to schools in the General Plan.

(2) The project was referred to Modesto City Schools who indicated no concerns with the project.

13. INCREASED DEMAND FOR POLICE SERVICES

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on police services expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

Cumulative Impacts

Effect: No residual significant cumulative impacts were disclosed in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Police services mitigation measures pertinent to the proposed project are found on pages V-13-2 through V-13-5 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.
c. Project-Specific Effects

Section V-13.B of the Master EIR discloses impacts on police services resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

<table>
<thead>
<tr>
<th>Effect</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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</thead>
<tbody>
<tr>
<td>13. INCREASED DEMAND FOR POLICE SERVICES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) The proposed project is inconsistent with policies relating to police services in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project would result in the need for new or significantly altered facilities not considered as part of the Urban Area General Plan or Master EIR which could cause new significant environmental impacts in order to maintain acceptable service ratios, response times, or other performance objectives.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>

Discussion:

(1) The project is consistent with the policies relating to police services in the General Plan.

(2) The project would not result in the need for construction of new or significantly altered facilities which could cause new significant environmental impacts in order to maintain acceptable service ratios, response times or other performance objectives. The project meets City Standards for emergency services access.

14. INCREASED DEMAND FOR FIRE SERVICES

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on fire services expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

Cumulative Impacts

Effect: No residual significant cumulative impacts were disclosed in the Master EIR.
b. Master EIR and/or New Mitigation Measures Applied to the Project

Fire Services mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-14-4 through V-14-7 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-14.B of the Master EIR discloses impacts on fire services resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

<table>
<thead>
<tr>
<th></th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>14. INCREASED DEMAND FOR FIRE SERVICES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) The proposed project is inconsistent with the fire service policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>2) The proposed project would result in the need for new or significantly altered facilities not considered as part of the Urban Area General Plan or Master EIR which could cause new significant environmental impacts in order to maintain acceptable service ratios, response times, or other performance objectives.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>3) The proposed project, based upon substantial evidence, would cause the erosion or elimination of fire protection services in adjoining fire protection districts.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

Discussion:

(1) The project is consistent with the fire service policies in the General Plan.

(2) The project would not result in the need for construction of new or significantly altered facilities which could cause new significant environmental impacts in order to maintain acceptable service ratios, response times or other performance objectives.
The project would not significantly impact adjacent fire districts or result in the elimination of fire protection services.

15. GENERATION OF SOLID WASTE

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts on solid waste expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

Cumulative Impacts

Effect: No residual significant cumulative impacts were disclosed in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Solid waste mitigation measures pertinent to the proposed project are found on pages V-15-4 through V-15-7 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Applied to Project.

Discussion:

No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-15.B of the Master EIR discloses solid waste impacts resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

<table>
<thead>
<tr>
<th></th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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<tr>
<td>15. GENERATION OF SOLID WASTE</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>1) The project is inconsistent with the solid waste policies in the Urban Area General Plan.</td>
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<td>☐️</td>
<td>☐️</td>
<td>☎️</td>
</tr>
<tr>
<td>2) The County is unable to expand its solid waste disposal capacity, as expected, causing all new</td>
<td>☐️</td>
<td>☐️</td>
<td>☐️</td>
<td>☎️</td>
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</tbody>
</table>
Less Than Significant Potentially with Less Than Significant Mitigation

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<thead>
<tr>
<th>Impact</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>development to result in cumulative impacts on the County's disposal capacity.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Discussion:

(1) The project is consistent with the solid waste policies in the General Plan.

(2) This project was referred to the Solid Waste Division for review, who indicated no concerns over service to the project area.

16. GENERATION OF HAZARDOUS MATERIALS

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts regarding hazardous materials expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

Cumulative Impacts

Effect: No residual significant cumulative impacts were disclosed in the Master EIR.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Hazardous materials mitigation measures pertinent to the proposed project are found on pages V-16-8 through V-16-13 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section V, Mitigation Measures Applied to Project.

Discussion:

No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-16.B of the Master EIR discloses impacts on hazardous materials resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

Significance Criteria: Determination of project effects will be based on the following thresholds. The project-specific effects will be less than significant unless:
16. GENERATION OF HAZARDOUS MATERIALS

<table>
<thead>
<tr>
<th>Potential Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The project is inconsistent with the hazardous materials policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>2) The proposed project would emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>3) The proposed project would be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and as a result, would create a significant hazard to the public or the environment.</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>4) The proposed project would be constructed on a contaminated site not known to the State of California as of March 2008.</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
</tbody>
</table>

Discussion:

(1) The project is consistent with the hazardous materials policies in the General Plan.

(2) No hazardous materials will be involved with this project.

(3) The project would not be located on a site, which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and as a result, would not create a significant hazard to the public or the environment.

(4) The project site is not known to contain any contaminants.

17. GEOLOGY, SOILS, AND MINERAL RESOURCES

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts related to geology, soils, and mineral resources expected after application of mitigations/policies:

Direct Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.

Cumulative Impacts

Effect: No residual significant direct impacts were disclosed in the Master EIR.
b. Master EIR and/or New Mitigation Measures Applied to the Project

Geology, soils, and mineral resource mitigation measures pertinent to the proposed project are found on pages V-17-9 and V-17-10 of the Master EIR. All mitigation measures appropriate to the project to be incorporated into or made conditions of approval of the proposed project are listed in Section V, Mitigation Measures Applied to Project.

Discussion:
No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-17.B of the Master EIR discloses geology, soils, and mineral resource impacts resulting from implementation of the Urban Area General Plan. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

<table>
<thead>
<tr>
<th>17. GEOLOGY, SOILS, AND MINERAL RESOURCES</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The project is inconsistent with policies relating to geology, soils, and mineral resources contained in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project would expose people or structures to potential substantial adverse effects including the risk of loss, injury, or death involving fault rupture, strong seismic activity; location on an expansive soil; result in the loss of topsoil; location on soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems in areas where sewers are not available for the disposal of wastewater; result in the loss of known mineral resources that would be of value to the region and the state; or result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan.</td>
<td>☐</td>
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</tr>
</tbody>
</table>

Discussion:
(1) The project is consistent with policies relating to geology, soils, and mineral resources in the General Plan.
The project would not be located on soil that is unstable, or that would become unstable as a result of the project. There are no known mineral resources of value to the region and the state on the property.

18. ENERGY

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts pertaining to energy expected after application of mitigations/policies:

Direct Impacts

Effect: Continued development in the Planned Urbanizing Area would have an impact on available energy supplies. Energy consumption likely would increase substantially by 2025 as a result of implementation of the Urban Area General Plan.

Cumulative Impacts

Effect: Implementation of the Urban Area General Plan will have a cumulatively considerable impact on energy consumption.

b. Master EIR and/or New Mitigation Measures Applied to the Project

The following energy mitigation measures pertinent to the proposed project are found on pages V-18-2 through V-18-8 in the Master EIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

Discussion:

No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-18.B of the Master EIR discloses impacts of implementing the Urban Area General Plan on energy resources. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

<table>
<thead>
<tr>
<th>18. ENERGY</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
</table>

Planned Development Zone for Senior Housing
General Plan Master EIR Finding of Conformance

Initial Study EA No. 2017-09
March 7, 2017
<table>
<thead>
<tr>
<th></th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant Impact with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with policies relating to energy in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>2) The proposed project would result in energy consumption during construction, operation, maintenance, or removal that is more wasteful, inefficient, and unnecessary than assumed in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
</tbody>
</table>

**Discussion:**

(1) The project is consistent with the energy policies in the General Plan.

(2) The project would not result in energy consumption during construction, operation, maintenance or removal that is more wasteful, inefficient and unnecessary than assumed in the General Plan.

**19. EFFECTS ON VISUAL RESOURCES**

**a. Significant Effects Identified in the Master EIR**

The Master EIR discloses the following residual significant and unavoidable impacts on visual resources expected after application of mitigations/policies:

**Direct Impacts**

**Effect:** New development in the Planned Urbanizing Area will occur in areas that are in agricultural production or are otherwise lightly developed, which could lead to the introduction of light and glare in areas that have little nighttime illumination.

**Cumulative Impacts**

**Effect:** No additional cumulative impacts were disclosed in the Master EIR.

**b. Master EIR and/or New Mitigation Measures Applied to the Project**

The following visual resources mitigation measures pertinent to the proposed project are found on pages V-19-3 and V-19-4 in the Master EIR. All mitigation measures appropriate to the proposed project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

**Discussion:**

No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

**c. Project-Specific Effects**
Section V-18.B of the Master EIR discloses impacts of implementing the Urban Area General Plan on energy resources. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

<table>
<thead>
<tr>
<th></th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>19. EFFECTS ON VISUAL RESOURCES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) The proposed project is inconsistent with policies relating to visual resources in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project would degrade views from riverside areas and parks to a greater degree than assumed in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>3) The proposed project would degrade views of riverside areas from public roadways and nearby properties to a greater degree than assumed in the Urban Area General Plan.</td>
<td>☐</td>
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</tbody>
</table>

**Discussion:**

(1) The project is consistent with the policies relating to visual resources in the General Plan.

(2) The project would not impact views from riverside areas and parks.

(3) The project would not impact views of riverside areas from roadways or nearby properties.

**20. LAND USE AND PLANNING**

**a. Significant Effects Identified in the Master EIR**

The Master EIR discloses the following residual significant and unavoidable impacts pertaining to land use and planning expected after application of mitigations/policies:

**Direct Impacts**

*Effect:* No residual significant direct impacts were disclosed in the Master EIR.

**Cumulative Impacts**

*Effect:* No residual significant cumulative impacts were disclosed in the Master EIR.
b. Master EIR and/or New Mitigation Measures Applied to the Project

The following land use and planning mitigation measures pertinent to the proposed project are found on pages V-20-6 through V-20-17 in the Master EIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

Discussion:
No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-20.B of the Master EIR discloses impacts of implementing the Urban Area General Plan on land use and planning. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

<table>
<thead>
<tr>
<th>20. LAND USE AND PLANNING</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The proposed project is inconsistent with land use and planning policies in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>2) The proposed project contains elements that would physically divide an established community in a way not assumed in the Urban Area General Plan.</td>
<td>☐</td>
<td>☐</td>
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<td>☒</td>
</tr>
<tr>
<td>3) The proposed project conflicts with a land use plan, policy or regulation established for the purpose of avoiding or mitigating an environmental impact by an agency that has jurisdiction over the proposed project.</td>
<td>☐</td>
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</tr>
<tr>
<td>4) The proposed project conflicts with an applicable habitat conservation plan or natural community conservation plan.</td>
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</tr>
</tbody>
</table>

Discussion:

(1) The project is designated as Mixed Use (MU) in the General Plan, which allows for residential uses. The project is consistent with the current General Plan Land Use Designation, and therefore is consistent with land use and planning policies in the General Plan.
(2) The project would not divide an established community. The surrounding area is developed with residential uses including the House Church of Modesto to the south and east. The proposed subdivision is consistent with the surrounding uses and would not divide existing neighborhood.

(3) The project does not conflict with the land use plan, policies and regulations of the City of Modesto designed to mitigate project impacts.

(4) The project does not conflict with applicable habitat conservation plans or natural community conservation plans.

21. CLIMATE CHANGE

a. Significant Effects Identified in the Master EIR

The Master EIR discloses the following residual significant and unavoidable impacts pertaining to climate change expected after application of mitigations/policies:

Direct Impacts

Effect: Impacts resulting from implementation of the Urban Area General Plan are not substantial enough to result in a significant direct impact on climate change, as disclosed in the Master EIR.

Cumulative Impacts

Effect: Implementation of the Urban Area General Plan will have a cumulatively considerable impact on climate change.

b. Master EIR and/or New Mitigation Measures Applied to the Project

The following climate change mitigation measures pertinent to the proposed project are found on pages V-21-7 through V-21-10 in the Master EIR. All mitigation measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section V, Mitigation Applied to Project.

Discussion:

No mitigation measures from the Master EIR are required. No new or additional mitigation measures or alternatives are required to reduce project impacts to a less-than-significant level.

c. Project-Specific Effects

Section V-18.B of the Master EIR discloses impacts of implementing the Urban Area General Plan on climate change. The following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not disclosed in the Master EIR.

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

1) The proposed project is inconsistent with policies relating to climate change in the Urban Area General Plan.

<table>
<thead>
<tr>
<th>Potential Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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</tbody>
</table>

2) The proposed project would result in average automobile trip lengths or CO$_2$ emissions higher than those assumed in the Master EIR.

<table>
<thead>
<tr>
<th>Potential Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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</table>

3) The proposed project would conflict with the Sustainable Communities Strategy or Alternative Planning Strategy that the Air Resources Board has agreed will achieve the goals of AB 32.

<table>
<thead>
<tr>
<th>Potential Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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</tbody>
</table>

Discussion:

(1) The City of Modesto General Plan Master EIR addressed potential climate change impacts due to development and other activities associated with the Urban Area General Plan (UAGP). The Urban Area General Plan Master EIR (MEIR) determined that buildout of the UAGP would make a cumulatively considerable contribution to global climate change. The UAGP nonetheless authorizes development that will contribute to global climate change by virtue of the production of greenhouse gases. The MEIR states the projected rate of growth of vehicle miles traveled (VMT) will increase the City's contribution to global climate change as the City develops. Development under the UAGP is expected to generate approximately 1,096,226.4 metric tons per year above 2005 emissions. The City Council adopted a Statement of Overriding Considerations in 2008, finding that the benefits of the UAGP outweighed the City's increased contribution to global climate change.

The MEIR identifies policies CL-3 through CL-26 as policies in effect that have been determined to reduce, avoid or mitigate air quality environmental impacts within the existing City limits and within the Planned Urbanizing Areas as they annex and develop. These policies include but are not limited to, the use of shade trees to reduce the heat island effect, current energy efficient building standards to reduce energy consumption, and the inclusion of facilities for alternative transportation. The proposed project is required to develop in accordance with climate change policies included in the UAGP and the MIER.

(2) Climate change is an inherently cumulative impact because no single project can produce enough greenhouse gases to substantially alter the global climate. No thresholds have been set for individual or cumulative greenhouse gases. Nonetheless, the proposed project would result in greenhouse gas emissions due primarily to automobile travel and energy use for lighting, heating, cooling and other activities. The primary source of CO$_2$ emissions generated from the project would be related to automobile trips. As identified under the traffic and circulation discussion, traffic engineering staff has determined that the project will be in substantial conformance with the GP MEIR assumptions for traffic generation, the CO$_2$ emissions generated from the project would also be in substantial conformance with that which was assumed under the GP MEIR analysis.
A Sustainable Communities Strategy has not yet been implemented by the Air Resources Board. Future development will be required to comply with the provisions of the Sustainable Communities Strategy once it is established.
V. MITIGATION MEASURES APPLIED TO THE PROPOSED PROJECT

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

A. Master EIR Mitigation Measures Applied to the Project

Pursuant to Public Resources Code Section 21157.1(c), in order for a Finding of Conformance to be made, all appropriate mitigation measures from the Master EIR shall be incorporated into the proposed project. Urban Area General Plan Policies/Master EIR mitigation measures shall be made part of the proposed project prior to approval by means of conditions of project approval or incorporation into the appropriate document or plan.

All applicable and appropriate mitigation measures have been applied to the project (see mitigation measures listed below).

B. New or Additional Mitigation Measures or Alternatives Required

Where the project’s effects would exceed the significance criteria for each environmental impact category, a mitigated negative declaration or Focused EIR must be prepared. Staff has reviewed the project against the significance criteria thresholds established in the Master EIR for all impact categories in this Initial Study.

A Mitigated Negative Declaration or Focused EIR shall be prepared for the project. The following additional project-specific mitigation measures listed below are necessary to reduce the identified new significant effect: none.

Traffic and Circulation:

N/A

Degradation of Air Quality:

AQ-42: All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover.

AQ-43: All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.

AQ-44: All land clearing, grubbing, scraping, excavation, land leveling, grading, cut & fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.

AQ-45: With the demolition of buildings up to six stories in height, all exterior surfaces of the building shall be wetted during demolition.
AQ-46: When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.

AQ-47: All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. (The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions.) (Use of blower devices is expressly forbidden.)

AQ-48: Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.

AQ-49: Within urban areas, track out shall be immediately removed when it extends 50 or more feet from the site and at the end of each workday.

AQ-50: Any site with 150 or more vehicle trips per day shall prevent carryout and track out.

**Generation of Noise:**

N-1: The City has also established a noise ordinance to control noise within the City. The City's noise ordinance (Modesto Municipal Code Section 4-9.101) prohibits the "loud and raucous discharge into the open air of the steam of any steam equipment or exhaust from any stationary internal-combustion engine."

N-2: Additionally, the noise ordinance prohibits the loud and raucous operation or use of any of the following before 7:00 a.m. or after 9:00 p.m. daily (except Saturday and Sunday and state or federal holidays, when the prohibited time shall be before 9:00 a.m. and after 9:00 p.m.):

1. A hammer, or any other device or implement used to pound or strike an object.
2. An impact wrench, or other tool or equipment powered by compressed air.
3. A hand-powered saw.
4. Any tool or piece of equipment powered by an internal-combustion engine such as, but not limited to, chain saw, backpack blower, and lawn mower.
5. Any electrically powered (whether by alternating current electricity or by direct current electricity) tool or piece of equipment used for cutting, drilling, or shaping wood, plastic, metal, or other materials or objects, such as, but not limited to, a saw, drill, lathe, or router.
6. Any of the following: heavy equipment (such as but not limited to bulldozer, steam shovel, road grader, back hoe), ground drilling and boring equipment (such as but not limited to derrick or dredge), hydraulic crane and boom equipment, portable power generator or pump, pavement equipment (such as but not limited to pneumatic hammer, pavement breaker, tamper, compacting equipment), piledriving equipment, vibrating roller, sand blaster, grout machine, trencher, concrete truck, and hot kettle pump.
7. Any construction, demolition, excavation, erection, alteration, or repair activity. In the case of urgent necessity and in the interest of public health and safety, the Chief Building Official may issue a permit for exemption from these. Such period shall not exceed three (3) working days in length while the emergency continues but may be renewed for successive periods of three (3) days or less while the emergency continues. The Chief Building Official may limit such permit as to time of use and/or permitted action, depending upon the nature of the emergency and the type of action requested.
N-3: The City of Modesto shall require construction activities to comply with the City’s noise ordinance (Title 4, Chapter 9), and noise-reducing construction practices to be implemented as conditions of approval for development projects where substantial construction-related noise impacts would be likely to occur (e.g., where construction would include extended periods of pile driving, where construction would occur over an unusually long period, or where noise-sensitive uses like homes and schools would be in the immediate vicinity, etc.). The city should consider potential mitigation measures, including, but not limited to, the following: Construction equipment and vehicles should be equipped with properly operating mufflers according to the manufacturers’ recommendations. Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields. Equipment that is quieter than standard equipment should be utilized. Haul routes that affect the fewest number of people should be selected.

**Effects on Agricultural Lands:**

N/A

**Increased Demand for Long-Term Water Supplies:**

N/A

**Increased Demand for Sanitary Sewer Services:**

N/A

**Loss of Sensitive Wildlife and Plant Habitat:**

N/A

**Disturbance of Archaeological/Historic Sites:**

N/A

**Increased Demand for Storm Drainage:**

SD-9: Construction activities shall comply with the requirements of the City’s Storm Water Management Plan under its municipal NPDES stormwater permit, and the State Water Resources Control Board’s General Permit for Discharges of Storm Water Associated with Construction Activity.

**Flooding and Water Quality:**

FWQ-13: Construction activities shall comply with the requirements of the City’s Storm Water Management Plan under its municipal NPDES Stormwater permit, and the State Water Resources Control Board’s General Permit for Discharges of Storm Water Associated with Construction Activity.

**Increased Demand for Parks and Open Space:**

N/A

**Increased Demand for Schools:**

N/A
**Increased Demand for Police Services:**
N/A

**Increased Demand for Fire Services:**
N/A

**Generation of Solid Waste:**
N/A

**Generation of Hazardous Materials:**
N/A

**Geology, Soils, and Mineral Resources:**
N/A

**Energy:**
N/A

**Effects on Visual Resources:**
N/A

**Land Use and Planning:**
N/A

**Climate Change:**
N/A