

Clark (4)

ORDINANCE NO. 3199 -C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 31 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED ON THE EAST SIDE OF ROSELLE AVENUE SOUTH OF MELROSE AVENUE. (JAGUAR INVESTMENT CORP.)

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan is divided into 35 Precise Plan Areas and requires that a Precise Plan be approved prior to development in each Area, and

WHEREAS, an application has been filed by Jaguar Investment Corp. for a Precise Plan for Area No. 31, property located on the east side of Roselle Avenue south of Merle Avenue, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on December 4, 2000, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2000-64, recommended to the City Council approval of a Precise Plan for Area No. 31 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on January 9, 2001, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California,

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

1. The proposed Precise Plan is consistent with the Village One Specific Plan and Modesto Urban Area General Plan.

BE IT FURTHER RESOLVED that the Council of the City of Modesto hereby finds and determines as follows:

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 31 of the Village One Specific Plan as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, a copy of which is on file in the City Clerk's Office.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of January, 2001, . By Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

Ord. No. 3199 C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 16th day of January, 2001, Councilmember Serpa moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: February 20, 2001

Clerk

ORDINANCE NO. 3200-C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED ON THE EAST SIDE OF ROSELLE AVENUE SOUTH OF MERLE AVENUE. (PRECISE PLAN FOR AREA NO. 31- JAGUAR INVESTMENT CORP.)

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan requires that concurrent with the review and approval of a Precise Plan, all properties included in the Precise Plan shall be rezoned to Specific Plan-Overlay Zone, SP-O, as set forth in Title 10 of the Modesto Municipal Code, and

WHEREAS, an application has been filed by Jaguar Investment corp. for a Precise Plan for Area No. 31, property located on the east side of Roselle Avenue south of Merle Avenue, and

WHEREAS, the application package also seeks rezoning from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on December 4, 2000, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after a public hearing held on December 4, 2000, it was found and determined by the Planning Commission that rezoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 2000-63, adopted December 4, 2000, the Planning Commission recommended that the application of Jaguar Investment Corp. to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located on the east side of Roselle Avenue south of Merle Avenue be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on January 9, 2001, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on January 9, 2001, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. The rezoning is a necessary prerequisite to development in the Village One Specific Plan.
2. The Precise Plan will ensure compatibility between the proposed development and the adjacent land uses.

SECTION 2. ZONING CHANGE. Section 13-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the following described property from a Specific Plan-Holding Zone, SP-H, to a Specific Plan-Overlay Zone, SP-O:

SP-H to SP-O, PPA 31

All that certain property situate in the southwest quarter of the southwest quarter of Section 13, Township 3 South, Range 9 East, Mount Diablo Base and Meridian; County of Stanislaus, State of California, described as follows:

Beginning at the Northwest corner of the Southwest quarter of the Southwest quarter of said Section 13, also being on the centerline of original 40 foot Merle Ave.; thence along said centerline North 89° 52' 29" East 1452.44 feet to a point of intersection of said centerline and the northerly extension of the east line of Parcel A as shown in Book 26 of Parcel Maps Page 117; thence South 00° 32' 08" East 215.01 feet to the Southeast corner of said Parcel A; thence South 89° 52' 29" West 140.00 feet along the south line of said Parcel A; thence South 00° 29' 34" East 1035.9 feet to the Southeast corner of Parcel 1 as shown in Book 18 of Parcel Maps Page 45; thence South 00° 29' 34" East 82.17 feet along the southerly extension of the east line of said Parcel 1 to the South line said Section 13; thence North 89° 54' 00" West 1311.66 feet along said section line to the Southwest corner of said Section 13; thence North 00° 31' 51" West 82.17 feet; thence South 89° 54' 00" East 5.67' feet to the Southwest corner of Parcel 2 as shown in Book 3 of Parcel Maps Page 17; thence North 00° 31' 51" West 1037.08 feet; thence South 88° 21' 03" West 5.67 feet; thence North 00° 31' 51" West 205 feet to the point of beginning.

SECTION 3. ZONING MAP. Section 13-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct

locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of January, 2001, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By [Signature]
Community Development Department
Planning Division

Ord. No. 3200 C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 16th day of January, 2001, Councilmember Serpa moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR City Clerk

Effective Date: February 20, 2001

Clerk

ORDINANCE NO. 3201 -C.S.

AN ORDINANCE AMENDING SECTION MAP 12-3-8 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON.

WHEREAS, a verified application for an amendment to Section 12-3-8 of the Zoning Map was filed by Redev Inc. on October 19, 2000, to reclassify from Low-Density Residential Zone, R-1, to Professional Office Zone, P-O, property located on the east side of Dale Road opposite Nightingale Drive, and

WHEREAS, after a public hearing held on December 18, 2000, it was found and determined by the Planning Commission that rezoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 2000-65, adopted on December 18, 2000, the Planning Commission recommended to the Council that the application of Redev Inc. to amend Section 12-3-8 of the Zoning Map to reclassify the hereinafter described property from Low-Density Residential Zone, R-1, to Professional Office Zone, P-O, be approved,

NOW, THEREFORE, the Council of the City of Modesto does ordain as follows:

SECTION 1. After a public hearing held on February 6th, 2000, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. The property is located on a minor arterial street, and is located in close proximity to other office uses on Dale Road.
2. Office uses are compatible with the existing and planned surrounding land uses in the area.

SECTION 2. ZONING CHANGE. Section 12-3-8 of the Zoning Map is hereby amended to reclassify the following described property from Low-Density Residential Zone, R-1, to Professional Office Zone, P-O:

R-1 to P-O

All that certain real property situate in a portion of Parcel "1" as shown on map filed in Book 27 of Parcel Maps, Page 121, Stanislaus County Records, located in the northwest quarter of Section 12, Township 3 South, Range 8 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

COMMENCING at the northwest corner of Lot 9, Block 13570, of "Dutchollow No. 4" according to the official map thereof filed for record in Volume 31 of Maps, Page 66, Stanislaus County Records; thence South 0° 19' 58" East along the west line of said "Dutchollow No. 4" a distance of 345.50 feet to the TRUE POINT OF BEGINNING of this description; thence South 89° 17' 36" West 550.04 feet to the centerline of Dale Road; thence South 0° 19' 27" East along said centerline of Dale Road, a distance of 639.26 feet; thence North 89° 16' 00" East 550.13 feet to said west line of "Dutchollow No. 4"; thence North 0° 19' 58" West along said west line of "Dutchollow No. 4" a distance of 639.01 feet to the point of beginning.

SECTION 3. ZONING MAP. Section 12-3-8 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of February, 2001, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Friedman, Frohman, Serpa, Smith
Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By [Signature]
Community Development Department
Planning Division

Ord. No. 3201-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 13th day of February, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: March 15, 2001

ORDINANCE NO. 3202-C.S.

AN ORDINANCE AMENDING SECTION 28-3-9 OF THE ZONING MAP TO REZONE FROM PLANNED DEVELOPMENT ZONE, P-D(539), TO PLANNED DEVELOPMENT ZONE, P-D(545), PROPERTY LOCATED ON THE NORTH SIDE OF SCENIC DRIVE WEST OF COFFEE ROAD. (RANDALL O'DELL)

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 28-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Planned Development Zone, P-D(539), to Planned Development Zone, P-D(545):

P-D(539) to P-D(545)

Commencing at a point on the North line of Scenic Drive running Southwest, bearing from the Southeast corner of the Northeast quarter of the Northeast quarter of Section 28, Township 3 South, Range 9 East M.D.B & M., North 89° 18' West, distant 38 links; thence along the North line of said County Road, 67° 33' West, 7.24 chains to the point of beginning; thence North 0° 4' West, 5.9965 chains to a point, thence North 89° 10' West, 221 feet to a point, thence South 0° 4' East to a point in the North line of said Scenic Drive, thence North 67° 33' East along the North line of said Scenic Drive, to the point of beginning, subject to reservations and restrictions of record.

Also including the southerly half of the alley immediately adjacent to the above-described property and that portion of Scenic Drive between the southerly line of the above described property and the centerline of Scenic Drive.

SECTION 2. USES. The following uses shall be permitted in said P-D(545) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming

in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Business/professional offices as allowed in the P-O Zone.
2. Off-street parking as shown on the approved plans.

SECTION 3. ZONING MAP. Section Map 28-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of February, 2001, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By [Signature]
Community Development Department
Planning Division

Ord. No. 3202-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 13th day of February, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: March 15, 2001

P-D ORDINANCE

1 Applicant
1 CDD - Becky Jenkins
1 Attorney
1 Attorney - Shanna Willis
1 E&T - Engineering Services
5 Posting
1 E&T - Traffic
1 Code Service
1 County Assessor
1 E&T - Construction Administration
1 CDD - Building Inspection
1 Recreation & Neighborhoods - NPU - Virginia M.
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ORDINANCE NO. 3203-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO, CALIFORNIA AMENDING ORDINANCE NO. 2293-C.S., AS AMENDED, APPROVING THE TRANSFER OF THE CABLE TELEVISION FRANCHISE FROM CABLE ONE, INC. TO UNITED CABLE TELEVISION CORPORATION

WHEREAS, Cable One, Inc. ("Cable One") currently holds the cable television franchise in the City of Modesto, and

WHEREAS, the City of Modesto, and Cable One have reached an agreement on certain compliance issues with respect to the franchise; and

WHEREAS, Cable One has made an application to transfer the franchise to United Cable Television Corporation, a Delaware corporation, a subsidiary of AT&T Broadband LLC, marketing services as AT&T Broadband ("AT&T Broadband"); and

WHEREAS, pursuant to the City's cable television franchise ordinance, Chapter 4 of Title XI of the Modesto Municipal Code (the "Franchise Ordinance"), and grant of the franchise, Ordinance No. 2293-C.S. (the "Franchise Agreement"), the City's consent is required to transfer control or ownership of the cable franchise; and

WHEREAS, the City and AT&T Broadband have reached agreement on the basic deal points for a renewal of the franchise beyond its current termination date of February 28, 2001; and

WHEREAS, the City Council has held a public hearing on the proposed transfer;

NOW, THEREFORE, the City Council of the City of Modesto does ordain as follows:

Section 1. Amendment of Section 1A of Ordinance No. 2293-C.S.

Subsection A. of Section 1 of Ordinance No. 2293-C.S. is hereby amended to read as follows:

A. "Grantee" shall mean United Cable Television Corporation.

Section 2. Terms and Conditions of Approval of Transfer.

Approval of the transfer of the cable television franchise from Cable One to AT&T Broadband is subject to, and conditioned upon, the following terms and conditions, all of which are hereby incorporated in the Franchise Agreement:

A. This approval is limited to the proposed transaction described in the transfer

application (the "Application") submitted jointly by Cable One and AT&T Broadband on August 23, 2000 as modified by this Ordinance. (Hereinafter, the "transaction" shall refer to the proposed transaction described in above.) After the closing of the proposed transaction, the holder of the franchise shall be United Cable Television Corporation, a Delaware corporation, a subsidiary of AT&T Broadband LLC, marketing services as AT&T Broadband. Any other or further transfer of control shall require a separate and new application for City approval if the City's approval is required under the Franchise Ordinance.

B. Within ten (10) days of the closing of the transaction, AT&T Broadband shall provide to the City certificates of insurance in compliance with the Section 11-4.33 of the Franchise Ordinance.

C. Within ten (10) days of the closing of the transaction, AT&T Broadband shall provide to the City the bonds required by the Franchise Ordinance including the bond required by Section 11-4.20 of the Franchise Ordinance.

D. AT&T Broadband shall comply with all requirements, obligations, terms and conditions of the Franchise Ordinance and the Franchise Agreement and this Ordinance

E. AT&T Broadband shall execute a certificate of acceptance of the franchise, including the Franchise Agreement and this Transfer Ordinance, in the form attached hereto as Exhibit A, at or before the close of the transaction and shall fax a copy of the executed certificate of acceptance to the City at or before the closing. The original certificate of acceptance shall be received by the City within five business days of the close of the transaction.

F. The City and Cable One have entered into a settlement agreement in full and complete settlement of the compliance issues. Cable One acknowledges and agrees that execution and performance of the settlement agreement is a condition of the transfer. AT&T Broadband also acknowledges and agrees that it will be required to perform certain physical improvements and corrections, after the transfer and that these improvements and corrections are a condition of the transfer and are binding on AT&T Broadband. AT&T Broadband acknowledges that failure to perform these improvements and corrections within the times set forth in the settlement agreement shall constitute a material breach of the franchise. Execution and delivery of the certificate of acceptance of the franchise by AT&T Broadband shall constitute its agreement to be bound to this condition and to the terms of this Ordinance, including, without limitation, the conditions requiring physical improvements and corrections to the cable system.

To the extent that the City discovers deficiencies in service other than those specified in the settlement agreement, including, but not limited to, non-compliance with the terms and conditions of the franchise, existing after the date of this approval, AT&T Broadband agrees that the fact that such deficiencies may have existed prior to the approval of the transfer shall not be a defense against correction of the deficiencies or non-compliance. To the best of the City's knowledge, as of the date of this Ordinance, the City is not aware of any other non-compliance issues other than those specified in this Ordinance and in the settlement agreement.

G. This approval shall terminate and be of no further force and effect if the proposed transaction does not close on or before May 1, 2001. Should AT&T Broadband and Cable One

desire additional time to close the transaction, they may, prior to March 31, 2001, apply to the City for an extension of the transfer approval upon a showing that none of the facts and circumstances surrounding the transfer have changed and that AT&T Broadband and Cable One shall comply with all the terms, conditions and agreements relating to the transfer. However, in no event, shall the transfer approval be extended, as provided for in this section, beyond December 31, 2001. Any extension of the transfer approval shall require a similar extension of, or modification and extension of, the settlement agreement.

Section 3. Agreements by Cable One and the City.

Cable One has agreed to certain matters as part of the transfer application and non-compliance proceedings. The City hereby finds that these agreements are material to the City's decision on the transfer and that the City has relied on these agreements in acting on the transfer.

All provisions of this Ordinance, and the agreements associated with the transfer, are made conditioned on the approval of the transfer by the City no later than February 13, 2001.

The agreements are as follows:

- A. Cable One agrees to comply with the settlement agreement, a copy of which is attached hereto as Exhibit B including the payments required by Section 4 of such settlement agreement.
- B. The City and Cable One agree that the Indemnification Agreement, attached hereto as Exhibit C, is acceptable to the City and that, upon execution of the Indemnification Agreement and delivery of the same to the City and the County of Stanislaus, the City will not seek further remedies for the water damage to the 1010 10th Place equipment from Cable One, other than those remedies set forth in the Indemnification Agreement. The Indemnification Agreement shall be executed and delivered to the City and the County prior to or concurrently with the close of the transaction.
- C. Cable One shall be responsible for and shall complete the corrections to the I-Net as set forth in the settlement agreement and on Exhibit D even if the completion is required to occur after the close of the transaction.

The enumeration of items in this section in no way limits or amends the requirements of the settlement agreement nor is this enumeration intended to diminish the importance of other matters set forth in the settlement agreement and not similarly set forth in this Ordinance, rather these items are set forth to emphasize their importance to the City's approval of the transfer application. Cable One understands that, should the transaction not close as anticipated, the City has not waived any rights it has to pursue compliance with the Franchise requirements.

Section 4. Agreements by AT&T Broadband and the City.

AT&T Broadband has agreed to certain matters as part of the transfer application. The City hereby finds that these agreements are material to the City's decision on the transfer and

that the City has relied on these agreements in acting on the transfer. These agreements are, therefore, incorporated into the approval of the transfer and are binding on AT&T Broadband.

All provisions of this Ordinance, and the agreements associated with the transfer, are made conditioned on the approval of the transfer by the City no later than February 13, 2001.

The agreements are as follows:

1. Because the franchise agreement has been extended and currently expires on February 28, 2001, AT&T Broadband has agreed to the following deal points with respect to a renewal of the franchise agreement. These deal points are binding on AT&T Broadband and shall serve as the basis for the renewal of the franchise. The deal points are attached hereto as Exhibit E and incorporated herein.
2. The City and AT&T Broadband agree to expeditiously negotiate and finalize a renewal agreement for review by the public and the City Council.
3. AT&T Broadband agrees to complete, within the times set forth on Exhibit D, the grounding requirements set forth on Exhibit D.
4. AT&T Broadband agrees to complete, within the times set forth on Exhibit D, the construction requirements set forth on Exhibit D.
5. AT&T Broadband agrees to pay for the City's cost of inspection to assure that the work required by Sections 3 and 4, above, are completed in accordance with Exhibit D.
6. The City and AT&T Broadband agree that, if AT&T Broadband is in compliance with the conditions of this Ordinance, those matters addressed in the Ordinance shall not be grounds for a finding that AT&T Broadband is in breach of the Franchise Agreement.

Section 5. Effective Date.

This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

Section 6. Publication.

At least two (2) days prior to its final adoption, copies of this Ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this Ordinance, the date of its introduction and the places where this Ordinance is posted.

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of , 2001 by Councilmember Frohman, who moved its

introduction and passage to print, which motion being duly seconded by Councilmember Smith, was upon roll call carried and ordered, printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa,
Smith, Mayor Sabatino
NOES: Councilmembers: None
ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

Ord. No. 3203 C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 20th day of February, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: March 22, 2001

EXHIBIT A
OF THE TRANSFER ORDINANCE

Certificate of Acceptance

February 6, 2001

EXHIBIT A
OF THE TRANSFER ORDINANCE NO. _____

CERTIFICATE OF ACCEPTANCE

United Cable Television Corporation, a Delaware corporation hereby, unconditionally, irrevocable and without reservation accepts the Cable Television Franchise originally granted by Ordinance No. 2293-C.S. dated October 23, 1983, including all amendment of said Ordinance through and including the date of this acceptance and Ordinance No. _____. By the execution, delivery and filing of this Certificate, the undersigned further:

1. Covenants and promises to faithfully undertake and perform each and every promise, covenant, commitment and undertaking contained in the Franchise Ordinance;
2. Represents and warrants that this Certificate, and the Franchise Ordinance and Agreement, as amended, constitute a valid and binding obligation, as to each and every term thereof, enforceable against the undersigned in accordance with the terms thereof;
3. Represents and warrants that the execution and delivery of this Certificate has been duly authorized and approved by the Board of Directors of the undersigned;
4. Represents and warrants that the persons who have executed this Certificate are duly authorized to do so by all necessary action;
5. Represents and warrants that the execution and delivery of this Certificate does not violate any provision of the By-Laws and/or Articles of Incorporation of any of the named corporations;
6. Expressly declares and agrees that the courts of the State of California and Federal District Court for the Eastern District of California, if appropriate, shall have jurisdiction over the undersigned in any action arising under the Franchise Ordinance, Franchise Agreement and the Transfer Ordinance and expressly consents to service of process pursuant to California Code of Civil Procedure Section 415.20(a) at any Modesto office of the Franchisee as to any action arising under or purporting to arise under the Franchise documents referenced herein.

7. Expressly decrees and agrees that adequate and sufficient consideration has been provided for each and every promise, covenant, commitment and undertaking of the undersigned contained in the franchise agreement and Ordinance approving the transfer;
8. Expressly declares and agrees to comply with each and every term, condition and agreement contained in Ordinance No. __, approving the transfer of control; and
9. This Certificate shall be valid when and only when executed by all other parties listed above.

IN WITNESS WHEREOF, this Certificate is executed effective
_____ 2001.

**United Cable Television Corporation, a
Delaware corporation.**

By: _____

Its: _____

[NOTE: ALL SIGNATURES MUST BE NOTARIZED]

EXHIBIT B
OF THE TRANSFER ORDINANCE

Settlement Agreement

February 6, 2001

**EXHIBIT B
OF THE TRANSFER ORDINANCE NO. _____**

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into in duplicate original on February ____, 2001, between Cable One, Inc. ("Cable One") and the City of Modesto ("City") in full and complete settlement of the compliance issues raised by the City regarding the cable franchise granted to Cable One by the City (the "Franchise"), on the terms set forth below and without any admission of liability. Performance of the terms of this Settlement Agreement to be performed by Cable One will constitute a finding by the City that Cable One is in compliance with the Franchise as of the close of the Cable One/AT&T transaction described in the pending transfer application (the "Closing") and will resolve any issues of alleged breach of the Franchise.

1. Status of Franchise Compliance Issues:

The compliance issues addressed in this Settlement Agreement are set forth in the City staff reports submitted to the City Council at its meetings of November 7, 2000 and December 12, 2000 and the City Council's resolutions from these same dates. The parties acknowledge that some of the matters raised in these staff reports, including the connections to the schools and the public buildings, have been completed by Cable One as of the date of this Settlement Agreement. The parties acknowledge that the work required to resolve many of the matters raised by the City will require significant periods of time to complete and that the reasonable time to complete this work will extend beyond the

Closing. If Cable One fully performs its obligations under this Settlement Agreement, the City hereby acknowledges and agrees that the Franchise will have been brought into compliance with its terms. Cable One and the City acknowledge and agree that United Cable Television Corporation, a subsidiary of and marketing services as AT&T Broadband ("AT&T") must also perform those duties set forth in this Settlement Agreement and the transfer ordinance in order to comply with the terms of the franchise and the transfer ordinance.

2. Submission of Transfer Application:

On August 23, 2000, Cable One submitted an application to transfer the Franchise to United Cable Television Corporation, a subsidiary of AT&T Broadband (hereinafter "AT&T"). The time within which to act on the transfer application has been extended through and including January 31, 2001 and, again through and including February 13, 2001. The parties understand and acknowledge that Cable One's compliance with the terms of this Settlement Agreement is a condition of the City's approval of the transfer. To the extent that this Settlement Agreement requires the consent of AT&T or acts to be performed by AT&T, those obligations shall be binding on AT&T through AT&T's execution of the Certificate of Acceptance of the Franchise.

3. Physical Repairs and Corrections to the Cable System:

A. Grounding. Cable One and the City agree that AT&T will complete the inspection and modification of the grounding of cable connections

in the City of Modesto, in the manner and within the time set forth on Exhibit A, attached hereto and incorporated herein.

B. Construction. Cable One and the City agree that AT&T will complete the inspection and resolution of code compliance matters, including but not limited to California Public Utilities Commission General Order 95, in the manner and within the time set forth on Exhibit A, attached hereto and incorporated herein.

C. Institutional Network. Cable One shall complete the modifications to the existing Institutional Network ("I-Net") in the manner and within the time set forth on Exhibit A, attached hereto and incorporated herein. After the Closing, AT&T shall be responsible for maintenance of this I-Net, until and unless this obligation is modified by the agreement of AT&T and the City, as part of the franchise renewal.

D. City Inspection. Upon completion of the modifications or repairs required by this Section 3 and Exhibit A, Cable One (prior to the Closing) or AT&T (after the Closing) shall notify the City and the City shall inspect the work. If Cable One requests inspection prior to Closing, Cable One shall pay the City's reasonable cost of that inspection. AT&T shall pay the City's reasonable cost of inspection incurred after the Closing. Any modifications required by the City's inspection shall be performed and completed by Cable One (prior to the Closing) or AT&T (after the Closing) at their cost. The parties agree that Cable One (prior to Closing) or AT&T (after the Closing) may request inspection at

reasonable intervals and the City will inspect the completed phase or area, under the terms set forth above.

4. Payment by Cable One to City:

Cable One shall pay to the City the sum of one million, one hundred thousand dollars (\$1,100,000.00) in settlement of all matters raised by the City in the compliance hearings and not expressly provided for in this Settlement Agreement, including but not limited to: the PEG equipment, programming, and studio requirements under the Franchise, the Franchise fee audit, the City's consultant fee costs, penalties that could be imposed under the Franchise, and the past repairs and staff costs related to the I-Net. This sum shall be paid to the City prior to or concurrently with the Closing.

Payment shall be made by Cable One by cashier's check or by wire transfer. If by wire transfer, Cable One shall request and the City shall provide the appropriate information to effect the wire transfer. If by cashier's check, the cashier's check shall be in the legal possession of the City prior to the Closing.

5. Water Damage at 1010 10th Place:

The parties acknowledge that Cable One has paid to the Joint Powers Agency (the owner and operator of the facility at 1010 10th Place), certain costs for the replacement of water damaged equipment. Cable One also agrees and shall pay the sum of **one thousand five hundred dollars (\$1500)**, at or prior to the Closing for additional inspection costs incurred by the Joint Powers Agency. At or prior to the Closing, Cable One shall also provide an indemnification

agreement to cover the telecommunications equipment for a two year period and an extended indemnification period limited to water damage expiring at 11:59 p.m. on May 31, 2012, in the form attached hereto as Exhibit B. The City, and the County of Stanislaus shall, through approval of the transfer of their respective cable franchises and upon receipt of such indemnification agreement and the \$1500 dollars described release Cable One as to all claims arising from the water damage, as provided for in the indemnification agreement.

6. Joint Press Release:

The parties agree to issue a joint press release upon execution of this Settlement Agreement in the form attached hereto as Exhibit C.

7. Effect of Agreement:

It is understood and agreed that this Settlement Agreement is the compromise of disputed claims made by the City, and that the terms of this Settlement Agreement are not to be construed as an admission of liability on the part of Cable One, which expressly denies any such liability. This Settlement Agreement is entered into solely for the purposes of settling pending disputes between Cable One and the City. Should any proceeding be instituted by or on behalf of the City or Cable One with respect to matters settled, released or waived herein then the release referenced in Section 8 of this Settlement Agreement shall be deemed full satisfaction of any such claim(s) and sufficient basis for the immediate dismissal thereof.

8. **Releases:**

Upon Closing and in consideration of the performance of Cable One's obligations under the terms of this Settlement Agreement, including receipt by the City of the payments referenced in Section 4 and Section 5 of this Settlement Agreement, the City and Cable One hereby each forever release, acquit and discharge the other from all claims, demands, actions and causes of action of any nature whatsoever which are currently known regarding the matters that are the subject of this Settlement Agreement, as well as to all claims, demands, actions and causes of action that the parties do not know or suspect to exist in their respective favors as of the date of this Settlement Agreement arising out of or in any way related to the Franchise. Each of the parties to this Settlement Agreement also hereby specifically waive the protections of California Civil Code Section 1542 which provides:

A general release does not extend to claims, which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

9. **Exceptions to Release:**

Nothing herein shall be construed as a release by any party of any obligation or claim arising out of a breach of this Settlement Agreement.

Moreover, nothing herein shall be construed to release AT&T from its obligations

under the terms of this Settlement, and the City's approval of the transfer ordinance, unless and until AT&T has fully performed all such obligations.

10. Binding on Successors and Assigns:

This Settlement Agreement shall inure to the benefit of and bind and be binding upon the managing agents, shareholders, officers, directors, agents, employees, attorneys, heirs, successors, partners and assigns of the undersigned parties.

11. Advice of Counsel:

Each of the parties to this Settlement Agreement represents and warrants that it has engaged separate counsel to represent it with respect to this Settlement Agreement and all matters covered herein, that it has been fully advised by said attorneys with respect to its rights and with respect to the execution of this Settlement Agreement and as to all matters which are subject to the mutual releases contained herein, and that it has read this Settlement Agreement and understands the terms thereof.

12. Complete Agreement:

This Settlement Agreement constitutes the entire, full and complete agreement between the parties hereto, and supersedes all prior agreements, except the Franchise. This Settlement Agreement supercedes any conflicting language between this Settlement Agreement and the Franchise. No other representations have induced the parties hereto to execute this Settlement Agreement.

13. Enforcement:

In the event of a breach of the terms of this Settlement Agreement, this Settlement Agreement shall be enforced in the Stanislaus County Superior Court. The parties to this Settlement Agreement hereby consent to personal jurisdiction and venue in that court for any action arising between them as a result of the breach of this Settlement Agreement. The terms of this Settlement Agreement are contractual, not merely recitals, and shall be interpreted, enforced and governed under the laws of the State of California (excluding California's choice of law rules). This Settlement Agreement is the result of negotiations between the parties, each of which has participated in the drafting hereof. The prevailing party in any action or proceeding to enforce this Settlement Agreement shall be entitled to recover its attorneys fees incurred in enforcing its rights under this Settlement Agreement.

14. No Undisclosed Principals:

Each of the parties to this Settlement Agreement represents and warrants to the other that no other person, firm, corporation, estate, or entity has had or now has any interest in any of the claims released herein.

15. No Prior Assignments or Transfers:

Each of the parties to this Settlement Agreement further represents and warrants to the other that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person, firm, corporation, estate, insurance carrier or other entity whatsoever any claim, controversy, right, promise, debt,

liability, demand, obligation, cost, expense, action or cause of action herein released or purported to be released.

16. Warranty of Authority:

In executing this Settlement Agreement, all individuals executing this Settlement Agreement further represents and warrants that they have the authority to bind their respective entities, and that those party-entities have the right and authority to compromise, settle, release and discharge all of the claims released herein. Execution of this Settlement Agreement by the City's Mayor shall be deemed to evidence legally proper approval by the City Council of this Settlement Agreement.

17. Indemnification:

The parties to this Settlement Agreement agree that, if any assignment or transfer, or any purported assignment or transfer of any of the claims, controversies, rights, promises, debts, liabilities, demands, obligations, costs, expenses, actions or causes of action released herein has been made, the party that made or purported to make such transfer or assignment shall indemnify and forever hold the other parties harmless against all claims and liabilities, including reasonable attorney's fees and costs incurred in connection therewith, that may be asserted by any third party relating to the subject matter of the assignment or transfer, or any purported assignment or transfer.

18. **Written Modifications Only:**

The terms of this Settlement Agreement shall not be modified or amended except in writing, signed by all parties or their designated representatives for such purpose.

19. **Duplicate Originals and Counterparts:**

This Settlement Agreement shall be executed in duplicate originals, with each party to retain a fully-executed duplicate original. This Settlement Agreement may be executed in counterparts, which when taken together shall constitute one binding agreement. Facsimile signatures shall be considered as binding as original signatures.

20. **Effective Date of Agreement:**

This Settlement Agreement shall be deemed effective on the date executed by Cable One or the date approved by the City Council, whichever shall occur later.

21. **Termination of Agreement:**

The parties to this Settlement Agreement understand and acknowledge that this Settlement Agreement is contingent upon the Closing. If the Closing does not occur on or before May 1, 2001, this Settlement Agreement shall terminate and be of no further force and effect, unless extended by mutual agreement of the parties, in writing. If this Settlement Agreement terminates pursuant to this Section 21, the City shall have the right to calendar and pursue its proceeding related to alleged breaches of the terms of the Franchise and Cable One shall have the right

to contest and defend any proceeding, as if this Settlement Agreement has not been executed by the parties. The terms of this Settlement Agreement shall not be admissible in any arbitration, litigation or other proceedings for any purpose, except as required to enforce this Settlement Agreement.

IT IS HEREBY AGREED:

Dated: _____

Cable One, Inc.

By: _____
T. Mitchell Bland,
Its Vice President

Dated: _____

City of Modesto

By: _____
Carmen Sabatino,
Its Mayor

EXHIBIT A
OF THE SETTLEMENT AGREEMENT

Grounding – Construction – INET

February 6, 2001

EXHIBIT A
OF THE SETTLEMENT AGREEMENT

GROUNDING – CONSTRUCTION – INET

Grounding

- Goal: All system drops grounded in compliance with the City's Municipal Code (adopting the National Electrical Code).
- Methodology: Grantee to inspect all drops to determine grounding status.
 - A. Every time a service or installation call occurs tech will check ground and repair as necessary, then add tracking code to the subscriber management system. Non-pay installers will determine grounding status, and add tracking code to the subscriber management.
 - B. Grantee will simultaneously deploy scheduled crews to inspect, correct as necessary, and add tracking codes to subscriber management system. Work to be performed in phases (anticipated to be 10 phases or greater).
 - C. City to conduct statistically accurate (+/- 3%) verification inspections upon notice of phase completions. Completion certified upon demonstration of 90% compliance.
- Timing: All phases to be completed within 24 months after transfer date.
- Reporting: Grantee to provide City with written project status reports within 10 days of the close of each quarter. Reports shall list totals of all drops inspected, all drops repairs, all drops found compliant, and number of drops remaining to be inspected. Upon certification of completion of the grounding project, quarterly reports may be discontinued.

Construction

- Goal: Plant compliance with applicable safety codes.
- Methodology: Grantee to identify safety code violations in existing plant during plant reconfiguration pre-construction walkout.
 - A. Prior, during and after plant reconfiguration pre-construction walkout, Grantee shall patrol its system to identify and repair all safety code violations which may affect pedestrians, subscribers, and vehicle traffic.
- Design: Reconfigured system shall be designed and constructed to meet all applicable safety codes.
- Timing: Full compliance to be achieved upon completion of the system reconfiguration. Compliance shall be defined as demonstration of 90% compliance with all applicable safety codes throughout the plant. Compliance shall not be reduced upon Grantee's showing that violation(s) are the result of the action or inaction of others.
- Reporting: Grantee to provide City with written project status reports within 10 days of the close of each calendar month. Reports shall list totals of all plant inspected, all plant repairs, and number of plant miles remaining to be

inspected. Upon certification of completion of the plant reconfiguration pre-construction walkout project, monthly reports may be discontinued.

INET

- Goal: Bit Error Rate ("BER") of no worse than 1×10^{-6} .
- Methodology: Grantee to reduce existing coaxial cascades by installation of fiber optic transmission system utilizing spare existing subscriber-network fiber trunks.
- Timing: BER goal to be achieved within 90 days after execution.
- Verification: Grantee to demonstrate BER to City at ends of all major INET system legs at end of 90 days.

EXHIBIT B
OF THE SETTLEMENT AGREEMENT

Indemnification Agreement

February 6, 2001

EXHIBIT B
OF THE SETTLEMENT AGREEMENT

**AGREEMENT
OF THE CITY OF MODESTO AND
STANISLAUS COUNTY JOINT POWERS AUTHORITY
AND CABLE ONE, INC.**

I. INTRODUCTION AND RECITAL OF FACTS:

1. This Indemnification Agreement is made and entered into by and between the City of Modesto and Stanislaus County Joint Powers Authority (the JPA herein), and CABLE ONE, INC. (CABLE ONE herein). Based upon the recital of facts set forth below and pursuant to the negotiation of the parties hereto, this Agreement is intended by the parties to and shall become effective retroactively on June 1, 2000.

2. Whereas the JPA constructed a new City and County Administration Building, located at 1010 Tenth Street, Modesto, County of Stanislaus, California (the JPA Building herein); and

3. Whereas the JPA contracted with Evans Communication, Inc. (Evans herein), for the purchase and installation of a telecommunications system for the JPA Building; and

4. Whereas pursuant to a contract with the JPA, Evans acquired and installed telecommunications equipment in the JPA Building, including, but not limited to, the equipment set forth on Exhibit A of this Agreement and including a "NEC NEAX 2400 IMS (Integrated Multimedia eXchange)" "PBX" system manufactured by NEC of America (collectively referred to as the Telecommunications Equipment herein); and

5. Whereas on or about the month of May in the year 2000, rainwater entered into the telecommunications room of the JPA Building through a conduit which had been installed by or on behalf of CABLE ONE into said telecommunications room and said rainwater was the cause of damage to or contributed to the damage of and may in the future cause further damage to the Telecommunications Equipment, the "Conduit Leak" hereinafter; and

6. Whereas CABLE ONE is engaged in negotiations with AT&T whereby Westmarc Development Joint Venture (AT&T), a subsidiary of AT&T, is to acquire the cable television system currently operated by CABLE ONE in the unincorporated territory of the County of Stanislaus and United Cable Television Corporation (AT&T), a subsidiary of AT&T, is to acquire the cable television system currently operated by CABLE ONE in the City of Modesto; and they are to acquire through transfers the cable television franchises associated with said governmental entities; and

7. Whereas at the time the rainwater entered into the JPA Building's telecommunications room the JPA had two years of warranty and/or an extended service plan on the Telecommunications Equipment pursuant to the JPA's agreement with Evans and Evans agreement with NEC of America; and

8. Whereas Evans has advised the JPA that the warranty and extended service plan was voided by the entry of water from the conduit installed by or on behalf of CABLE ONE into the telecommunications room of the JPA Building and the exposure of the Telecommunications Equipment to water and/or water vapor; and

9. Whereas the parties to this Agreement wish to memorialize the mutual understanding of the parties to return the JPA to the position which it held with regard to the warranties and extended service plan it had concerning the Telecommunications Equipment in the JPA Building prior to the entry of rainwater through a conduit installed by or on behalf of CABLE ONE into the telecommunications room of the JPA Building in or about May of the year 2000 referred to hereinabove.

II. THEREFORE, in recognition of the introduction and recital of facts set forth above and which are part of this Agreement, the parties mutually promise and agree to perform as follows:

1. CABLE ONE agrees that it shall indemnify the JPA against any and all costs and expenses actually and reasonably incurred by the JPA in connection with the repair or replacement (with functionally equivalent equipment) of any of the Telecommunications Equipment that is reasonably determined by a qualified expert to have been damaged by the Conduit Leak, provided that any claim by JPA for such indemnification by CABLE ONE must be made prior to 12:00 midnight on May 31, 2012, it being further agreed that the parties shall submit any dispute arising from this section to binding arbitration pursuant to the rules of the American Arbitration Association in effect at the time of an arbitration.

2. In addition, CABLE ONE agrees that it shall from the retroactive commencement date of this Agreement on June 1, 2000, and through and

including 12:00 midnight on May 31, 2002, indemnify the JPA against any and all costs and expenses incurred by the JPA in connection with the repair or replacement (with functionally equivalent equipment) of any of the Telecommunications Equipment that fails to function or was or is damaged by any incident including the Conduit Leak, but excluding damage caused by the JPA's or a third party's negligence or willful misconduct, provided that the incident causing such damage must have occurred prior to 12:00 midnight on May 31, 2002, and provided that the JPA notifies CABLE ONE promptly in writing of any such incident or damage, it being further agreed that the parties shall submit any dispute arising from this section to binding arbitration pursuant to the rules of the American Arbitration Association in effect at the time of an arbitration.

3. The City of Modesto, by the adoption of a resolution approving the cable television franchise transfer from CABLE ONE to United Cable Television Corporation (AT&T), a subsidiary of AT&T, shall be deemed to be approval of the City of Modesto, as a member of the JPA, to this agreement.

4. The County of Stanislaus, by the adoption of a resolution approving the cable television franchise transfer from CABLE ONE to Westmarc Development Joint Venture (AT&T), a subsidiary of AT&T, shall include approval of the County of Stanislaus, as a member of the JPA, to this agreement.

5. The JPA, the City of Modesto and the County of Stanislaus, and each of them, as and for consideration of the promises of indemnification by CABLE ONE set forth herein, agree that the rights set forth in Sections 1 and 2 of Part II of this Agreement shall be each such party's sole and exclusive remedies

against CABLE ONE for any claims relating to any damage to any of the Telecommunications Equipment and that they, alone or in combination, will not bring an action in law or equity against CABLE ONE for any losses relating to the Telecommunication Equipment or the Conduit Leak except to enforce CABLE ONE's indemnification obligations arising pursuant to Sections 1 and 2 of Part II of this Agreement.

6. This Agreement shall inure to the benefit of and be a binding contract on the successors or assigns of any and all parties to this Agreement.

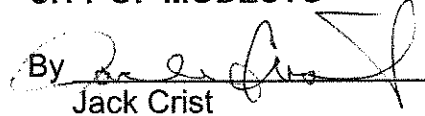
**CITY OF MODESTO AND COUNTY OF STANISLAUS
JOINT POWERS AUTHORITY**

By _____
Patty Hill-Thomas, Executive Officer

COUNTY OF STANISLAUS

By _____
Reagan M. Wilson
Chief Executive Officer

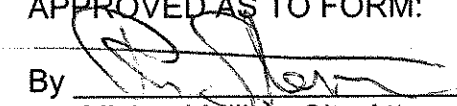
CITY OF MODESTO

By  _____
Jack Crist
City Manager

APPROVED AS TO FORM:

By _____
Dean Wright
Deputy County Counsel

APPROVED AS TO FORM:

By  _____
Michael Milich, City Attorney
For the City of Modesto

CABLE ONE, INC.

By _____
By an officer of said corporation
Authorized to bind said corporation
to the terms of this Agreement

EXHIBIT A
OF THE
INDEMNIFICATION AGREEMENT

JPA Telephone Equipment

February 6, 2001

EXHIBIT A
OF THE INDEMNIFICATION AGREEMENT

DATE: January 4, 2001

TO: Donna Hansen
Mary Coelho
City of Modesto
City Managers Office

FROM: Trudy Gagon
Evans Companies
Voice #394-0259
FAX #394-0359

RE: Telephone Equipment

Below is a recap of the dollar amount of the equipment in question installed at 1010-10th Street by Evans Communications:

This amount represents the initial contract along with additional cards added to the PBX. This amount does not include any telephones that were installed as they are not in any jeopardy.

INITIAL INVOICE #147520:	Equipment = \$386,374.00
NEAX 2400 PBX	Labor = \$158,000.00

INVOICE #147519:	Equipment = \$ 59,502.15
AVT 32 Port Voice mail System*	Labor = \$ 16,720.00

INVOICE #152732, #146794, #147441	
#151253	Equipment = \$ 18,271.00
Additional Cards & Equipment	Labor = \$ 740.00

*Please note the City of Modesto moved the existing 16 port of voice mail from old City Hall into this new system making it a 48 port voice mail system for the JPA – the price of the original 16 ports is not in the above pricing.

At the time of the sale, the system was under a two-year warranty that would have expired 12/2001 with Evans Communications. When this accident occurred we sent a letter stating that under the circumstances, this warranty would no longer cover any of the equipment in the common equipment room. All telephones installed at that time are still under the original warranty. The manufacturers warranty was good for one year.

EXHIBIT C
OF THE SETTLEMENT AGREEMENT

Joint Press Release

February 6, 2001

EXHIBIT C
OF THE SETTLEMENT AGREEMENT

JOINT PRESS RELEASE

CITY OF MODESTO

CABLE ONE, INC.

Cable Franchise settlement reached: Cable One to pay City \$1.1 million

The City of Modesto announced today a comprehensive settlement with Cable One, Inc., which will resolve issues raised by the City regarding operation of the cable franchise. The settlement contains no admission by Cable One but requires Cable One to pay \$1.1 million to resolve outstanding items in the current franchise agreement. With the settlement completed, the City will approve of the transfer the cable franchise to United Cable Television Corporation, a subsidiary of AT&T Corporation. The transfer is scheduled to occur on March 1, 2001.

The payment will address and resolve items such as retroactive franchise fees, consultant fees, improvement of public access equipment, costs related to improvement of the I-NET and other cable franchise related City costs.

Cable One and the City both commended each other for expediting negotiations and settlement to allow the transfer, which is part of a larger transaction involving other Cable One and AT&T cable systems. The City looks forward to the entry of AT&T into the Modesto cable market.

#####

EXHIBIT C
OF THE TRANSFER ORDINANCE

Indemnification Agreement

February 6, 2001

EXHIBIT C
OF THE TRANSFER ORDINANCE NO. _____

**AGREEMENT
OF THE CITY OF MODESTO AND
STANISLAUS COUNTY JOINT POWERS AUTHORITY
AND CABLE ONE, INC.**

I. INTRODUCTION AND RECITAL OF FACTS:

1. This Indemnification Agreement is made and entered into by and between the City of Modesto and Stanislaus County Joint Powers Authority (the JPA herein), and CABLE ONE, INC. (CABLE ONE herein). Based upon the recital of facts set forth below and pursuant to the negotiation of the parties hereto, this Agreement is intended by the parties to and shall become effective retroactively on June 1, 2000.

2. Whereas the JPA constructed a new City and County Administration Building, located at 1010 Tenth Street, Modesto, County of Stanislaus, California (the JPA Building herein); and

3. Whereas the JPA contracted with Evans Communication, Inc. (Evans herein), for the purchase and installation of a telecommunications system for the JPA Building; and

4. Whereas pursuant to a contract with the JPA, Evans acquired and installed telecommunications equipment in the JPA Building, including, but not limited to, the equipment set forth on Exhibit A of this Agreement and including a "NEC NEAX 2400 IMS (Integrated Multimedia eXchange)" "PBX" system manufactured by NEC of America (collectively referred to as the Telecommunications Equipment herein); and

5. Whereas on or about the month of May in the year 2000, rainwater entered into the telecommunications room of the JPA Building through a conduit which had been installed by or on behalf of CABLE ONE into said telecommunications room and said rainwater was the cause of damage to or contributed to the damage of and may in the future cause further damage to the Telecommunications Equipment, the "Conduit Leak" hereinafter; and

6. Whereas CABLE ONE is engaged in negotiations with AT&T whereby Westmarc Development Joint Venture (AT&T), a subsidiary of AT&T, is to acquire the cable television system currently operated by CABLE ONE in the unincorporated territory of the County of Stanislaus and United Cable Television Corporation (AT&T), a subsidiary of AT&T, is to acquire the cable television system currently operated by CABLE ONE in the City of Modesto; and they are to acquire through transfers the cable television franchises associated with said governmental entities; and

7. Whereas at the time the rainwater entered into the JPA Building's telecommunications room the JPA had two years of warranty and/or an extended service plan on the Telecommunications Equipment pursuant to the JPA's agreement with Evans and Evans agreement with NEC of America; and

8. Whereas Evans has advised the JPA that the warranty and extended service plan was voided by the entry of water from the conduit installed by or on behalf of CABLE ONE into the telecommunications room of the JPA Building and the exposure of the Telecommunications Equipment to water and/or water vapor; and

9. Whereas the parties to this Agreement wish to memorialize the mutual understanding of the parties to return the JPA to the position which it held with regard to the warranties and extended service plan it had concerning the Telecommunications Equipment in the JPA Building prior to the entry of rainwater through a conduit installed by or on behalf of CABLE ONE into the telecommunications room of the JPA Building in or about May of the year 2000 referred to hereinabove.

II. THEREFORE, in recognition of the introduction and recital of facts set forth above and which are part of this Agreement, the parties mutually promise and agree to perform as follows:

1. CABLE ONE agrees that it shall indemnify the JPA against any and all costs and expenses actually and reasonably incurred by the JPA in connection with the repair or replacement (with functionally equivalent equipment) of any of the Telecommunications Equipment that is reasonably determined by a qualified expert to have been damaged by the Conduit Leak, provided that any claim by JPA for such indemnification by CABLE ONE must be made prior to 12:00 midnight on May 31, 2012, it being further agreed that the parties shall submit any dispute arising from this section to binding arbitration pursuant to the rules of the American Arbitration Association in effect at the time of an arbitration.

2. In addition, CABLE ONE agrees that it shall from the retroactive commencement date of this Agreement on June 1, 2000, and through and

including 12:00 midnight on May 31, 2002, indemnify the JPA against any and all costs and expenses incurred by the JPA in connection with the repair or replacement (with functionally equivalent equipment) of any of the Telecommunications Equipment that fails to function or was or is damaged by any incident including the Conduit Leak, but excluding damage caused by the JPA's or a third party's negligence or willful misconduct, provided that the incident causing such damage must have occurred prior to 12:00 midnight on May 31, 2002, and provided that the JPA notifies CABLE ONE promptly in writing of any such incident or damage, it being further agreed that the parties shall submit any dispute arising from this section to binding arbitration pursuant to the rules of the American Arbitration Association in effect at the time of an arbitration.

3. The City of Modesto, by the adoption of a resolution approving the cable television franchise transfer from CABLE ONE to United Cable Television Corporation (AT&T), a subsidiary of AT&T, shall be deemed to be approval of the City of Modesto, as a member of the JPA, to this agreement.

4. The County of Stanislaus, by the adoption of a resolution approving the cable television franchise transfer from CABLE ONE to Westmarc Development Joint Venture (AT&T), a subsidiary of AT&T, shall include approval of the County of Stanislaus, as a member of the JPA, to this agreement.

5. The JPA, the City of Modesto and the County of Stanislaus, and each of them, as and for consideration of the promises of indemnification by CABLE ONE set forth herein, agree that the rights set forth in Sections 1 and 2 of Part II of this Agreement shall be each such party's sole and exclusive remedies

against CABLE ONE for any claims relating to any damage to any of the Telecommunications Equipment and that they, alone or in combination, will not bring an action in law or equity against CABLE ONE for any losses relating to the Telecommunication Equipment or the Conduit Leak except to enforce CABLE ONE's indemnification obligations arising pursuant to Sections 1 and 2 of Part II of this Agreement.

6. This Agreement shall inure to the benefit of and be a binding contract on the successors or assigns of any and all parties to this Agreement.

**CITY OF MODESTO AND COUNTY OF STANISLAUS
JOINT POWERS AUTHORITY**

By _____
Patty Hill-Thomas, Executive Officer

COUNTY OF STANISLAUS

By _____
Reagan M. Wilson
Chief Executive Officer

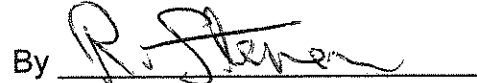
CITY OF MODESTO

By  _____
Jack Crist
City Manager

APPROVED AS TO FORM:

By _____
Dean Wright
Deputy County Counsel

APPROVED AS TO FORM:

By  _____
Michael Milich, City Attorney
For the City of Modesto

CABLE ONE, INC.

By _____
By an officer of said corporation
Authorized to bind said corporation
to the terms of this Agreement

EXHIBIT A
OF THE
INDEMNIFICATION AGREEMENT

JPA Telephone Equipment

February 6, 2001

EXHIBIT A
OF THE INDEMNIFICATION AGREEMENT

DATE: January 4, 2001

TO: Donna Hansen
Mary Coelho
City of Modesto
City Managers Office

FROM: Trudy Gagon
Evans Companies
Voice #394-0259
FAX #394-0359

RE: Telephone Equipment

Below is a recap of the dollar amount of the equipment in question installed at 1010-10th Street by Evans Communications:

This amount represents the initial contract along with additional cards added to the PBX. This amount does not include any telephones that were installed as they are not in any jeopardy.

INITIAL INVOICE #147520:	Equipment = \$386,374.00
NEAX 2400 PBX	Labor = \$158,000.00

INVOICE #147519:	Equipment = \$ 59,502.15
AVT 32 Port Voice mail System*	Labor = \$ 16,720.00

INVOICE #152732, #146794, #147441	
#151253	Equipment = \$ 18,271.00
Additional Cards & Equipment	Labor = \$ 740.00

*Please note the City of Modesto moved the existing 16 port of voice mail from old City Hall into this new system making it a 48 port voice mail system for the JPA – the price of the original 16 ports is not in the above pricing.

At the time of the sale, the system was under a two-year warranty that would have expired 12/2001 with Evans Communications. When this accident occurred we sent a letter stating that under the circumstances, this warranty would no longer cover any of the equipment in the common equipment room. All telephones installed at that time are still under the original warranty. The manufacturers warranty was good for one year.

EXHIBIT D
OF THE TRANSFER ORDINANCE

Grounding – Construction – INET

February 6, 2001

EXHIBIT D
OF THE TRANSFER ORDINANCE NO. _____

GROUNDING – CONSTRUCTION – INET

Grounding

- Goal: All system drops grounded in compliance with the City's Municipal Code (adopting the National Electrical Code).
- Methodology: Grantee to inspect all drops to determine grounding status
 - A. Every time a service or installation call occurs tech will check ground and repair as necessary, then add tracking code to the subscriber management system. Non-pay installers will determine grounding status, and add tracking code to the subscriber management.
 - B. Grantee will simultaneously deploy scheduled crews to inspect, correct as necessary, and add tracking codes to subscriber management system. Work to be performed in phases (anticipated to be 10 phases or greater).
 - C. City to conduct statistically accurate (+/- 3%) verification inspections upon notice of phase completions. Completion certified upon demonstration of 90% compliance.
- Timing: All phases to be completed within 24 months after transfer date.
- Reporting: Grantee to provide City with written project status reports within 10 days of the close of each quarter. Reports shall list totals of all drops inspected, all drops repairs, all drops found compliant, and number of drops remaining to be inspected. Upon certification of completion of the grounding project, quarterly reports may be discontinued.

Construction

- Goal: Plant compliance with applicable safety codes.
- Methodology: Grantee to identify safety code violations in existing plant during plant reconfiguration pre-construction walkout.
 - A. Prior, during and after plant reconfiguration pre-construction walkout, Grantee shall patrol its system to identify and repair all safety code violations which may affect pedestrians, subscribers, and vehicle traffic.
- Design: Reconfigured system shall be designed and constructed to meet all applicable safety codes.
- Timing: Full compliance to be achieved upon completion of the system reconfiguration. Compliance shall be defined as demonstration of 90% compliance with all applicable safety codes throughout the plant. Compliance shall not be reduced upon Grantee's showing that violation(s) are the result of the action or inaction of others.
- Reporting: Grantee to provide City with written project status reports within 10 days of the close of each calendar month. Reports shall list totals of all plant inspected, all plant repairs, and number of plant miles remaining to be

inspected. Upon certification of completion of the plant reconfiguration pre-construction walkout project, monthly reports may be discontinued.

INET

- Goal: Bit Error Rate ("BER") of no worse than 1×10^{-6} .
- Methodology: Grantee to reduce existing coaxial cascades by installation of fiber optic transmission system utilizing spare existing subscriber-network fiber trunks.
- Timing: BER goal to be achieved within 90 days after execution.
- Verification: Grantee to demonstrate BER to City at ends of all major INET system legs at end of 90 days.

EXHIBIT E
OF THE TRANSFER ORDINANCE

AT&T Broadband – Modesto
Renewal Deal Points

February 6, 2001

**EXHIBIT E
OF THE TRANSFER ORDINANCE NO. _____**

AT&T BROADBAND – MODESTO RENEWAL DEAL POINTS

REBUILD

- Additional channels (analog or digital) added within 18 months of effective date.
- 2-way 750 MHz capable upgrade 36 months (5-year bonus if completed in 24 months). System to be capable of supporting high speed data services.
- Provide detailed upgrade plan within 6 months of effective date.

TERM

- 10 years

CUSTOMER SERVICE

- FCC customer service standards, within 90 days of effective date.

FRANCHISE FEES

- 5% franchise fees payable 45 days after close of quarter. Implemented in next billing cycle following effective date of the franchise.

SERVICE TO PUBLIC BUILDINGS

- One outlet of analog cable programming service to non-public areas of public buildings.
- Time and materials to be paid by City for installations exceeding 150'.

DENSITY REQUIREMENTS

- 35-40 homes per mile.

PUBLIC-EDUCATION-GOVERNMENT (PEG) STUDIO

- Managed transition period. Staffing at current franchise levels (5) continues for first 12 months of franchise term. Thereafter, access group responsible for its own programming. Access group may have use of the studio for up to 12 months after effective date of franchise.
- Equipment to be transferred to West Campus within 12 months of effective date of franchise.
- Fiber return line installed from West Campus to headend coincident with studio transfer.

- PEG funding to begin accruing following the first billing cycle after the effective date of the franchise. Disbursement of funds to the City to be made coincident with the franchise fee payment.
- PEG funding will appear as a line-item on customer's bills.
- Channel allocation to remain the same (3 or 4 PEG channels depending on current franchise requirement).

LEVEL PLAYING FIELD LANGUAGE

- Standard language from Yuba/Sutter franchises.

I-NET

- I-Net to consist of two dark fibers owned by the franchisee but used at no cost to the City. Additional fibers to be negotiated between the parties.
- City to pay for construction and installation on an incremental time and materials basis.
- Franchisee to maintain fiber optic connections up to the point of entry to each I-Net location subject to separate maintenance agreement.

Clerk

ORDINANCE NO. 3204-C.S.

AN ORDINANCE AMENDING SECTION 21-3-9 OF THE ZONING MAP TO REZONE FROM A PORTION OF PLANNED DEVELOPMENT ZONE, P-D(363), TO PLANNED DEVELOPMENT ZONE, P-D(546), PROPERTY LOCATED ON THE WEST SIDE OF NELSON AVENUE SOUTH OF EAST ORANGEBURG AVENUE. (TIM FISHER/ARCHITECTURE PLUS)

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 21-3-9 of the Zoning Map is hereby amended to reclassify the following described property from a portion of Planned Development Zone, P-D(363), to Planned Development Zone, P-D(546):

P-D(363) to P-D(546)

All that certain real property situated in a portion of Section 21, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California; being a portion of Lot 3 as shown on the map of A Subdivision Of Lots 21 And 22 Of The Mensinger Colony as recorded in Volume 11 of Maps, at Page 2, Stanislaus County Records, more particularly described as follows:

BEGINNING at the Southeast corner of said Lot 3; thence South 89° 52' 00" West, along the South line of said Lot 3, a distance of 330.58 feet to Southwest corner of said Lot 3; thence North 1° 18' 00" West, along the West line of said Lot 3, a distance of 90 feet; thence North 89° 52' 00" East, a distance of 330.66 feet; thence South 1° 16' 00" East, along the East line of said Lot 3, a distance of 90.00 feet to the Southeast corner of said Lot 3 and the Point of Beginning of this description.

SECTION 2. USES. The following uses shall be permitted in said P-D(546) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming

in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Single-story senior housing complex.

SECTION 3. ZONING MAP. Section Map 21-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of February, 2001, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Smith, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By [Signature]
Community Development Department
Planning Division

Ord. No. 3204 C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 20th day of February, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: March 22, 2001

P-D ORDINANCE

- 1 Applicant
 - 1 CDD - Becky Jenkins
 - 1 Attorney
 - 1 Attorney - Shanna Willis
 - 1 E&T - Engineering Services
 - 5 Posting
 - 1 E&T - Traffic
 - 1 Code Service
 - 1 County Assessor
 - 1 E&T - Construction Administration
 - 1 CDD - Building Inspection
 - 1 Recreation & Neighborhoods - NPU - Virginia M.
- 16

ORDINANCE NO. 3205 - C.S.

AN ORDINANCE AMENDING ORDINANCE NO. 2293-C.S. ENTITLED " AN ORDINANCE GRANTING TO CABLE ONE, INC., A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE COMMUNICATION SYSTEM WITHIN THE CITY OF MODESTO." TO EXTEND THE TERM OF THE FRANCHISE AGREEMENT TO PERMIT THE TRANSFER OF THE FRANCHISE FROM CABLE ONE TO UNITED CABLE TELEVISION CORPORATION, A SUBSIDIARY OF AT&T BROADBAND, AND TO CONTINUE THE FRANCHISE RENEWAL NEGOTIATIONS.

WHEREAS, the City Council adopted Ordinance No. 2293-C.S., which became effective on or after December 1, 1984, entitled, "An Ordinance Granting To Capital Cities Cable, Inc., A Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communication System Within The City of Modesto", and

WHEREAS, said Ordinance No. 2293-C.S. was amended by Ordinance No. 2496-C.S. to change the title to read "An Ordinance Granting To Post-Newsweek Cable, Inc., A Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communication System Within The City Of Modesto", and

WHEREAS, said Ordinance No. 2293-C.S., was also amended by Ordinance No. 2620-C.S. on November 8, 1988, to extend the time period that the franchise fee payments are due after the end of each quarter, and

WHEREAS, on November 16, 1999, the City Council by Ordinance No. 3162-C.S. previously granted an extension of the term of the current franchise to May 31, 2000, and

WHEREAS, on June 6, 2000, the City Council by Ordinance No. 3179-C.S. granted a further extension of the term of the current franchise to October 31, 2000, and

WHEREAS, on October 4, 2000, the City Manager gave Cable One notice of Breach of the Cable Franchise and set a public hearing on the breach for November 7, 2000, and

WHEREAS, on November 7, 2000, by Resolution No. 2000-750 the City Council determined that Cable One was in breach of its franchise obligations and referred the matter back to City staff for further discussions with Cable One to ascertain whether Cable One is willing to cure and the manner of cure; and the City Council set a further public hearing on the franchise for the City Council meeting on December 12, 2000, and

WHEREAS, on November 7, 2000, the City Council adopted Ordinance No. 3192-C.S. extending the term of the franchise to December 20, 2000, to permit time to resolve compliance issues and to assure that Cable One remains bound to the terms of the franchise, and

WHEREAS, on December 12, 2000, by Resolution No. 2000-631 the City Council determined that Cable One remained in material breach of the terms of the franchise and adopted Ordinance No. 3197- C.S. extending the term of the contract to February 28, 2001, and

WHEREAS, City Council Resolution No. 2001-36 adopted by the City Council on January 23, 2001, deferred consideration of the request to transfer the Cable One franchise to United Cable Television, a subsidiary of AT&T Corp. from January 30, 2001, to no later than February 13, 2001, and

WHEREAS, City Council Resolution No. 2001-64 adopted by the City Council on February 13, 2001, accepted the settlement agreement with Cable One resolving all alleged areas of non-compliance with the terms of the franchise, and

WHEREAS, the Modesto City Council, by Ordinance No. 3203 -C.S., which was introduced on February 13, 2001, approved the transfer of the cable television franchise from Cable One to United Television Corporation, and

WHEREAS, Cable One, Inc., is still the current holder of the cable franchise referenced herein, and

WHEREAS, the City Council desires to assure that the Franchisee, Cable One and after the transfer the United Cable Television Corporation, remains bound to the terms of the franchise during this period while the City negotiates the renewal of the franchise agreement,

NOW, THEREFORE, the Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF ORDINANCE NO. 2293-C.S. Section 4 of Ordinance No. 2293-C.S. is hereby amended to read as follows:

SECTION 4. GRANT OF FRANCHISE.

Pursuant to the provisions of Chapter 4 of Title 11 of the Modesto Municipal Code, as amended by Ordinance No. 2292-C.S. or as it may hereafter be amended, a nonexclusive franchise to construct, operate and maintain a cable communications system within the City of Modesto, for a term of fifteen (15) years commencing on the effective date of this ordinance, is hereby granted to Grantee with all the rights and privileges and subject to each and all of the terms, conditions, and limitations as set forth in the Franchise Documents.

The area included within the nonexclusive franchise granted hereby includes all areas within the city limits of the City of Modesto, and also includes all territory hereafter annexed, except that the City Council reserves the right to exclude such additional territory from the franchise area at the time it is annexed to the City.

The termination date of this franchise is extended from February 28, 2001 to May 31, 2001.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 20th day of February, 2001, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Smith, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Mike Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3205-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 20TH day of February, 2001, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: March 22, 2001

ACCEPTANCE OF FRANCHISE

Cable One, Inc. does hereby agree with and accept all of the terms and conditions set forth in Ordinance No. 3205 -C.S., introduced by the Council of the City of Modesto on February 20,, 2001, extending the term of the franchise.

Dated: _____.

CABLE ONE, INC.

By: _____

Title: _____

By: _____

Title _____

(SEAL)

APPROVED AS TO FORM:

By _____
MICHAEL D. MILICH, City Attorney

CERTIFICATE OF CLERK

I hereby certify that the foregoing ACCEPTANCE OF FRANCHISE was received by me at the hour of _____ o'clock p.m. on the _____ day of _____, 200__.

JEAN ZAHR, City Clerk

Clerk (13)

ORDINANCE NO. 3206-C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 3097-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 1610-C.S. ENTITLED 'AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 1259-C.S. RELATING TO PLANNED DEVELOPMENT ZONE, P-D(109) (VINTAGE FAIRE)'. (THE MACERICH COMPANY)"

SECTION 1. AMENDMENT OF ORDINANCE NO. 3097-C.S. Section 2 of

Ordinance No. 3097-C.S. is hereby amended to delete the 16-screen theater complex as an allowed use to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(109) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. A regional shopping center containing a maximum of one million, three hundred thousand (1,300,000) square feet of gross floor area. Uses within the shopping center shall be limited to those uses permitted in the H-1 Zone.
2. A minimum of two thousand, six hundred (2,600) off-street parking spaces.
3. A family amusement machine center.
4. Two restaurants.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct

locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of February, 2001, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Smith, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: Conrad

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3206-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of March, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: Conrad

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: April 5, 2001

ORDINANCE APPROVING A DEVELOPMENT AGREEMENT

- 2 - Clerk
- 1 - City Attorney
- 1 - Steve Mitchell - CDD
- 5 - Post
- 1 - Code Service
- 1 - Applicant (If there is one)

11 Total

Check 13

ORDINANCE NO. 3207 -C.S.

AN ORDINANCE RESCINDING ORDINANCE NO. 3098-C.S. ENTITLED "AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND MACERICH VINTAGE FAIRE LIMITED PARTNERSHIP AND SIGNATURE THEATRES, LLC, RELATING TO ADDING A MULTI-SCREEN CINEMA TO THE VINTAGE FAIRE MALL."

WHEREAS, Government Code Section 65864, et seq., authorizes the City to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property and authorizes the City to establish procedures for the application and consideration of such agreements, and

WHEREAS, by City Council Resolution No. 91-185, adopted on March 26, 1991, the City Council established procedures and requirements for the consideration of development agreements, and by City Council Resolution No. 97-492, adopted on August 26, 1997, the City Council revised said procedures and requirements and superseded Resolution No. 91-185, and

WHEREAS, the Planning Commission on May 18, 1998, held a public hearing to consider an application by Macerich Vintage Faire Limited Partnership to amend Planned Development Zone, P-D(109), for the addition of a 16-screen theater and two restaurants, and

WHEREAS, the Planning Commission by Resolution 98-39 recommended approval of the amendment to Planned Development Zone, P-D(109), which included, with the consent of the applicant, a condition requiring a development agreement to address certain issues be negotiated and executed prior to City Council approval of the amendment, and

WHEREAS, the City Council held a public hearing on the amendment to Planned Development Zone, P-D(109), on June 16, 1998, at which hearing the City Council voted to continue the public hearing to August 18, 1998, to allow for the negotiation and execution of said Development Agreement, and

WHEREAS, a proposed Development Agreement was negotiated between representatives of the City of Modesto and the applicants, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on August 3, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the proposed Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 98-47, adopted on August 3, 1998, recommended to the City Council approval of the proposed Development Agreement between the City of Modesto and Macerich Vintage Faire Limited Partnership and Signature Theatres, LLC, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 7:00 p.m., on August 18, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the proposed Development Agreement between the City of Modesto and Macerich Vintage Faire Limited Partnership and Signature Theatres, LLC, and

WHEREAS, thereafter, by Resolution No. 98-439, the Council denied without prejudice the request for rezoning and by Resolution No. 98-440, the Council denied without prejudice the proposed development agreement to add a multi-screen cinema to the Vintage Faire Mall, thus allowing the applicant to re-apply at any time, and

WHEREAS, the applicant subsequently resubmitted an application on September 4, 1998, and the Planning Commission held a duly noticed public hearing on this application on September 21, 1998, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 98-56 adopted on September 21, 1998, recommended to the City Council approval of the proposed Development Agreement between the City of Modesto and Macerich Vintage Faire Limited Partnership and Signature Theatres, LLC, and

WHEREAS, said matter was again set for a public hearing of the City Council to be held at 4:00 p.m., on September 22, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the proposed Development Agreement between the City of Modesto and Macerich Vintage Faire Limited Partnership and Signature Theatres, LLC, and

WHEREAS, thereafter, by Ordinance No. 3098-C.S. the City Council approved the proposed Development Agreement between the City of Modesto and Macerich Vintage Faire Limited Partnership and Signature Theatres, LLC, adding a multi-screen cinema to the Vintage Faire Mall, and

WHEREAS, the Development Agreement as required by condition no. 1 of City Council Resolution No. 98-509 was not executed and said theater complex was not developed, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on November 20, 2000, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 2000-57, adopted November 20, 2000, recommended to the City Council that the Development Agreement between the City of Modesto and Macerich Vintage Faire Limited Partnership and Signature Theatres, LLC be revoked and Ordinance No. 3098-C.S. approving said Development Agreement be rescinded, and

WHEREAS, Section 65867.5 of the Government Code provides that a development agreement is a legislative act which shall be approved by ordinance and is subject to referendum,

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

SECTION 1. RESCIND. That Ordinance No. 3098-C.S. entitled "An Ordinance Approving a Development Agreement Between the City of Modesto and Macerich Vintage Faire Limited Partnership and Signature Theatres, LLC, Relating to Adding a Multi-Screen Cinema to the Vintage Faire Mall" is hereby rescinded.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of February, 2001, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Smith, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: Conrad

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Michael Milich*
MICHAEL D. MILICH, City Attorney

Ord. No. 3207-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of March, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: Conrad

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: April 5, 2001

Clerk

ORDINANCE NO. 3208-C.S.

AN ORDINANCE AMENDING SECTION 3-2.1401.1 OF ARTICLE 14 OF CHAPTER 2 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE RELATING TO SPEED LIMITS.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Section 3-2.1401.1 of Article 14 of

Chapter 2 of Title 3 of the Modesto Municipal Code is hereby amended to read as follows:

3-2.1401.1. CHANGE IN SPEED LIMITS SET BY STATE LAW: FOR PURPOSE OF ENFORCEMENT USING RADAR OR OTHER ELECTRONIC DEVICE.

By authority of, and upon the basis of engineering and traffic surveys conducted pursuant to Vehicle Code and the Traffic Manual of the Department of Transportation, it is determined that the prima facie speed limits which follow would facilitate the orderly movement of vehicular traffic and would be reasonable and safe.

<u>NAME OF STREET OR PORTION AFFECTED</u>	<u>DECLARED PRIMA FACIE SPEED LIMIT</u>	<u>DATE SURVEYED</u>
BANGS AVENUE, between Dale Road and McHenry Avenue	45 miles per hour	September 4, 2000
BLUE GUM AVENUE, between Morse Road and Carpenter Road	40 miles per hour	September 4, 2000
BRIGGSMORE AVENUE, between Prescott Road and Tully Road	45 miles per hour	January 13, 1999
BRIGGSMORE AVENUE, eastbound/ westbound between Tully Road and McHenry Avenue	45 miles per hour	September 4, 2000
BRIGGSMORE AVENUE, westbound between Coffee Road and McHenry Avenue	45 miles per hour	December 21, 1998

BRIGGSMORE AVENUE, eastbound between McHenry Avenue and 1,000 feet west of Coffee Road	45 miles per hour	December 21, 1998
BRIGGSMORE AVENUE, eastbound between a point 1,000 feet west of Coffee Road and Coffee Road	45 miles per hour	July 28, 1993
BRIGGSMORE AVENUE, between Oakdale Road and Claus Road	50 miles her hour	May 14, 1998
BRIGGSMORE AVENUE, between Coffee Road and Oakdale Road	50 miles per hour	January 13, 1999
BRIGHTON AVENUE, between Coffee Road and Locke Road	35 miles per hour	June 18, 1997
CALIFORNIA AVENUE, between Carpenter Road and North Martin Luther King Drive	35 miles per hour	June 15, 1999
CARPENTER ROAD, between Blue Gum Avenue and Woodland Avenue	40 miles per hour	May 28, 1998
CARPENTER ROAD, between Woodland Avenue and Maze Boulevard	40 miles per hour	September 4, 2000
CARPENTER ROAD, between Maze Boulevard and Paradise Road	50 miles per hour	June 15, 1999
CARVER ROAD, between M.I.D. Lateral #6 and Brixton Lane	40 miles per hour	June 18, 1991
CARVER ROAD, between Brixton Lane and Briggsmore Avenue	35 miles per hour	May 8, 1997
CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	35 miles per hour	May 8, 1997

CARVER ROAD, between Orangeburg Avenue and 9th Street	35 miles per hour	May 8, 1997
CELESTE DRIVE, between Coffee Road and Oakdale Road	30 miles per hour	June 18, 1997
CLAUS ROAD, between Sylvan Avenue and Briggsmore Avenue	50 miles per hour	February 29, 1996
CLAUS ROAD, between Briggsmore Avenue and Scenic Drive	45 miles per hour	May 8, 1997
CLAUS ROAD, between Scenic Drive and Yosemite Boulevard	50 miles per hour	September 4, 2000
COFFEE ROAD, between Claratina Avenue and Sylvan Avenue	40 miles per hour	April 4, 2000
COFFEE ROAD, between Sylvan Avenue and Floyd Avenue	40 miles per hour	May 28, 1998
COFFEE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	January 11, 1999
COFFEE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	May 14, 1998
COLLEGE AVENUE, between Rumble Road and Bowen Avenue	30 miles per hour	May 14, 1998
COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue	35 miles per hour	June 16, 1998
CREEKWOOD DRIVE, between Claus Road and Yosemite Boulevard	35 miles per hour	March 17, 1999
CROWS LANDING ROAD, between Blankenburg Avenue to School Avenue	40 miles per hour	February 29, 1996
CROWS LANDING ROAD, between Hatch Road and Whitmore Avenue	35 miles per hour	April 29, 1997

CROWS LANDING ROAD, between 7th Street and Hatch Road	35 miles per hour	August 24, 1999
DALE ROAD, between Pelandale Avenue and Snyder Avenue	40 miles per hour	September 4, 2000
DALE ROAD, between Snyder Avenue and Veneman Avenue	40 miles per hour	May 8, 1997
DALE ROAD, between Veneman Avenue and Standiford Avenue	35 miles per hour	May 8, 1997
EASTRIDGE DRIVE, between Orangeburg Avenue and Scenic Drive	30 miles per hour	August 17, 1994
EL VISTA AVENUE, between Scenic Drive and Yosemite Boulevard	40 miles per hour	December 22, 1998
EMERALD AVENUE, between Maze Boulevard and California Avenue	30 miles per hour	June 17, 1997
EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road	30 miles per hour	June 19, 1997
FLOYD AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	January 11, 1999
FLOYD AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	June 14, 1999
FLOYD AVENUE, between Oakdale Road and Roselle Avenue	40 miles per hour	November 4, 2000
FLOYD AVENUE, between Roselle Avenue and Fine Avenue	40 miles per hour	September 4, 2000
GRANGER AVENUE, between Tully Road and McHenry Avenue	35 miles per hour	December 21, 1998

GRANGER AVENUE, between McHenry Avenue and Sunrise Avenue	35 miles per hour	December 21, 1998
HATCH ROAD, between Crows Landing Road and Carpenter Road	45 miles per hour	September 4, 2000
KANSAS AVENUE, between Carpenter Road and Emerald Avenue	35 miles per hour	January 13, 1999
KANSAS AVENUE, between Emerald Avenue and Ninth Street	35 miles per hour	January 13, 1999
KANSAS AVENUE, between Morse Road and Rosemore Avenue	40 miles per hour	June 8, 1998
KANSAS AVENUE, between Rosemore Avenue and Carpenter Road	40 miles per hour	June 8, 1998
LA LOMA AVENUE, between H Street and Santa Ana Avenue	35 miles per hour	March 16, 1999
LA LOMA AVENUE, between H Street and Santa Rosa Avenue	35 miles per hour	March 16, 1999
LA LOMA AVENUE, between Burney Street and Yosemite Boulevard	30 miles per hour	September 4, 2000
LAKWOOD AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	June 18, 1997
LINCOLN AVENUE, between 650 feet north of M.I.D. Lateral #2 and Yosemite Boulevard	40 miles per hour	July 19, 1994
LINCOLN AVENUE, between Dry Creek and Yosemite Boulevard	35 miles per hour	September 4, 2000

MABLE AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	September 4, 2000
MERLE AVENUE, between Oakdale Road and Roselle Avenue	30 miles per hour	June 28, 1996
MILLER AVENUE, between La Loma Avenue and El Vista Avenue	35 miles per hour	March 16, 1999
MITCHELL ROAD, between Finch Road and the southerly City limits	50 miles per hour	April 28, 1997
MORRIS AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	March 12, 1992
MORSE ROAD, between Blue Gum Avenue and Kansas Avenue	40 miles per hour	June 16, 1997
MT. VERNON DRIVE, between Prescott Road and College Avenue	30 miles per hour	June 23, 1999
NEECE DRIVE, between Tuolumne Boulevard and Rouse Avenue	35 miles per hour	June 19, 1997
NEEDHAM STREET, between 9th Street and L Street	35 miles per hour	June 18, 1997
NORTH MARTIN LUTHER KING DRIVE, between Maze Boulevard and California Avenue	30 miles per hour	March 13, 1992
NORTH MARTIN LUTHER KING DRIVE, between Maze Boulevard and Paradise Road	30 miles per hour	April 29, 1997
NORWEGIAN AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	January 11, 1999
OAKDALE ROAD, between 1300 feet north of Mable Avenue and Sylvan Avenue	45 miles per hour	August 29, 2000

OAKDALE ROAD, between Sylvan Avenue and Floyd Avenue	45 miles per hour	August 29, 2000
OAKDALE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	December 22, 1998
OAKDALE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	December 22, 1998
ORANGEBURG AVENUE, between Briggsmore Avenue and Martin Avenue	35 miles per hour	June 19, 1997
ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	40 miles per hour	June 19, 1997
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	June 19, 1997
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	June 19, 1997
ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	June 18, 1997
ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road	35 miles per hour	June 19, 1997
PARADISE ROAD, between Vernon Avenue and North Martin Luther King Drive	40 miles per hour	June 26, 1994
PARADISE ROAD, between North Martin Luther King Drive and Washington Street	35 miles per hour	February 9, 1999
PARADISE ROAD, between Carpenter Road and Martin Luther King Drive	35 miles per hour	February 9, 1999

PARKER ROAD, between Claus Road and Atchinson, Topeka and Santa Fe Railroad Tracks	45 miles per hour	April 28, 1997
PELANDALE AVENUE, between Sisk Road and Dale Road	45 miles per hour	March 18, 1997
PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	40 miles per hour	June 16, 1997
PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	June 16, 1997
PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	June 16, 1997
RIVERSIDE DRIVE, between Edgebrook Drive and Yosemite Boulevard	30 miles per hour	August 30, 2000
ROSE AVENUE, between Floyd Avenue and Briggsmore Avenue	35 miles per hour	December 21, 1998
ROSE AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	December 21, 1998
ROSEBURG AVENUE, between Carver Road and Tully Road	30 miles per hour	May 8, 1997
ROSEBURG AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	April 29, 1997
ROSEBURG AVENUE, between McHenry Avenue and Sunrise Avenue	30 miles per hour	January 8, 1993
ROSELLE AVENUE, between Floyd Avenue and Briggsmore Avenue	45 miles per hour	November 4, 2000

ROSEMORE AVENUE, between Blue Gum Avenue and Kansas Avenue	35 miles per hour	August 30, 2000
ROUSE AVENUE, between Neece Drive and Colorado Avenue	30 miles per hour	April 29, 1997
RUMBLE ROAD, between Sisk Road and Conant Avenue	35 miles per hour	June 16, 1997
RUMBLE ROAD, between Conant Avenue and Tully Road	35 miles per hour	June 16, 1997
RUMBLE ROAD, between Tully Road and McHenry Avenue	35 miles per hour	June 28, 1996
RUMBLE ROAD, between McHenry Avenue and Coffee Road	35 miles per hour	May 28, 1998
SANTA CRUZ AVENUE, between Yosemite Boulevard and Legion Park Drive	30 miles per hour	November 4, 2000
SCENIC DRIVE, between Burney Street and Coffee Road	35 miles per hour	June 18, 1997
SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	April 28, 1997
SCENIC DRIVE, between Oakdale Road and Lakewood Avenue	40 miles per hour	April 28, 1997
SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	April 28, 1997
SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	April 30, 1998
SCENIC DRIVE, between Coffee Road and Bodem Street	35 miles per hour	March 16, 1999

SHARON AVENUE, between Fine Avenue and Claus Road	40 miles per hour	November 17, 2000
SIERRA DRIVE, between G Street and South 7th Street	30 miles per hour	June 19, 1997
SISK ROAD, between Vintage Drive and Standiford Avenue	45 miles per hour	June 14, 1999
SISK ROAD, between Pelandale Avenue and Vintage Drive	45 miles per hour	June 14, 1999
SISK ROAD, between Standiford Avenue and Briggsmore Avenue	45 miles per hour	August 29, 2000
SNYDER AVENUE, between Dale Road and Prescott Road	40 miles per hour	September 1, 1997
SNYDER AVENUE, between Prescott Road and Carver Road	45 miles per hour	September 1, 1997
STANDIFORD AVENUE, between Tully Road and McHenry Avenue	40 miles per hour	December 22, 1998
STANDIFORD AVENUE, between Prescott Road and Tully Road	40 miles per hour	August 29, 2000
STANDIFORD AVENUE, between Sisk Road and Prescott Road	45 miles per hour	January 12, 1999
SUNRISE AVENUE, between Briggsmore Avenue and Lucern Avenue	35 miles per hour	December 21, 1998
SUNRISE AVENUE, between Lucern Avenue and Floyd Avenue	35 miles per hour	June 26, 1994
SUTTER AVENUE, between Paradise Road and Robertson Road	30 miles per hour	February 9, 1999

SYCAMORE AVENUE, between Orangeburg Avenue and Griswold Avenue	30 miles per hour	November 14, 2000
SYLVAN AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	December 22, 1998
SYLVAN AVENUE, between Coffee Road and Oakdale Road	40 miles per hour	June 23, 1994
SYLVAN AVENUE, between Oakdale Road and Roselle Avenue	45 miles per hour	August 30, 1995
SYLVAN AVENUE, between Claus Road and Roselle Avenue	50 miles per hour	April 28, 1997
TENAYA DRIVE, between Santa Cruz Avenue and Mitchell Road	30 miles per hour	February 1, 1996
TULLY ROAD, between M.I.D. Lateral #6 and Standiford Avenue	45 miles per hour	June 14, 1999
TULLY ROAD, between Briggsmore Avenue and Coldwell Avenue	35 miles per hour	March 18, 1997
TULLY ROAD, between Briggsmore Avenue and Standiford Avenue	35 miles per hour	March 18, 1997
TULLY ROAD, between Standiford Avenue and 1500' south of Bangs Avenue	45 miles per hour	March 18, 1997
TUOLUMNE BOULEVARD, between Paradise Road and 7th Street	35 miles per hour	July 19, 1994
UNION AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	August 29, 2000
VENEMAN AVENUE, between Dale Road and Regency Park Drive	35 miles per hour	March 21, 1999

VIRGINIA AVENUE, between Roseburg Avenue and Needham Street	30 miles per hour	June 19, 1997
WHITMORE AVENUE, between Crows Landing Road and Morgan Road	40 miles per hour	June 28, 1996
WHITMORE AVENUE, between Ustick Road and Crows Landing Road	45 miles per hour	February 29, 1996
WOODLAND AVENUE, between Morse Road and Carpenter Road	35 miles per hour	November 14, 2000
WOODLAND AVENUE, between Carpenter Road and 9th Street	35 miles per hour	May 9, 1997
WOODROW AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	June 19, 1997
5TH STREET, between L Street and Sierra Drive	25 miles per hour	July 17, 1996
6TH STREET, between D Street and L Street	30 miles per hour	July 17, 1996
7TH STREET BRIDGE, between B Street and River Road	30 miles per hour	August 30, 2000
9TH STREET, between Carpenter Road and Tully Road	45 miles per hour	May 9, 1997
9TH STREET, between D Street and Morton Boulevard	30 miles per hour	November 4, 2000
9TH STREET, between P Street and L Street	35 miles per hour	January 13, 1999
9TH STREET, between L Street and Tully Road	35 miles per hour	May 9, 1997

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of March, 2001, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

Ord. No. 3208-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 27th day of March, 2001, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: April 26, 2001

ORDINANCE AMENDING SPEED LIMIT

1	Attorney
1	Attorney - Shanna Willis
5	Posting
2	E&T - Transportation
1	Police
<u>1</u>	Code Service
11	

ORDINANCE NO. 3209-C.S.

AN ORDINANCE AMENDING SECTION 21-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1 TO PLANNED DEVELOPMENT ZONE, P-D(547), PROPERTY LOCATED ON THE WEST SIDE OF COFFEE ROAD EAST OF ALLEN DRIVE SOUTH OF EAST ORANGEBURG AVENUE. (MICHAEL PURNELL, M.D.)

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 21-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(547):

R-1 to P-D(547)

A portion of the Northeast quarter of the Southeast quarter of the Northeast quarter of Section 21, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particular described as follows:

BEGINNING at a point on the East line of said Section 21, where said line is intersected by the easterly extension of the northerly line of the premises conveyed to H. H. Copeland and Minnie N. Copeland, his wife, by Deed dated April 17, 1947 and recorded May 2, 1947, as Document No. 12009; thence northerly and along the East line of said Section 21, a distance of 60.00 feet; thence westerly parallel with the northerly line of the premises conveyed to said Copeland by Deed first hereinabove referred to, a distance of 175.00 feet, more or less (found to be 199 feet, more or less as shown on that particular Record of Survey filed in Volume 10 of Surveys, at Page 138 and that particular Subdivision Map filed in Volume 19, of Maps at Page 56, Stanislaus County Records) to a point on the East line of the premises conveyed to Minnie McIntyre by Deed dated August 28, 1947 and recorded September 8, 1947 as Document No. 23016; thence southerly along the easterly line of the premises so conveyed to said McIntyre a distance of 60.00 feet to the southeasterly corner of the said premise conveyed to Minnie McIntyre; thence westerly along the northerly line of the aforementioned premises conveyed to Copeland, a distance of 155.00 feet; to the westerly line of the said Copeland premises; thence southerly along said westerly line a distance of 74.00 feet to the southwesterly corner of the said Copeland premises; thence, continuing

southerly along the westerly line of the premises conveyed to Marion C. Billingsley by deed dated March 20, 1947 and recorded March 25, 1947 as Document No. 8580, a distance of 75.00 feet to the southwesterly corner of said Billingsley premises; thence easterly parallel with the northerly line of the said Copeland premises a distance of 330 feet, more or less (found to be 354.00 feet, more or less as shown on that particular Record of Survey filed in Volume 10 of Surveys, at Page 138, and that particular Subdivision Map filed in Volume 19 of Maps at Page 56, Stanislaus County Records), to a point on the East line of said Section 21, said point being distant 149.00 feet southerly along said Section line from the point of beginning; thence northerly along the East line of said Section 21, a distance of 149.00 feet to the POINT OF BEGINNING.

Including also the West half of Coffee Road and the East half of Allen Drive and the East half of the alley, all being adjacent to the above-described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(547) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Two-story office complex with uses as allowed in the P-O Zone.

SECTION 3. ZONING MAP. Section Map 21-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct

locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of March, 2001, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael Milich
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By [Signature]
Community Development Department
Planning Division

Ord. No. 3209-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 13th day of March, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: April 12, 2001

Clerk 9

ORDINANCE NO. 3210 -C.S.

AN ORDINANCE AMENDING SECTION 2-3.302 OF ARTICLE 3 OF CHAPTER 3 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO OFFICE OF THE CITY CLERK AND AUDITOR - CREATION AND FUNCTIONS.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Section 2-3.302 of Article 3 of Chapter 3 of Title 2 of the Modesto Municipal Code is hereby amended to read as follows:

2-3.302. CREATION AND FUNCTIONS.

The office of the City Clerk and Auditor is established by the Charter. This office as an administrative division shall be under the direct control of the City Clerk and Auditor. It shall be the duty of the City Clerk and Auditor to perform all duties and have such authorities and responsibilities as are prescribed by the Charter and ordinances of the City and the laws of the State of California. The City Clerk and Auditor shall perform the following duties:

- (a) Attend all meetings of the Council and record, index and maintain a full and true record of all the Council's proceedings.
- (b) Maintain appropriately certified and indexed original copies of resolutions and ordinances adopted by the Council and of written contracts made by the City and deeds for property rights obtained or held by the City.
- (c) Verify cash receipts, the distribution of revenues to the appropriate funds, and certify as to legality and correctness all bills, invoices, payrolls, demands and charges against the City.
- (d) Audit fiscal transactions relating to the deposit, transfer, withdrawal or investment of City monies.
- (e) Conduct performance audits, as assigned by the City Council after first being recommended by the Audit Committee. A "performance audit" means a post audit which determines with regard to the purpose, functions and duties of the audited City function all of the following:

- (1) Whether the audited department, office, board, or commission is managing or utilizing its resources, including public funds, personnel, property, equipment and space in an economical and efficient manner.
 - (2) Causes of inefficiencies or uneconomical practices, including inadequacies in management, information systems, internal and administrative procedures, organizational structure, use of resources, allocation of personnel, purchasing policies and equipment.
 - (3) Whether the desired results are being achieved.
 - (4) Whether objectives established by the Council are being met.
- (f) Conduct special audits and investigations, as assigned by the Council, after having first been recommended by the Audit Committee. "Special audits" and "investigations" means assignments of limited scope intended to determine:
- (1) The accuracy of information provided to the Council.
 - (2) The costs and consequences of recommendations made to the Council
 - (3) Other information concerning the performance of City departments, offices, boards or commissions as requested by the Council.
- (g) Except as provided in Section 1306 of the Modesto City Charter, perform financial related audits as requested by the Council after first having been recommended by the Audit Committee.
- (h) City Clerk and Auditor shall have access to, and authority to examine any and all documents including, but not limited to, books, accounts, internal memoranda, writings and tapes, reports, vouchers, correspondence files and other records, bank accounts, money and other property of any City department, officer, office, board, or commission, whether created by the Charter or otherwise, with the exception of the office of any elected official.

It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof,

upon the written request of the City Clerk and Auditor or his or her authorized representative. In circumstances deemed appropriate by the City Clerk and Auditor, in his or her discretion, he or she may issue administrative subpoenas to compel the production of any document described in this subparagraph (h). The failure of any officer, employee, or agent of the City to comply with any such administrative subpoena shall be a violation of this Code and shall be deemed a misdemeanor, punishable as provided for in the Charter of the City of Modesto and Title 1 of this Code. In addition, the City Clerk and Auditor may assess an administrative penalty of five hundred dollars (\$500.00) per calendar day or any portion of a calendar day beyond the day and time set forth in any administrative subpoena for the production of any record described in this subparagraph (h). The civil and criminal penalties prescribed by this subparagraph (h) shall be cumulative and the use of one remedy shall not bar the use of any other remedy provided for herein.

- (i) Perform such other duties as may be required by the Council.

The City Clerk and Auditor may require any claimant to make oath as to the validity of any claim or demand against the City. The Clerk may investigate any such claim or demand and for such purpose may examine witnesses under oath; and if the Clerk finds it erroneous, fraudulent, or otherwise invalid, the Clerk shall refuse to certify the same for payment.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2001, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

Ord. No. 3210 C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of April, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Juan Zahr*
JUAN ZAHR, City Clerk

Effective Date: May 3, 2001

ORDINANCE AMENDING MODESTO MUNICIPAL CODE

1	Attorney
1	Attorney - Shanna Willis
1	City Clerk
5	Posting
1	Code Service
<u>1</u>	For any other interested departments
10	

ORDINANCE NO. 3211 -C.S.

AN ORDINANCE AMENDING SECTION 31-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(478), AS AN ADDITION TO P-D(478) PROPERTY LOCATED ON THE SOUTH SIDE OF BRIGGS AVENUE, WEST OF MARTIN LUTHER KING DRIVE. (LEONARD SORANNO)

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 31-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(478), as an addition to P-D(478):

R-1 to P-D(478), as an addition to P-D(478)

All that certain real property situate in a portion of Lot 3 of the "ReSurvey of Brichman's Addition to the City of Modesto", according to the Official Map thereof, filed for record in Volume 2 of Maps, Page 1, Stanislaus County Records, located in Section 31, Township 3 south, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

BEGINNING at the northwest corner of said Lot 3; thence South 89° 46'40" East, along north line of said Lot 3, being also the south line of a 60.00 foot wide Briggs Avenue, a distance of 231.30 feet to the northwesterly corner of existing Planned Development Zone, P-D(478); thence southerly along the westerly line of said Planned Development Zone, P-D(478), the following five (5) courses:

- (1) South 0°25'50" East 54.00 feet,
- (2) South 44°34'10" West 131.95 feet,
- (3) South 0°25'50" East 105.25 feet,
- (4) South 42°25'50" East 93.34 feet, and
- (5) South 0°25'50" East 147.42 feet, to the south line of said Lot 3;

Thence North 89°48'40" West, along said south line of Lot 3, a distance of 204.00 feet, to the southwest corner of said Lot 3; thence North 0°25'50" West, along the west line of said Lot 3, a distance of 466.40 feet to the point of

beginning. Including also all of the south one-half of 60.00 foot wide Briggs Avenue located immediately adjacent to the above described project.

SECTION 2. USES. The following uses shall be permitted in said P-D(478) Zone, as an addition to P-D(478), if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. A single-story medical clinic.
2. County offices.
3. Landscaped parking area.

SECTION 3. ZONING MAP. Section Map 31-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2001, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By [Signature]
Community Development Department
Planning Division

Ord. No. 3211 C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of April, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: May 3, 2001

P-D ORDINANCE

1 Applicant
1 CDD - Becky Jenkins
1 Attorney
1 Attorney - Shanna Willis
1 E&T - Engineering Services
5 Posting
1 E&T - Traffic
1 Code Service
1 County Assessor
1 E&T - Construction Administration
1 CDD - Building Inspection
1 Recreation & Neighborhoods - NPU - Virginia M.
16

Clerk (12)

ORDINANCE NO. 3212 -C.S.

AN ORDINANCE AMENDING SECTIONS 7-3.106.1, 7-3.204, 7-3.206 AND 7-3.401 OF CHAPTER 3 OF TITLE 7 OF THE MODESTO MUNICIPAL CODE RELATING TO ULTRALIGHT VEHICLES.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Sections 7-3.106.1, 7-3.204, 7-3.206 and 7-3.401 of Chapter 3 of Title 7 of the Modesto Municipal Code are hereby amended to read as follows:

7-3.106.1. PRIVATE AIRCRAFT AND ULTRALIGHT VEHICLE - REGULATIONS.

- (a) Every person or persons owning or controlling any private aircraft based at the Modesto City-County Airport shall be subject to the following regulations:
 - (1) Private aircraft will be operated noncommercially.
 - (2) Private aircraft may be used by persons other than the owner, or owners, provided that in no case may it be rented, leased, or used for any commercial purpose.
 - (3) Private aircraft may be used in connection with the owner's own business.
 - (4) Company- or corporation-owned aircraft, operated for the free transportation of their, and other, personnel or products, are classified as private aircraft and subject to the same restrictions as set forth in this section.
- (b) Any person or persons owning, controlling, or operating any ultralight vehicle, as defined in Federal Aviation Regulations (FAR) Part 103, that is either based at or transient to the Modesto City-County Airport shall be subject to the following regulations:
 - (1) All ultralight vehicles shall be operated in accordance with all applicable federal, state, local, administrative and regulatory

statutes, rules, regulations and policies as now existing or hereafter amended including, but not limited to, the operating rules set forth in FAR Part 103 and the Modesto City-County Airport ultralight operations policy.

- (2) No person shall operate an ultralight vehicle at the Modesto City-County Airport unless and until the owner and operator has obtained written authorization from the air traffic control facility having jurisdiction over the airspace and said written authorization is on file with the Modesto City-County Airport Manager.
- (3) No person shall operate an ultralight vehicle at the Modesto City-County Airport unless and until the owner and operator of the ultralight vehicle has provided the City of Modesto with a certificate of insurance in an amount and in a form acceptable to the City's Risk Manager naming the City of Modesto and the County of Stanislaus as additional insureds.
- (4) As used in this chapter and title the term aircraft shall include ultralight vehicles.

7-3.204. LANDINGS.

- (a) All aircraft approaching the Modesto City-County Airport for landing shall fall in the line of traffic and skirt the field to a point where a landing can be made in the direction indicated by the traffic direction indicator and with a straight glide beginning at least one thousand (1000) feet distant from the leeward end of the landing area, except as set forth in subdivision (b).
- (b) Ultralight vehicles approaching the Modesto City-County Airport for landing will comply with the approach patterns established by the Air Traffic Control facility having jurisdiction of the airspace.

7-3.206. TURNING WHILE TAKING OFF.

So far as is practicable, no aircraft taking off shall make any turn at a distance of less than one thousand (1000) feet horizontally from the nearest edge of the airport. Except, ultralight vehicles taking off shall make all turns inside the Modesto City County Airport's airfield boundary while assuring that a safe separation is maintained from other users of the airport in accordance with Air Traffic Control regulations.

7-3.401. FEES.

The Council shall have the power by resolution to establish charges and fees for the following types of activities and services at the Modesto City-County Airport:

- (a) Rental of hangars.
- (b) Tie downs.
- (c) Office space.
- (d) Landing fees for nonscheduled transient aircraft carrying passengers and/or cargo for hire.
- (e) Collection of a Passenger Facility Charge (PFC) from airline passengers enplaning flights at Modesto City-County Airport.
- (f) Permanently based commercial services, the fee to be in lieu of the license requirements imposed by Chapter 1 of Title 6 of this Code, and shall be payable in advance.
- (g) Temporarily based commercial services, the fee to be in lieu of the license requirements imposed by Chapter 1 of Title 6 of this Code, and shall be payable in advance.

An operator shall be considered as "temporarily based" at the Modesto City-County Airport within the meaning of this chapter unless the operator maintains an office at the airport and intends to engage in business from the base for a consecutive period of not less than six (6) months in duration. The requirements of this section may be modified or waived by action of the Council during such times as are declared by it to be periods of public emergency.

- (h) Ultralight vehicle operators shall pay to the City an access fee in lieu of the flowage fee and taxes paid to the County by fixed wing and rotor aircraft owners. The fees will be established from time to time by resolution of the City Council.
- (i) Such other services for activities as are deemed proper by the Council.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of April, 2001, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

Ord. No. 3212-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 10th day of April, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: May 10, 2001

ORDINANCE AMENDING MODESTO MUNICIPAL CODE

1 Attorney ✓
1 Attorney - Shanna Willis ✓
1 Howard Cook ✓
5 Posting
1 Code Service
1 For any other interested departments *EFT Admin*
10

Clear 28
13

ORDINANCE NO. 3213-C.S.

AN ORDINANCE REPEALING CHAPTER 10 OF TITLE 3
OF THE MODESTO MUNICIPAL CODE RELATING TO
TOWING SERVICES.

The Council of the City of Modesto does ordain as follows:

SECTION 1: REPEALS. Chapter 10 of Title 3 of the Modesto Municipal Code
is hereby repealed.

SECTION 2: EFFECTIVE DATE. This ordinance shall go into effect and be
in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final
adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct
locations in the City; and a notice shall be published once in *The Modesto Bee*, the official
newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its
introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of April, 2001, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

Ord. No. 3213-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 10th day of April, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: May 10, 2001

ORDINANCE AMENDING MODESTO MUNICIPAL CODE

1 Attorney
1 Attorney - Shanna Willis
1 Police Department
5 Posting
1 Code Service
1 For any other interested departments - Risk
10

Clerk (14)

ORDINANCE NO. 3214-C.S.

AN ORDINANCE AMENDING SECTION 2-3.103 OF ARTICLE 1 OF CHAPTER 3 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO OFFICE OF THE CITY MANAGER - ACTING CITY MANAGER.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Section 2-3.103 of Article 1 of Chapter 3 of Title 2 of the Modesto Municipal Code is hereby amended to read as follows:

2-3.103. ACTING CITY MANAGER.

There shall be two (2) Deputy City Managers. In the case of absence or disability of the City Manager, either Deputy City Manager, or such other officer of the City as shall be appointed City Manager pro tempore by the Council, shall perform the duties and exercise the powers of the City Manager.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of April, 2001, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3214-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 10th day of April, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: May 10, 2001

ORDINANCE AMENDING MODESTO MUNICIPAL CODE

1 Attorney
1 Attorney - Shanna Willis
1 City Manager
5 Posting
1 Code Service
1 For any other interested departments
10

ORDINANCE NO. 3215 -C.S.

AN ORDINANCE AMENDING SECTION 8-3.102 OF ARTICLE 1 OF CHAPTER 3 OF TITLE 8 OF THE MODESTO MUNICIPAL CODE RELATING TO CITY CONTRACTS - CONTRACTING AUTHORITY.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Section 8-3.102 of Article 1 of Chapter 3 of Title 8 of the Modesto Municipal Code is hereby amended to read as follows:

8-3.102. CONTRACTING AUTHORITY.

The City Manager may approve and authorize all contracts and purchase orders involving an expenditure of City funds in the amount of fifty thousand dollars (\$50,000.00) or less. Except as noted below, no contract involving an expenditure in excess of fifty thousand dollars (\$50,000.00) may be authorized, approved or executed without City Council approval. The fifty thousand dollars (\$50,000.00) limit set forth in the preceding sentences does not apply to the following:

- (a) Contracts for public works projects consisting of the improvement or modification of traffic signals or signal systems including those street improvements which are incidental to or related to the improvement or modification of the traffic signal. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of two hundred thousand dollars (\$200,000.00) or less.
- (b) Contracts for public works projects consisting of the improvement, repair, expansion, renovation, or modification of the baseball stadium facilities located at John Thurman Field in the City of Modesto. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of three million dollars (\$3,000,000.00) or less.
- (c) Contracts for public works projects consisting of the construction, improvement, repair, expansion, renovation or modification of any facilities funded by a Mello-Roos Community Facilities District and involving an expenditure of District Facility Taxes in the amount of

three million dollars (\$3,000,000.00) or less. The District Administrator may approve and authorize all contracts for such projects.

- (d) Contracts for public works projects consisting of the maintenance, repair, replacement, and improvement of existing water lines. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of three hundred thousand dollars (\$300,000.00) or less.
- (e) Contracts for public works projects consisting of the installation and establishment of water service connections associated with new development. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of seventy-five thousand dollars (\$75,000.00) or less.
- (f) Contracts for public works projects consisting of repairs determined by the City Manager to be of urgent necessity for the preservation of life, health, or property. The City Manager may approve and authorize all contracts for such projects in the amount of two hundred thousand dollars (\$200,000.00) or less. Within ten (10) days of the authorization for any such work, the City Manager shall report to the City Council the circumstances of the emergency.

Any contract for public works projects which may be so approved as set forth in subsections (a), (b), (c), (d), (e) and (f) above of this section and authorized by the City Manager is not subject to the public bidding requirements of article 3 of this chapter or of Section 1307 of the Modesto City Charter. This section is adopted pursuant to Sections 801(1c) and 1307 of the Modesto City Charter. The City Manager may delegate his or her authority in a manner consistent with the procedures established by this chapter. As set forth in Section 2-2.03 of this Code, all contract documents that require City Council approval shall be approved as to form by the City Attorney or the City Attorney's authorized representative before presentation to the City Council.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official

newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of April, 2001, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Mayor Sabatino, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3215-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 10th day of April, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: Frohman

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: May 10, 2001

ORDINANCE AMENDING MODESTO MUNICIPAL CODE

1 Attorney
1 Attorney - Shanna Willis
1 Operations & Maintenance
1 Engineering & Transportation
5 Posting
1 Code Service
1 For any other interested departments
11

Clerk ②

ORDINANCE NO. 3216 -C.S.

AN ORDINANCE AUTHORIZING AN AMENDMENT TO
THE CONTRACT BETWEEN THE CITY OF MODESTO AND
THE BOARD OF ADMINISTRATION OF THE CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

The Council of the City of Modesto does ordain as follows:

SECTION 1. That an amendment to the contract between the City of Modesto and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment is attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.

SECTION 2. The City Manager of the City of Modesto is hereby authorized, empowered, and directed to execute said amendment for and on behalf of the City of Modesto.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2001, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3216-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 15th day of May, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: June 14, 2001



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Modesto

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective August 1, 1946, and witnessed July 27, 1946, and as amended effective December 1, 1950, July 1, 1956, July 1, 1959, November 1, 1959, January 1, 1960, October 1, 1962, January 1, 1969, May 1, 1973, May 1, 1974, June 24, 1975, March 28, 1978, July 4, 1978, November 1, 1980, October 20, 1981, June 29, 1982, October 15, 1985, June 24, 1986, April 14, 1987, November 22, 1991, July 25, 1997 and November 7, 2000 which provides for participation of Public Agency in said System; Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 13 are hereby stricken from said contract as executed effective November 7, 2000, and hereby replaced by the following paragraphs numbered 1 through 14 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

2. Public Agency shall participate in the Public Employees' Retirement System from and after August 1, 1946 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).
4. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
 - a. **POLICE COURT EMPLOYEES; AND**
 - b. **ALL HOURLY RATED OR HOURLY BASIS EMPLOYEES HIRED ON AND AFTER OCTOBER 1, 1962.**
5. Assets heretofore accumulated with respect to members in the local retirement system have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of the assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system has been credited to the individual membership account of each such employee under the Public Employees' Retirement System.
6. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to June 30, 1978, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).

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7. The percentage of final compensation to be provided for each year of credited prior and current service as a local fire member shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a local police member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full). The required member contribution rate is 9% of reportable compensation.
9. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 21222.1 (One-Time 5% Increase - 1970). Legislation repealed said Section effective January 1, 1980.
 - b. Section 21222.2 (One-Time 5% Increase - 1971). Legislation repealed said Section effective January 1, 1980.
 - c. Section 21319 (One-Time 15% Increase for Local Miscellaneous Members Who Retired or Died Prior to July 1, 1971).
 - d. Section 21571 (Basic Level of 1959 Survivor Benefits) for local fire members only.
 - e. Section 21572 (Increased Level of 1959 Survivor Benefits) for local miscellaneous members only.
 - f. Section 20042 (One-Year Final Compensation).
 - g. Section 21427 (Improved Nonindustrial Disability Allowance) for local miscellaneous members only.
 - h. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance) for local safety members and those local miscellaneous members entering membership on or prior to October 20, 1981.
 - i. Section 21325 (One-Time 3% to 15% Increase For Local Miscellaneous Members and Local Safety Members Who Retired or Died Prior to January 1, 1974).
 - j. Section 20475 (Different Level of Benefits Provided for New Employees). Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance) are not applicable to local miscellaneous members entering membership after October 20, 1981.

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- k. Section 21322 (One-Time 4% Increase For Local Miscellaneous Members and Local Safety Members Who Retired or Died Prior to January 1, 1981).
 - l. Section 21317 (One-Time 15% Increase for Certain Local Safety Members Who Retired for Service Retirement).
 - m. Section 21024 (Military Service Credit as Public Service), Statutes of 1976.
 - n. Section 21574.5 (Indexed Level of 1959 Survivor Benefits) for local police members only.
10. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on March 28, 1978. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
11. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
12. Public Agency shall also contribute to said Retirement System as follows:
- a. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - b. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
13. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

14. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF MODESTO

BY _____
KENNETH W. MARZION, CHIEF
ACTUARIAL & EMPLOYER SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

ORDINANCE

- 1 Attorney ✓
- 1 Personnel ✓
- 1 Finance ✓
- 5 Post
- 1 Code Service

Cleek

ORDINANCE NO. 3217 -C.S.

AN ORDINANCE AMENDING SECTION 5-10.304 OF ARTICLE 3 OF CHAPTER 10 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE RELATING TO DISCHARGE REGULATIONS AND REQUIREMENTS - CONSTRUCTION ACTIVITIES, NEW DEVELOPMENT AND REDEVELOPMENT, AND BEST MANAGEMENT PRACTICES.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Section 5-10.304 of Article 3 of Chapter 10 of Title 5 of the Modesto Municipal Code is hereby amended to read as follows:

5-10.304. CONSTRUCTION ACTIVITIES, NEW DEVELOPMENT AND REDEVELOPMENT, AND BEST MANAGEMENT PRACTICES.

- (a) **Compliance with NPDES Permits and Notification of Intent.** Any industrial discharger, discharger associated with construction activity, or other discharger subject to a storm water NPDES permit issued by the United States Environmental Protection Agency, the State Water Resource Control Board, or the Regional Water Quality Control Board, shall provide a Notice of Intent, to the appropriate permitting agency and comply with all requirements of such NPDES permit.
- (b) **Storm Water Pollution Prevention Plan.** The authorized enforcement officer may require any business or construction site, which may directly or indirectly discharge into the City storm drain system, or that is engaged in activities which may result in pollutant discharges, to develop and implement a Storm Water Pollution Prevention Plan, which must include an employee training program and any other BMPs, programs, or process descriptions which the authorized enforcement officer deems necessary to prevent a non-storm water discharge. The Storm Water Pollution Prevention Plan shall be consistent with (no less stringent than) and comply in all respects with the standards and/or requirements contained in the most current Guidance Manual for New Development Stormwater Quality Control Measures approved by the City Council, including, but not limited to, the execution of any agreements contained therein. Business activities which may require a Storm Water Pollution Prevention Plan include, but are not limited to, construction maintenance, storage, manufacturing, assembly, equipment operations,

vehicle loading or fueling, or cleanup procedures which are carried out partially or wholly out of doors.

- (c) **Compliance with Best Management Practices.** Every person undertaking any activity or use of a premises which may cause or contribute to storm water pollution or contamination, illegal discharges, or non-storm water discharges shall comply with Best Management Practices guidelines or pollution control requirements as may be reasonably established by the authorized enforcement officer or this chapter. With respect to any new construction, no encroachment or other development related permit shall be issued by the City without the written approval of the Director with respect to the requirements of this section.
- (d) **Vegetation Clearing Limits for Construction.** The City may set forth reasonable limits on the clearing of vegetation from construction sites, including, but not limited to, regulating the length of time during which soil may be bare, and, in certain sensitive cases, prohibiting bare soil.
- (e) **Best Management Practices for Construction Activities.** All construction contractors performing work in the City shall conform to the Erosion and Sediment Control Standard of this chapter, City Standard Specifications for Erosion and Sediment Control, and any other standard adopted by the City. The City may establish controls on the volume and rate of storm water runoff from new developments and redevelopments in accordance with the Guidance Manual for New Development Stormwater Quality Control Measures to minimize the discharge and transport of pollutants.

In addition to any adopted BMPs or other requirements for construction projects adopted by the City, the following requirements shall apply to all projects undergoing construction in the City. The requirements set forth below shall apply at the time of demolition of an existing structure or commencement of construction and until the project receives final occupancy/clearance from the City.

- (1) Sediment, construction waste and other pollutants from construction sites and parking areas, including runoff from equipment at construction sites, shall be retained on the site to the maximum extent practicable.
- (2) Any sediment or other materials that are not retained on the site shall be removed the same day as the projects are completed.

Where determined necessary by the Director, a temporary sediment barrier shall be installed.

- (3) On an emergency basis only, plastic covering may be utilized to prevent erosion of an otherwise unprotected area, along with runoff devices to intercept and safely convey the runoff.
 - (4) Excavated soil shall be located on the site in a manner that minimizes the amount of sediments running into the street or adjoining properties. Soil piles shall be covered until the soil is either used or removed.
 - (5) No washing of construction or other industrial vehicles shall be allowed on a construction site or property adjacent to a construction site.
 - (6) Drainage controls shall be utilized as needed, depending on the extent of the proposed grading and topography of the site, including, but not limited to, the following: detention ponds, sediment ponds, infiltration pits, dikes, filter berms, ditches, down drains, chutes, or flumes.
- (f) **Best Management Practices for New Development and Redevelopment.** To minimize the discharge and transport of pollutants, the City may require, in its discretion, new development or redevelopment projects to implement designs which minimize storm water runoff.

Acceptable methods and standards for controlling storm water runoff volumes, rates, and pollutant load may include but are not limited to the following:

- (1) **Increase Permeable Areas.** Avoid placing impervious surfaces in highly porous soil areas; incorporate landscaping and open space into the project design; use porous materials for or near driveways and walkways; incorporate detention ponds and infiltration pits into the project's design; avoid placing pavement and other impervious surfaces in low lying areas.
- (2) **Direct Runoff to Permeable Areas.** Direct storm water runoff away from impermeable areas to swales, berms, green strip filters, gravel beds, and french drains. Install rain gutters and orient them toward permeable areas. Modify the grade of the

property to divert flow to permeable areas and minimize the amount of storm water runoff leaving the property. When designing curbs, berms or other structures, avoid designs which isolate permeable or landscaped areas.

- (3) **Maximize Storm Water Storage for Reuse.** Use retention structures, subsurface areas, cisterns, or other structures to store storm water runoff for reuse or slow release.

(g) **New Development Storm Water Control Measures.**

The goal of the New Development Management Program (NDMP) is to minimize runoff pollution typically caused by land development and protect the beneficial uses of receiving waters by employing a sensible combination of pollutant source control and site-specific treatment control measures.

In order to meet these objectives, the City of Modesto developed the Guidance Manual for New Development Stormwater Quality Control Measures. This manual is available for review at the City Clerk's Office.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2001, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3217-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 1st day of May, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: May 30, 2001

ORDINANCE AMENDING MODESTO MUNICIPAL CODE

1 Attorney
1 Attorney - Shanna Willis
1 Operations & Maintenance
5 Posting
1 Code Service
1 For any other interested departments
10

Clerk 20

ORDINANCE NO. 3218 -C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 1048-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION MAP 15-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON. (MEMORIAL HOSPITAL ASSOCIATION OF STANISLAUS COUNTY)", AS AMENDED BY ORDINANCE NOS. 1795-C.S. AND 2330-C.S. (MEMORIAL HOSPITAL ASSOCIATION)

SECTION 1. AMENDMENT OF ORDINANCE NO. 1048-C.S. Section 2 of Ordinance No. 1048-C.S. as amended by Ordinance Nos. 1795-C.S. and 2339-C.S., is hereby further amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(73) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Acute care hospital.
2. Retirement Living Center.
3. Outpatient Center
4. Helicopter landing area.
5. Hospital storage facilities, medical/professional office for uses as allowed in the P-O Zone.
6. Off-street parking as shown on the approved plans."

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2001, by Councilmember Smith, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Friedman

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3218-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 1st day of May, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Friedman

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: May 30, 2001

P-D ORDINANCE

1 Applicant
1 CDD - Becky Jenkins
1 Attorney
1 Attorney - Shanna Willis
1 E&T - Engineering Services
5 Posting
1 E&T - Traffic
1 Code Service
1 County Assessor
1 E&T - Construction Administration
1 CDD - Building Inspection
1 Recreation & Neighborhoods - NPU - Virginia M.
16

Amended for 5/1/03 for Clerical Error

ORDINANCE NO. 3219-C.S.

**AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 5 OF
THE MODESTO MUNICIPAL CODE RELATING TO
MESSAGE ESTABLISHMENTS.**

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Chapter 2 of Title 5 of the Modesto

Municipal Code is hereby amended to read as follows:

CHAPTER 2 - MESSAGE/BODYWORK BUSINESSES.

ARTICLE 1. GENERAL PROVISIONS

5-2.101. PURPOSE AND INTENT.

It is the purpose and intent of this Chapter to provide for the orderly regulation of the message/bodywork business and message practitioners in the City of Modesto. The City Council recognizes message is a viable professional field offering the public valuable health and therapeutic services including, but not limited to, message, bodywork and somatic therapies.

This Chapter establishes minimum standards for message and bodywork practitioners and their business establishments so as to protect and safeguard the public health, safety and welfare and to enhance the reputation of the profession and integrity of the services provided.

It is the purpose and intent of the City Council that message/bodywork establishments and persons offering such services be regulated so as to ensure that persons offering message/bodywork services possess the minimum qualifications necessary to operate such businesses and to perform the services offered and to ensure that those offering these services conduct their work in a lawful and professional manner and comply with required building, sanitation and health standards.

5-2.102. DEFINITIONS.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this Chapter.

- (a) **Employee:** For the purposes of this chapter, shall include independent contractors.

- (b) **Massage or bodywork techniques:** Means any nonincidental touching, rubbing, stroking, kneading, tapping, pounding, vibrating, or stimulating of the external parts of the human body including, but not limited to, the following methods of treatment:
 - (1) Bio-mechanical manipulation of soft-tissue through touch for the purposes of prevention, rehabilitation and healing. This includes, but is not limited to, deep-tissue and pre and post sports massage and manual lymph drainage therapeutic technique, myofascial release and neuromuscular reeducation;
 - (2) Hydrotherapy;
 - (3) Heliotherapy;
 - (4) Electro-mechanical or vibratory devices;
 - (5) Herbal applications or chemical preparations such as oil or alcohol rubs, aromatic lubricants, powders, creams, ointments, or similar preparations commonly used in this practice;
 - (6) Salt baths;
 - (7) Petrissage;
 - (8) Effleurage;
 - (9) Tapotement; and
 - (10) Application of pressure, using specific thumb and finger techniques working on precise reflex points on feet, hands and ears.

- (c) **Massage/bodywork business:** Means any establishment having a fixed place of business where any individual, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on or permits to be

engaged in, conducted or carried on, massage/bodywork services or techniques, acupressure, reflexology, alcohol rubs, Russian, Swedish, or Turkish Baths, facial massage/bodywork, electric or magnetic treatments, or health treatments involving massage/bodywork or baths.

- (d) **Massage/bodywork practitioner:** Means any natural person, other than a medical practitioner licensed by the State of California, who practices or administers any massage/bodywork technique as defined above in exchange for a fee, income, or anything of any value whatsoever within the City of Modesto.
- (e) **Manager:** Means the person(s) designated by the operator of the massage/bodywork business to act as the representative and agent of the operator in managing day-to-day operations with the same liabilities and responsibilities. Evidence of management includes, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. A manager may also be an owner. A manager must meet the standards and qualifications of Section 5-2.104 to qualify as a manager and must obtain a practitioner license.
- (f) **On-site therapy:** Means any method of pressure on, or friction against, or stroking, kneading, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations, when the client remains fully clothed and at a location other than a massage/bodywork establishment, and is limited to business offices, sports complexes, convention centers and public events.
- (g) **Out-call massage:** Means the engaging in or carrying on of massage/bodywork for a fee or any consideration at a location other than a duly licensed massage/bodywork establishment.
- (h) **Operator/owner:** Means all persons who have an ownership interest in the massage/bodywork business and are responsible for its day-to-day operations. The operator/owner also is an individual(s) whose name(s) appears on the City of Modesto business license.
- (i) **Person:** Means any individual, or corporation, partnership, association or other group or combinations of individuals acting as an entity.
- (j) **Recognized school of massage:** Means any school or institution of learning which has for its purpose the teaching of the theory, practice, method and performance, ethics, anatomical and physiological knowledge,

and work of massage, which school or institution complies with California Education Code Sections 94310 - 94311, and which requires a resident course of study before the student shall be furnished with a diploma or certificate of graduation. Schools offering a correspondence course not requiring actual attendance shall not be deemed a recognized school. Any out-of-state school must meet the requirements of California Education Code Sections 94310 and 94311 and must be licensed by the state or subdivision thereof within which it functions if such licensing is required.

- (k) **Qualified massage association:** Means any association which meets the following criteria:
- (1) Has established as a minimum educational requirement for membership, the completion of at least five hundred (500) hours of training from a recognized school of massage or has a written and practical testing of equivalency administered and overseen by its admission committee or by national certification program endorsed by the National Commission for Certifying Agencies (NCCA), which will be considered in lieu of the minimum education requirement of five hundred (500) hours.
 - (2) Offers and requires participation and completion by members of a minimum number of hours of specified continuing education as a condition of continuing membership.
 - (3) Is opened to members of the general public meeting the requirements for membership on a national basis.
 - (4) Has minimum educational requirements or equivalence, including at least five hundred (500) classroom hours or its equivalent in anatomy, physiology, hygiene, sanitation, massage therapy and practice, ethics of massage practice, first-aid and CPR. Equivalency must be verified by written and practical testing by the association.
 - (5) Has established rules of ethics and has enforcement procedures for the suspension or revocation of membership for violation of such rules.
- (l) **Qualifying exam:** Means a national certification examination which has been recognized by objective standards to fairly evaluate professional level, skill, safety and competence as determined by a qualified massage association.

- (m) **Reflexology:** Is the application of specific pressures to reflex points in the hands and feet. It is a clothed session with only the removal of shoes and socks allowed.

5-2.103. MASSAGE/BODYWORK BUSINESS: LICENSE REQUIRED.

Every person conducting, managing, owning, or operating a massage/bodywork business in the City, except as exempted under Article 5 herein, shall first obtain a license under this Chapter. Said license shall be numbered and must be displayed by the licensee in a prominent place on the premises in which the business is conducted. Any individual who is both a massage/bodywork practitioner and the owner/operator of a massage/bodywork business may obtain a single license as owner/practitioner if he or she satisfies the license requirements for both business and practitioner.

5-2.104. MASSAGE/BODYWORK PRACTITIONER: LICENSE REQUIRED.

Every person employed as a massage/bodywork practitioner or self-employed providing massage/bodywork services for compensation at a licensed massage/bodywork establishment and/or providing on-site therapy and/or out-call massage for compensation in the City shall obtain a license under this Chapter. In order to qualify for a massage/bodywork practitioner license provided for hereunder, each massage/bodywork practitioner must satisfy one of the following criteria:

- (a) Have received a diploma or certificate of completion in a course of study in massage/bodywork at a recognized school of massage or institution approved pursuant to the California Education Code and shows proof of satisfying completion of at least five hundred (500) classroom hours of a non-repetitive curriculum in anatomy, physiology, hygiene, sanitation, massage therapy, theory, practice and ethics of massage practice; however, said five hundred (500) hours shall not include internship hours obtained by a student from a school when the school collects a fee from the public for a massage given by the student, and the school then credits the student with "internship hours;" or
- (b) Have received a certificate of completion in a course of study at an institution outside California which, in the opinion of the Police Chief, meets or exceeds the criteria for approval for such programs in California; or
- (c) Have successfully passed an independently prepared and administered national certification examination which is recognized by objective

standards to fairly evaluate professional levels of skill, safety and competence, as determined by the National Commission for Certifying Agencies.

5-2.105. REQUIREMENTS AS TO ESTABLISHMENTS AND PRACTITIONERS LICENSED BY THE EFFECTIVE DATE OF THE ORDINANCE CODIFIED IN THIS CHAPTER.

- (a) All persons currently holding a valid massage establishment or a massage technician license issued pursuant to the provisions of City of Modesto's former massage ordinance, shall meet and satisfy the educational requirement of five hundred (500) hours of a non-repetitive curriculum in anatomy, physiology, hygiene, sanitation, massage therapy, theory, practice and ethics of massage practice. Every currently licensed practitioner has a minimum of one hundred eighty (180) hours and in order to retain said license, shall meet and satisfy the following requirements on or before the dates set forth below:
 - (1) Have a total of three hundred (300) hours of education completed by May 1, 2003; and
 - (2) Have a total of five hundred (500) hours of education completed by January 1, 2006.
- (b) The five hundred (500) hour educational requirement shall not include internship hours obtained by a student from a school when the school collects a fee from the public for a massage given by the student, and the school then credits the student with "internship hours."
- (c) In the alternative, a current licensee may satisfy the five hundred (500) hour educational requirement by successfully passing an independently prepared and administered national certification examination as set forth in Section 5-2.104 of this Chapter.
- (d) All persons currently holding a valid massage establishment or a massage technician license shall have three (3) months from the effective date of the ordinance codified in this Chapter to provide proof of current certification of adult cardiopulmonary resuscitation and proof of malpractice insurance coverage as required by this Chapter.
- (e) Existing establishment and technician licenses shall continue in effect until expiration. Upon expiration, a new application shall be submitted pursuant to the provisions of this Chapter with the exception of the mandatory five hundred (500) hour educational requirement.

- (f) Upon expiration, the Police Chief shall issue a provisional license to any massage/bodywork practitioner who does not satisfy the five hundred (500) hour educational requirement. The provisional licenses shall be issued as follows:
 - (1) All provisional licenses issued in the years 2001 and 2002 shall expire on May 1, 2003.
 - (2) All provisional licenses issued after May 1, 2003, shall expire January 1, 2006.

ARTICLE 2. APPLICATION FOR LICENSE.

5-2.201. FEES.

A fee shall be required for every license application filed under this Chapter. The fee must be received by the Modesto Police Department before any application is processed. The City Council shall set the amounts of said fees by resolution and may from time to time by resolution adjust the amounts of said fees. Any fee pursuant to this section shall be in addition to and not in lieu of any business license tax imposed pursuant to the provisions of the Modesto Municipal Code.

5-2.202. APPLICATION DURATION.

A license issued under this Chapter shall be valid for two (2) years from the date of issuance. Renewal application shall be submitted on a short form to be developed by the Modesto Police Department which provides information regarding any items which may have been changed from the initial application otherwise the renewal procedure shall be the same as for the issuance of a new license.

5-2.203. APPLICATION FOR LICENSE: ESTABLISHMENT LICENSE AND PRACTITIONER'S LICENSE

Every person desiring a business license or practitioner's license under this Chapter shall complete and submit to the Modesto Police Department a written application in a form approved by the Police Chief. The application shall be completed under penalty of perjury under the laws of this State and shall require the following information as relevant to the specific type of license:

- (a) The name of the applicant and a complete statement regarding any and all true and fictitious names used by the applicant within the five (5) years immediately preceding the application; All applications for licenses for massage/bodywork establishments or schools of massage shall be referred

to the Chief Building Official, the Fire Chief, the Health Officer, the Community Development Director, and the Police Chief who shall make written recommendations to the City Manager concerning compliance with the laws and ordinances that they administer and enforce.

- (b) The residence address, business address, and residence and business telephone numbers of the applicant;
- (c) The previous addresses of applicant, if any, for a period of five (5) years immediately prior to the date of the application and the dates of residence at each address;
- (d) Acceptable written proof that the applicant is at least eighteen (18) years of age;
- (e) The names, residence and business address and telephone numbers of any co-partners, excluding limited partners of the applicant;
- (f) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in the Articles of Incorporation along with the names and residence addresses of each of the officers, directors and each shareholder owning ten (10) percent or more of the corporation. If one or more of the owners is a corporation, the provisions of this section pertaining to a corporate applicant apply;
- (g) The names, residence and business address and telephone numbers of the managers and persons to be in charge;
- (h) The name, residence and business addresses and telephone numbers of the owner of the premises, if any, in which the business is to be located and the written consent of said owner to operation of the business or a copy of the lease for the premises executed by the owner evidencing such consent;
- (i) The applicant's height, weight, color of eyes and hair and date and place of birth, unless applicant is a partnership or corporation, in which case this information shall be supplied for the person or persons authorized to execute the application;
- (j) The nature, name and place of applicant's business or employment during the five (5) years immediately preceding the date of filing of the application;

- (k) A description of the exact nature of the business to be operated and the name under which it will operate;
- (l) The address and particular room or rooms and square footage of the premises in which the massage/bodywork activities are to occur;
- (m) A diagram drawn to scale and dimensions showing the number of rooms for said business, including a sketch of the interior arrangement thereof and a list of the equipment used thereon;
- (n) Whether or not the applicant or any partner, co-partner, manager, or operator of the business being applied for has had a license for the same or any similar business suspended or revoked anywhere, and if so, the circumstances of such suspension or revocation;
- (o) A statement that the applicant or any partner, co-partner, manager, employee or operator of the business has never been convicted of violations of Penal Code Sections 220, 261, 264.1, 266e, 266h, 266i, 314, 315, 316, 318, 647(a) or (b), or any offense involving possession of the substances identified in Health and Safety Codes Sections 11054, 11055, 11056, 11057, or 11058 or of any felony, or, if such crime has been committed by such person, a complete statement of the nature of such crime and the place and date of conviction;
- (p) A statement that the applicant or any partner, co-partner, manager, employee or operator of the business is not required to register under Penal Code Section 290, or if any such person is so required, the circumstances leading to this requirement;
- (q) Sets of fingerprints of the applicant, the person or persons in charge of the business and all massage/bodywork practitioners for the business taken by the City of Modesto Police Department;
- (r) Proof of massage malpractice insurance coverage in the sum of not less than five hundred thousand dollars (\$500,000.00) per each massage/bodywork practitioner employed by the business up to a maximum of one million dollars (\$1,000,000.00);
- (s) Proof of membership in a qualified massage association, if applicable;
- (t) Proof of matriculation from a recognized school of massage, as defined herein. If the applicant is a corporation or partnership, then this proof must

be supplied for a member of the corporation or partnership who will actively participate in the management of the establishment. The practitioner must submit an original diploma, certificate of graduation, or other written proof, including certified transcripts, acceptable to the Police Chief, that establish compliance with Modesto Municipal Code Section 5-2.104;

- (u) Proof of current certification of adult cardiopulmonary resuscitation (C.P.R.). If the applicant is a corporation or partnership, then this proof must be supplied for a member of the corporation or partnership who will actively participate in the management of the establishment; and
- (v) Such other information as the Police Chief shall deem necessary.

5-2.204. NOTICE OF CHANGE.

- (a) Whenever any change occurs relating to the written information specified in Section 5-2.203, including changes in the physical layout of the business, changes in employees or operations, the applicant shall report said change and provide all information which would have been required under Section 5-2.203 prior to its taking effect.
- (b) No massage/bodywork business license may be sold, transferred or assigned by a licensee, or by operation of law, to any other person or persons. Any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such license and such license shall thereafter be null and void. However, if the licensee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without effecting a surrender or termination of the license. In such case, the license, upon notification to the Police Chief, shall be placed in the name of the surviving partners. A massage/bodywork license issued to a corporation shall be deemed terminated and void when either any outstanding stock of the corporation is sold, transferred or assigned after the issuance of a license, or any stock authorized but not issued at the time of the granting of the license is thereafter issued or sold, transferred or assigned. No massage/bodywork practitioner's license may be sold, transferred or assigned by a licensee, or any operation of law, to any other person or persons.
- (c) Renewal applications shall require such information as may be required by the Police Chief to update the information contained in the original license

application. The applicant shall accompany the application for renewal with the appropriate filing fee established by resolution of the City Council.

- (d) All existing license holders shall have an additional three (3) months from the effective date of the ordinance codified in this Chapter to provide proof of current certification of adult cardiopulmonary resuscitation and proof of malpractice insurance coverage.

ARTICLE 3. MASSAGE/BODYWORK ESTABLISHMENT LICENSE

5-2.301. INVESTIGATION.

- (a) The Police Chief upon receipt of a complete application for a massage/bodywork business or a renewal of such license will conduct an appropriate investigation to determine whether the license shall be issued in accordance with the procedures of this Chapter.
- (b) The Police Chief shall have sixty (60) days to investigate the application and the background of the applicant, including, but not limited to, any past criminal convictions as provided by the Justice Department or other legally authorized agency.

5-2.302. APPROVAL OR DENIAL OF LICENSE.

- (a) After investigation, the Police Chief shall approve or conditionally approve issuance or renewal of the license if he/she finds:
- (1) A completed written application form has been filed;
 - (2) The required application fee has been paid;
 - (3) The applicant has fully cooperated in the investigation of his or her application;
 - (4) The applicant has not knowingly made any false, misleading or fraudulent statements in the application;
 - (5) The applicant is conducting the business in a building that complies with all of the health, zoning, fire, building and safety requirements and standards of the laws of the State of California and the City of Modesto;
 - (6) The applicant, his/her or its employees, agents, partners, or officers, directors, or shareholders of the corporation holding more than five (5) percent of the stock, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or of conduct violating Penal Code Sections 220, 261, 264.1, 266e, 266h, 266i, 314, 315, 316, 318, 647(a), and 647(b) or convicted of an attempt to commit any of the above-mentioned offenses or convicted in any state of any offense which if committed or attempted in this state, or conspiracy to commit any of the above offenses, would have been punishable as one or more of the above-mentioned offenses, or any crime involving dishonesty, fraud, deceit, or moral turpitude;
 - (7) The applicant, his/her or its employees, agents, partners, or officers, directors, or shareholders of the corporation holding more than five (5) percent of the stock, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted, within the past five years, in a court of competent jurisdiction of any offense involving the controlled substances designated in Sections 11054, 11055, 11056,

11057, or 11058 of the Health and Safety Code or violation in any other state of an offense which, if committed in this state, would have been punishable as one or more of the above-mentioned offenses;

- (8) The applicant, his/her or its employees, agents, partners, or officers, directors, or shareholders of the corporation holding more than five (5) percent of the stock, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving the maintenance of a nuisance in connection with the same or similar business operation;
 - (9) The applicant has not had a license or license for a similar type business revoked by the City or any other jurisdiction within the past three (3) years;
 - (10) The applicant has shown proof of malpractice insurance as required by this Chapter;
 - (11) Proof of current certification of adult cardiopulmonary resuscitation by the manager of the business and all practitioners;
 - (12) The applicant is not delinquent in payment to the City of Modesto of taxes, fees, fines, or penalties assessed against or imposed upon the applicant arising out of any other business activity owned or operated by the applicant and licensed by the City.
- (b) The Police Chief shall provide written notice to the applicant of the decision and the grounds therefore as soon as possible after arriving at the decision. If denied, an applicant may reapply if he or she can provide evidence that the ground or grounds for denial of the applicant no longer exist, provided however, that no such reapplication may be made no sooner than ninety (90) days after the original application. All licenses issued pursuant to the provisions of this Chapter shall be personal to the applicant and nontransferable.
- (c) The Police Chief is authorized to issue a temporary license if relevant Department of Justice State Summary Criminal History Information is not received within the sixty (60) day investigation. A final decision granting or denying a license shall be made after receipt of such Summary Criminal

History Information. If the license is granted, its effective date shall be the date of issuance of the temporary license.

Temporary licenses shall be issued for a ninety (90) day period. The Police Chief may extend such temporary license should the relevant Department of Justice Information not yet be available.

ARTICLE 4. MASSAGE/BODYWORK PRACTITIONER LICENSE

5-2.401. CONTENTS.

- (a) In addition to the information required by Section 5-2.203 of this Chapter, each application for massage/bodywork practitioner shall contain the name, address and telephone number of the business at which the applicant will be employed.
- (b) The applicant must furnish a certificate from a physician, licensed to practice medicine in the State of California, showing that the applicant has been tested within the previous thirty (30) days in a manner of proof by the health officer and has been found to be free of Tuberculosis.

5-2.402. INVESTIGATION.

The Police Chief shall have sixty (60) days to investigate the application and the background of the applicant, including but not limited to, any past criminal convictions as provided by the Justice Department or other legally authorized agency. Upon completion of the investigation, the Police Chief shall grant the license if, in addition to the finding that the applicant will work in an establishment which complies with this Chapter, the requirements of Section 5-2.403 have been met.

5-2.403. APPROVAL OR DENIAL OF LICENSE.

- (a) After investigation, the Police Chief shall approve or conditionally approve issuance or renewal of the license if he/she finds:
 - (1) A completed written application form has been completed;
 - (2) The required application fee has been paid;
 - (3) The applicant has fully cooperated in the investigation of his or her application;

- (4) The applicant has not knowingly made any false, misleading or fraudulent statements in the application;
- (5) The applicant has not had a license or license for a similar type business revoked by the City or any other jurisdiction within the past three (3) years;
- (6) The applicant has shown proof of malpractice insurance;
- (7) The applicant has shown proof of current certification of adult cardiopulmonary resuscitation;
- (8) The applicant has not been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under Penal Code Section 290, or of conduct violating Penal Code Sections 226i, 266, 314, 315, 316, 318, 647(a), 647(b) and 647(h), or convicted of an attempt to commit any of the above-mentioned offenses or convicted in any state of any offense which if committed or attempted in this state, or conspiracy to commit any of the above offenses, would have been punishable as one or more of the above-mentioned offenses, or any crime involving dishonesty, fraud, deceit, or moral turpitude;
- (9) The applicant has not been convicted within the past five (5) years, in a court of competent jurisdiction of any offense involving the controlled substances designated in Sections 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code or violation in any other state of an offense which, if committed in this state, would have been punishable as one or more of the above-mentioned offenses;
- (10) The applicant has not been convicted in a court of competent jurisdiction of an offense involving the maintenance of a nuisance in connection with the same or similar business operation;
- (11) The applicant has received a degree or certificate of completion in a course of study in massage/bodywork at a school or institution approved pursuant to the California Education Code with a state approved massage/bodywork curriculum of not less than five hundred (500) hours; or has received a certificate of completion in a course of study at an institution outside California which, in the opinion of the Police Chief, meets or exceeds the criteria for

approval for such programs in California; or has successfully passed an independently prepared and administered national certification examination which is recognized by objective standards to fairly evaluate professional levels of skill, safety and competence, as determined by the national commission for certifying agencies and has produced an acceptable diploma or certificate of graduation or document establishing the passing of a national certification examination.

- (b) The Police Chief shall provide written notice to the applicant of the decision and the grounds therefore as soon as possible after arriving at the decision. The decision of the Police Chief shall be final. If denied, an applicant may reapply if he or she can provide evidence of the ground or grounds of denial of the applicant no longer exist, provided however, that no such reapplication may be made sooner than ninety (90) days after the original application. All licenses issued pursuant to the provisions of this Chapter shall be personal to the applicant and nontransferable.
- (c) The Police Chief is authorized to issue a temporary license if relevant Department of Justice State Summary Criminal History Information is not received within the thirty (30) day investigation. A final decision granting or denying a license shall be made after receipt of such Summary Criminal History Information. If the license is granted, its effective date shall be the date of issuance of the temporary license.

Temporary licenses shall issued for a ninety (90) day period. The Police Chief may extend such temporary license, should the relevant Department of Justice Information not yet be available.

ARTICLE 5. EXEMPTIONS.

5-2.501 PROFESSIONS.

The provisions of this Chapter shall not apply to the following classes of persons while engaged in the performance of the duties of their respective professions:

- (a) Physicians, surgeons, chiropractors, osteopaths, podiatrists, acupuncturists, or physical therapists duly licensed to practice in the State of California;
- (b) Registered nurses or state licensed vocational nurses;

- (c) Hospitals, nursing homes, sanitariums, or other health care facilities duly licensed by the State of California;
- (d) Barbers, beauticians and cosmetologists who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, limited solely to the massaging of the neck, face, scalp, feet up to the ankle, or hands up to the wrist of the client. This includes manicurists, nail technicians and estheticians licensed by the State of California as required by the Barbering and Cosmetology Act;
- (e) Accredited high schools, junior colleges, and colleges or universities where coaches and trainers are acting within the scope of their employment;
- (f) Trainers of any amateur, semiprofessional or professional athlete or athletic team while engaging in their training responsibilities for and with athletes.

5-2.502. SCHOOLS OF MASSAGE.

Recognized schools of massage in the City of Modesto that were in existence on January 1, 1992, and massage therapists who are either employees or independent contractors of those schools. Students of recognized schools of massage in the City of Modesto that were in existence on January 1, 1992, are also exempt from the requirements of this Chapter. However, this exemption does not apply if either independent contractors, employees or students of those schools provide massage or bodywork services in exchange for a fee, income, or anything of any value whatsoever within the City of Modesto.

5-2.503. HOLISTIC PRACTITIONERS.

Holistic health practitioners who are nonmedical health care therapists and use a massage speciality and therapeutic approach in caring for clients and who present to the Police Chief proof of satisfactory completion of one thousand (1,000) hours of instruction in such speciality or therapeutic approach at a school with a state approved curriculum and proof of membership in a state or nationally chartered organization devoted to the specialty or therapeutic approach are exempt. The practice of such health care therapists may include other services such as nutritional assistance or counseling as long as all activities are directed toward health care.

5-2.504. REFLEXOLOGIST.

Practitioners of reflexology who present to the Police Chief proof of satisfactory completion of two hundred (200) hours of reflexology classroom instruction in reflexology related subjects including anatomy, physiology, and subjects dealing with feet, hands or ears and reflexology practice from a reputable school of reflexology are exempt. The practitioner shall submit written proof of attendance, including certified transcripts, or other documents, acceptable to the Police Chief.

5-2.505. MISCELLANEOUS.

Practitioners of legitimate proprietary bodywork modalities such as Rolfing, Hellerwork, and Trager which are not “massage” as commonly understood but which may fall within the definition of massage/bodywork because of touching or other contact, may be exempt from the requirements of this section if these practitioners are certified to practice by that modality’s training program, guild or other professional organization.

5-2.506. NON-EXEMPT PRACTITIONERS.

All individuals who use a massage specialty and/or therapeutic approach in caring for clients while under the “control and direction” of any of the exempted classes of individuals as listed above must have a valid massage/bodywork practitioner license and comply with all the requirements for the issuance of a practitioner license.

ARTICLE 6. ON-SITE THERAPY AND OUT-CALL MASSAGE

5-2.601. OFF-PREMISES MASSAGE/BODYWORK.

No person shall perform or administer massage or bodywork techniques as either on-site therapy or out-call massage/bodywork, as those terms are defined herein, for money or other consideration, without obtaining a massage/bodywork practitioner license pursuant to the provisions of this Chapter in conjunction with a valid City of Modesto Business License.

5-2.602. OUT-CALL PROHIBITION.

Out-call massage/bodywork shall not be performed unless authorized in writing by a physician, surgeon, chiropractor or osteopath duly licensed to practice in the State of California. Violation of this Section shall constitute a misdemeanor.

5-2.603. TIME CONSTRAINTS.

Out-call massage and on-site therapy shall only be conducted between the hours of 8:00 a.m. and 8:00 p.m.

5-2.604. LOCATIONS - PROHIBITED

Out-call massage or on-site therapy shall not be conducted in the following locations:

- (a) A hotel/motel room or any other similar location used primarily for transitory habitation purposes.
- (b) The residence of the out-call or on-site massage/bodywork practitioner.

ARTICLE 7. DENIAL OF LICENSE-APPEAL

5-2.701. PROCEDURE.

The decision of the Police Chief to deny a massage/bodywork business license or massage/bodywork practitioner's license may be appealed to the City Manager or his or her designee by the applicant through the following procedure:

- (a) No later than fifteen (15) calendar days after mailing of the Notice of Denial, the applicant shall file with the City Clerk a written Request for an Appeal Hearing, which states the specific grounds for appeal.
- (b) As soon as practicable after receiving the appeal, the City Manager, or his or her designee, shall set a date to hear the appeal, which date shall be no less than seven (7) days nor more than sixty (60) days from the date the appeal was filed. The City Manager, or his or designee, shall give each appellant written notice of the time and place of the hearing at least fifteen (15) days prior to the date of the hearing, either by causing a copy of the notice to be delivered to the appellant personally or by certified mail addressed to the appellant at the address shown on the appeal. Continuances of the hearing may be granted by the City Manager, or his or

designee, on request of the appellant for good cause shown, or on the City Manager's own motion. The hearing shall be informal. At the hearing, the City Manager or his or her designee shall hear the appellant and any witnesses and shall determine the issue. Upon conclusion of the hearing, the City Manager or his or her designee shall render a decision. The decision of the City Manager, or his or her designee, shall be final.

5-6.702. BURDEN OF PROOF.

Unless otherwise specifically prohibited by law, the burden of proof is on the applicant or licensee in any hearing or other matter under this Chapter.

ARTICLE 8. FACILITIES AND OPERATING REQUIREMENTS

5-2.801. REQUIREMENTS.

Every massage/bodywork establishment and every massage/bodywork practitioner shall comply with the following facilities and operations requirements.

The Police Department shall, from time to time, make an inspection of each massage/bodywork establishment for the purpose of determining compliance with this Chapter.

- (a) The massage/bodywork establishment premises and facilities shall meet and be maintained in a condition to comply with all applicable code requirements of the City of Modesto, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and cleanliness of the facility.
- (b) Massage/bodywork establishments and massage/bodywork practitioners shall at all times have an adequate supply of clean sanitary towels, coverings and linens. Towels, nondisposable coverings, and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall be deposited in separate receptacles.
- (c) In the massage/bodywork establishment, wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, showers and bathrooms, tanning booths, whirlpool baths, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day when the premises are

open, with a disinfectant. Bath tubs shall be thoroughly cleaned with a disinfectant after each use. All walls, ceilings, floors and other physical facilities for the establishment shall be in good repair and maintained in a clean and sanitary condition.

- (d) All equipment used in the massage/bodywork operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage or bodywork techniques shall not be used on more than one (1) client unless they have been sterilized, using standard sterilization methods.
- (e) Clients of the massage/bodywork establishment shall be furnished with a dressing room. Dressing rooms will be used only by clients of the same sex at the same time. Dressing rooms need not be separate from the room in which the massage is being performed.
- (f) Toilet facilities shall be provided in convenient locations within the massage/bodywork establishment and shall consist of at least one (1) unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.
- (g) A minimum of one (1) wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage or bodywork services. Soap and sanitary towels shall also be provided at each basin.
- (h) The massage/bodywork establishment license and a copy of the license of each and every massage/bodywork practitioner employed in the establishment shall be displayed in an open and conspicuous place on the premises. Massage/bodywork practitioners shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and provide the complete covering from mid-thigh to three (3) inches below the collarbone.
- (i) The owner, operator or manager of the massage/bodywork establishment shall keep a complete and current list of the names and residence addresses of all massage/bodywork practitioners and employees of the massage/bodywork establishment and the name and residence addresses of the manager or managing employee purported to be principally in charge of the operation of the massage/bodywork establishment. This roster shall be kept at the premises and be available for inspection by officials charged with enforcement of this Chapter.

- (j) Every massage/bodywork establishment shall keep a written record of the date and hour of each treatment administered, the name and address of each patron, the name of the massage/bodywork practitioner administering treatment, and the type of treatment administered. Such written record shall be open to inspection by officials charged with the enforcement of this Chapter. Such record shall be kept on the premises of the massage/bodywork establishment for a period of two (2) years.
- (k) No person shall enter, be, or remain in any part of a massage/bodywork establishment while in the possession of, consuming, or using any drug except a prescription drug. The responsible owner, operator, managing employee, manager or licensee shall not permit any such person to enter or remain upon such premises.
- (l) Every massage/bodywork establishment shall be open at all times during business hours for inspection by any officer of the City of Modesto.
- (m) All exterior doors shall remain unlocked from the inside during business hours. A person operating a massage/bodywork establishment shall be responsible for and provide that said premises shall, during business hours, be readily accessible and open for inspection by law enforcement officers for the purpose of locating evidence that would substantiate a violation of the provisions of this Chapter.
- (n) No massage/bodywork establishment shall simultaneously operate as a school of massage, or share facilities with a school of massage or bodywork technique.

ARTICLE 9. PROHIBITED CONDUCT APPLICABLE TO MASSAGE/ BODYWORK BUSINESS AND PRACTITIONERS

5-2.901. PROHIBITIONS.

- (a) Massage/bodywork techniques shall be provided or given at a duly licensed massage/bodywork establishment only between the hours of 6:00 a.m. and 10:00 p.m. No massage/bodywork establishment shall be open to clients between 10:00 p.m. and 6:00 a.m.
- (b) Alcoholic beverages may be served or furnished on the premises if the licensee receives a special event permit from the Chief of Police and satisfies any and all requirements of the Alcoholic Beverage Control

Department applicable to such special event. The sale of alcohol on the premises is prohibited.

- (c) No owner, manager, operator, responsible managing employee, or licensee shall permit, and no massage/bodywork practitioner shall offer or perform any service other than those permitted under this Chapter.
- (d) No licensee or employee of a massage/bodywork establishment shall:
 - (1) Expose the sexual or genital part of the licensee/employee in the course of a massage/bodywork technique; or
 - (2) Expose the sexual or genital part of any other person in the course of a massage/bodywork technique.

Sexual and genital parts shall include the genitals, anus, perineum of any person and the breasts of any female.

- (e) No licensee or employee of a massage/bodywork establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that any services available that is prohibited under this Chapter nor shall any massage/bodywork establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this Chapter.
- (f) A massage/bodywork practitioner shall not violate the provisions of Sections 647(a) and (b) of the California Penal Code, or any other state law involving a crime of moral turpitude, and such practices shall not be allowed or permitted by the massage/bodywork establishment licensee.
- (g) A massage/bodywork practitioner shall not massage a client of one sex within the view of a client of the opposite sex, and such practices shall not be allowed or permitted by the massage/bodywork establishment licensee. Parents, guardians, translators or caregivers are excluded from this requirement.
- (h) Proof of knowledge of any violation of this Section shall not be required to be shown where a massage/bodywork establishment license is suspended or revoked.
- (i) This ordinance does not prohibit the sale of merchandise at retail.

**ARTICLE 10. SUSPENSION AND REVOCATION OF LICENSE
AND APPEALS THEREFROM**

5-2.1001. GROUNDS FOR SUSPENSION AND REVOCATION.

- (a) The Police Chief may refuse to renew, revoke or suspend any license granted under this Chapter on the grounds that the applicant or license holder has failed to comply with the license conditions or other requirements of this Chapter. If a suspended license lapses during the suspension period, a new application must be made at the end of the suspension period.
- (b) The Police Chief may revoke or refuse to renew a massage/bodywork business license if he or she makes any of the findings for denial of a license under Section 5-2.302 or upon any subsequent violation of any provision within one (1) year following a prior suspension under this Chapter or upon demonstrated inability to operate or manage the massage/bodywork establishment in a law abiding manner, thus necessitating action by law enforcement officers or in such manner as to constitute a menace to the health, safety, or general welfare of the public.
- (c) The Police Chief may summarily suspend a massage/bodywork establishment license for a period of thirty (30) days for each violation of this Chapter or may summarily suspend a massage/bodywork practitioner's license for a period of thirty (30) days for each violation of this Chapter.
- (d) The Police Chief may revoke or refuse to renew a massage/bodywork practitioner's license if he or she makes any of the findings for denial of a license under Section 5-2.403 or upon any subsequent violation of any provision of this Chapter within one (1) year following a suspension authorized under this Chapter.
- (e) The Police Chief may revoke, suspend or refuse to renew any license if any of the following are found:
 - (1) The licensee does not possess the qualifications for the license as required by this Chapter;
 - (2) The licensee has been convicted of any violation of any provision of this Chapter;

- (3) The licensee has engaged in conduct or operated a massage/bodywork establishment or is engaged in conduct as a massage therapist or bodywork practitioner in a manner which violates this Chapter, any conditions of the license, or any of the laws which would have been grounds for denial of the license;
 - (4) There is fraud, material misrepresentation, false statement, or omission of a material fact in any application for a license or in any supplemental material;
 - (5) An activity authorized under the license has been conducted in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public; or
 - (6) Upon a recommendation from the City officials which states that such business is being managed, conducted, or maintained without regard for public safety or public health.
 - (7) For purposes of this Section, licensee, in the case of a massage/bodywork establishment, shall include the managing responsible officer or managing employee.
- (f) When the Police Chief concludes grounds for denial, suspension, revocation or refusal to renew a license exists, the Police Chief shall serve the applicant or license holder, either personally or by certified mail addressed to the business or residence address of the applicant or license holder, with a Notice of Denial or Notice of Intent to Suspend, Revoke or Refuse to Renew License. This notice shall state the reasons for the proposed action, the effective date of the decision, the right of the applicant or license holder to appeal the decision to the City Manager, and that the decision will be final if no appeal is filed within the time permitted.

5-2.1002. APPEAL OF REVOCATION OR SUSPENSION.

No later than ten (10) calendar days after mailing of Notice of Revocation, Suspension, or Denial of Renewal, the licensee may appeal the Police Chief's decision to the City Manager by the procedure for appeal as set forth in Section 5-2.701 of this Chapter. The hearing and notice of the decision shall be given in the same manner as provided in Section 5-2.701 of this Chapter. The decision of the City Manager, or his or her designee, shall be final.

5-2.1003. BURDEN OF PROOF.

Unless otherwise specifically prohibited by law, the burden of proof is on the applicant or licensee in any hearing or other matter under this Chapter.

**ARTICLE 11. LICENSE DURATION AND RENEWAL;
CONTINUING EDUCATION**

5-2.1101. DURATION.

Any license issued under this Chapter shall be valid for two (2) years from the date of issuance unless revoked or suspended.

5-2.1102. RENEWAL.

- (a) A licensee may apply for a renewal of a license thirty (30) days prior to the expiration of the license. If, upon the thirty-first (31st) day after the expiration of a license, an application of renewal has not been received, the license shall be deemed expired. Any license issued under this Chapter shall be returned to the Police Chief within forty-eight (48) hours of its expiration. No privilege to provide massage shall exist until an application for renewal has been granted. After a license expires, a new application may be filed.
- (b) To renew a license under this Chapter, the licensee shall pay the City a non-refundable fee in an amount set forth by resolution established by the City Council. A copy of the receipt for the non-refundable fee shall accompany the application for renewal.
- (c) After investigating the application for renewal, the Police Chief shall renew the license if the licensee continues to meet the requirements for the issuance of a license, and none of the grounds for denial of a license set forth in this Chapter exist. The Police Chief shall renew the license within

thirty (30) days of such request if the information upon which the original application was granted remains unchanged and no violations of this Chapter have been committed.

5-2.1103. RENEWAL PROCESS.

Licenses may be renewed every two (2) years by filing an application for renewal under penalty of perjury updating information in the original application provided to the Police Chief.

5-2.1104. CONTINUING EDUCATION.

At the time of renewal, an applicant shall provide verification of continued membership, in good standing, of a state or national professional association as required by specific sections of this Chapter and/or verification that the licensee has participated successfully in continuing education programs consisting of a minimum of twenty-four (24) hours of related course work of which a minimum of twelve (12) hours shall be approved by a qualified massage association as defined in this Chapter. Internship hours, as defined in Section 5-2.104(a), shall not satisfy the continuing education requirement. Any qualified training received by the licensee and presented as compliance with the continuing education requirement has a three year life only.

5-2.1105. VIOLATION AND PENALTY.

- (a) It is unlawful for any person, association, firm or corporation to engage in, conduct or carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises, the business of massage/bodywork or to render or permit to be rendered massage or bodywork services at a location removed from a massage/bodywork business in the absence of a license issued pursuant to the provisions set forth in this Chapter.
- (b) Any massage/bodywork business operated, conducted, or maintained contrary to the provisions of this Chapter shall be unlawful and a public nuisance, and the City Attorney may, in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in any manner provided by law.
- (c) A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall constitute a misdemeanor; except that notwithstanding any other provision of this Code, any such

violation constituting a misdemeanor under this Chapter may, in the discretion of the City Attorney, be charged and prosecuted as an infraction. Any violation of this Chapter prosecuted as a misdemeanor shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the County Jail for a period of not more than six (6) months, or by both fine and imprisonment. Any infraction prosecuted under the provisions of this Chapter shall be made punishable by a fine not to exceed five hundred dollars (\$500.00).

- (d) Each person shall be charged with a separate offense for each and every day during which any violation of any provision of this Chapter is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.
- (e) Pursuant to the City Attorney's prosecutorial discretion, the City may enforce violations of this Chapter as criminal, civil and/or administrative violations utilizing administrative remedies.
- (f) It is the duty of the Police Chief to enforce rules and regulations in accordance with this Chapter.

5-2.1106. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

5-2.1107. EMPLOYMENT OF MASSAGE/BODYWORK TECHNICIANS.

No licensee, manager, or owner/operator of a massage/bodywork establishment shall allow or permit a person to administer massage/bodywork for such establishment unless the practitioner possesses a valid massage/bodywork technician license under the provisions of this Chapter. It shall be the responsibility of massage/bodywork establishment licensee to ensure that each person employed as a practitioner shall first have obtained a valid license under this Chapter.

5-2.1108. RESTRICTED LICENSE.

A license issued under this Chapter is restricted and does not confer any property rights or privileges to the holder, and the holder thereof does not have any right to renewal of such license. The Police Chief may, without hearing, issue an order suspending the licensee's right to further exercise any privileges granted under such a license pending final determination made after formal hearing as provided for above.

5-2.1109. BUSINESS LOCATION CHANGE.

Upon a request to change the location of a massage/bodywork establishment, an application to the Police Chief shall be made and such application shall be granted, provided all applicable provisions of this code have been complied with by the applicant.

5-2.1110. SALE OR TRANSFER OF MASSAGE/BODYWORK ESTABLISHMENT INTEREST.

The sale or transfer of any interest in any massage/bodywork establishment shall be reported to the Police Chief at least ten (10) days prior to such sale or transfer. The person obtaining such interest shall file a new license application and an investigation conducted pursuant to the provisions of this Chapter.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of April, 2001, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Smith, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Friedman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: Conrad, Frohman

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

Ord. No. 3219-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 1st day of May, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Fisher, Friedman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: Conrad, Frohman

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: May 30, 2001

ORDINANCE NO. 3220 -C.S.

AN ORDINANCE ADDING CHAPTER 12 ENTITLED "FUNERAL PROCESSIONS" TO TITLE 3 OF THE MODESTO MUNICIPAL CODE.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Chapter 12 entitled "Funeral Processions" is hereby added to Title 3 of the Modesto Municipal Code to read as follows:

CHAPTER 12. FUNERAL PROCESSIONS

3-12.01. DECLARATION OF PURPOSE.

Local authorities may adopt rules and regulations by ordinance or resolution to regulate traffic at such locations that may require traffic directions for orderly traffic flow. It is the purpose of this chapter to use the power, conferred to the City of Modesto, pursuant to California Vehicle Code Section 21100(e), to appoint persons other than traffic officers to direct and regulate traffic for a funeral procession.

3-12.02. DEFINITIONS.

- (a) **Funeral Escort** means a uniformed person employed by a mortuary or company to direct the movement of a group of vehicles engaged in a funeral procession.
- (b) **Funeral Procession** means a group of two or more vehicles traveling in line from a funeral service whether that funeral service is held at a place of worship or another location, to a transportation facility, cemetery, or crematory.

3-12.03. PERMIT REQUIRED.

- (a) Motor vehicle funeral processions may be led or escorted by private escorts within the City of Modesto in accordance with the requirements of this chapter.
- (b) No person shall stop, direct or otherwise direct traffic in intersections while leading or escorting a motor vehicle funeral procession without

first obtaining a valid Funeral Escort Permit from the Modesto Police Department.

3-12.04. RULES GOVERNING FUNERAL PROCESSIONS.

- (a) Each vehicle participating in a funeral procession shall be operated with its headlights and, if so equipped, its emergency flashers turned on.
- (b) No operator of any vehicle shall drive between the vehicles comprising a funeral procession, provided that the vehicles comprising such procession are conspicuously so designated by having their headlights and, if so equipped, emergency flashers turned on.
- (c) The directing of all vehicles and traffic on any street over which such funeral procession or parade wishes to pass shall be subject to rules and regulations promulgated by the Police Department.

3-12.05. TRAFFIC CONTROL AND DIRECTION.

- (a) Any person issued a valid funeral escort permit pursuant to this chapter and leading or escorting a vehicular funeral procession shall obey all traffic laws, including all speed laws, except that such person is authorized to stop cross-traffic, to enable all vehicles in the funeral procession to proceed together as an unbroken chain, at intersections controlled by:
 - (1) Stop signs, providing that the permittee remains in the intersections until all funeral procession vehicles have cleared the intersection.
 - (2) Signal lights, providing that the lead vehicle in the procession enters the intersection with a green light and the permittee remains in the intersection at all times when the procession is proceeding through the intersection.
- (b) A permittee is authorized to direct traffic in the manner specified in this section only while wearing an official insignia approved by the Police Chief and carrying a valid permit issued to him or her as an individual pursuant to this chapter.
- (c) The Police Chief may order the immediate suspension or revocation of a funeral escort permit if the permittee has not directed traffic in the manner specified in this section.

3-12.06. OFFICIAL INSIGNIA.

The Police Chief shall approve an official insignia which must be worn by all permittees while directing traffic in the manner specified in Section 3-12.04.

3-12.07. PERMIT APPLICATION PROCEDURES.

- (a) Applications for a funeral escort permit shall be filed with the Police Chief on forms provided by the Modesto Police Department and shall contain or be accompanied by the following:
 - (1) Name and address of applicant, and the applicant's funeral escort service employer if the applicant is employed by such a service;
 - (2) Proof of liability insurance in compliance with this chapter;
 - (3) Proof of satisfactory completion of a traffic safety program of instruction as required under this chapter;
 - (4) Proof that the applicant holds a valid California Vehicle Operator's License, properly endorsed for the type of vehicle the applicant intends to use while directing vehicular funeral processions;
 - (5) Payment of permit, insignia and inspection fees as established by the schedule of fees resolution of the City Council;
 - (6) Proof that the vehicle to be used in the course of conducting escorts has been inspected by the Modesto Police Department to insure that it meets the equipment and safety requirements as set forth by the Police Chief;
 - (7) An Indemnification and Hold Harmless Agreement as required by this chapter, signed by the applicant and the applicant's funeral escort service employer; and
 - (8) Such other information as may be required by the Police Chief.
- (b) If all the requirements for approval of a Funeral Escort Permit are met, then the Police Chief shall issue a permit within fourteen (14) days of submission of the completed application.

- (c) The Funeral Escort Permit shall be valid for a period of two (2) years from the date of issuance and such permits shall not be transferrable.

3-12.08. DENIAL, SUSPENSION OR REVOCATION OF PERMIT.

Funeral Escort Permits issued pursuant to this chapter may be denied, suspended or revoked by the Police Chief upon any of the following grounds:

- (a) The application is incomplete or illegible;
- (b) The applicant has knowingly made false statements on the application;
- (c) The applicant has been convicted of a crime, and the time for appeal has elapsed, provided, however, that the permit may be denied upon this ground only if the crime is substantially related to the qualifications, functions or duties associated with operating motor vehicles or with leading or otherwise escorting a motor vehicle funeral procession;
- (d) Failure to meet any of the requirements of this chapter;
- (e) The applicant's unlawful or negligent operation of a motor vehicle during the three years prior to the date of application;
- (f) The applicant's unlawful or negligent direction of traffic while escorting a vehicular funeral procession or other motor vehicle procession.

3-12.09. NOTICE OF DECISION TO DENY, SUSPEND OR REVOKE PERMIT.

- (a) Upon determining the existence of any of the grounds for denial, suspension or revocation in accordance with Section 3-12.08, the Police Chief shall issue a Notice of Decision to deny, suspend or revoke the permit.
- (b) The Notice of Decision shall state all the grounds and reasons upon which the denial, suspension or revocation is based.
- (c) The Notice of Decision shall be mailed to the applicant or permittee at the address stated on the application or permit. Alternatively, the Notice of Decision may be delivered to the applicant or permittee or to the address given in the application or permit.

- (d) The Notice of Decision shall advise that denial, suspension or revocation shall become final unless the applicant or permittee files a written request for hearing before the Police Chief within the time period specified in Section 3-12.10 of this chapter.

3-12.10. PROCEDURE FOR HEARING BEFORE THE POLICE CHIEF.

- (a) The written request for a hearing before the Police Chief must be received by the Chief within ten (10) days of the date of mailing of the decision to deny, suspend or revoke the permit.
- (b) The Police Chief shall schedule a hearing which shall be held no later than thirty (30) days after receipt of a timely request for hearing.
- (c) The Notice of Hearing shall be mailed to the applicant or permittee no later than ten (10) days prior to the scheduled date of the hearing.
- (d) At the hearing before the Police Chief, the applicant or permittee shall be given the opportunity to present witnesses and documentary evidence and to cross-examine witnesses.
- (e) The hearing will be conducted informally and the technical rules of evidence shall not apply. Any and all other evidence which the Chief of Police deems reliable, relevant and not unduly repetitious may be considered.
- (f) The applicant or permittee may be represented by any other person.
- (g) Issuance of a written notice of cancellation by an insurance company shall be conclusive proof at the hearing of the effective cancellation of an insurance policy.

3-12.11. DECISION OF THE POLICE CHIEF.

Within twenty (20) days after the hearing, the Police Chief shall mail a written decision sustaining, reversing or modifying his or her initial decision to the applicant or permittee at the address stated in the application or permit.

3-12.12. APPEAL PROCEDURE.

If the permittee is dissatisfied with the decision of the Police Chief to deny, suspend, or revoke the permit, such person may appeal to the City Manager by filing a Notice of Appeal in writing with the City Manager's Office within

fifteen (15) days of the date of the order of the Police Chief. The City Manager or his designee shall hold a hearing within thirty (30) days of the receipt of the Notice of Appeal. The permittee shall be accorded the same hearing rights provided in Section 3-12.10. The City Manager or his or her designee may sustain, reverse or modify the order of the Police Chief. The decision of the City Manager or his or her designee shall be final.

3-12.13. INDEMNITY.

The funeral escort permittee or his or her funeral escort service employer shall assume all responsibility for his or her activity and operation, shall bear all losses and damages directly or indirectly resulting to him or her, any subcontractor, the City or City employees that are the result of the performance or character of the operation, unforeseen difficulties, accidents, occurrences or other causes not predicated on active negligence of the City. The permittee or his or her funeral escort server employer shall assume the defense of and indemnify and save harmless the City and its officers and employees from all claims, loss, damage, injury and liability of every kind, nature and description, including punitive damages, directly or indirectly arising from the escorting a vehicular funeral procession.

3-12.14. LIABILITY INSURANCE.

During the term of a permit issued pursuant to this chapter, the permittee or his or her funeral escort service employer shall maintain in full force and effect at the permittees or his or her employer's own cost a comprehensive auto and general liability insurance policy:

- (a) In an amount no less than Five Hundred Thousand Dollars (\$500,000.00) single limit per occurrence; and
- (b) Issued by an admitted insurer or insurers as defined by the California Insurance Code; and
- (c) Providing that this City, its officers, employees and agents are to be named as insureds under the policy; and
- (d) Covering all losses and damages as specified in Section 3-12.13 of this chapter; and
- (e) Stipulating that the policy will operate as primary insurance and that no other insurance effected by the City or other named insured will be called on to contribute to a loss covered thereunder; and

- (f) Providing that no cancellation, change in coverage or expiration by the insurance company or the insured shall occur during the term of the funeral escort service permit, without thirty (30) days written notice to the City prior to the effective date of such cancellation or change in coverage.

In the event of failure of any permittee or his or her funeral escort employer to maintain in effect such insurance policy, the Police Chief shall order the cancellation of the permit as provided in this chapter.

3-12.15. TRAFFIC SAFETY INSTRUCTION PROGRAM.

Each applicant for a Funeral Escort Permit shall submit to the Police Chief or his designee evidence of the curriculum, including instruction of materials and skills taught and practiced or an instructional program of traffic safety which the applicant has satisfactorily completed. The Police Chief or his designee shall review and approve each submitted instructional program if the Police Chief or his designee reasonably believes that the program provided the applicant sufficient training to direct traffic as specified in this chapter in a safe and lawful manner.

3-12.16. PERMIT RENEWAL.

- (a) A permittee seeking renewal of his or her Funeral Escort Permit shall meet all the requirements for a permit renewal that applicants are required to meet in order to first obtain a Funeral Escort Permit.
- (b) All provisions of this chapter applicable to first-time applicants shall apply to a permittee applying for renewal of a Funeral Escort Permit.

3-12.17. REGULATIONS.

- (a) The Police Chief may prepare and issue written regulations for distribution to applicants and permittees regarding the implementation of the provisions of this chapter, including but not limited to, the safe and lawful conduct of funeral escort services, and the maintenance of insignia, uniforms, motor vehicles and equipment used in escorting funeral processions.
- (b) Such regulations shall be binding upon applicants and permittees. Permittees shall comply with these written regulations as a term and condition of the permit.

3-12.18. PRIVATE PROCESSIONS MUST OBEY ALL TRAFFIC LAWS.

Persons participating in private funeral processions or other processions within the City without police escort must obey all state and City traffic laws, except as specifically authorized by this chapter.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of May, 2001, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3220-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 8th day of May, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: June 7, 2001

ORDINANCE AMENDING MODESTO MUNICIPAL CODE

1 Attorney ✓
1 Attorney - Shanna Willis ✓
1 Police Department ✓
5 Posting
1 Code Service
1 For any other interested departments
10

Clerk 12

ORDINANCE NO. 3221-C.S.

AN ORDINANCE AMENDING SECTION 2-1.08 OF
CHAPTER 1 OF TITLE 2 OF THE MODESTO MUNICIPAL
CODE RELATING TO CITY COUNCIL ORGANIZATION
AND PROCEDURE - ORDER OF BUSINESS.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Section 2-1.08 of Chapter 1 of Title
2 of the Modesto Municipal Code is hereby amended to read as follows:

2-1.08. ORDER OF BUSINESS.

Promptly at the hour set by law on the date of each regular meeting, the members of the Council, the City Clerk, City Attorney and City Manager shall take their regular stations in the Council Chambers, and the business of the Council shall be taken up for consideration and disposition in the following order, with the exception that the Mayor or other presiding officer may take any item out of order as the public necessity and convenience may require:

- 1. Roll call.
- 2. Pledge of allegiance to the flag.
- 3. Invocation.
- 4. City Clerk's announcements.
- 5. Declaration of conflicts of interest.
- 6. Acknowledgments and presentations.
- 7. Oral communications.
- 8. Council comments and reports.
- 9. Consent items.
- 10. Written communications.
- 11. Unfinished business.
- 12. Hearings.
- 13. New business.
- 14. Miscellaneous:
 - a. Legislation.
 - b. Appointments.
 - c. Other.
- 15. Matters too late for the agenda.
- 16. Adjournment.
- 17. Closed session items.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of May, 2001, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3221-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 15th day of May, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: June 14, 2001

ORDINANCE AMENDING MODESTO MUNICIPAL CODE

1 Attorney
1 Attorney - Shanna Willis
1 Initiating Department
5 Posting
1 Code Service
1 For any other interested departments *Mgt.*
10

Clerk
20

ORDINANCE NO. 3222 -C.S.

AN ORDINANCE AMENDING CHAPTER 4 OF TITLE 11 OF THE MODESTO MUNICIPAL CODE RELATING TO PROCEDURE FOR GRANTING CABLE COMMUNICATION SYSTEM FRANCHISES.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Chapter 4 of Title 11 of the Modesto Municipal Code is hereby amended to read as follows:

CHAPTER 4 - PROCEDURE FOR GRANTING CABLE COMMUNICATION SYSTEM FRANCHISES

11-4.01. DEFINITIONS.

For the purposes of this chapter, the following terms, phrases, words, abbreviations and their derivations shall have the following meanings. Except where specifically conflicting with the definitions below, this chapter incorporates by reference the cable communication definitions in Federal Communications Commission (FCC) Rules and Regulations, adopted from time to time, including but not limited to those set forth in Title 47, Code of Federal Regulations, Part 76, Section 76.5 Definitions. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- (a) "Active electronics" shall mean those electronic devices of the Cable System using externally-generated energy to perform or provide one or more of the following functions: amplify signals on the Cable System; optical to radio frequency transitions or radio frequency to optical transitions; radio frequency to radio frequency transitions; power the Cable System; monitor and report on the function of the Cable System; and/or perform any other function primary or ancillary to the functions listed here. Such active electronics shall include and be limited to: headend equipment such as modulators; processors; satellite receivers; headend gas generators; externally-powered telephone system equipment; externally-powered data transmission equipment; amplifiers; fiber optic nodes; power supplies directly supply power to the Cable System; status monitoring devices; and alarm systems monitoring the

Cable System. Active electronics shall specifically exclude signal taps; directional couplers; coaxial cable connectors; fiber optic cable connectors; impedance termination devices; passive equalizers; attenuators; and grounding equipment and/or devices which are not integrated by the manufacturer into any active device described herein.

- (b) **"Cable Act"** shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq. as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996.
- (c) **"City"** shall mean the City of Modesto, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.
- (d) **"City Manager"** shall mean the City Manager of the City of Modesto or any other officer or employee of the City of Modesto designated by the City Manager to act in the Manager's place.
- (e) **"Cable Communication System or Cable System"** shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:
 - (1) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 - (2) A facility that serves Subscribers without using, or connecting to a facility that uses, any Public right-of-way within City;
 - (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Federal Communications Act of 1934, as amended, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
 - (4) Any facilities of any electric utility used solely for operating its electric utility systems; or

- (5) An OVS that is certified by the FCC.

Any reference to a Cable System includes the Cable System as a whole, or any part thereof, including all pedestals, equipment cabinets, electronic equipment and devices appurtenant to the Cable System.

- (f) "**Cable Service**" shall mean cable service as defined by the Cable Act and shall include one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (g) "**Council**" shall mean the present governing body of the City or any future board constituting the legislative body of the City.
- (h) "**Duly noticed public hearing**" means a public hearing before the City Council for which at least the ten (10) days' advance notice shall have been provided to the public, and to all interested parties who have so requested, in writing. Public notice may be satisfied by publication in the official newspaper of the City of Modesto. A Grantee is a necessary party to any hearing conducted with regard to its operation, and notice to it will be satisfied by registered mail to its office in the City of Modesto. Notice required hereunder shall state clearly the proposed action or matter under consideration; the time provided for any response, including response by the public; and the date, location and time of the hearing.
- (i) "**Federal Communications Commission**" and "**FCC**" shall mean the Federal Communications Commission of the United States of America.
- (j) "**Franchise**" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a Cable System in the City.
- (k) "**Franchise Area**" shall mean the area within the City throughout which Grantee shall be authorized to construct, maintain and operate its Cable System and shall include any additions thereto.
- (l) "**Franchise Documents**" shall mean and include all of the following:
- (1) Article XIV of the Charter of the City of Modesto;

- (2) This chapter as it now exists or may hereafter be amended;
 - (3) The ordinance granting a Franchise to a particular Grantee; and
 - (4) The acceptance of a Franchise by a Grantee on a form issued by the City and signed by the Grantee.
- (m) "**Full compliance**" means complete satisfaction of all material elements and details of stated requirements.
 - (n) "**Grantee**" shall mean the person, firm or corporation to whom or which a franchise, as hereinabove defined, is granted by the Council under this chapter, and the lawful successor, transferee or assignee of said person, firm, or corporation.
 - (o) "**Gross system receipts**" shall mean all revenues derived by the Grantee from the operation of the Cable System to provide Cable Services in the Franchise Area, provided, however, that such phrase shall not include: (1) any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC User Fee; (2) unrecovered bad debt to the extent that such debt was included in the calculation of gross system receipts on which Franchise fees have been paid; and (3) any I-Net/PEG amounts collected from subscribers for pass-through to the City for I-Net/PEG services. For purposes of this section, gross system receipts shall also include revenues derived from the provision of high speed data services unless a non-appealable ruling of the FCC or a non-appealable ruling of a court of competent jurisdiction determines that high speed data services are not included in cable services under federal law.
 - (p) "**Property of Grantee**" shall mean all property owned, installed or used by a Grantee in the conduct of a Cable System in the City under a Franchise granted pursuant to this chapter.
 - (q) "**Public place**" shall mean any place in which the public has an interest as affecting the safety, health, morals and welfare of the City and its citizens, including, but not limited to parks, public buildings, public facilities and public utility easements.
 - (r) "**Street**" or "**Public Way**" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way,

drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Franchise Area which shall entitle Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.

- (s) "**Subscriber**" shall mean any person or entity legally receiving for any purpose the Cable Service of a Grantee.
- (t) "**Substantial compliance**" where used as to technical requirements, means that ninety-five (95) percent of the received channels shall meet all applicable technical standards simultaneously at the time of measurement.

11-4.02. FRANCHISE TO OPERATE.

- (a) A nonexclusive Franchise to construct, operate and maintain a Cable System within a Franchise Area may be granted by the Council to any person, firm or corporation, whether operating under an existing Franchise or not, who or which offers to provide such system under and pursuant to the terms of this chapter.
- (b) Any Franchise granted pursuant to the provisions of this chapter shall authorize and permit the Grantee to engage in the business of operating and providing a Cable System in the City in accordance with federal and state law and the provisions of this chapter.
- (c) No provision of this chapter may be deemed or construed as to require granting of a Franchise when in the opinion of the Council it is in the public interest not to do so or to restrict the number of Grantees.
- (d) The operative content of each Franchise at any given time consists of all the Franchise documents described under the definition of that term in Section 11-4.01, and includes any later changes thereto, including amendments to the City Charter, amendments to this chapter, and to the individual Franchise ordinance granting a Franchise to operate a Cable System, provided such changes do not change the Franchise in any way except as authorized by Section 11-4.33(d).
- (e) No Franchise shall be for a term longer than fifteen (15) years following the commencement of the term of the franchise.

11-4.03. APPLICATION FOR FRANCHISE.

- (a) Application for a Cable System Franchise shall be in writing, shall include an application fee deposit in the amount of ten thousand dollars (\$10,000.00), shall be filed with the City Clerk, and shall include at a minimum:
- (1) The name, address, and telephone number of the applicant.
 - (2) A detailed statement of the corporate or other business organization of the applicant including, but not limited to, the following:
 - (i) The names, residence and business addresses of all officers, directors and associates of the applicant.
 - (ii) The names, residence and business addresses of all officers, persons and entities having, controlling, or being entitled to have or control of one percent (1%) or more of the ownership of the applicant and the respective share of each person or entity.
 - (iii) The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling the applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable communication systems owned or controlled by the applicant, its parent and subsidiary business entities and the areas served thereby.
 - (iv) A detailed description of all previous experience of the applicant in providing cable communication system service.
 - (v) A detailed and complete financial statement of the applicant prepared by a certified public accountant or other person satisfactory to the City Manager.
 - (vi) A statement identifying, by place and date, any and all cable communication system franchises awarded the

applicant, or its parent or subsidiary business entities; the status of those franchises; the total cost of such systems; and the amount of applicant's and its parent's or subsidiary's resources committed to their completion.

- (3) A thorough, detailed description of the proposed cable communication system and plan of operation of the applicant which shall include, but not be limited to the following:
 - (i) A detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served.
 - (ii) A detailed, informative and referenced statement describing the actual equipment and operational and performance standards proposed by the applicant. In no event shall the operational and performance standards be less than those adopted by the Rules and Regulations of the FCC (contained in Title 47, Subpart K, Section 76.601 et seq.).
 - (iii) A detailed estimate of the cost of constructing the proposed system.
 - (iv) A copy of the form of any agreement, undertaking or other instrument proposed to be entered into between the applicant and any subscriber.
 - (v) A detailed statement setting forth in their entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm or corporation which materially relate to or depend upon the application and the granting of the franchise.
 - (vi) A schedule of all proposed service levels and rates and charges.
 - (vii) A copy of any agreement existing between the applicant and any public utility subject to regulation by the California Public Utilities Commission providing for the

use of any facilities of the public utility, including but not limited to poles, lines or conduits, within the City and/or adjacent areas.

- (viii) Any other details, statements, information or references pertinent to the application which shall be required by the Council.

- (b) The applicant for an initial Franchise shall pay the reasonable costs of the City incurred in the processing, reviewing and awarding of the franchise, including but not limited to, staff costs, legal costs and consultant costs, if any. The applicant shall submit with its application a deposit, as set forth above, towards payment of these costs, and shall submit additional deposits if notified by the City that the prior deposits have been expended by the City and that additional City incurred costs are anticipated. The City will not formally consider the application unless all requested deposits have been made prior to the time of the City's consideration. All of the City's costs shall be paid by the applicant prior to the Franchise becoming effective. Should the City determine not to grant a franchise, applicant shall only be entitled to a refund of any deposit in excess of the costs incurred by the City in reviewing the application.

11-4.04. PROCEDURE TO CONSIDER APPLICATION.

- (a) Upon receipt of a completed application, the Council shall refer the application to the City Manager. The City Manager shall prepare a report and make recommendations on the application within one hundred twenty (120) days.

- (b) Upon receipt of the report and recommendations of the City Manager, if the Council wishes to consider granting a franchise, it shall pass a resolution declaring its intent and setting the date and time for a public hearing. The hearing date shall be not less than twenty (20) days nor more than forty (40) days after the date of the resolution.

- (c) The City Clerk shall publish a notice of the hearing in the official newspaper of the City at least once ten (10) days prior to the hearing. The notice shall state the name of the applicant, the proposed terms of the franchise, any amounts or percentages to be paid to the City during the life of the franchise, any limitations as to time, place or type of service proposed, together with a general statement of the other major

provisions of the proposed franchise, and that copies of the proposed Franchise may be obtained at the office of the City Clerk.

- (d) At the time set for the hearing, the Council shall proceed to consider the application and all persons shall be given an opportunity to present their arguments. The Council may adjourn the hearing from time to time.
- (e) In determining whether to grant a franchise, the Council may, to the extent permitted by law, consider the character and quality of proposed services, proposed rates, the experience, character and financial capability of the applicant, proposed management system, quality of proposed equipment, ability to meet construction requirements and any other factors deemed important to safeguard the interests of the public and the City.

11-4.05. GRANTING OR DENYING A FRANCHISE.

- (a) Within thirty (30) days following the conclusion of the hearing, the Council shall by resolution deny or by ordinance grant the application for a franchise. The Council's action shall be final and conclusive.
- (b) No Franchise shall become effective unless and until the ordinance granting same has become effective and, in addition, unless and until all things required by this Section and Sections 11-4.19, 11-4.20, 11-4.21, and 11-4.34 are done and completed, all of such things being hereby declared to be conditions precedent to the effectiveness of any franchise. In the event any of these things are not done and complete in the time and manner required, the Council may declare the Franchise null and void.
- (c) Prior to the effective date of an ordinance granting a franchise, the Grantee shall file with the City Clerk a written acceptance of the franchise, together with the surety bond, security fund, and insurance policies required by this chapter. The written acceptance shall include an agreement to be bound by and to comply with and to do all things required by the provisions of this chapter and the franchise. The written acceptance shall be acknowledged by the Grantee before a notary public, and shall in form and content be satisfactory to and approved by the City Attorney.

11-4.06. REQUEST FOR PROPOSALS.

The Council may, in lieu of considering unsolicited applications for franchises, issue a request for proposals for the award of a franchise(s).

11-4.07. FRANCHISE RENEWAL.

- (a) Any Franchise is renewable at the application of the Grantee, in accordance with the requirements of the Cable Act and in the same manner as required for obtaining the original franchise, except those provisions which are by their terms expressly inapplicable or which federal law makes inapplicable; provided, however, that the Council may at its option waive compliance with any or all of the application requirements of Section 11-4.03. In considering an application for renewal, the Council shall take into account the record of compliance of the Grantee with the franchise. An application for renewal shall be accompanied by a renewal application deposit in the amount of ten thousand dollars (\$10,000). The applicant shall pay the reasonable costs of the City for the renewal application as set forth in section 11-4.03(b).
- (b) Nothing in this chapter shall be deemed or construed as an obligation to renew any expiring Franchise or to give priority or preference to an existing Grantee over new applicants.

11-4.08. EXPIRATION OR TERMINATION OF A FRANCHISE; ENFORCEMENT; REMEDIES.

- (a) Termination of the Franchise: Any Franchise may be terminated prior to its date of expiration by the Council in the event that the Council shall have found, after thirty (30) days' notice of any proposed termination and duly noticed public hearing, that:
 - (1) The Grantee has failed to comply with any material provision of this chapter, or has, by act or omission, violated any material term or condition of the Franchise ordinance.
 - (2) The Grantee has failed or refused to correct any deficiency for a period of more than sixty (60) days after notice by the City Manager as provided herein or any extension granted by the City Manager or the City Council.

- (b) Deficiencies, Corrections: As part of the annual review of the Franchise or at any other time when deficiencies in performance by the Grantee are brought to the City Manager's attention, the City Manager may order the Grantee to correct any deficiency or failure to comply with the terms of this Chapter and/or the Grantee's franchise. Except in cases of emergencies, the City Manager shall provide a period of at least sixty (60) days to bring the Franchise into compliance with its terms and the terms of this Chapter.
- (1) A Grantee may request an extension of time to correct a deficiency by making such request in writing to the City Manager with a statement of the reasons why such deficiency cannot be fully corrected within thirty (30) days. The City Manager shall consider and grant or deny such requests as in the Manager's judgment the request is justified. The Grantee may appeal this decision by the City Manager to the City Council in accordance with the provisions of Chapter 4 of Title I of the Modesto Municipal Code.
 - (2) If a Grantee fails or refuses to correct a deficiency within sixty (60) days of the order of the City Manager, or any extensions of time granted by the City Manager or the Council, the Grantee shall pay to the City a penalty as determined by the City Manager of up to five thousand dollars (\$5,000.00), plus one hundred dollars (\$100.00) per calendar day, including the first day, for each day that the deficiency continues.
 - (3) If the Grantee fails or refuses to correct the deficiencies as required by the City Manager within the time for compliance established by the City Manager or the City Council, City Manager may recommend to the City Council that, in addition to any other remedies available to the City, the Franchise be terminated.
- (c) Assessment of all penalties against a Grantee may be appealed to the Council, which shall have the authority, by resolution, to waive penalties if in the Council's judgment waiver is deemed justified.
- (d) In case of either expiration or termination of a franchise, in order to prevent an interruption of service to the public, the Grantee, during a reasonable interim period, may be required by the City to accept, and by acceptance of a Franchise issued under the provisions of this chapter

accepts, obligation to continue to operate the Cable System under the terms of the franchise.

- (e) Each Franchise may contain a provision specifying liquidated damages payable to the City in the event of a breach of a Franchise obligation where damages would be otherwise difficult to ascertain.
- (f) Remedies provided for in this Chapter or under an ordinance granting a Franchise shall be cumulative and in addition to all other remedies which may be available at law or equity. Recovery by the City of any amounts under any policy of insurance, performance bond, security fund or letter of credit, does not limit the Grantee's duty to indemnify the City, or relieve the Grantee of its Franchise obligations or limit the amounts that may be owed to the City.

11-4.09. SYSTEM DESIGN AND TECHNICAL PERFORMANCE.

- (a) The Cable System shall be designed and installed in accordance with the standards of the cable industry and at a minimum shall conform with the technical performance standards contained in the ordinance granting a franchise. In addition, should the Federal Communications Commission (FCC) or other governmental authority having jurisdiction impose Cable System technical performance standards either outside the scope of the technical performance standards contained in the ordinance granting a franchise, or requiring a higher level of Cable System performance, those standards are hereby incorporated by reference.
- (b) All cable communication systems authorized by franchises granted pursuant to this chapter shall be, insofar as financially and technically feasible, technically compatible one with another.
- (c) At a subscriber's request, the Grantee shall provide a means for locking out the audio and/or video portions of any pay television programming.

11-4.10. PUBLIC, EDUCATION AND GOVERNMENT ACCESS REQUIREMENTS.

The Grantee shall provide facilities and equipment funding for public, education and government access programming as provided for in the ordinance granting a franchise.

11-4.11. SERVICE TO PUBLIC BUILDINGS AND SCHOOLS.

The Grantee shall provide cable service to public buildings and facilities and to schools as provided for in the ordinance granting a franchise.

11-4.12. SYSTEM MAINTENANCE AND TESTING.

- (a) The Cable System shall be maintained so that it consistently operates in compliance with all required technical standards, including, without limitation, federal, state, local and Franchise standards.

The Grantee shall maintain a corrective maintenance program that will render efficient corrective service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time.

Interruptions shall be preceded by notice to affected subscribers where practicable and shall occur during a period of minimum use of the system if feasible. A permanent written or electronically recorded log shall be maintained by the Grantee, of all service interruptions for a period of at least five (5) years, which log shall be made available to the City upon City's request. The log shall reflect the date, time, duration, approximate number of subscribers affected, the approximate area affected, and reason for each service interruption.

- (b) Within ten (10) working days after completing its FCC-required proof of performance testing as required in 47 CFR 76 Subpart K, as such regulation may be in any way amended or modified by the FCC, Grantee shall notify the City that the test has been completed. Grantee shall, at City's request, transmit a true and complete copy of its testing documents and findings, and all appendices thereto, to the City Manager or designee. Transmission of these documents shall not relieve Grantee of any obligation to place a copy of such documents in its public file.

11-4.13. ANNUAL PERFORMANCE REPORT.

- (a) The City Manager may request an annual report from the Grantee of the Grantee's performance under this chapter and its franchise. Such request shall be submitted by the City to the Grantee in writing and the Grantee shall have sixty (60) days to submit its written report to the City. The review period shall be for the immediate past calendar year. Failure to request a report shall not be construed as an admission, in any manner, by City that the Grantee is in compliance with the terms of its

franchise. Such review may consist of, but not be limited to, the following, as specified by the City in its written notice to Grantee:

- (1) The name of the Grantee and the address of its principal place of business and its principal local address.
- (2) The name and title of the officer of the Grantee principally responsible for the Grantee's Cable System in the City.
- (3) The name of the engineer primarily responsible for the Grantee's Cable System in the City.
- (4) The names and addresses of all current officers and directors of the Grantee.
- (5) The names and addresses of any parent or subsidiary corporations of the Grantee to which the Grantee makes payments for services, including the names and addresses of all officers and directors of such parent or subsidiary corporations, and the locations of their headquarters.
- (6) Recitation of the facts surrounding any change in corporate structure or organization of the Grantee and parent or subsidiary corporations of the Grantee to which the Grantee makes payments for any services, including a full disclosure of how such changes affect the relationship of the Grantee to its owners or subsidiaries.
- (7) Recitation of the Grantee's date of submission of all reports and other material required to be submitted or maintained by the Grantee during the previous calendar year to the FCC, or placed in any public or private file subject to inspection by the FCC.
- (8) Recitation of the types of services provided by the Grantee during the previous calendar year.
- (9) Certification that a current set of maps drawn to scale, or GIS maps are required by Section 11-4.24(c), showing all Cable System equipment installed in streets and other public places in the City exists in reproducible form and that such documentation is up-to-date and have been submitted to the City as required by Section 11-4.24(c).

- (10) Such other data, information, statements or assurances as the City Manager may determine are necessary or appropriate to review Grantee's performance under this chapter and its Franchise and Grantee's compliance with the provisions of this chapter and its franchise.
- (b) One hundred twenty (120) days after receipt of the report, the City Manager shall make a report to the Council on the Grantee's report.
- (c) The City Manager may include in the report findings regarding the Grantee's performance, including deficiencies, if any, and reports of actions by the City Manager or recommendations for further actions by the City Council.

11-4.14. SUBSCRIBER RATES AND RATE REVIEW.

Grantee's rates and charges for Cable Services shall be subject to regulation by the City to the full extent authorized by applicable state and federal law.

The City retains the right, at any time during the term of any Franchise granted hereunder, to institute regulation of rates and charges, as such regulations may be permitted or authorized under the then current state or federal law.

11-4.15. FRANCHISE PAYMENTS.

- (a) All Grantees shall pay to the City a sum equal to the maximum amount allowable under federal law, or such other amount as may be specified in the Grantee's franchise, and in addition such other sums as may be provided for in Grantee's franchise. The City Council shall determine, within the maximum rates set forth above, the Franchise fee to be paid. On at least sixty (60) days notice, during the term of any franchise, the City Council may adjust the Franchise fee to be paid within the maximum amount allowable.
- (b) Payment by the Grantee to the City shall be made quarterly within forty-five (45) days of the end of each quarter, or more frequently if required in its franchise, by delivery to the City Manager.
- (c) No other fee, charge or consideration shall be imposed except such generally applicable business license fees, construction, development and inspection and permit fees as set by the City and applicable to qualifying

businesses and individuals in the community on a non-discriminatory basis.

- (d) The Grantee shall file with the City Manager within ninety (90) days after the expiration of the Grantee's fiscal year or portion thereof during which such Franchise is in force, either an audited financial statement prepared by an independent certified public accountant or certified by an officer of the Grantee, certifying under penalty of perjury, and in a form satisfactory to the City's financial officer, showing in detail the gross system receipts, as defined herein, of the Grantee during the preceding fiscal year or portion thereof. The statement shall fully reconcile any and all discrepancies in the fees paid in the preceding twelve (12) months. The statement shall be prepared in accordance with generally accepted accounting standards. It shall be the duty of the Grantee, and Grantee shall pay to the City, within fifteen (15) days after the time for filing such statements, the sum prescribed or any unpaid balance thereof for the fiscal year or portion thereof covered by such statements.
- (e) The City shall have the right to inspect, copy, and audit the Grantee's fiscal records, upon reasonable written notice. The costs of the audit shall be borne by the Grantee when the audit results show an under payment of more than five percent (5%) of the Grantee's annual payment to the City. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this chapter or for the performance of any other obligation.
- (f) Franchise fees are due and payable on or before the times set forth herein. A delinquency charge of one and one-half percent (1.5%) per month on the unpaid balance may be collected by the City on any Franchise fee payment overdue by ten (10) days or more.

11-4.16. SUBSCRIBER CUSTOMER SERVICE AND COMPLAINT PROCEDURES.

- (a) The Grantee has the responsibility of assuring that subscribers receive quality service and quick and fair resolution of any complaints. The Grantee shall maintain at least one location within the City where bills may be paid and where requests for service may be made, services modified or terminated, complaints made, and equipment exchanged, picked up or delivered. Such location shall be staffed with knowledgeable personnel able to render such assistance to subscribers.

The Grantee shall also make a telephone number available on a twenty-four hour basis, so that subscribers may call without incurring added telephone toll charges, to receive and initiate action on all cable subscriber complaints and to take action to provide maintenance services.

- (b) The Grantee shall provide written information at the time of the installation of Cable Services and annually thereafter to all subscribers consistent with Sec. 76.309 (c) 3 of the FCC's rules and regulations, as modified or amended from time to time.
- (c) Excluding conditions beyond the control of the Grantee, the Grantee shall begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The Grantee shall begin actions to correct other service problems the next business day after notification of the service problem. Service interruption shall mean the loss of picture or sound on one or more cable channels.
- (d) The City shall have a designated official responsible for receiving and processing subscriber complaints that have not been handled in a timely manner by the Grantee. Such City officials shall be designated by the City Manager, with a designated address and telephone number, and shall be responsible to receive and process all such complaints during office hours.
- (e) Upon receipt of a subscriber's complaint by the designated City official, the subscriber shall first be assured that the matter has been brought to the attention of the designated official of the Grantee. If the complaint has not been resolved by the Grantee to the satisfaction of the subscriber and the City's designee, the responsible City official shall take appropriate action with the Grantee to resolve it. Failing that, the City official, or the aggrieved subscribers, or the Grantee may bring the matter to the attention of the City Manager. The City Manager shall have authority, allowable under the law, to resolve the complaint. The City Manager's decision may be appealed to the City Council by any party.
- (f) Both the designated official of the Grantee and the designated City official shall maintain logs of subscriber complaints made to the City on forms to be approved by the City Manager. Such logs are to be kept for a three-year period. Such logs maintained by the Grantee shall be available to the City to the extent permitted by law.

11-4.17. PROVISION OF SERVICE.

Every Grantee shall provide service to all residential dwellings requesting service, within its Franchise area, subject to the line extension policy, if any, contained in the ordinance granting the franchise, provided, however, that the Grantee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or monthly service charge. No Grantee shall deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, sex or sexual orientation.

11-4.18. SUBSCRIBER CONTRACT.

Before Grantee shall provide service to any subscriber, the Grantee shall obtain a signed contract from the subscriber containing a provision substantially as follows:

"Subscriber understands that in providing service Grantee is making use of streets and public places within the City, and that the continued use of these streets and public places is in no way guaranteed. In the event the continued use of such streets and public places is denied to Grantee for any reason, Grantee will make every reasonable effort to provide service over alternate routes. Subscriber agrees he will make no claim nor undertake any action against the City, its officers, its employees, or Grantee if a service to be provided by Grantee hereunder is interrupted or discontinued because the continued use of such streets and public places is denied to Grantee for any reason."

The form of Grantee's contract with its subscribers shall be subject to review by the City Attorney.

11-4.19. PERFORMANCE BOND.

- (a) The Grantee shall, concurrently with filing of an acceptance of award of any Franchise granted under this chapter, file with the City Clerk and at all times thereafter maintain in full force and effect throughout the term of such Franchise or any renewal thereof, at Grantee's sole expense, a corporate surety bond in a company authorized to do business in the State of California and in a form approved by the City Attorney, in the amount specified in the franchise, renewed annually, and conditioned upon the faithful performance of Grantee and upon the further condition that in the event Grantee shall fail to comply with any one (1) or more of

the provisions of this chapter, or of the franchise, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the City as a result thereof, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the bond, said condition to be a continuing obligation for the duration of such Franchise and any renewal thereof and thereafter until the Grantee has liquidated all of its obligations with the City that may have arisen from its exercise of any privilege therein granted. The bond shall provide that thirty (30) days' prior written notice of intention not to renew, cancellation, or material change, be given to the City.

- (b) Neither the provisions of this Section, nor any bond accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under its Franchise or for damages either to the full amount of the bond or otherwise.
- (c) If provided for in the ordinance granting a franchise, the Grantee may provide an irrevocable letter of credit securing all or a portion of the amount otherwise required to be secured by the performance bond.

11-4.20. SECURITY FUND.

The City may, in any Franchise granted hereunder, require the Grantee to establish and maintain either an insured account as security or a letter of credit for the faithful performance by Grantee of all the provisions of the franchise, and compliance with any requirements of any officer, board, commission, committee or employee of the City having jurisdiction over Grantee's acts or defaults under the franchise, and the payment by the Grantee of any moneys due the City under the franchise. The security fund or letter of credit, if required, shall be subject to the following requirements:

- (a) Prior to the effective date of the franchise, the Grantee shall deposit an amount of money as set forth in the Franchise into an insured account in a financial institution acceptable to the City Manager, and maintain the deposit throughout the term of the Franchise or in the alternative provide a letter of credit.
- (b) Within thirty (30) days after notice by the City to the Grantee that any amount has been withdrawn by the City from the security fund, the

Grantee shall deposit a sum of money sufficient to restore such security fund or letter of credit to the original amount.

- (c) If the Grantee fails after ten (10) days' notice to pay the City any moneys due, or fails to repay to the City any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with the Franchise or fails to comply with any provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the security, the City may immediately withdraw the amount thereof, including interest and penalties, from the security fund or letter of credit. Upon such withdrawal, the City shall notify the Grantee of the amount withdrawn and Grantee shall replace said amount in accordance with the requirements of subsection (b) above.
- (d) A security fund or letter of credit deposited pursuant to this Section shall become the property of the City in the event that a Franchise is cancelled by reason of the default of the Grantee or revoked for cause. The Grantee, however, shall be entitled to the return of the security fund or letter of credit, or portion thereof, as remains on deposit at the expiration of the term of the franchise, or upon termination of the Franchise at an earlier date, provided that there is then no outstanding default on the part of the Grantee.
- (e) The rights reserved to the City with respect to the security fund or letter of credit are in addition to all other rights of the City whether reserved by a Franchise or authorized by law; and no action, proceeding or exercise of a right with respect to such security fund or letter of credit shall affect any other right the City may have.

11-4.21. CONSTRUCTION BOND.

- (a) Prior to commencement of any construction on a cable system or on any rebuild of a Cable System, the Grantee shall provide a construction performance bond to the City in an amount to be determined by the City but not less than fifteen percent (15%) of the estimated cost of the construction. This bond is in addition to the performance bond required under Section 11-4.19 of this chapter.
- (b) The construction bond shall be filed with the City Clerk and shall be maintained in full force and effect throughout the term of construction. The bond shall be procured, at Grantee's sole expense, from a corporate

surety bond in a company authorized to do business in the State of California and in a form approved by the City Attorney, and conditioned upon the faithful performance and completion of the construction. There shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the City within the City as a result thereof, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property, or the correction or repair of any property to a condition substantially equal to its condition prior to the construction, said condition to be a continuing obligation for the duration of such construction and thereafter until the Grantee has liquidated all of its obligations with the City that may have arisen from its construction. The bond shall provide that thirty (30) days' prior written notice of intention not to renew, cancellation, or material change, be given to the City.

- (c) Neither the provisions of this Section, nor any bond accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under its Franchise or for damages either to the full amount of the bond or otherwise.

11-4.22. LIMITATIONS AND PROHIBITIONS.

- (a) Any Franchise granted pursuant to this chapter shall include the following condition:

"The Cable System herein franchised shall be used for the provision of Cable Services and as expressly authorized by this ordinance and Chapter 4 of Title 11 of the Modesto Municipal Code."

Inclusion of the foregoing statement in any such Franchise shall not be deemed to limit the authority of the City to handle [include] any other reasonable condition, limitation or restriction which it may deem necessary to impose in connection with such Franchise pursuant to the authority conferred by this chapter.

The City further desires to encourage the use and availability of new technologies to the residents within the City. To the extent that a Grantee wishes to provide additional services not included within any Franchise granted pursuant to this chapter or otherwise granted by state or federal law and not requiring City approval, Grantee may do so, upon

compliance with any requirements of law or upon approval by the City if lawfully required and such consent shall not be unreasonably withheld. Nothing in this Section shall excuse or forgive the payment of Franchise fees or other applicable fees or charges for use of the rights of way or otherwise for any additional services the Grantee may determine to provide.

- (b) It shall be unlawful for any person to establish or operate in the City a Cable System unless a Franchise has first been obtained, and unless the Franchise is in full force and effect.
- (c) It shall be unlawful for any person to construct, install or maintain within any public street in the City, or within any other public property of the City, or within any privately owned area within the City which has not yet become a public street, but is designated as a proposed public street on any tentative subdivision or parcel map approved by the City, any equipment or facilities for a cable communication system unless a Franchise authorizing use of the street or property or area has first been obtained pursuant to the provisions of this chapter, and unless a Franchise is in full force and effect.
- (d) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a Cable System within the City.
- (e) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a Cable System within the City, without payment to the owner of the system.
- (f) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires or equipment of a Cable System within the City.
- (g) Any Franchise granted shall be nonexclusive.
- (h) Any privilege claimed under a Franchise by the Grantee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property.

- (i) Any Franchise shall be a privilege to be held in personal trust by the original Grantee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation, by change in control of a corporation or company, stock transfer, transfer in trust, mortgage, or other hypothecation, or otherwise, without the prior consent of the Council expressed by resolution or ordinance, and then only under conditions as may be prescribed. Any transfer or assignment shall be made only by an instrument in writing, a duly executed copy of which shall be filed in the office of the City Clerk within thirty (30) days after transfer or assignment. The consent of the Council may not be arbitrarily refused; provided, however, the proposed assignee must show legal, technical and financial qualifications to own and operate the Cable System, and must agree to comply with all provisions of this chapter; and provided that the Franchise shall be in substantial compliance with the terms and conditions of the Franchise agreement and this chapter at the time of the transfer; and, further, that no consent shall be required for a transfer in trust, mortgage or other hypothecation as a whole, to secure an indebtedness.
- (j) Time shall be of the essence of any such Franchise granted. The Grantee shall not be relieved of his obligation to comply promptly with any of the provisions of this chapter or by any failure of the City to enforce prompt compliance.
- (k) Any right or power in, or duty impressed upon, any officer, employee, department or board of the City shall be subject to transfer by the City to any other officer, employee, department or board of the City.
- (l) The Grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any provision or requirement contained in this chapter as of the date of the approval of any Franchise issued to the Grantee, or of any Franchise issued or because of its enforcement.
- (m) The Grantee shall be subject to all provisions, rules, regulations and conditions prescribed by Federal, State, City and local law heretofore or hereafter enacted during the term of any franchise; provided that, except as otherwise provided in Section 11-4.33(d), any such City law does not change a Franchise in any way. Copies of all petitions, applications and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission or

any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting Cable System operations authorized pursuant to its Franchise shall be kept on file in the Grantee's local office and be available for inspection by the City Manager.

- (n) Any Franchise granted shall not relieve the Grantee of any obligation involved in obtaining pole space from any department of the City, utility company or from others maintaining poles in streets.
- (o) Any Franchise shall be in lieu of any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled or exercisable by the Grantee, or any successor to any interest of the Grantee, of or pertaining to the construction, operation or maintenance of any Cable System in the City; and the acceptance of any Franchise shall operate as between the Grantee and the City, as an abandonment of any and all of such rights, privileges, powers, immunities and authorities within the City, to the effect that as between the Grantee and the City, any and all construction, operation and maintenance by the Grantee of any Cable System in the City shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to said franchise, and not under or pursuant to any other right, privilege, power, immunity or authority whatsoever.

11-4.23. INTERCONNECTION.

At the City's written request, every Grantee shall be required to interconnect its Cable System with every other Cable Communications System within City, or immediately adjacent to City, on fair and reasonable terms for purposes of providing PEG and I-Net services or for the purpose of providing connection to the Emergency Operations Center used by City in emergencies. In the event of a dispute, the City Manager may issue an order establishing the terms and conditions under which interconnection shall occur, and the Grantee shall comply with the order to the extent it is economically and technically feasible. In the event such interconnection is required with a cable operator in an immediately adjacent jurisdiction, the City's Grantee cannot be compelled to enter into a neighboring jurisdiction in which it does not already provide cable service, but may be requested by Grantor to provide interconnection capability at a point of demarcation at the City's border.

11-4.24. REPORTS, PROPERTY AND RECORDS OF THE GRANTEE.

- (a) At all reasonable times, and, in the case of an emergency, immediately upon request, the Grantee shall permit any duly authorized representative of the City to examine all Cable System property of the Grantee, together with any appurtenant property of the Grantee situated within or without the City, and to examine and transcribe any and all maps and other records kept or maintained by the Grantee or under its control which deal with the operations, affairs, transactions or property of the Grantee with respect to its franchise. If any such maps or records are not kept in the City, or upon reasonable written request made available in the City, or, in the case of an emergency, immediately upon request, and if the Council shall determine that an examination thereof is necessary or appropriate, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by the Grantee.
- (b) The Grantee shall prepare and furnish to the City Manager at the times and in the form approved by the City reports with respect to its operations, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the City or any of its officers in connection with the franchise. These reports shall include a daily log of service requests, customer complaints and the Grantee's response, including the type, manner and time of response.
- (c) The Grantee shall at all times maintain in its local office a current set of as-built maps drawn to scale, showing all Cable System equipment installed and in place in streets and other public places in the City. The Grantee shall, either as part of an initial build of a system or as part of any rebuild or reconstruction, prepare and submit electronic or autocad versions of its as-built maps on a GIS system to identify locations in the right of way and the type of active electronics and facilities in the rights of way, including splice locations. If the Grantee maintains any maps or records in more detail than those required to be submitted to the City under this section and the Grantee has not submitted such maps or records to the City, then upon reasonable written request from the City, or, in the case of an emergency, immediately upon request by the City, such more detailed as-built maps shall be made available to the City for review during normal business hours, or, in an emergency, after regular business hours.

- (d) The Grantee shall at all times maintain at its local office for public inspection a file containing copies of all reports required by Federal Communications Commission (FCC) Rules and Regulations as now exist or may hereafter be changed or amended and are required to be kept in such public inspection file. Said documentation must be kept on file in the Grantee's local office and be available for inspection by the City Manager.

11-4.25. PERMITS, INSTALLATION AND START OF SERVICE.

- (a) Except as otherwise provided for in a franchise agreement, within sixty (60) days after acceptance of a franchise, the Grantee shall apply for and diligently pursue the obtaining of all necessary permits and authorizations which are required in the conduct of its business, including but not limited to any utility joint use attachment agreements, microwave carrier licenses and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of Cable Systems, their associated microwave transmission facilities, or any other associated facility.
- (b) The Grantee shall commence construction and installation of the Cable System within ninety (90) days after obtaining all necessary permits, licenses and authorizations.
- (c) Within one hundred eighty (180) days after the commencement of construction of the system, the Grantee shall provide service to subscribers, and the completion of the construction and installation shall be pursued with reasonable diligence thereafter, so that service to all parts of the Franchise area shall be provided within two (2) years from the date that service was first provided, except as may be otherwise provided in any franchise.
- (d) Failure on the part of the Grantee to commence and diligently pursue each of the foregoing requirements or any requirements for installation of its system or providing of service as set forth in its franchise, and to complete each of said matters, shall be grounds for termination of the franchise. However, the Council in its discretion may extend the time for obtaining of permits, authorizations and utility pole clearances, and for the commencement and completion of construction and installation for additional periods in the event the Grantee, acting in good faith, experiences delays by reason of circumstances beyond its control.

11-4.26. LOCATION OF PROPERTY OF GRANTEE.

- (a) The Grantee may, at such locations and in such manner as shall be approved by the City Manager acting in the exercise of his reasonable discretion, erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along streets and public places such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the Grantee's Cable System.
- (b) The Grantee shall not install or erect any facilities or apparatus in or on other public property, places or rights-of-ways, or within any privately owned area within the City which has not yet become a public street, but is designated as a proposed public street on any tentative subdivision map approved by the City, except those installed or erected upon public utility facilities now existing, without obtaining the applicable City permits.
- (c) In those areas and portions of the City where the transmission or distribution facilities of both the public utility providing telephone service and those of the utility providing electric service are underground, then the Grantee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground. In those areas and portions of the City where the transmission or distribution facilities of both the public utility providing telephone service and those of the utility providing electric service are hereafter placed underground, then the Grantee shall construct its transmission and distribution facilities underground concurrently with and at the same time as the transmission and distribution facilities of the telephone service and electric service are placed underground; and the Grantee shall thereafter operate and maintain all of its transmission and distribution facilities underground in said areas and portions of the City. For the purpose of this subsection, "underground" shall include a partial underground system.

Active Electronics in the Grantee's Cable System may be in appropriate housings upon the surface of the ground. The location of the housings shall be subject to the approval of the City Manager. If technologically feasible and subject to the approval of the public agency owning the property, if the proposed location is not within a public right of way held by the City, the Grantee shall locate Active Electronics in median, strips, within alleys, or on public or school sites to avoid unnecessary

intrusion of these large housings in residential front and side yard areas within the public rights of way. In granting or denying such approval, the City Manager shall take into account the overall design of the Grantee's system, including technical requirements and costs, as well as other factors deemed appropriate. The City shall not in any manner be responsible for any costs or obligations incurred by the Grantee in placing the Grantee's facilities underground. Taps may remain aboveground in areas receiving cable service as of August 1, 2001 subject to any undergrounding or flush mounting retrofit program set forth in a franchise agreement. Installations occurring after August 1, 2001 shall be underground or flush mounted in the ground, except as otherwise approved by the City Manager pursuant to the standards set forth in this section.

- (d) When new construction or property development occurs, and utilities are to be placed underground, Grantees shall participate in any joint trench coordinating committee or joint trench program established by the City within the Franchise area. In such case, the Grantee shall install all facilities necessary to commence cable service upon the occupancy of each house in the subdivision. Unless otherwise provided for in the ordinance granting a franchise, a Grantee may participate in joint trench opportunities where a new development's dwelling units, when occupied, will not meet the line extension policy established in the franchise, but shall participate where the new development's dwelling units, when occupied, would meet the line extension standards of the franchise. A Grantee may be involved in all design aspects of the new construction or development that relate to the infrastructure required for cable service, including the provision of specifications and engineering assistance prior to construction. The costs of easements, trenching, and construction of the conduits required to bring cable service to the new construction or development will be borne by the Grantee, the developer, or the property owner, as may be agreed upon between them. Grantee shall bear all costs of the Active Electronics required to construct and operate the Cable System.
- (e) The granting of a Franchise pursuant to this chapter shall not be construed as permission or authority to enter on, occupy, or otherwise utilize private property outside of public utility easements without the express consent of the owner or agent in possession thereof.

11-4.27. TREE TRIMMING.

Grantee, in order to maintain its facilities, including its overhead wires and cables or its underground conduits, may trim trees on public property. Tree trimming and pruning shall be done in accordance with the guidelines established by the International Society of Arboriculture ("ISA"), which are the industry standard, or, if the City adopts its own standards, the City's then current adopted standards shall apply. Tree pruning shall be performed by a business licensed for tree pruning work by the State of California, and all work shall be performed under the supervision of an arborist certified by ISA or the City. Except in cases of emergencies, at least twenty-four (24) hours prior to beginning any work that will affect any tree on public property or any street tree, Grantee shall notify Grantor's Operations and Maintenance Department and obtain permission from Grantor's Operations and Maintenance Department. Grantee shall not begin work until its plans and procedures have been approved by the Operations and Maintenance Department. Grantee and Grantor may agree to other procedures different from those set forth herein or may agree to a blanket permit to expedite tree trimming.

11-4.28. REMOVAL AND ABANDONMENT OF PROPERTY OF GRANTEE.

- (a) In the event that the use of any part of the Cable System is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system or property has been installed in any street or public place without complying with the requirements of the Grantee's Franchise or this chapter, or the Franchise has been terminated, cancelled or has expired, the Grantee shall promptly, upon being given ten (10) days' written notice, remove from the streets or public places all such property and poles of such system other than any which the City Manager may permit to be abandoned in place. In the event of removal, the Grantee shall promptly restore the street or other area from which the property has been removed to a condition satisfactory to the City Manager.
- (b) Any property of the Grantee remaining in place sixty (60) days after the termination or expiration of the Franchise shall be considered permanently abandoned. The City Manager may extend the time not to exceed an additional thirty (30) days.
- (c) Subject to the provisions of any utility joint use attachment agreement, upon permanent abandonment of any property of the Grantee in place,

all or any portion of the property as designated by the City, shall, at the option of the City and subject to such conditions as the City may require, become that of the City; and, if the City exercises the option, the Grantee shall submit to the Council an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of the property.

11-4.29. CHANGES REQUIRED BY PUBLIC IMPROVEMENTS.

Upon ten (10) days written notice, except in emergencies, the Grantee shall, at its' expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place any property of the Grantee when required by the City Manager by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks or any other type of structures or improvements by public agencies; provided, however, that the Grantee shall in all such cases have the privileges and be subject to the obligations to abandon any property of the Grantee in place, as provided in Section 11-4.28.

11-4.30. FAILURE TO PERFORM WORK.

Upon failure of the Grantee to commence, pursue or complete any work required by law or by the provisions of this chapter or by its Franchise to be done in any street or other public place, within the time prescribed, and to the satisfaction of the City Manager, the City Manager may cause such work to be done; and the Grantee shall pay to the City the cost in the itemized amounts reported by the City Manager to the Grantee within thirty (30) days after receipt of the itemized report.

11-4.31. EMERGENCY USE OF SYSTEM.

- (a) Every Grantee shall comply with all FCC rules and regulations relating to the national Emergency Alert System (EAS) or any successor system thereto.
- (b) In the case of any emergency or disaster, the Grantee shall, upon request of the City Manager, make available its facilities to the City for emergency use during the emergency or disaster period.

11-4.32. EXCLUSIVE USE OF TELEPHONE FACILITIES.

When and in the event that a Grantee constructs, operates and maintains a Cable System exclusively through telephone company facilities constructed, operated and maintained pursuant to a state-granted telephone Franchise and offers proof satisfactory to the Council that in no event during the life of such Franchise shall the Grantee make any use of the streets independently of such telephone company facilities, said Grantee shall be required to comply with all of the provisions hereof as a "licensee;" and in such event whenever the term "Grantee" is used herein it shall be deemed to mean and include "licensee."

11-4.33. RIGHTS RESERVED TO THE CITY.

- (a) Nothing herein shall be deemed or construed to impair or affect, in any way, to any extent, the right of the City to acquire the property of the Grantee pursuant to the rights specified in 47 USC Section 547. Nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the City's right of eminent domain.
- (b) There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any charter, law, ordinance or code of general applicability of the City; and the Grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or power, heretofore or hereafter enacted or established.
- (c) Neither the granting of any Franchise nor any of the provisions contained herein shall be construed to prevent the City from granting any identical, or similar, Franchise to any other person, firm or corporation, within all or any portion of the City.
- (d) There is hereby reserved to the City the authority, after the holding of a public hearing, to amend any section or part of this chapter so as to require reasonable additional bonding or insurance on the part of the Grantee.
- (e) Neither the granting of any Franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

- (f) The Council may do all things which are necessary in the exercise of its jurisdiction under this chapter and may determine any question of fact which may arise during the existence of any Franchise granted hereunder. The City Manager is hereby authorized and empowered to mediate any controversy or charge arising from the operations of any Grantee under this chapter, either on behalf of the City, the Grantee or any subscriber, in the best interest of the public
- (g) The City may place a lien against all property of the Grantee located within the City against payment of all penalties, claims and taxes due the City under its franchise.

11-4.34. INDEMNIFICATION AND INSURANCE REQUIREMENTS.

- (a) The Grantee shall indemnify and save harmless the City, its officers, agents, and employees, from and against any and all liability, claims, demands, actions, suits and proceedings by others, including reasonable attorney's fees, for loss or damage for bodily injury, sickness and disease, including death resulting therefrom, and for property damage, occasioned by the construction, operation or maintenance of the Grantee's Cable System under this chapter and its Franchise granted hereunder.
- (b) The Grantee shall indemnify and save harmless the City, its officers, agents and employees, from and against any and all liability claims, demands, actions, suits, and proceedings by others, and against any loss, cost, expense and damages resulting therefrom, including reasonable attorney's fees, arising out of the construction, operation or maintenance of the Grantee's Cable System or failure by the Grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the Grantee's Cable System.
- (c) The Cable System Grantee shall provide the City Clerk with evidence of insurance coverage in the amount and form as approved by the City's Risk Manager and as specified in the franchise. Such amounts shall be set forth from time to time by resolution of the City Council consistent with the franchise.

11-4.35. SUPERVISION OF CABLE SYSTEM FRANCHISES.

- (a) In order to serve and maintain the City's continuing regulatory jurisdiction and supervision over the operation of outstanding cable

franchises, the City Manager shall have general supervisory authority over all outstanding cable franchises, including, without limitation, the authority:

- (1) To make recommendations to the Council on standards and guidelines for the governing of Cable System franchises and for amendments to this chapter.
 - (2) To make written recommendations to the Council concerning the disposition of specific applications for the granting or renewal of cable franchises, each recommendation to be accompanied by a summary of the documents and other evidence considered and of the reasons for the recommendation.
 - (3) To make written recommendations to the Council on applications for subscriber rate adjustments according to procedures prescribed in this chapter and consistent with Federal and State law.
 - (4) To resolve subscriber complaints which have not been resolved by otherwise prescribed procedures.
 - (5) To receive reports regarding PEG channel use and to make recommendations to the City Council on PEG channel usage; agreements for PEG channel use and programming services, and the allocation of grant funds, if any, for I-Net, government, education and/or public access equipment and services.
 - (6) To review and audit all reports and other material required to be maintained and kept available by a cable Grantee, to review a cable Grantee's operating rules and subscriber service contracts.
 - (7) To conduct, or have conducted, performance evaluations of Cable Systems.
 - (8) To initiate investigations and make appropriate recommendations to a cable Grantee and to the Council as to the Grantee's performance under its franchise.
- (b) The Council hereby delegates to the City Manager all necessary and proper powers to carry out his prescribed duties and responsibilities under this chapter. The City Manager shall have no powers, duties or

responsibilities with respect to the censorship of program content, whether as to off-air broadcast carriage or locally originated programming.

11-4.36. TITLES FOR CONVENIENCE.

The titles of the sections set forth in this Chapter are for convenience only.

11-4.37. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, or of any federal or state agency with preemptive powers, such decision shall not affect the validity of the remaining portions thereof. The Council hereby declares that it would have enacted this chapter and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one (1) or more of such sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this chapter shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee of any Franchise awarded hereunder. If any portion of this chapter, which was a material consideration to the granting of any franchise, is invalidated for any reason, it will be subject to renegotiation with the Grantee or Grantees, subject to such guidance as may have been afforded by the invalidating authority.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of MAY, 2001, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Smith, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3222-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 5th day of June, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: July 6, 2001

ORDINANCE NO. 3223 -C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO GRANTING UNITED CABLE TELEVISION CORPORATION A RENEWAL OF ITS NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM WITHIN THE CITY OF MODESTO SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE FRANCHISE RENEWAL AGREEMENT

The City Council of the City of Modesto does ordain as follows:

SECTION 1. GRANT OF RENEWAL OF NONEXCLUSIVE CABLE FRANCHISE. Pursuant to the provisions of Chapter 4 of Title 11 of the Modesto Municipal Code, as adopted by Ordinance No. 3222-C.S., a renewal of a nonexclusive franchise to construct, operate, and maintain a cable communications system within the City of Modesto is hereby granted to United Cable Television Corporation subject to the terms and conditions of the Franchise Renewal Agreement, attached hereto as Exhibit 1 and incorporated herein.

~~SECTION 2. FRANCHISE FEE. Pursuant to Section 2.2 of the Franchise Renewal Agreement, the franchise fee shall remain at three percent (3%) of Gross Annual Cable Service Revenue until such time as the franchise fee is modified as permitted under Section 2.2.~~

Amended per Ordinance No. 3470

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of May, 2001, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Smith, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES: Councilmembers: None
ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Marilou Roney, Acting
JEAN ZAHR, City Clerk
(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Exhibit 1

CABLE TELEVISION FRANCHISE RENEWAL AGREEMENT
BETWEEN THE CITY OF MODESTO
AND
UNITED CABLE TELEVISION CORPORATION
EFFECTIVE: July 5th, 2001

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EXHIBIT A - OWNERSHIP

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EXHIBIT F - INSTITUTIONAL NETWORK (I-NET)

Attachment A to Exhibit F - I-Net Sites

This Agreement is made and entered into this 5th day of June 2001, at Modesto, California, by and between the City of Modesto, a political subdivision of the State of California, and United Cable Television Corporation, a Delaware Corporation.

WITNESSETH

WHEREAS, the City of Modesto, pursuant to Chapter 4 of the City of Modesto Municipal Code, is authorized to grant and renew one or more nonexclusive revocable franchises to operate, construct, maintain and reconstruct a cable television system within the City; and

WHEREAS, the City of Modesto, in entering into this Franchise Agreement, desires to provide for and meet the following objectives:

- A. Provide for the installation and operation of a cable system with features that meet the current and future needs and interests of the City;
- B. Encourage the widest feasible scope and diversity of programming and other services to all City residents, consistent with community needs and interests;
- C. Encourage telecommunication services of all kinds to be offered to City residents on a non-discriminatory basis;
- D. Encourage prompt implementation of technical advances in communications technology;
- E. Provide for ample and fairly allocated access to cable facilities to program producers for public, governmental and educational programming;
- F. Ensure that rates and charges for basic cable programming, equipment and service are fair, reasonable and consistent with federal standards and regulations;
- G. Provide for high quality customer service by the Grantee;
- H. Ensure that the installation and maintenance of cable facilities comply with all applicable City regulations and do not interfere with the City's use of its own facilities and property;

I. Encourage competition among cable operators on a fair and equitable basis;

J. Protect the City's interests and the health, safety and welfare of City residents; and

K. Ensure the universal availability of cable services within the franchise area on a non-discriminatory basis.

WHEREAS, the City, after due evaluation of United Cable Television Corporation, and after public hearing, has determined that it is in the best interests of the City and its residents to renew its franchise with United Cable Television Corporation.

NOW, THEREFORE, the City of Modesto (hereinafter, "Grantor") hereby grants to United Cable Television Corporation (hereinafter the "Grantee" or "United") a renewal of its cable television franchise in accordance with the provisions of Chapter 4 and this Agreement.

SECTION 1. RENEWAL OF FRANCHISE.

1.1 Grant.

(a) The cable television franchise granted effective October 1984, and extended by Ordinance to May 31, 2001, and currently held by United, a corporation whose current ownership is indicated in Exhibit "A", is hereby renewed, subject to the terms and conditions of this Agreement. The renewal extends the franchise, authority, right and privilege, to construct, rebuild, operate and maintain a Cable Television System within the streets and public ways in the City as it is now or may in the future be constituted, and also provides the authority to offer to subscribers any Cable Television Service and such other services that legally may be offered, utilizing the facilities of Grantee's Cable Television System. To that end, Grantee may erect, install, construct, upgrade, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the public rights-of-way in the City such lines, cables, fiber optics, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, enclosures, attachments and other property and equipment as are necessary and appropriate to the operation of the System to provide Cable Service.

(b) The cable franchise granted in this Agreement shall be used for the provision of Cable Services.

(c) Notwithstanding subsection (b) of this section, Grantor desires to encourage the use and availability of new technologies to the residents of Grantor. To the extent that Grantee wishes to provide additional services not included within the franchise granted pursuant to this Agreement or otherwise authorized by local, state or federal law, Grantee may do so, upon compliance with any requirements of law or upon approval by Grantor, which approval will not be unreasonably withheld.

1.2 Right of Grantor to Issue and Renew Franchise.

Grantee acknowledges and accepts the current right of Grantor to issue and/or renew a franchise and Grantee agrees it shall not now or at any time hereafter challenge any lawful exercise of this right in any local, state or federal court. This is not, however, a waiver of any constitutional or legal right or privilege on the part of the Grantee.

1.3 Effective Date of Renewal.

The renewal shall be effective on July 5th, 2001, provided that said date is no later than thirty (30) days after the date the City Council, by Ordinance, approves this Agreement. The renewal is further contingent upon the filing by Grantee with the City Clerk, a fully executed original of this Agreement and the required security fund and insurance certificates, except that if the filing of the security fund or any such insurance certificate does not occur within sixty (60) days after the adoption of the Ordinance approving this renewal and any extension of time hereunder, the Grantor may declare this renewal null and void.

1.4 Term.

(a) The Base Renewal Term shall be ten (10) years from the effective date of this Agreement, as provided in Section 1.3.

(b) The Grantor seeks to provide an incentive to Grantee to make additional programming and services available to subscribers and potential subscribers by encouraging upgrading of its Cable System as quickly as possible. As a result, the term of the franchise shall be automatically extended for five (5) additional years if Grantee substantially completes construction of a cable system upgrade of at least seven hundred and fifty megahertz ("750 MHz") within twenty-four (24) months of the effective date of the franchise. Demonstration to the Grantor that Grantee has "substantially" completed construction of a system upgrade within the City to at least 750 MHz within twenty-four (24) months of the effective date of the franchise shall be determined as follows:

(1) Grantee shall notify Grantor no less than sixty (60) days prior to the completion of its upgrade of the expected completion date; and

(2) To affirmatively demonstrate system bandwidth of at least 750 MHz, on or within thirty (30) days after the expected completion date provided by Grantee to Grantor pursuant to Section 1.4(b)(1) above, Grantee shall demonstrate to Grantor or its designated agent Grantee's system's compliance with the FCC technical standards at 47 C.F.R. § 76.605 utilizing the reporting and testing methodology described at 47 C.F.R. §§ 76.605, and 76.609 (all of which as may be amended) at twenty (20) widely scattered test points selected by the Grantor or its designated agent. Grantee shall insure that all normally activated analog channels between 50 MHz and 550 MHz are activated. In addition, Grantee shall insure that, for the purpose of this test only, it has activated a normal NTSC analog channel with video carrier on 745.2500 MHz and audio carrier centered at 749.7500 MHz. Such channel shall be added only for the duration of the test and shall not be otherwise available to the Grantee's subscribers. Nothing in this section shall require Grantee to provide video programming services to Grantee's subscribers in the 550 MHz to 750 MHz spectrum. Such test point locations shall be selected so as to insure that no fewer than five (5) locations are at the electrical extremities of Grantee's system. The test point locations shall not be disclosed to Grantee prior to the performance of the tests required here.

(3) On or within thirty (30) days after the expected completion date provided by Grantee to Grantor pursuant to Section 1.4(b)(1) above, Grantee shall demonstrate to Grantor or its designated agent that Grantee's system complies with the requirements of the National Electrical Code (as adopted by Grantor in its Municipal Code), and the California Public Utilities Commission General Order 95 and General Order 128 (both of which as may be amended) in no less than ninety percent (90%) of its plant. The methodology used to make this determination shall be consistent with that used by Grantor in its September 2000 inspection of the Cable System in place within the City. The Grantor or its designated agent shall conduct this physical plant inspection, and Grantee shall have the right to observe all such inspections.

(4) Within seven (7) days following the completion of the tests described at Section 1.4(b)(2) above, Grantee shall deliver all test point data for all measurements to the Grantor or its designated agent. Within the same seven (7) day period, Grantor shall provide Grantee with a list of locations which do not comply with the National Electrical Code (as adopted by Grantor in its Municipal Code), and the California Public Utilities Commission General Order 95 and General Order 128 (both of which as may be amended).

(c) The term "substantially complete" does not include circumstances where the property owner has restricted or encumbered entry or where completion is otherwise beyond Grantee's control. Under these circumstances, Grantee is not required to extend its system to such private property.

(d) Within sixty (60) days after completion of the tests described at Section 1.4(b)(2) above, Grantor shall certify whether Grantee has substantially completed its system construction as described above. Grantor's failure to affirmatively object to completion shall be deemed acknowledgement that the construction has been completed.

(e) As long as Grantee substantially completes the upgrade described in this section within the time set forth in this Section, this Agreement shall expire on July
4th, 2016.

(f) Grantee shall pay to Grantor the cost of Grantor's inspection required pursuant to this Section, which may be billed to Grantee by Grantor monthly. Grantee shall make such payments within thirty (30) days of receipt of a bill or invoice from Grantor.

1.5 Incorporation of Provisions of Cable Ordinance and Transfer Ordinance.

(a) The provisions of the Grantor's Cable Television Ordinance, Article 11 of Chapter 4 of the City of Modesto's Municipal Code (the "Ordinance"), and the Transfer Ordinance, Ordinance No. 3203-C.S. are hereby incorporated by reference as if set out in full, and form part of the terms and conditions of this Agreement. The Ordinance, the Transfer Ordinance and this Agreement are intended to complement each other and, to the greatest extent possible, to be read together in a consistent manner. In event of any direct conflict between the terms and conditions of this Agreement and the provisions of the Ordinance and the Transfer Ordinance, the provisions of this Agreement shall apply. Reference in this Agreement to the Transfer Ordinance shall not be construed to limit the terms of the Transfer Ordinance unless the express terms of this Agreement otherwise provide.

(b) Should the Ordinance be amended, revised, superseded or otherwise changed after the effective date hereof in such a way as would materially affect the terms and conditions of this Agreement, the amendment, revision or change shall not apply to this Agreement without Grantee's approval.

1.6 Definitions.

The definitions set forth in the Ordinance shall apply to this Agreement unless otherwise provided for herein.

(a) "A 750 MHz bandwidth cable system" is defined as follows:

1. 0 MHz to 50 MHz is set aside for upstream return (subscriber to headend) data and/or video transmissions, which is equivalent to 8.33 NTSC analog television channels; and

2. 50 MHz to 750 MHz is set aside for downstream (headend to subscriber) data and/or video transmissions, which is equivalent to 116.66 NTSC analog television channels; and

3. Grantee shall have the right to reapportion the bandwidth between upstream and downstream and modes of modulation and transmission as it sees fit, subject to FCC rules and federal law.

(b) "Standard Installation" is defined as one hundred and twenty-five feet (125') from the nearest tap to the subscriber's terminal.

(c) "Subscriber" shall mean any person or entity legally receiving for any purpose the Cable Service of a Grantee.

1.7 Level Playing Field.

(a) The cable television Franchise granted by this Agreement may not be construed to limit in any manner the right of Grantor, through its authorized officers and in accordance with applicable law, to issue other Franchises to operate cable systems within the City to other individuals or entities; and any additional grants will not operate to revoke, terminate, or materially and adversely affect any rights granted to Grantee by this Agreement.

(b) Should Grantor grant a Franchise to another individual or entity to provide video programming and/or Cable Services on material terms and conditions that are more favorable or less burdensome when viewed as a whole than the terms and conditions applicable to Grantee under this Agreement, the Grantor shall, upon Grantee's written request, and after a hearing on the matter, adjust the terms and conditions applicable to Grantee under this Agreement so that the material terms and

conditions under which Grantee operates are not less favorable or more burdensome when viewed as a whole than those that are applied to such other individual or entity.

SECTION 2. GENERAL REQUIREMENTS.

2.1 Governing Requirements.

Grantee shall comply with all requirements of this Agreement, the Ordinance, and applicable state and federal law.

2.2 Franchise Fee.

(a) The Grantee shall pay to the Grantor an annual franchise fee of up to the maximum allowable by federal law of the Gross Annual Cable Service Revenue received by the Grantee for operations of the Cable System in the Franchise Area unless the fee is changed pursuant to the level playing field provisions of Section 1.7 or federal law is modified to require a different amount. The City Council, after a noticed public hearing shall, at its discretion, establish the franchise fee at any amount within the maximum allowable amount and may, on sixty (60) days written notice to the Grantee and after a public hearing, adjust the franchise fee, either higher or lower, at any time during the term of this Agreement. As of the time of execution of this Agreement, the maximum allowable franchise fee under federal law is five percent (5%) of Gross Annual Cable Service Revenue.

(b) The franchise fee shall be paid quarterly within forty-five (45) days after the end of each calendar quarter.

(c) A delinquency charge in the amount of one and one-half percent (1.5%) per month of the unpaid balance may be collected by the City on any franchise fee payment overdue by ten (10) days or more.

2.3 Franchise Fee Payment, Reports and Right to Audit.

(a) No acceptance of any payment shall be construed as an accord that the amount is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for further or additional sums payable under the provision of this Agreement.

(b) All payments shall be subject to audit, as authorized by the Ordinance. Audits shall be limited to no more than one (1) for any three (3) year franchise period. The Grantee shall pay the Grantor's actual out-of-pocket costs of the audit if the audit

results show an under payment of more than five percent (5%) of the Grantee's annual payment to the Grantor.

(c) The Grantee shall file with the City within ninety (90) days after the expiration of the Grantee's fiscal year an audited financial statement prepared by a certified public accountant or an officer of the Grantee, certifying under penalty of perjury, and in a form satisfactory to the City's financial officer, showing in detail the Gross Annual Cable Service Revenues of the Grantee during the preceding fiscal year. The statement shall fully reconcile any and all discrepancies in the fees paid in the preceding twelve (12) months. The statement shall be prepared in accordance with generally accepted accounting standards. The Grantee shall pay to the City within fifteen (15) days after the time for filing such statements, the sum prescribed or any unpaid balance thereof for the period of time covered by such statement. In the event the Grantee overpaid the City, the Grantee may deduct such amount from the next franchise fee payment due Grantor until such time as the overpayment has been recovered.

2.4 Insurance and Indemnification.

(a) Indemnity.

(1) Scope of Indemnity. To the extent permitted by law, and except for matters arising out of the sole negligence (whether passive or active) or willful misconduct of Grantor, or its officers, boards, commissions, agents and employees, Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor, and its officers, boards, commissions, agents and employees, against any and all claims, causes of action, proceedings, and judgments for damages, including reasonable attorneys' fees and other reasonable defense costs arising out of the construction, repair, maintenance, or operation of the Cable System or performance of the Franchise Agreement. This indemnity does not apply to: (1) the content of programming carried on any channel set aside for public, educational or governmental use, or channels leased pursuant to 47 U.S.C. § 532, unless the Grantee was engaged or participated in determining the editorial content of the program; or (2) the Grantor's use of Grantee's Emergency Alert System ("EAS") capability.

(2) Duty to Give Notice and Tender Defense. The Grantor shall give Grantee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding claimed to be covered by the indemnity of this Section. The Grantor shall cooperate fully in the defense of any such action, suit or proceeding and shall not incur any expenses chargeable to Grantee without the written consent of Grantee, which consent shall not be unreasonably withheld.

(b) Grantee's Insurance.

(1) The Grantee shall obtain and maintain throughout the duration of the term of the Franchise, liability insurance covering the Grantee, and designating the Grantor, its officers, agents and employees, whether elected or appointed as additional insureds, against any and all claims, for bodily injury, personal injury, or damage to property, both real and personal, caused by the construction erection, operation or maintenance of any aspect of the Cable System, or arising out of the Franchise Agreement in amounts no less than the following, and with such deductibles as are ordinary and reasonable in keeping with industry standards. Grantee's insurance shall be placed with insurer(s) with acceptable Best's rating of A:VII or with the approval of the Risk Manager:

Comprehensive General Liability: combined single limit of not less than Five Million Dollars (\$5,000,000.00).

Comprehensive Automobile Liability: combined single limit of not less than Five Million Dollars (\$5,000,000.00).

Workers' Compensation: In compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of Five Hundred Thousand Dollars (\$500,000.00).

(2) Grantee shall provide sixty (60) days advance notice to the Grantor in the event of material alteration, or cancellation of any coverage.

(3) Grantee shall provide certificates of insurance as evidence of the above coverages.

(c) Additional Insured Endorsement. Grantor shall provide an additional insured endorsement that shall apply to Grantor and its elected and appointed officers, agents, employees and volunteers, individually and collectively on all policies except Workers' Compensation. The Worker's Compensation insurer shall agree, except in situations of the Grantor's gross negligence or intentional conduct, to waive all rights of subrogation against the Grantor, and its elected and appointed officers, agents, employees and volunteers, individually and collectively.

(d) Primary Insurance. Grantor shall provide that the insurance afforded by the Additional Insured Endorsement shall apply as primary insurance and other insurance maintained by Grantor and its officers, agents, employees and volunteers

shall be excess only and not contributing with the insurance provided under this insurance, all subject to the indemnity clause under this Section 2.4.

(e) Coverage Limits Adjustment. Grantor reserves the right to adjust the coverage limit requirements no more often than once every five (5) years. Any such adjustment shall be no greater than the increase in the San Francisco Metropolitan Consumer Price Index (all consumers) for the period since the last adjustment.

(f) Substitution of Coverage. Grantor may, in writing, require Grantee to certify, in writing and under penalty of perjury, the scope of the coverage provided, including a description of all deductibles, exclusions, and endorsements applicable to the Franchise. If at any time any of the coverage is unsatisfactory to the Grantor or if a company issuing any policy is unsatisfactory to the Grantor, Grantee shall promptly obtain new or modified coverage and submit a certification of such coverage and/or submit the name and qualifications of a replacement carrier to the Grantor's Risk Manager for approval and shall, thereafter, provide the certificate of insurance required by this section.

(g) Failure to maintain the insurance or failure to furnish, deliver and maintain the certificates required by this section shall constitute a material breach of the franchise. Failure of the Grantee to obtain and/or maintain any required insurance shall not relieve the Grantee from any liability under the franchise.

2.5 Performance Bonds and Security.

(a) Grantee shall provide to Grantor a construction performance bond securing faithful performance by Grantee of the system upgrade in the amount of Two Million Dollars (\$2,000,000.00). The bond shall be released upon substantial completion of the construction work to be performed in the Public Rights-of-Way in satisfaction of the Cable System upgrade, as defined in Sections 1.4 and 4.1 herein.

(b) In addition to the construction performance bond set forth in subsection (a) Grantee shall provide a combination of a performance bond and an irrevocable Letter of Credit in the amount of Five Hundred Thousand Dollars (\$500,000.00) to ensure the faithful performance of its responsibilities under this Agreement. The Letter of Credit shall be in an amount no less than Two Hundred Fifty Thousand Dollars (\$250,000.00). The balance may be in either a Letter of Credit or a performance bond, at Grantee's option. Use of such Letter of Credit, replenishment of the Letter of Credit, and Performance Bond shall be consistent with Sections 11-4.20 and 11-4.21 of Chapter 4 of the City's Code.

(c) Nothing herein shall be deemed a waiver of the normal permit and bonding requirements required of all contractors working within the public rights-of-way provided, however, that if Grantee is performing work solely on behalf of the Grantor, Grantee may include the cost of any normal permit fees and other permit requirements within the costs to be billed to Grantor and Grantor shall pay the costs of any normal permit fees and other permit requirements as part of the cost of the work to be performed by Grantee.

2.6 Reservation of Rights.

Grantor and Grantee reserve all rights that they may possess under the law unless expressly waived herein.

2.7 Franchise Transfer.

(a) The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, without the prior written consent of the Grantor, such consent not to be unreasonably withheld. Grantor's approval or disapproval of the proposed transfer shall be based on the proposed transferee's legal financial and technical qualifications and on whether the current Grantee is in compliance with the terms of this Franchise.

(b) No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness or for any internal restructuring where the proposed Grantee's assets are equal to or greater than that of the existing Grantee and where the management control of the proposed Grantee is the same as that of the current Grantee. For a proposed internal restructuring, Grantee shall notify Grantor, in writing, of the proposed restructuring and of the asset value and place in the corporate structure of the proposed Grantee and the current Grantee and the proposed management control after the restructuring. Grantor shall have thirty (30) days from receipt of the notice, to notify Grantee, in writing, that it objects to the proposed restructuring transfer and the grounds for its objection. Should Grantor object, Grantee may appeal this objection to the City Council within ten (10) days of the notice of objection or submit a transfer application. If Grantor fails to object within thirty (30) days of receipt of the notice, Grantor shall be deemed to have no objection and the proposed restructuring can be completed without further consent from Grantor. Upon completion of the restructuring transfer, the new Grantee shall execute a certificate of acceptance and provide such bonds and insurance and other documentation as is necessary under this Agreement and the Ordinance.

(c) Except as provided in subsection (b), franchise transfers are subject to the requirements of Section 11-4.22(i) of Chapter 4 of the City Code. Within thirty (30) days of receiving a request for transfer, or such longer period as may be authorized by federal law, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request or such longer period as may be authorized by federal law, consent by the Grantor shall be deemed given.

SECTION 3. SERVICE AREA AND LINE EXTENSION POLICY.

3.1 Franchise and Service Area.

(a) Franchise Area to be Served. Grantee is authorized by this franchise to serve the Grantor's entire geographic area now existing and any new territory annexed thereto in the future.

(b) Dwellings to be Served. Grantee must provide service to all residential dwellings requesting service, subject to Grantee's line extension policy, set forth in Section 3.2.

3.2 Line Extension Policy.

(a) General Policy. Within the franchise area, Grantee shall extend its trunk and distribution system to serve subscribers requesting service where the density of inhabited households passed by such extension is equal to or greater than thirty (30) households per mile in areas passed by overhead cable or fifty (50) households per mile in areas passed by underground cable, provided that all such permission as may be required from the owner of the property is reasonably available. In areas with less than thirty (30) households per mile aerial or fifty (50) households per mile underground, service shall be offered in conformance with Grantee's line extension policies. Grantee shall not be required to extend its trunk and distribution system where the area is already served by another Grantee.

(b) Policy on Non-Standard Installations. Grantee's maximum standard length for a service drop is one hundred twenty-five aerial feet (125'). For underground drops which require Grantee to cut pavement curbs, sidewalk, or similar "hardscape" surfaces, and for that incremental portion of all drops greater than one hundred twenty-five feet (125'), Grantee may charge an installation fee equal to its cost of time and materials plus customary overhead.

3.3 Joint Trench Requirements.

(a) When new construction or property development occurs, and utilities are to be placed underground, Grantee agrees to participate in any joint trench coordinating committee established within the franchise area by Grantor. Grantee shall place its equipment and facilities in the joint trench so that service is available to the first occupied residential unit within the subdivision upon occupancy.

(b) Grantee may participate in joint trench opportunities where a new development's dwelling units, when occupied, will not meet the line extension policy of Section 3.2, but shall participate where the new development's dwelling units, when occupied, would meet the line extension standards of Section 3.2. Grantee may be involved in all design aspects of the new construction or development that relate to the infrastructure required for cable service, including the provision of specifications and engineering assistance prior to construction. The costs of easements, trenching, and construction of the conduits required to bring cable service to the new construction or development will be borne by the Grantee, the developer, or the property owner, as may be agreed upon between them. Grantee will bear all costs of installing cable, amplifiers, and other equipment required to construct and operate the cable system.

3.4 Tree Trimming.

Grantee, in order to maintain its facilities, including its overhead wires and cables or its underground conduits, may trim trees on public property. Tree trimming and pruning shall be done in accordance with the guidelines established by the International Society of Arboriculture ("ISA"), which are the industry standard, or, if the City adopts its own standards, then to the City's then current adopted standards. Tree pruning shall be performed by a business licensed for tree pruning work by the State of California, and all work shall be performed under the supervision of an arborist certified by ISA or the City. Except in cases of emergencies, at least twenty-four (24) hours prior to beginning any work that will affect any tree on public property or any street tree, Grantee shall notify Grantor's Operations and Maintenance Department and obtain permission from Grantor's Operations and Maintenance Department. Grantee shall not begin work until its plans and procedures have been approved by the Operations and Maintenance Department. Grantee and Grantor may agree to other procedures different from those set forth herein or may agree to a blanket permit to expedite tree trimming.

3.5 Tap Flush Mounting Retrofit Program.

Grantee shall provide a plan to the Grantor, for Grantor's approval, to retrofit and/or replace all taps within the City with underground and flush mounted taps. Such plan shall provide for completion of the entire city in reasonable phases such that the entire retrofit plan is completed within five years of the effective date of this Agreement. In new developments occurring after August 1, 2001, all taps shall be underground and flush mounted with the ground. Grantee shall include in its plan a mechanism for subscribers and property owners to request retrofitting of the tap(s) on their property at an earlier time than that required by the retrofit plan provided that the cost of the retrofit is paid by the subscriber or property owner. The plan shall provide for a reasonable time, not to exceed ninety (90) days for subscriber or property owner requests to be accommodated. However, Grantee may request a waiver of some or all of this obligation based on showing, supported by substantial evidence, including technical information and data, that this obligation, if enforced, will materially degrade the plant or service reliability. Such a waiver shall not be unreasonably denied by the City.

SECTION 4. SYSTEM REQUIREMENTS.

4.1 Upgrade.

(a) The Grantee shall upgrade the existing cable system to provide a total system capacity of at least 750 MHz. The Grantee's system will be two-way capable to the home and the Grantee will activate two-way services as determined by the Grantee. Grantee may activate portions of the upgraded plant and offer new or expanded services in phases, as Grantee may determine, provided that any particular level of service shall be available universally to all subscribers within thirty-six (36) months of the service first being offered to a subscriber. Nothing in this section shall be deemed to prevent Grantee from providing experimental or promotional services to some, but not all, residential subscribers. These experimental or promotional services may only be provided temporarily and in no case longer than twenty-four (24) months.

(b) The system upgrade shall be complete within thirty-six (36) months of the effective date of this Agreement. If Grantee completes the system upgrade within twenty-four (24) months of the effective date of this Agreement, Grantee's franchise term shall be extended as provided for in Section 1.4 of this Agreement.

(c) Within six (6) months of the effective date of this Agreement Grantee shall submit to Grantor a construction plan, specifying the nature and timing of construction phases.

(d) In addition to the matters set forth herein regarding the system upgrade and without limiting this Agreement or the requirements and obligations of the Transfer Ordinance, Grantee shall comply with the schedule for new programming channels as set forth in the transfer documents contained in Ordinance No. 3203-C.S.

(e) In addition to the system upgrade, Grantee shall make the system code compliance corrections in the manner and in the time required by the Transfer Ordinance.

(f) Completion shall be determined in the same manner as set forth in Section 1.4, above, regardless of whether completion occurs within twenty-four (24) months or thirty-six (36) months. In either case, Grantee shall pay Grantor's cost of inspection as set forth in Section 1.4.

4.2 Cable Service to Public Buildings.

(a) Throughout the term of the franchise, the Grantee shall provide, without charge for standard installation or monthly service, one outlet of expanded basic cable service to each public building, fire station, police department, and or accredited public or private school in the Franchise Area. A current list of these buildings is included as Exhibit D. This requirement shall apply to any similar newly constructed or newly occupied facility. Upon Grantor's request, Grantee shall provide additional outlets within each public building at Grantee's time and materials cost Grantor or the owner of the public building may provide for internal wiring for additional outlets and, to the extent the outlets are internally connected, no additional monthly service charge will be charged. Grantee acknowledges that all classrooms and public offices are currently connected to the cable system. These classrooms and public offices shall remain connected; in the future, classrooms and offices may be connected by the schools with the schools or the Grantee providing the internal wiring as set forth above. Cable Services provided under this section may not be exhibited in public areas and shall not be used by Grantor or any other party to sell services in, throughout or outside of such buildings.

(b) Expanded basic service shall consist of the Basic Service Tier and any analog Cable Programming Service Tier(s) offered by the Grantee. Expanded basic service shall be the service level immediately below the premium services level. Expanded basic service shall not include any specialized tiers, premium services or any combination thereof.

(c) Public Users of such outlets shall hold the Grantee harmless from and against any and all liability or claims arising out of their use of such outlets including but not limited to those arising from copyright liability.

4.3 Emergency Override.

(a) Grantee shall comply with all FCC rules and regulations relating to the national Emergency Alert System (EAS) or any successor emergency system. In the event of any conflict between the federal EAS and these requirements, the federally mandated EAS shall have priority.

(b) As part of the system upgrade, and operational no later than at the completion of the system upgrade, Grantee shall provide the capability to enable Grantor's public safety personnel and designated public officials to remotely activate the local component of the EAS so as to provide emergency information to subscribers residing in Grantor's jurisdiction. This capability shall include the ability to interrupt and override the audio signals of all cable channels using remote coded access activation devices. Grantor acknowledges that subscribers in adjoining jurisdictions commonly served by the cable system may receive any such emergency notifications.

(c) The equipment necessary to remotely activate and utilize the local component of the EAS shall be provided by Grantee at no expense to the Grantor.

(d) Except to the extent expressly prohibited by law, the Franchising Authority shall hold Grantee, its employees, officers and assigns harmless for any claims arising out of the use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

4.4 Institutional Network.

(a) The Grantee shall construct an Institutional Network (I-NET) simultaneously with the system upgrade. The Grantee's construction obligations of the Institutional Network shall be complete within thirty-six (36) months of the effective date of this Agreement. Grantee's construction obligations of the Institutional network shall be complete within twenty-four (24) months, if the system is completed within twenty-four (24) months. Inspection of the Institutional Network shall be conducted at the same time and in the same manner as that for the completion of the system upgrade under Section 1.4, and Grantor's cost of inspection shall be included in the costs billed to Grantee and paid by Grantee as provided under Section 1.4.

(b) The scope, design, and operation of the Institutional Network shall be consistent with Exhibit F of this document.

(c) Until the upgrade is completed, Grantee shall support and maintain the I-Net as required under the Transfer Ordinance and the prior franchise agreement.

4.5 Right of Inspection; Inspection Costs.

(a) Grantor, or its designated agent, shall have the right to inspect all construction, reconstruction or installation work performed, subject to the provisions of this Franchise and other pertinent provisions of law, and as part of Grantor's obligation to protect the public health, safety and welfare of its citizens. Except in emergencies, Grantor shall provide Grantee ten (10) days' written notice in advance of any inspections conducted under this provision, and shall provide Grantee the right to accompany Grantor on such inspection. Grantor shall, within ten (10) days of acceptance of any reports provided by its designated agent, provide Grantee with copies of any written reports prepared following such inspection.

(b) Grantee shall pay Grantor's reasonable and actual inspections costs for inspections conducted pursuant to this Section.

SECTION 5. SERVICES AND PROGRAMMING.

5.1 Programming List.

Grantee shall provide Grantor with a list of program services, rates and charges offered and shall update the list annually.

SECTION 6. PUBLIC, EDUCATION AND GOVERNMENT (PEG) ACCESS FACILITIES AND FUNDING

6.1 PEG Channels and Funding.

Grantee shall provide video channels for public, educational and governmental use and associated capital funding, in accordance with the Cable Communications Policy Act of 1984, as amended (47 U.S.C. § 531), and as provided for in Exhibits D and E.

6.2 Indemnification.

The Grantor agrees to indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the use of the Grantee's channel(s) for PEG by the Grantee or its designee.

SECTION 7. BOOKS AND RECORDS

7.1 Inspection of Books and Records.

The Grantee agrees that the Grantor, upon reasonable written notice (generally reasonable notice shall be thirty (30) days notice) to the Grantee, may review such of its books and records at the Grantee's business office(s), during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Grantor. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Grantor's representative(s) to view the books and records at the appropriate location. Except as otherwise provided in the Ordinance, this Agreement or by state or federal law, the Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. To the extent that Grantee claims that the information required by the Grantor is proprietary or confidential in nature, Grantor, to the extent permitted by law, agrees to treat any such information disclosed by the Grantee as confidential, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

SECTION 8. ENFORCEMENT AND TERMINATION OF FRANCHISE

8.1 Notice of Violation.

In the event that the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

8.2 The Grantee's Right to Cure or Respond.

The Grantee shall have thirty (30) days from receipt of the notice described in subsection 8.1:

(a) to respond to the Grantor, contesting the assertion of noncompliance;

(b) to cure such default; or

(c) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed. Grantee shall provide justification for the time frame for compliance and the Grantor shall review the time schedule for compliance. Such time schedule shall be reviewed by the Grantor and, either approved or modified and approved, based on the complexity of correction required, the availability of trained personnel to make the correction and the risk of injury and/or the degree of inconvenience to the public.

8.3 Public Hearing.

In the event that the Grantee fails to respond to the notice described in subsection 8.1 pursuant to the procedures set forth in subsection 8.2, or in the event that the alleged default is not remedied within thirty (30) days or the date approved by the Grantor pursuant to 8.2(C) above, and the Grantor continues its investigation into the default, then Grantor's City Manager shall determine whether, in the Manager's opinion, the Grantee is in default. If the City Manager determines that the Grantee is in default, the City Manager shall set this matter for public hearing before the City Council. The Grantor shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard. The public hearing may be continued from time to time, at the City Council's discretion. At the conclusion of the public hearing, the City Council shall determine whether the Grantee is in default and shall order such enforcement actions or other remedies as the Council determines are necessary and appropriate.

8.4 Enforcement.

Subject to applicable federal and state law, in the event the City Council, after the hearing set forth in subsection 8.3, determines that the Grantee is in default of any provision of the Franchise, the City Council may:

(a) Seek specific performance of any provision, which reasonably lends itself to such remedy;

(b) Commence an action at law for monetary damages or seek other legal or equitable relief;

(c) In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with subsection 8.5;

(d) Pursue any other remedies available under the Ordinance or under state or federal law; or

(e) Pursue any combination of remedies and enforcement the Council determines appropriate.

8.5 Revocation.

Should the Grantor seek to revoke the Franchise after following the procedures set forth in subsections 8.1-8.4 above, the Grantor shall give written notice to the Grantee of its intent, which notice may be included in any enforcement order made under Section 8.4, above. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to object in writing and to state its reasons for such objection. In the event the Grantor has not received a satisfactory response from the Grantee, it may schedule a public hearing before the City Council to determine whether to revoke or terminate the Franchise. The Grantor shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked.

The Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Grantor's rights under the Franchise in lieu of revocation of the Franchise or in addition to revocation. The remedies provided for in this Agreement and in the Ordinance are cumulative and are in addition to all other remedies available at law or equity provided, however, that Grantor may not collect both liquidated damages and actual damages for the identical violation.

8.6 Legal Challenge.

The Grantee may appeal the decision to revoke the franchise to an appropriate court. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Grantor. Grantee expressly agrees that any appeal or other action related to this Agreement and the Grantee's franchise shall be brought in

the courts of the State of California and the Federal District Court for the Eastern District of California, if appropriate, and that these courts shall have jurisdiction over the Grantee in any action arising under this Agreement, the Ordinance, or any enforcement or breach action related to this Agreement.

8.7 Force Majeure.

The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary; provided that the Grantee furnishes Grantor with documentary proof that every effort was made to notify the utility providers in a timely manner and monitor and pursue the utility providers timely performance of the necessary work or that every effort was made to obtain the necessary materials and/or labor in a diligent and timely manner.

8.8 Good Faith Error.

The parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Grantor and/or Subscribers provided that the Grantee demonstrates through prompt action, Grantee's good faith and Grantee's compliance with the terms of the Franchise.

SECTION 9. REGULATION.

9.1 Franchise Regulation.

The franchise renewed under this Agreement shall be subject to regulation by Grantor in accordance with Chapter 4 of the City's Municipal Code and this Agreement.

9.2 Rate Regulation.

If Grantor is permitted under federal and/or state law to regulate the rates charged by Grantee, Grantor may elect to so regulate under this Agreement. Grantor shall establish reasonable procedures consistent with applicable laws and regulations and follow those procedures before so regulating.

9.3 Customer Service Standards.

(a) **FCC Standards.** Grantor reserves the right to enforce the FCC customer service standards, as now codified at 47 C.F.R. § 76.309, or hereafter amended.

(b) **Reception Quality.**

(1) The FCC Rules and Regulations, including, without limitation, Part 76, Subpart K (Technical Standards), and any amendments or supplements thereto, will apply to the Grantee's operations to the extent permitted by applicable law.

(2) The headend of the cable system, satellite earth stations, and any hubs or nodes thereof must be equipped with an emergency power system in order to maintain continuous power in the event of a commercial power outage. The standby emergency power system shall be capable of providing emergency power for a minimum of three (3) hours to the hubs and nodes and a minimum of twenty-four (24) hours to the head end.

(3) The Cable System shall be designed, installed, and operated so as to comply with the following general signal quality and reliability requirements:

- (i) Continuous twenty-four (24) hour daily operation.
- (ii) Avoid causing interference with the reception of off-the-air signals by subscribers and non-subscribers, and harmful interference to FCC licensees operating within the scope of their license(s).
- (iii) Operate normally over a wide range of outdoor temperatures that historically occur within the Franchise Area.

9.4 Notices.

Notices transmitted by either party to this Agreement to the other party shall be addressed as follows:

Grantor: City Manager
City of Modesto
1010 10th Street
6th Floor
Modesto, California 95354

U.S. Postal Mail should be addressed to:
City Manager
City of Modesto
P.O. Box 642
Modesto, California 95353

Grantee: Franchise Director
AT&T Broadband
3443 Deer Park Drive
Stockton, California 95219

with a copy to:

Franchising Department
AT&T Broadband
188 Inverness Drive West, Suite 600
Englewood, CO 80112

Either party may designate by written notice a different address to which notices shall be sent.

9.5 Successors and Assigns.

All provisions of this Agreement shall apply to any lawful successors and assigns.

9.6 Severability.

If any provision of this Agreement or the application of such provision to any circumstance is declared unconstitutional or otherwise invalid by the lawful judgment

of any court of competent jurisdiction, the remainder of this Agreement or the application of the provision to other circumstances, shall not be affected thereby.

9.7 Choice of Law; Jurisdiction.

This Agreement shall be governed by and interpreted under the laws of the State of California. In the event of any conflict between federal law and state or local law, federal law shall control. Grantee expressly agrees that the courts of the State of California and Federal District Court for the Eastern District of California, if appropriate, shall have jurisdiction over the Grantee in any action arising under the Franchise Ordinance, Franchise Agreement and the Transfer Ordinance and expressly consents to service of process pursuant to California Code of Civil Procedure section 415.20(a) at any Modesto office of the Grantee as to any action arising under or purporting to arise under the Franchise documents referenced herein.

9.8 Titles for Convenience.

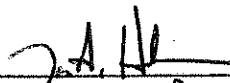
The titles of the sections of this Franchise are for convenience only.

9.9 Entire Agreement.

This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement the date and year first above written.


United Cable Television Corporation,
a Delaware Corporation

By: 
Its: Scott Vice-President

City of Modesto


CARMEN SABATINO, Mayor

ATTEST:

By: 
JEAN ZAHR, City Clerk
(SEAL)

APPROVED AS TO FORM:

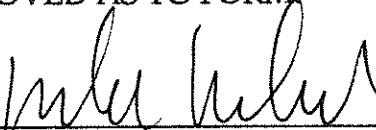
By: 
MICHAEL D. MILICH, City Attorney

EXHIBIT A

OWNERSHIP

United Cable Television Corporation

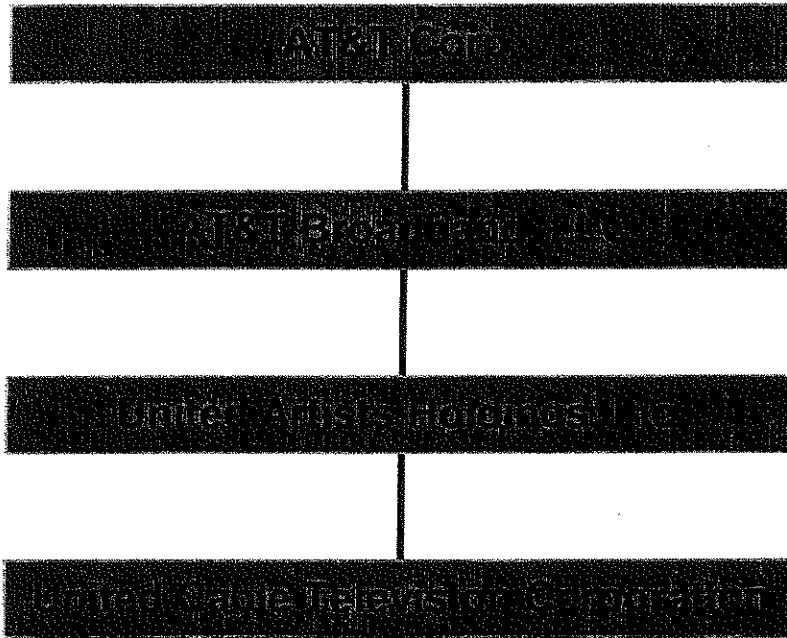


EXHIBIT B

CERTIFICATE OF ACCEPTANCE

United Cable Television Corporation, a Delaware corporation hereby, unconditionally, irrevocably and without reservation accepts the Cable Television Franchise Renewal granted by Ordinance No. 3223 dated July 5th, 2001 (the "Franchise Ordinance").

By the execution, delivery and filing of this Certificate, the undersigned further:

1. Covenants and promises to faithfully undertake and perform each and every promise, covenant, commitment and undertaking contained in the Franchise Ordinance;
2. Represents and warrants that this Certificate, and the Franchise Ordinance and the Franchise Renewal Agreement attached and incorporated in the Franchise Ordinance constitute a valid and binding obligation, as to each and every term thereof, enforceable against the undersigned in accordance with the terms thereof;
3. Represents and warrants that the execution and delivery of this Certificate has been duly authorized and approved by the Board of Directors of the undersigned;
4. Represents and warrants that the persons who have executed this Certificate are duly authorized to do so by all necessary action;
5. Represents and warrants that the execution and delivery of this Certificate does not violate any provision of the By-Laws and/or Articles of Incorporation of any of the named corporations;
6. Expressly declares and agrees that the courts of the State of California and Federal District Court for the Eastern District of California, if appropriate, shall have jurisdiction over the undersigned in any action arising under the Franchise Ordinance, and the Franchise Agreement and expressly consents to service of process pursuant to California Code of Civil Procedure Section 415.20(a) at any Modesto, Stockton or Sacramento, California office of the Franchisee as to any action arising under or purporting to arise under the Franchise documents referenced herein.

7. Expressly decrees and agrees that adequate and sufficient consideration has been provided for each and every promise, covenant, commitment and undertaking of the undersigned contained in the franchise agreement and Ordinance approving the transfer;

8. This Certificate shall be valid when and only when executed by all other parties listed above.

IN WITNESS WHEREOF, this Certificate is executed effective July 5, 2001
2001.

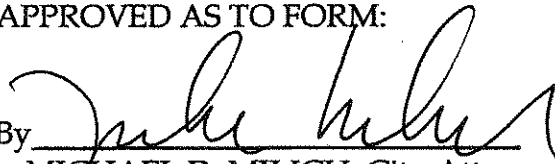
**United Cable Television Corporation, a
Delaware corporation.**

By: _____

Its: _____

[NOTE: ALL SIGNATURES MUST BE NOTARIZED]

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

CERTIFICATE OF CLERK

I hereby certify that the foregoing ACCEPTANCE OF FRANCHISE was
received by me at the hour of ____ o'clock p.m. on the ____ day of _____, 2001.

JEAN ZAHR, City Clerk

EXHIBIT C

PUBLIC BUILDINGS FOR CABLE WIRING AND SERVICES

CITY OF MODESTO CABLE SITES

SITE ADDRESSES	BUILDING		NOTES
Police Services			
600 10th St	Main Office		
3705 Oakdale Rd	Northeast Area Command		
2005 #600 Evergreen Ave	Northwest Area Command		
1550-A Yosemite Blvd	Southeast Area Command		
401#D Paradise Rd	Southwest Area Command		
1124 F St	Property & Evidence Building		
11TH & G STREETS	POLICE DEPT. EVIDENCE		
Fire Services			
1220 Fire Science Lane	Training Center		
600 11th Street	Fire Administration		
610 11 th Street	1		
629 2 nd Street	2		
637 El Vista Ave	3		
1505 Blue Gum Ave	4		
200 W Briggsmore Ave	5		
2700 Standiford Ave	6		
1800 Mable Ave	7		
737 Airport Wy	8		
4025 Fara Biundo Dr.	9		
148 Imperial Ave	10		
1010 10 th St.	Fire Prevention		
Carver & Pelandale	11		
Other Facilities			
501 N. JEFFERSON STREET	CORPORATION YARD		
115 ELM STREET	PORTABLE BUILDING		
720 COLDWELL AVENUE	Recreation Center		
416 DOWNEY AVENUE	Senior Opportunity Srvcs.		
9TH STREET & J STREET	Transportation Center		

1221 SUTTER AVE.	Sanitation Plant		
501 Neece Drive	John Thurman Field		
601 MARTIN LUTHER KING	King-Kennedy Memorial		
1000 L STREET	Modesto Centre Plaza		
211 BODEM STREET	Senior Citizens Center		
906 15 TH STREET	Mc Henry Mansion		
1402 I STREET	Mc Henry Museum		
1010 10 th St.	City Hall		
Stanislaus County Facilities			
2209 BLUE GUM AVE.	SCOE PACE ALTERNATE EDUCATION		
2215 BLUE GUM AVE.	JUVENILE HALL/PROBATION /M.H.- EVALUATION		
1100 KANSAS AVE.	M.H. COUNSELING		
1501 "F" ST.	M.H. COUNSELING		
800 SCENIC DR.	M.H. DEPARTMENT ADMIN.		
820 SCENIC DR.	HEALTH DEPARTMENT		
830 SCENIC DR.	HEALTH SERVICES AGENCY		
1014 SCENIC DR.	MEDI-CAL		
1016 SCENIC DR.	CENTRAL SERVICES		
3229 OAKDALE RD.	S.T.A.R.S.		
921 COUNTY CENTER III COURT	CENTRAL SERVICES WAREHOUSE UNIVERSITY/CORO NER		
3705 OAKDALE RD.	REGIONAL E911/EOC/CON.FIR E/NMPD		
1501 "I" ST.	COUNTY LIBRARY		
700 17 TH ST.	MEDICAL ARTS		
108 CAMPUS WAY	W.I.C.		
629 12 TH ST.	DEPT. EMPLOYMENT & TRAINING		

200 E. HACKETT RD.	PUBLIC SAFETY CENTER		
250 E. HACKETT RD.	SHERIFF OPERATIONS		
251 E. HACKETT RD.	COMMUNITY SERVICE AGENCY		
442 E. HACKETT RD.	KITCHEN/LAUNDRY		
3800 CORNUCOPIA DR.	ENVIRONMENTAL RESOURCES/ AG.COMM. - RAY SIMMON TRAINING CENTER		
1716 MORGAN RD.	PUBLIC WORKS-ENGINEERING		
900 "H" ST.	SAAG		
2501 MCHENRY AVE.	FAMILY PLANNING CLINIC		
2030 COFFEE RD.	COMMUNITY HEALTH SERVICES SUITE C4		
1012 "I" ST.	VCC		
2260 FLOYD AVE.	TRAFFIC COURT		
1012 11 TH ST.	LAW LIBRARY		
722 "I" ST.	M.H. SUNSHINE PLACE		
1006 "H" ST.	M.H. WELLNESS RECOVERY CENTER		
2727 3 RD ST.	CERES - ALTERNATE E.O.C.		
*1100 "H" ST.	SCOE		
801 11 TH ST.	CITY HALL		
*1021 "I" ST.	Clerk Recorder/ Elections/ Public Defender		

SCHOOL CABLE SITES

MJC			
435 College Avenue	Modesto Junior College		

2201 Blue Gum Avenue	Yosemite Community College District		
429 Tully Road	Modesto Junior College Champion Building		
1010 10 th Street	10th Street Place		
1207 I Street	Job Center Club		
1220 Reno Ave.	Center for Advanced Manufacturing Technology (Camp)		
	Modesto Schools		
Administrative Office			
426 Locust St.	District Office		
Reno Ave, Ste B	Technology Center		
Reno Ave, Ste A	School to Career		
1424 Woodland Ave.	Corporation Yard		
1200 N. Carpenter Rd.	Nutrition Services		
K-6 Schools			
915 Bowen Ave.	Beard		
909 Bret Harte Place	Bret Harte		
1135 Paradise Rd.	Burbank		
1181 Teresa Street	Garrison		
450 El Vista Ave.	El Vista		
515 Coldwell Ave.	Enslin		
1530 Mt. Vernon Drive	Everett		
1937 West Whitmore Ave	Fairview		
120 S. Emerald Ave.	Franklin		
1220 W. Orangeburg Ave.	Fremont		
1900 Kirchen Dr.	Kirchen		
2920 Middlebrook Pl	Lakewood		
515 Sutter Ave.	Marshall		
1413 Poust Rd.	Martone		
1215 Lucerne Ave.	John Muir		
500 Locust St.	Pearson		
1821 Robertson Rd.	Robertson Rd		
1120 Rose Ave.	Rose Ave.		
100 School Ave	Shackelford		
1325 Sonoma Ave.	Sonoma		
707 Herndon Rd.	Tuolumne		
201 Wilson Ave.	Wilson		
1602 Monterey	Wright		
7-8 Schools			

1725 Las Vegas St.	Hanshaw		
1800 Encina Ave.	La Loma		
707 Emerald	Mark Twain		
1330 College	Roosevelt		
High Schools			
1717 Sylvan Ave	Beyer		
1200 Rumble Rd	Davis		
1000 Coffee Rd.	Downey		
641 Norseman Dr	Johansen		
18 H St	Modesto High		
1440 Sunrise Ave.	Elliott		
	SYLVAN UNION SCHOOL DISTRICT		
605 SYLVAN AVENUE	SYLVAN DISTRICT OFFICE		
2024 VERA CRUZ DR.	COLEMAN BROWN ELEMENTARY		
1800 WISDOM WAY	ORCHARD ELEMENTARY SCHOOL (SYLVAN)		
819 RUMBLE WAY	SHERWOOD ELEMENTARY SCHOOL (SYLVAN)		
1037 FLOYD AVENUE	SOMERSET ELEMENTARY SCHOOL (SYLVAN)		
605 TOKAY AVENUE	STANDIFORD ELEMENTARY SCHOOL (SYLVAN)		
3900 NORTHVIEW DRIVE	STOCKARD COFFEE ELEMENTARY SCHOOL (SYLVAN)		
2908 COFFEE ROAD	SYLVAN ELEMENTARY SCHOOL (SYLVAN)		
2701 KODIAK DRIVE	ELIZABETH USTACH MIDDLE SCHOOL (SYLVAN)		
.00 WOODROW AVENUE	WOODROW		

	ELEMENTARY SCHOOL (SYLVAN)		
	SALIDA SCHOOL DISTRICT		
3920 BLUE BIRD DRIVE	MILDRED PERKINS SCHOOL (SALIDA)		
	STANISLAUS UNION SCHOOL DISTRICT		
3601 CARVER ROAD	STANISLAUS UNION DISTRICT OFFICE		
1825 CHEYENNE WAY	AGNES BAPTIST SCHOOL (STANISLAUS UNION)		
2818 CONANT AVENUE	CHRYSLER SCHOOL (STANISLAUS UNION)		
1809 SHELDON DRIVE	EISENHUT SCHOOL (STANISLAUS UNION)		
2410 JANNA AVENUE	MUNCY SCHOOL (STANISLAUS UNION)		
2243 WEST RUMBLE	PRESCOTT SENIOR ELEMENTARY SCHOOL (STANISLAUS UNION)		
	EMPIRE SCHOOL DISTRICT		
512 N. McCLURE ROAD	BERNARD HUGHES ELEMENTARY SCHOOL (EMPIRE)		
3420 E. ORANGEBURG AVENUE	CHRISTINE SIPHERD ELEMENTARY SCHOOL (EMPIRE)		

815 FRAZINE ROAD	ALICE STROUD ELEMENTARY SCHOOL (EMPIRE)		
	STANISLAUS COUNTY OFFICE OF EDUCATON SITES (BESIDES 1100 H STREET)		
917 OAKDALE ROAD	SCOE MEDIA SERVICES		
1324 CELESTE DRIVE	SCOE CHILD DEVELOPMENT PROGRAMS		
715 13 TH STREET	SCOE VALLEY BUSINESS HIGH SCHOOL		

EXHIBIT D

GRANTEE COMMITMENT TO PEG ACCESS CHANNELS, EQUIPMENT AND PROGRAM MANAGEMENT

1. Transition Period.

- (a) Grantor and Grantee agree to a twelve (12) month "transition period" to provide Grantor adequate time to establish a PEG facility and assume operations of PEG channels and to provide a smooth transition from the prior franchise agreement to the franchise renewal with no decrease in service during the transition period. Such transition period shall be defined as the first twelve (12) months following the effective date of this Agreement.
- (b) During the transition period, Grantee will continue operating its studio located at 1639 Princeton Avenue, Modesto and will continue programming the PEG channels and Local Origination channels. Grantee shall continue to provide studio staffing and programming as required in Section 3 and Exhibit A of Ordinance No. 2293.
- (c) In the event the Grantor vacates the studio prior to the end of the transition period and ceases reliance on Grantee's staff to program the PEG channels, Grantee will provide a grant in the amount of Nine Thousand One Hundred Sixty-Six Dollars (\$9,166.00) per month for each month remaining on the twelve (12) month term.
- (d) Upon termination of the transition period, but no later than twelve (12) months following the effective date of the franchise, Grantee will no longer be required to maintain, staff and operate the studio or manage the PEG channels.
- (e) Grantee shall provide to Grantor, upon termination of the transition period, title to any and all equipment, studio related office equipment and furniture, including, video production equipment, including sets, racks, batteries and power cords, used for Grantee's PEG and Local Origination that Grantee wishes to obtain for its own PEG use. Within thirty (30) days of the effective date of this Agreement, Grantee shall provide Grantor with an inventory of this equipment. This inventory shall be amended to reflect any new or replacement equipment acquired by Grantee during the transition period.

2. PEG Video Access Channels.

- (a) Upon the termination of the transition period and thereafter, through the term of this Agreement, Grantee shall provide three (3) downstream analog video channels available exclusively for Grantor's PEG use. Upon completion of the system upgrade as provided in Sections 1.4 and 4.1 of this Agreement, Grantee shall provide one additional analog channel to Grantor to be available exclusively for Grantor's PEG use. Grantee shall notify Grantor in writing of the availability of the fourth channel. If Grantor does not desire to program the fourth channel (or any other PEG channel), then, upon a request from Grantee and upon receiving written authorization from Grantor, Grantee may utilize the fallow channel capacity in its basic service tier. Grantor may recapture use of its channel(s) upon sixty (60) days written notice to Grantee.
- (b) After the system upgrade is completed, Grantee shall provide one additional analog video channel (for a total of 5 channels) upon sixty (60) days written notice from Grantor, at such time as Grantor or Grantor's designees' are providing the following level of programming: during ten (10) consecutive weeks, a pre-existing channel designated for the same purpose as the channel requested (Public Access, Educational Access, or Governmental Access) cablecasts at least forty-two (42) hours per week of original programming. For the purposes of calculating the forty-two (42) hours per week of programming, a program may be repeated only four (4) times after its original run during the ten (10) week period.
- (c) At such time as Grantee has the ability and equipment to compress and digitally insert programming into the digital stream for viewing in the Modesto franchise area, at City's request, the City may exchange up to four (4) digital channels at average digital compression for each analog PEG channel.
- (d) At such time as the entire cable system is digital, then, upon notice from Grantees, the analog PEG channels shall be exchanged for digital channels, at a ratio of one analog channel for four digital channels at average digital compression; provided that Grantee shall be responsible for the costs of equipment necessary to convert from analog to digital programming.

- (e) PEG channels shall be used in a manner consistent with Federal law.
- (f) Grantor agrees to indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the use of the Grantee's channels for PEG by Grantee or its designee(s).

3. PEG Training.

- (a) To facilitate Grantor's efforts to initiate a PEG operation and production facility, Grantee shall provide three hundred (300) hours of expertise in engineering and designing a PEG facility and/or operating PEG channels to Grantor or its designee, during the transition period.
- (b) To facilitate existing PEG users becoming self-sufficient in program production, Grantee shall provide two (2) training programs, open to the public, during the first six (6) months of the term of this Agreement. The scope and syllabus of the training shall be mutually agreed upon between the Grantee and the City's Cable Programming Committee.

4. Return Lines.

- (a) Upon ninety (90) days written notice, Grantee shall install a return line capable of sending two (2) PEG channels from Modesto Community College's West Campus located at 2201 Blue Gum Avenue, or at such other location designated by the City, provided that any alternate location shall not be further from 1010 10th Street than the West Campus location.
- (b) Grantee shall continue to provide and maintain the return lines located at:
 - (1) the City/County Building, 1010 10th Street, Modesto, CA 95354;
and
 - (2) the Stanislaus County Office of Education, 1100 H. Street, Modesto, CA 95354.

5. Grantee agrees not to pass-through to customers nor offset against franchise fees, any of the costs relating to the provisions of 1 through 4, above.

Exhibit E

I-Net and PEG Funding

1. Grantee shall provide a grant in the amount set forth below to Grantor for capital equipment associated with PEG and/or I-Net facilities beginning with the first billing cycle following approval of the grant by the City Council. The City Council shall determine the amount of the grant, if any, within the maximum amounts set forth below, and may, after a public meeting and sixty (60) days written notice to the Grantee, modify the amount, either lower or higher but within the maximum amounts set forth below, as the Council in its discretion determines.

2. Beginning upon the effective date of this franchise the maximum grant shall be twenty-five cents (\$.25) per month per subscriber. Thereafter, on the anniversary date of the effective date of the franchise, the maximum amount shall increase ten cents (\$.10) per subscriber per month each year for the first ten (10) years of the franchise to a maximum in year ten of seventy-five cents (\$.75). For years eleven (11) through fifteen (15) of the franchise, if the franchise is extended pursuant to Section 1.4 of the franchise agreement, the maximum increase per year shall be five cents (\$.05) per year. The maximum amount shall increase per year on a cumulative basis regardless of whether the City Council has determined to increase the grant provided by Grantee to the maximum amount in any given year.

3. Grantee shall remit such I-Net/PEG funding to Grantor coincident with the quarterly franchise fee payment.

4. If permitted by federal and state law, Grantor shall not oppose any "pass-through" of the I-Net/PEG grant, as long as said "pass-through" is done in a manner consistent with the provisions of federal and state law.

5. The use of the funds from the grant shall be determined by the City Council, from time to time, as the Council shall determine. The primary use of the grant shall be for I-Net facilities, and for educational and governmental broadcasting equipment and facilities costs, consistent with the requirements of federal and state law. The City Council may, but is not required to, provide grants and/or loans for capital equipment for public access from these funds.

Exhibit F

INSTITUTIONAL NETWORK (I-NET).

1. Construction.

(a) Grantor and Grantee agree that Grantee, as part of the Cable System upgrade required in Section D herein, will install two (2) or more strands of fiber optic cable between one or more central locations designated by the Grantor and the public buildings identified in Exhibit D.

(b) Within the ninety (90) days following Grantee's acceptance of the franchise, Grantor and I-NET users and Grantee shall meet as required to develop the final I-Net system technical configuration, including fiber strand counts, routes, entry points, and demarcation points. Grantor shall retain ultimate control over the final I-Net system technical configuration submitted to Grantee.

(c) Within thirty (30) days following submission to Grantee of Grantor's final I-Net system technical configuration, Grantee shall notify Grantor of Grantee's incremental cost of purchasing and installing the fiber optic cable on a time and materials basis for each leg or logical grouping of the I-NET. Grantor shall have ninety (90) days thereafter to accept the cost or to reduce the requested final I-Net system technical configuration and eliminate the costs involved in the reduction. Such a reduced I-Net system technical configuration shall then be provided by Grantor to Grantee and shall constitute Grantor's acceptance of the reduced design as submitted by it.

(d) Grantor and Grantee shall determine the construction areas for the purpose of invoicing and paying of costs. Construction areas shall be established so that the system installed can be tested and determined complete prior to payment for that phase of the construction.

(e) Grantor shall reimburse Grantee for its incremental costs of purchasing and installing the fiber optic cable on a time and materials basis. Upon receipt of an invoice for the incremental costs within a construction area indicating completion of construction in an area, Grantor shall pay Grantee thirty (30) days after the end of each quarter in which construction is completed and verified by Grantor.

(f) The Grantee shall terminate the I-Net connection at the point of entry of the I-Net site, which will be defined as the location of its existing cable drop. In the event the I-Net user wishes to move its point of entry, it may re-route the signal at its

own expense or ask the Grantee to move it subject to customary time and material charges.

(g) As used in this Section, incremental cost is the cost of the fiber and other network materials necessary to support the incremental fiber counts and any related construction costs that the Grantee would not have incurred in the absence of Grantor's decision to install fiber for Grantor's use.

(h) Grantee agrees to provide an I-Net plan consisting of cost quotes for each I-Net site listed in Attachment A for each of its upgrade phases prior to beginning construction on that phase. The Grantor may elect not to proceed with construction of specific sites at its discretion; however, failure to approve the I-Net plan within ninety (90) days of receipt will be deemed to be an election not to construct those sites.

(i) Grantor requires the construction of the I-Net to be complete thirty-six (36) months or twenty-four (24) months after the effective date of the franchise, consistent with the upgrade schedule contained in Section 1.4.

2. Ownership, Maintenance and Repair.

(a) The Grantee shall own, maintain and repair all components of the network on its side of the demarcation (entry) point and as exist in the Public Right-of-Way.

(b) Grantee shall treat any failure of the I-Net components for which Grantee is responsible as if it were a failure of Grantee's cable system. Grantee shall respond in a timely manner to remedy any such failures and shall advise Grantor as soon as possible that a network failure has been identified and is being repaired. Grantee shall make network repairs within six (6) hours of notice from Grantor or discovery of the need for repair by Grantee, whichever occurs first, unless the failure is such that it is impossible or infeasible to make the repair within six (6) hours. Upon the simultaneous or co-located failure of the I-Net and the cable system, Grantee shall restore the I-Net to service at the same time as it restores the cable system.

(c) Grantor, or its I-Net users, shall own and maintain all equipment used to manage, control and operate the network on its side of the demarcation (entry) points at each I-Net site and at the I-Net central location.

(d) Grantor and its public and quasi-public designees, shall have the exclusive use of the network, at no lease cost during the term of the franchise agreement.

(e) Grantor agrees to waive or pay all permit fees for such work to the extent that such permit fees relate only to the fiber installed for I-Net purposes.

3. Return Lines.

(a) In addition to the I-Net, Grantee is required to construct and maintain, at Grantee's cost, the return lines set forth on Exhibit D (PEG)

4. Uses.

(a) Grantor and Grantee agree that any use of the I-Net by its users to generate revenue, other than cost sharing arrangements between the public agency I-Net users to generate the revenue needed to install, operate and maintain the fiber and related facilities and use of the cable system by Grantor, or to serve non-public entities, shall occur only with the prior written consent of Grantee.

(b) I-Net use must be consistent with federal and state law.

5. Limitations On Warranties and Liability.

(a) In no event will either party be liable to the other party for any indirect, special, incidental, punitive or consequential damages, whether or not foreseeable, including but not limited to, loss of revenue, loss of customers or clients, loss of goodwill, or loss of profits arising out of or in relation to this agreement or the performance or nonperformance of any obligation herein, whether arising out of contract or tort; provided that the foregoing shall not limit a party's obligation under Section 2.4 to indemnify, defend and hold the other party harmless against amounts payable to third parties.

(b) Grantee disclaims all warranties, whether express, implied or statutory, including without limitation, any implied warranties of merchantability or fitness for a particular purpose and non-infringement of third party rights. Except as specifically provided herein, and subject to the limitations set forth in this section, Grantee specifically disclaims any responsibility for any damages suffered by customer or any third party, except for those caused by Grantee's gross negligence or willful misconduct.

(c) Grantee shall not be liable for any act or omission of any other company or companies furnishing a portion of the Services, or for damages associated with services, facilities, or equipment which it does not furnish, including, but not limited to,

damages which result from the operation of the I-Net users' system, equipment or facilities.

(d) Neither the Grantor nor the I-Net users or their agents or independent contractors shall offer to third parties warranties or representations for the Services which would obligate or otherwise bind the Grantee.

6. Indemnification.

(a) Each Party ("Indemnifying Party") will indemnify and hold harmless the other Party ("Indemnified Party"), its affiliates, officers, directors, employees, stockholders, partners, independent contractors and agents from and against any and all joint or several costs, damages, losses, liabilities, expenses, judgments, fines, settlements and any other amount of any nature, including reasonable fees and disbursements of attorneys, accountants, and experts (collectively, "Damages"), arising from any and all claims, demands, actions, suits, or proceedings whether civil, criminal, administrative, or investigative (collectively, "Claims") relating to:

- (1) The conduct or management of Indemnifying Party's business with regard to the subject matter of this Agreement, except to the extent such damages are caused or contributed to by the gross negligence or willful act or omission of the Indemnified Party;
- (2) Any breach by Indemnifying Party of any obligation, warranty, or covenant under this Agreement;
- (3) Any Claim of any third party resulting from the negligence or willful act or omission of Indemnifying Party; and
- (4) Any violation of this Agreement by the Indemnifying Party or any violation of any law, rule, regulation, or order of any governmental authority having jurisdiction over any aspect hereof, or in violation of any patent, right, license, agreement, or certificate relating to the subject matter hereof.

(b) The Indemnifying Party agrees to defend the Indemnified Party for any loss, injury, liability, claim or demand ("Actions") that is the subject of this Section. The Indemnified Party agrees to notify the Indemnifying Party promptly, in writing, of any Actions, threatened or actual, and to cooperate in every reasonable way to facilitate the defense or settlement of such Actions. The Indemnifying Party shall assume the defense of any Action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party may employ its own counsel in any such case, and shall pay

such counsel's fees and expenses. The Indemnifying Party shall have the right to settle any claim for which indemnification is available; provided, however, that to the extent that such settlement requires the Indemnified Party to take or refrain from taking any action or purports to obligate the Indemnified Party, then the Indemnifying Party shall not settle such claim without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed.

7. Failure to Maintain.

Failure of Grantee to maintain that portion of the I-NET for which it is responsible at the same level of availability as its subscriber network, and after having received written notice from Grantor and a reasonable period thereafter to cure, shall constitute a breach of this Franchise and shall subject Grantee to the same penalties, fines and remedies for any breach of the franchise as set forth in this Agreement and in the Ordinance. Grantee's failure thereafter to cure, operate, and maintain its portion of the I-Net shall constitute a material breach of this Franchise subjecting Grantee to all sanctions available hereunder, including termination of this Franchise.

Attachment A
I-Net Sites

CITY OF MODESTO INET SITES

SITE ADDRESSES	BUILDING	DOES FIBER EXIST?	NOTES
Police Services			
600 10th St	Main Office	N	
3705 Oakdale Rd	Northeast Area Command	N	This is also the EOC
2005 #600 Evergreen Ave	Northwest Area Command	N	
1550-A Yosemite Blvd	Southeast Area Command	N	
401#D Paradise Rd	Southwest Area Command	N	
3401 Dale Rd	Vintage Faire Mall Office	N	
1124 F St	Property & Evidence Building	N	
11TH & G STREETS	POLICE DEPT. EVIDENCE	N	
Fire Services			
1220 Fire Science Lane	Training Center	N	
600 11th Street	Fire Administration	Y	
610 11 th Street	1	Y	
629 2 nd Street	2	N	
637 El Vista Ave	3	N	
1505 Blue Gum Ave	4	N	
200 W Briggsmore Ave	5	N	
2700 Standiford Ave	6	N	
1800 Mable Ave	7	N	
737 Airport Wy	8	N	
4025 Fara Biundo Dr.	9	N	
148 Imperial Ave	10	N	
1010 10 th St.	Fire Prevention	Y	
Carver & Pelandale	11	N	Proposed
Sutter & Chicago	2a	N	Proposed
Other Facilities			
410 Needham (Needham and Sycamore)	Graceada Park Mancini Bowl	N	Proposed

501 N. JEFFERSON STREET	CORPORATION YARD	Y	
115 ELM STREET	PORTABLE BUILDING	Y	
720 COLDWELL AVENUE	Recreation Center	Y	
416 DOWNEY AVENUE	Senior Opportunity Srvcs.	N	
9TH STREET & J STREET	Transportation Center	N	KIOSK
617 AIRPORT WAY	Airport Terminal	N	
700 TIOGA DRIVE	Airport General Aviation	N	
1221 SUTTER AVE.	Sanitation Plant	Y	
7007 JENNINGS ROAD	Secondary Treatment Plant	N	Located in County
601 MARTIN LUTHER KING	King-Kennedy Memorial	Y	
1000 L STREET	Modesto Centre Plaza	Y	
615 SIERRA DRIVE	Maddux Youth Center	N	
800 E. MORRIS STREET	Community Services Center	N	
211 BODEM STREET	Senior Citizens Center	N	
906 15 TH STREET	Mc Henry Mansion	N	
1402 I STREET	Mc Henry Museum	N	
1021 S. SANTA CRUZ AVE.	American Legion Hall	N	
1700 HELD DRIVE	Amtrak Station	N	KIOSK
Vintage Faire Mall	City Hall At The Mall	N	
1010 10 th St.	City Hall	N	INET Fiber HUB.
400 ENSLEN AVENUE	Boy Scout Clubhouse	N	
Hatch & Morgan	Intersection of Hatch & Morgan	N	Allows access to secondary EOC via ATMS.

SCHOOLS INET SITES

MJC			
435 College Avenue	Modesto Junior College		
2201 Blue Gum Avenue	Yosemite Community College District		
429 Tully Road	Modesto Junior College Champion Building		
1010 10 th Street	10th Street Place		Anticipated occupancy - Fall2001
1207 I Street	Job Center Club		
1220 Reno Ave.	Center for Advanced		

	Manufacturing Technology (Camp)		
Modesto Schools			
Administrative Office			
426 Locust St.	District Office	N	
Reno Ave, Ste B	Technology Center	N	
Reno Ave, Ste A	School to Career	N	
1424 Woodland Ave.	Corporation Yard	N	
1200 N. Carpenter Rd.	Nutrition Services	N	
K-6 Schools			
915 Bowen Ave.	Beard	N	
909 Bret Harte Place	Bret Harte	N	
1135 Paradise Rd.	Burbank	N	
450 El Vista Ave.	El Vista	N	
515 Coldwell Ave.	Enslin	N	
1530 Mt. Vernon Drive	Everett	N	
1937 West Whitmore Ave	Fairview	N	
120 S. Emerald Ave.	Franklin	N	
1220 W. Orangeburg Ave.	Fremont	N	
1900 Kirchen Dr.	Kirchen	N	
2920 Middlebrook Pl	Lakewood	N	
515 Sutter Ave.	Marshall	N	
1811 Teresa Street	Garrison	N	
1413 Poust Rd.	Martone	N	
1215 Lucerne Ave.	John Muir	N	
500 Locust St.	Pearson	N	
1821 Robertson Rd.	Robertson Rd	N	
1120 Rose Ave.	Rose Ave.	N	
100 School Ave	Shackelford	N	
1325 Sonoma Ave.	Sonoma	N	
707 Herndon Rd.	Tuolumne	N	Not Connected
201 Wilson Ave.	Wilson	N	
1602 Monterey	Wright	N	
7-8 Schools			
1725 Las Vegas St.	Hanshaw	N	
1800 Encina Ave.	La Loma	N	
707 Emerald	Mark Twain	N	
1330 College	Roosevelt	N	
High Schools			
1717 Sylvan Ave	Beyer	N	
1200 Rumble Rd	Davis	N	
1000 Coffee Rd.	Downey	N	

641 Norseman Dr	Johansen	N	
18 H St	Modesto High	N	
1440 Sunrise Ave.	Elliott	N	
Just east of the corner of Roselle & Sylvan. No other information is available	High School site	N	Proposed
Salida Area. East of the 99 Freeway- No other information is available.	High School site	N	Proposed
CITY TRAFFIC SIGNAL SITES			
Claribel Rd	Claus Road Corridor		
Plainview Rd			
Claratina (extended)			
Rice Rd			
Sylvan			
Milnes			
Sharon Ave			
Briggsmore Ave/Parker Rd			
Orangeburg			
Cedar Creek Dr			
Scenic Dr/Copper Creek			
Garst			
Creekwood Dr			
Yosemite Blvd/Garner			
½ mile S of Yosemite			
Finch Rd			
Claribel Rd	Roselle Ave/Lakewood Ave Corridor		
Plainview Rd			
Claratina (extended)			
Mable Ave			
Sylvan Ave			
½ mile S of Sylvan			
Floyd (extended)			
Belharbour Dr			
Briggsmore			
Laramie Dr			
Scenic Dr			

Claribel Rd	Oakdale Rd Corridor		
½ mile S. of Claribel			
Claratina (extended)			
Mable Ave			
Sylvan Ave			
Claribel Rd	Coffee Rd Corridor		
½ mile S of Claribel			
Claratina Ave			
Claribel Rd	McHenry Ave Corridor		
Bangs Ave			
Claratina Ave			
Union Ave			
Standiford Ave/Sylvan Ave			
Woodrow Ave/Robin Hood			
Rumble Rd			
Leveland Ln			
Floyd Ave			
Bowen Ave			
Tokay Ave			
Briggsmore Ave			
Granger Ave			
Orangeburg Ave			
Roseburg Ave			
Griswold Ave/Hintze Ave			
Morris Ave			
Needham St			
Downey Ave/Needham St	J St Corridor		
14 th St			
12 th St			
11 th St			
10 th St			
9 th St			
Pelandale Ave	Prescott Rd Corridor		
Snyder Ave			
Cheyenne Ave			
Standiford Ave			

Pelandale Ave/Salida Blvd	Dakota Ave Corridor		
Murphy Rd			
Beckwith Ave			
North Ave			
Shoemake Ave			
Blue Gum Ave			
Woodland Ave			
Kansas Ave			
Maze Blvd			
Kiernan Ave	Sisk Rd Corridor		
Bangs Ave			
Pelandale Ave			
Target Center Dr			
Vintage Dr			
Standiford Ave/Beckwith Rd			
Rumble Rd			
Brenner Wy			
Earl St			
Conant Ave			
Plaza Pkwy			
Briggsmore Ave			
Briggsmore Ave/Carpenter Rd	Carpenter Rd Corridor		
Blue Gum Ave			
Woodland Ave			
Kansas Ave			
Maze Blvd			
California Ave			
Houser Ln			
Chicago Ave			
Paradise Rd			
Hatch Rd			
½ mile S of Hatch			
Whitmore Ave			
Scenic Dr/Oakdale Rd	El Vista Ave/Mitchell Rd Corridor		
Encina Ave			
Miller Ave			
Yosemite Blvd/Mitchell			
Tenaya Ave/Airport Way			
½ mile S of Tenaya			

Riverside Dr			
Finch Rd			
½ mile S of Finch			
River Rd			
Hatch Rd			
Fowler Rd			
Whitmore Ave			
Roeding Rd			
Service Rd			
9th St	Needham St Corridor		
10th St/College Ave			
11th St			
12th St/Virginia Ave			
L St			
Sycamore Ave			
K St			
McHenry Ave/J St			
Kansas Ave	9th St Corridor		
P St			
L St			
K St			
J St			
I St			
H St			
14th St	H St/Paradise Rd Corridor		
12th St			
11th St			
10th St			
9th St			
7th St			
6th St			
5th St			
1st St			
Tuolumne Blvd /MLK Dr/Sutter Ave			
Mayette Ave			
Harris Ave			
Pine Tree Ln			

Carpenter Rd			
Sisk Rd	Kiernan Ave/Claribel Rd Corridor		
Stoddard Rd			
Quinturn Ln			
Dale Rd			
½ mile E of Dale			
Morrow Rd			
½ mile E of Morrow			
Prescott Rd			
Carver Rd			
Tully Rd			
Tunson Rd			
Stratos Wy			
McHenry Ave/Claribel			
½ mile E of McHenry			
Coffee Rd			
½ mile E of Coffee			
Oakdale Rd			
½ mile E of Oakdale			
Roselle Ave			
Litt Rd (extended)			
Claus Rd			
Salida Blvd	Pelandale Ave/Claratina Ave Corridor		
99 NB/SB On/Off Ramps			
Sisk Rd			
Northgate Village Center			
Chapman			
Blue Bird Dr			
Dale Rd			
Eastport Dr			
Prescott Rd			
Carver Rd			
Tully Rd			
½ mile E of Tully			
McHenry Ave/Claratina			
½ mile E of McHenry			
Coffee Rd			
¼ mile E of Beyer Park Dr			

Oakdale Rd			
½ mile E of Oakdale Rd			
Roselle Ave			
½ mile E of Roselle			
Claus Rd			
Oakdale Rd	Sylvan Ave Corridor		
½ mile E of Oakdale Rd			
Roselle Ave			
Litt Rd			
Claus Rd			
Oakdale Rd	Briggsmore Ave Corridor		
½ mile E of Oakdale Rd			
Roselle Ave/Lakewood			
½ mile E of Roselle			
Claus Rd			
Playground Dr			
El Vista Ave/Oakdale Rd	Scenic Dr Corridor		
Sonoma Ave			
Lakewood Ave			
Lillian Dr			
Claus Rd			
Dakota Ave	Blue Gum Ave Corridor		
½ mile E of Dakota			
Morse Rd			
Rosemore Ave			
Carpenter Rd			
Dakota Ave	Kansas Ave Corridor		
Morse Rd			
Rosemore Ave			
Carpenter Rd			
14 th & D St	Yosemite Blvd Corridor		
Santa Rosa Ave			
Santa Cruz Ave			
La Loma			
Daly Ave/San Juan Dr			

El Vista Ave/Mitchell Rd			
N & S Riverside Dr			
Lincoln Ave			
North McClure Rd			
Creekwood Dr			
Claus Rd			
Carpenter Rd	Hatch Rd		
½ mi E of Carpenter			
Ustick Rd			
Dallas St			
Crows Landing Rd			
Jim Way			
99 NB/SB On/Off Ramps			
Herndon Rd			
Richland Ave			
Central Ave			
Moffett Dr			
Mitchell Rd			
Stanislaus County Facilities			
2209 BLUE GUM AVE.	SCOE PACE ALTERNATE EDUCATION	NO	
2215 BLUE GUM AVE.	JUVENILE HALL/PROBATION/ M.H.-EVALUATION	NO	
1100 KANSAS AVE.	M.H. COUNSELING	NO	
1501 "F" ST.	M.H. COUNSELING	NO	
800 SCENIC DR.	M.H. DEPARTMENT ADMIN.	NO	
820 SCENIC DR.	HEALTH DEPARTMENT	NO	
830 SCENIC DR.	HEALTH SERVICES AGENCY	NO	
1014 SCENIC DR.	MEDI-CAL	NO	
1016 SCENIC DR.	CENTRAL SERVICES	NO	
3229 OAKDALE RD.	S.T.A.R.S.	NO	
921 COUNTY CENTER III URT	CENTRAL SERVICES WAREHOUSE UNIVERSITY/CORO	NO	

	NER		
3705 OAKDALE RD.	REGIONAL E911/EOC/CON.FIRE /NMPD	NO	
1501 "I" ST.	COUNTY LIBRARY	NO	
700 17 TH ST.	MEDICAL ARTS	NO	
108 CAMPUS WAY	W.I.C.	NO	
629 12 TH ST.	DEPT. EMPLOYMENT & TRAINING	NO	
200 E. HACKETT RD.	PUBLIC SAFETY CENTER	NO	
250 E. HACKETT RD.	SHERIFF OPERATIONS	NO	
251 E. HACKETT RD.	COMMUNITY SERVICE AGENCY	NO	
442 E. HACKETT RD.	KITCHEN/LAUNDR Y	NO	
3800 CORNUCOPIA DR.	ENVIRONMENTAL RESOURCES/ AG.CO MM. - RAY SIMMON TRAINING CENTER	NO	
1716 MORGAN RD.	PUBLIC WORKS- ENGINEERING	NO	
900 "H" ST.	SAAG	NO	
2501 MCHENRY AVE.	FAMILY PLANNING CLINIC	NO	
2030 COFFEE RD.	COMMUNITY HEALTH SERVICES SUITE C4	NO	
1012 "I" ST.	VCC	NO	
2260 FLOYD AVE.	TRAFFIC COURT	NO	
1012 11 TH ST.	LAW LIBRARY	NO	
722 "I" ST.	M.H. SUNSHINE PLACE	NO	
1006 "H" ST.	M.H. WELLNESS RECOVERY CENTER	NO	
2727 3 RD ST.	CERES - ALTERNATE E.O.C.	NO	
*1100 "H" ST.	SCOE	YES	
11 TH ST.	CITY HALL	NO	

*1021 "I" ST.	CLERK RECORDER/ELECTI ONS/PUB. DEFENDER	YES	
ADDITIONS FROM SCHOOL DISTRICTS			
	SYLVAN UNION SCHOOL DISTRICT		
SHARON & FINE	ELEMENTARY SCHOOL (SYLVAN)		PROPOSED
KODIAK DR. & FINE	ELEMENTARY SCHOOL (SYLVAN)		PROPOSED
VILLAGE ONE AREA	MIDDLE SCHOOL (SYLVAN)		PROPOSED
605 SYLVAN AVENUE	SYLVAN DISTRICT OFFICE		
2024 VERA CRUZ DR.	COLEMAN BROWN ELEMENTARY		
1000 WISDOM WAY	ORCHARD ELEMENTARY SCHOOL (SYLVAN)		
819 RUMBLE WAY	SHERWOOD ELEMENTARY SCHOOL (SYLVAN)		
1037 FLOYD AVENUE	SOMERSET ELEMENTARY SCHOOL (SYLVAN)		
605 TOKAY AVENUE	STANDIFORD ELEMENTARY SCHOOL (SYLVAN)		
3900 NORTHVIEW DRIVE	STOCKARD COFFEE ELEMENTARY SCHOOL (SYLVAN)		
2908 COFFEE ROAD	SYLVAN ELEMENTARY SCHOOL (SYLVAN)		
2701 KODIAK DRIVE	ELIZABETH USTACH MIDDLE SCHOOL (SYLVAN)		
WOODROW AVENUE	WOODROW		

	ELEMENTARY SCHOOL (SYLVAN)		
	SALIDA SCHOOL DISTRICT		
3920 BLUE BIRD DRIVE	MILDRED PERKINS SCHOOL (SALIDA)		
	STANISLAUS UNION SCHOOL DISTRICT		
3601 CARVER ROAD	STANISLAUS UNION DISTRICT OFFICE		
1825 CHEYENNE WAY	AGNES BAPTIST SCHOOL (STANISLAUS UNION)		
2818 CONANT AVENUE	CHRYSLER SCHOOL (STANISLAUS UNION)		
1809 SHELDON DRIVE	EISENHUT SCHOOL (STANISLAUS UNION)		
2410 JANNA AVENUE	MUNCY SCHOOL (STANISLAUS UNION)		
2243 WEST RUMBLE	PRESCOTT SENIOR ELEMENTARY SCHOOL (STANISLAUS UNION)		
2338 SNYDER AVENUE	ELEMENTARY SCHOOL (STANISLAUS UNION)		PROPOSED
	EMPIRE SCHOOL DISTRICT		
512 N. McCLURE ROAD	BERNARD HUGHES ELEMENTARY SCHOOL (EMPIRE)		
3420 E. ORANGEBURG	CHRISTINE SIPHERD		

AVENUE	ELEMENTARY SCHOOL (EMPIRE)		
815 FRAZINE ROAD	ALICE STROUD ELEMENTARY SCHOOL (EMPIRE)		
	STANISLAUS COUNTY OFFICE OF EDUCATON SITES (BESIDES 1100 H STREET)		
917 OAKDALE ROAD	SCOE MEDIA SERVICES		
1324 CELESTE DRIVE	SCOE CHILD DEVELOPMENT PROGRAMS		
715 13 TH STREET	SCOE VALLEY BUSINESS HIGH SCHOOL		

Ord. No. 3223-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 5th day of June, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

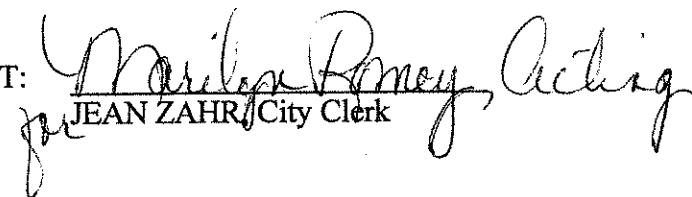
AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: July 5, 2001

ORDINANCE NO. 3224-C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 1892-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION MAP 8-4-9 OF THE ZONING MAP OF THE CITY OF MODESTO, PREZONING CERTAIN PROPERTY LOCATED THEREON. (GERRIT VANDER POL)", (MICHAEL E. BECKWITH)

SECTION 1. AMENDMENT OF ORDINANCE NO. 1892-C.S. Section 2 of Ordinance No. 1892-C.S., is hereby further amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(247) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. M-1 Zone uses which are agriculturally related.
2. All commercial and industrial uses as are allowed in the M-1 Zone.
3. Off-street parking as shown on the approved plans."

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

Clerk
(21)

ORDINANCE NO. 3224 -C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 1892-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION MAP 8-4-9 OF THE ZONING MAP OF THE CITY OF MODESTO, PREZONING CERTAIN PROPERTY LOCATED THEREON. (GERRIT VANDER POL)", (PHILIP D. OVERHOLTZER)

SECTION 1. AMENDMENT OF ORDINANCE NO. 1892-C.S. Section 2 of Ordinance No. 1892-C.S., is hereby further amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(247) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. M-1 Zone uses which are agriculturally related.
2. All commercial and industrial uses as are allowed in the M-1 Zone.
3. Off-street parking as shown on the approved plans."

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of May, 2001, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:
By *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

Ord. No. 3224-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 5th day of June, 2001, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: July 6, 2001

P-D ORDINANCE

1	Applicant
1	CDD - Becky Jenkins
1	Attorney
1	Attorney - Shanna Willis
1	E&T - Engineering Services
5	Posting
1	E&T - Traffic
1	Code Service
1	County Assessor
1	E&T - Construction Administration
1	CDD - Building Inspection
<u>1</u>	Recreation & Neighborhoods - NPU
16	

Clerk

ORDINANCE NO. 3225 -C.S.

AN ORDINANCE AMENDING SECTION 3-2.1401.1 OF ARTICLE 14 OF CHAPTER 2 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE RELATING TO SPEED LIMITS.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Section 3-2.1401.1 of Article 14 of

Chapter 2 of Title 3 of the Modesto Municipal Code is hereby amended to read as follows:

3-2.1401.1. CHANGE IN SPEED LIMITS SET BY STATE LAW: FOR PURPOSE OF ENFORCEMENT USING RADAR OR OTHER ELECTRONIC DEVICE.

By authority of, and upon the basis of engineering and traffic surveys conducted pursuant to Vehicle Code and the Traffic Manual of the Department of Transportation, it is determined that the prima facie speed limits which follow would facilitate the orderly movement of vehicular traffic and would be reasonable and safe.

<u>NAME OF STREET OR PORTION AFFECTED</u>	<u>DECLARED PRIMA FACIE SPEED LIMIT</u>	<u>DATE SURVEYED</u>
BANGS AVENUE, between Dale Road and McHenry Avenue	45 miles per hour	September 4, 2000
BLUE GUM AVENUE, between Morse Road and Carpenter Road	40 miles per hour	September 4, 2000
BRIGGSMORE AVENUE, between Prescott Road and Tully Road	45 miles per hour	January 13, 1999
BRIGGSMORE AVENUE, eastbound/ westbound between Tully Road and McHenry Avenue	45 miles per hour	September 4, 2000
BRIGGSMORE AVENUE, westbound between Coffee Road and McHenry Avenue	45 miles per hour	December 21, 1998

BRIGGSMORE AVENUE, eastbound between McHenry Avenue and 1,000 feet west of Coffee Road	45 miles per hour	December 21, 1998
BRIGGSMORE AVENUE, eastbound between a point 1,000 feet west of Coffee Road and Coffee Road	45 miles per hour	July 28, 1993
BRIGGSMORE AVENUE, between Oakdale Road and Claus Road	50 miles her hour	May 14, 1998
BRIGGSMORE AVENUE, between Coffee Road and Oakdale Road	50 miles per hour	January 13, 1999
BRIGHTON AVENUE, between Coffee Road and Locke Road	35 miles per hour	June 18, 1997
CALIFORNIA AVENUE, between Carpenter Road and North Martin Luther King Drive	35 miles per hour	June 15, 1999
CARPENTER ROAD, between Blue Gum Avenue and Woodland Avenue	40 miles per hour	May 28, 1998
CARPENTER ROAD, between Woodland Avenue and Maze Boulevard	40 miles per hour	September 4, 2000
CARPENTER ROAD, between Maze Boulevard and Paradise Road	50 miles per hour	June 15, 1999
CARVER ROAD, between M.I.D. Lateral #6 and Brixton Lane	40 miles per hour	June 18, 1991
CARVER ROAD, between Brixton Lane and Briggsmore Avenue	35 miles per hour	May 8, 1997
CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	35 miles per hour	May 8, 1997

CARVER ROAD, between Orangeburg Avenue and 9th Street	35 miles per hour	May 8, 1997
CARVER ROAD, between Brixton Avenue and Pelandale Avenue	35 miles per hour	September 4, 2000
CARVER ROAD, between Pelandale Avenue and Bangs Avenue	40 miles per hour	September 4, 2000
CELESTE DRIVE, between Coffee Road and Oakdale Road	30 miles per hour	June 18, 1997
CLAUS ROAD, between Sylvan Avenue and Brigsmore Avenue	50 miles per hour	February 29, 1996
CLAUS ROAD, between Brigsmore Avenue and Scenic Drive	45 miles per hour	May 8, 1997
CLAUS ROAD, between Scenic Drive and Yosemite Boulevard	50 miles per hour	September 4, 2000
COFFEE ROAD, between Claratina Avenue and Sylvan Avenue	40 miles per hour	April 4, 2000
COFFEE ROAD, between Sylvan Avenue and Floyd Avenue	40 miles per hour	May 28, 1998
COFFEE ROAD, between Floyd Avenue and Brigsmore Avenue	40 miles per hour	January 11, 1999
COFFEE ROAD, between Brigsmore Avenue and Scenic Drive	40 miles per hour	May 14, 1998
COLLEGE AVENUE, between Rumble Road and Bowen Avenue	30 miles per hour	May 14, 1998
COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue	35 miles per hour	June 16, 1998
CREEKWOOD DRIVE, between Claus Road and Yosemite Boulevard	35 miles per hour	March 17, 1999

CROWS LANDING ROAD, between Blankenburg Avenue to School Avenue	40 miles per hour	February 29, 1996
CROWS LANDING ROAD, between Hatch Road and Whitmore Avenue	35 miles per hour	April 29, 1997
CROWS LANDING ROAD, between 7th Street and Hatch Road	35 miles per hour	August 24, 1999
DALE ROAD, between Pelandale Avenue and Snyder Avenue	40 miles per hour	September 4, 2000
DALE ROAD, between Snyder Avenue and Veneman Avenue	40 miles per hour	May 8, 1997
DALE ROAD, between Veneman Avenue and Standiford Avenue	35 miles per hour	May 8, 1997
EASTRIDGE DRIVE, between Orangeburg Avenue and Scenic Drive	30 miles per hour	August 17, 1994
EL VISTA AVENUE, between Scenic Drive and Yosemite Boulevard	40 miles per hour	December 22, 1998
EMERALD AVENUE, between Maze Boulevard and California Avenue	30 miles per hour	June 17, 1997
EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road	30 miles per hour	June 19, 1997
FLOYD AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	January 11, 1999
FLOYD AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	June 14, 1999

FLOYD AVENUE, between Oakdale Road and Roselle Avenue	40 miles per hour	November 4, 2000
FLOYD AVENUE, between Roselle Avenue and Fine Avenue	40 miles per hour	September 4, 2000
GRANGER AVENUE, between Tully Road and McHenry Avenue	35 miles per hour	December 21, 1998
GRANGER AVENUE, between McHenry Avenue and Sunrise Avenue	35 miles per hour	December 21, 1998
HATCH ROAD, between Crows Landing Road and Carpenter Road	45 miles per hour	September 4, 2000
KANSAS AVENUE, between Carpenter Road and Emerald Avenue	35 miles per hour	January 13, 1999
KANSAS AVENUE, between Emerald Avenue and Ninth Street	35 miles per hour	January 13, 1999
KANSAS AVENUE, between Morse Road and Rosemore Avenue	40 miles per hour	June 8, 1998
KANSAS AVENUE, between Rosemore Avenue and Carpenter Road	40 miles per hour	June 8, 1998
LA LOMA AVENUE, between H Street and Santa Ana Avenue	35 miles per hour	March 16, 1999
LA LOMA AVENUE, between H Street and Santa Rosa Avenue	35 miles per hour	March 16, 1999
LA LOMA AVENUE, between Burney Street and Yosemite Boulevard	30 miles per hour	September 4, 2000
LAKWOOD AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	June 18, 1997

LINCOLN AVENUE, between 650 feet north of M.I.D. Lateral #2 and Yosemite Boulevard	40 miles per hour	July 19, 1994
LINCOLN AVENUE, between Dry Creek and Yosemite Boulevard	35 miles per hour	September 4, 2000
MABLE AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	September 4, 2000
MERLE AVENUE, between Oakdale Road and Roselle Avenue	30 miles per hour	June 28, 1996
MILLER AVENUE, between La Loma Avenue and El Vista Avenue	35 miles per hour	March 16, 1999
MITCHELL ROAD, between Finch Road and the southerly City limits	50 miles per hour	April 28, 1997
MORRIS AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	March 12, 1992
MORSE ROAD, between Blue Gum Avenue and Kansas Avenue	40 miles per hour	June 16, 1997
MT. VERNON DRIVE, between Prescott Road and College Avenue	30 miles per hour	June 23, 1999
NEECE DRIVE, between Tuolumne Boulevard and Rouse Avenue	35 miles per hour	June 19, 1997
NEEDHAM STREET, between 9th Street and L Street	35 miles per hour	June 18, 1997
NORTH MARTIN LUTHER KING DRIVE, between Maze Boulevard and California Avenue	30 miles per hour	March 13, 1992
NORTH MARTIN LUTHER KING DRIVE, between Maze Boulevard and Paradise Road	30 miles per hour	April 29, 1997

NORWEGIAN AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	January 11, 1999
OAKDALE ROAD, between 1300 feet north of Mable Avenue and Sylvan Avenue	45 miles per hour	August 29, 2000
OAKDALE ROAD, between Sylvan Avenue and Floyd Avenue	45 miles per hour	August 29, 2000
OAKDALE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	December 22, 1998
OAKDALE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	December 22, 1998
ORANGEBURG AVENUE, between Briggsmore Avenue and Martin Avenue	35 miles per hour	June 19, 1997
ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	40 miles per hour	June 19, 1997
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	June 19, 1997
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	June 19, 1997
ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	June 18, 1997
ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road	35 miles per hour	June 19, 1997
PARADISE ROAD, between Vernon Avenue and North Martin Luther King Drive	40 miles per hour	June 26, 1994

PARADISE ROAD, between North Martin Luther King Drive and Washington Street	35 miles per hour	February 9, 1999
PARADISE ROAD, between Carpenter Road and Martin Luther King Drive	35 miles per hour	February 9, 1999
PARKER ROAD, between Claus Road and Atchinson, Topeka and Santa Fe Railroad Tracks	45 miles per hour	April 28, 1997
PELANDALE AVENUE, between Sisk Road and Dale Road	45 miles per hour	March 18, 1997
PELANDALE AVENUE, between Dale Road and Prescott Road	50 miles per hour	August 29, 2000
PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	40 miles per hour	June 16, 1997
PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	June 16, 1997
PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	June 16, 1997
RIVERSIDE DRIVE, between Edgebrook Drive and Yosemite Boulevard	30 miles per hour	August 30, 2000
ROSE AVENUE, between Floyd Avenue and Briggsmore Avenue	35 miles per hour	December 21, 1998
ROSE AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	December 21, 1998
ROSEBURG AVENUE, between Carver Road and Tully Road	30 miles per hour	May 8, 1997

ROSEBURG AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	April 29, 1997
ROSEBURG AVENUE, between McHenry Avenue and Sunrise Avenue	30 miles per hour	January 8, 1993
ROSELLE AVENUE, between Floyd Avenue and Briggsmore Avenue	45 miles per hour	November 4, 2000
ROSEMORE AVENUE, between Blue Gum Avenue and Kansas Avenue	35 miles per hour	August 30, 2000
ROUSE AVENUE, between Neece Drive and Colorado Avenue	30 miles per hour	April 29, 1997
RUMBLE ROAD, between Sisk Road and Conant Avenue	35 miles per hour	June 16, 1997
RUMBLE ROAD, between Conant Avenue and Tully Road	35 miles per hour	June 16, 1997
RUMBLE ROAD, between Tully Road and McHenry Avenue	35 miles per hour	June 28, 1996
RUMBLE ROAD, between McHenry Avenue and Coffee Road	35 miles per hour	May 28, 1998
SANTA CRUZ AVENUE, between Yosemite Boulevard and Legion Park Drive	30 miles per hour	November 4, 2000
SCENIC DRIVE, between Burney Street and Coffee Road	35 miles per hour	June 18, 1997
SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	April 28, 1997
SCENIC DRIVE, between Oakdale Road and Lakewood Avenue	40 miles per hour	April 28, 1997

SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	April 28, 1997
SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	April 30, 1998
SCENIC DRIVE, between Coffee Road and Bodem Street	35 miles per hour	March 16, 1999
SHARON AVENUE, between Fine Avenue and Claus Road	40 miles per hour	November 17, 2000
SIERRA DRIVE, between G Street and South 7th Street	30 miles per hour	June 19, 1997
SISK ROAD, between Vintage Drive and Standiford Avenue	45 miles per hour	June 14, 1999
SISK ROAD, between Pelandale Avenue and Vintage Drive	45 miles per hour	June 14, 1999
SISK ROAD, between Standiford Avenue and Briggsmore Avenue	45 miles per hour	August 29, 2000
SNYDER AVENUE, between Dale Road and Prescott Road	40 miles per hour	September 1, 1997
SNYDER AVENUE, between Prescott Road and Carver Road	45 miles per hour	September 1, 1997
STANDIFORD AVENUE, between Tully Road and McHenry Avenue	40 miles per hour	December 22, 1998
STANDIFORD AVENUE, between Prescott Road and Tully Road	40 miles per hour	August 29, 2000
STANDIFORD AVENUE, between Sisk Road and Prescott Road	45 miles per hour	January 12, 1999
SUNRISE AVENUE, between Briggsmore Avenue and Lucern Avenue	35 miles per hour	December 21, 1998

SUNRISE AVENUE, between Lucern Avenue and Floyd Avenue	35 miles per hour	June 26, 1994
SUTTER AVENUE, between Paradise Road and Robertson Road	30 miles per hour	February 9, 1999
SYCAMORE AVENUE, between Orangeburg Avenue and Griswold Avenue	30 miles per hour	November 14, 2000
SYLVAN AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	December 22, 1998
SYLVAN AVENUE, between Coffee Road and Oakdale Road	40 miles per hour	February 7, 2001
SYLVAN AVENUE, between Oakdale Road and Roselle Avenue	45 miles per hour	August 30, 1995
SYLVAN AVENUE, between Claus Road and Roselle Avenue	50 miles per hour	April 28, 1997
TENAYA DRIVE, between Santa Cruz Avenue and Mitchell Road	30 miles per hour	February 1, 1996
TULLY ROAD, between M.I.D. Lateral #6 and Standiford Avenue	45 miles per hour	June 14, 1999
TULLY ROAD, between Briggsmore Avenue and Coldwell Avenue	35 miles per hour	March 18, 1997
TULLY ROAD, between Briggsmore Avenue and Standiford Avenue	35 miles per hour	March 18, 1997
TULLY ROAD, between Standiford Avenue and 1500' south of Bangs Avenue	45 miles per hour	March 18, 1997
TUOLUMNE BOULEVARD, between Paradise Road and 7th Street	35 miles per hour	July 19, 1994

UNION AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	August 29, 2000
VENEMAN AVENUE, between Dale Road and Regency Park Drive	35 miles per hour	March 21, 1999
VIRGINIA AVENUE, between Roseburg Avenue and Needham Street	30 miles per hour	June 19, 1997
WHITMORE AVENUE, between Crows Landing Road and Morgan Road	40 miles per hour	June 28, 1996
WHITMORE AVENUE, between Ustick Road and Crows Landing Road	45 miles per hour	February 29, 1996
WOODLAND AVENUE, between Morse Road and Carpenter Road	35 miles per hour	November 14, 2000
WOODLAND AVENUE, between Carpenter Road and 9th Street	35 miles per hour	May 9, 1997
WOODROW AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	June 19, 1997
5TH STREET, between L Street and Sierra Drive	25 miles per hour	July 17, 1996
6TH STREET, between D Street and L Street	30 miles per hour	July 17, 1996
7TH STREET BRIDGE, between B Street and River Road	30 miles per hour	August 30, 2000
9TH STREET, between Carpenter Road and Tully Road	45 miles per hour	May 9, 1997
9TH STREET, between D Street and Morton Boulevard	30 miles per hour	November 4, 2000

9TH STREET, between P Street and L Street	35 miles per hour	January 13, 1999
9TH STREET, between L Street and Tully Road	35 miles per hour	May 9, 1997

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of June, 2001, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino
NOES: Councilmembers: None
ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3225-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12th day of June, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: July 12, 2001

Date/Dept/Author

Clerk

ORDINANCE NO. 3226-C.S.

AN ORDINANCE ADOPTING THE 2001-2002 OPERATING BUDGET AND FIRST YEAR OF THE FISCAL YEAR 2001-2002 THROUGH 2010-2011 CAPITAL IMPROVEMENT PROGRAM FOR THE CITY OF MODESTO FOR THE FISCAL YEAR ENDING JUNE 30, 2002, AND PROVIDING FOR CERTAIN TRANSFERS OF FUNDS.

WHEREAS, pursuant to the Charter of the City of Modesto, a proposed Operating Budget and Capital Improvement Program (CIP) for the 2001-2002 fiscal year has been submitted to the City Council by the City Manager, and the City Council has made such revisions as it has deemed advisable as per Exhibit "A" attached hereto and incorporated herein by this reference, and

WHEREAS, in accordance with the City Charter, a duly noticed public hearing was held relating to the adoption of the proposed Budget, and

WHEREAS, prior to any discussion of the budget and prior to the final adoption, the City Council by separate motion considered each CIP project that could be the source of a potential conflict of interest to one or more members of the City Council without the participation of those members, and

WHEREAS, copies of the proposed Budget have been and are available for inspection by the public at the office of the City Clerk,

NOW, THEREFORE, the Council of the City of Modesto does ordain as follows:

SECTION 1. ADOPTION OF BUDGET. That the "City of Modesto Proposed Annual Budget 2001-2002", presented by the City Manager to the City Council at its meeting

held on June 19, 2001, and as thereafter amended by the City Council, a copy of which Budget, as amended, is on file in the office of the City Clerk, is hereby adopted, as the Budget for the City of Modesto for the fiscal year ending June 30, 2002, and the several amounts stated therein as proposed expenditures.

SECTION 2. ENCUMBRANCES. That the funds of the City of Modesto encumbered on June 30, 2001, are hereby appropriated for the purposes for which they are encumbered and shall be a part of the Budget for the fiscal year 2001-2002, adopted hereby.

SECTION 3. CAPITAL PROJECTS. That Capital Projects carried over from fiscal year 2000-2001 are hereby re-appropriated as a part of the Budget for the fiscal year 2001-2002, adopted hereby.

SECTION 4. CITY COUNCIL APPROVAL REQUIRED. That the City Council is authorized by resolution to:

- a. Approve appropriation of reserves.
- b. Approve transfers between funds.
- c. Approve appropriation of any non-departmental revenues.
- d. Approve inter-fund loans.
- e. Approve the creation of new CIP projects and appropriation increases in existing CIP projects.
- f. Approve the transfer and authorize the expenditure of funds from the Reserved Fund Balances for specific purposes.

SECTION 5. CITY MANAGER AUTHORITY. That the City Manager is authorized to transfer funds between budgeted activities or departments within a fund and to

appropriate unbudgeted departmental revenues, and the City Manager may delegate this authority to the Deputy City Manager.

SECTION 6. DEPARTMENT HEAD AUTHORITY. That City Department Heads are authorized to allocate departmental appropriation to line item level.

SECTION 7. EFFECTIVE DATE. Pursuant to Section 722 of the Charter of the City of Modesto, this ordinance shall go in effect and be in full force and operation immediately upon adoption.

SECTION 8. PUBLICATION. Copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 19th day of June, 2001, by Councilmember Fisher, who moved its adoption and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Friedman, Serpa, Smith

NOES: Councilmembers: Conrad, Frohman, Mayor Sabatino

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

Attachment A

On June 19, 2001, Council adopted the operating and CIP Budget for 2002. Their action to adopt the budget included the following adjustments:

Budget Reductions (\$)

General Fund

City Manager	\$39,500
Information Services	\$75,000
Finance	\$55,000
Fire	\$25,000
Community Development	\$20,000
Engineering & Transportation	\$25,000
Parks, Recreation & Neighborhoods	\$20,000
Operation & Maintenance	\$11,000

Non General Fund (Special Fund for Capital Outlay)

Performing Arts Feasibility Study Project	\$50,000
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Budget Increases (\$)

General Fund

Special Events Support (GF)	\$37,000
California Conservation Corps	\$104,000
Honor Farm (operating)	\$83,000
Color Modesto	\$50,000
Traffic Signal Battery Back-up System	\$15,000
Senior-Youth Program	\$16,000
GED Program	\$5,000
Police Overtime	\$60,000
Fire Inspector	\$65,000

Non-General Fund (Special Fund for Capital Outlay)

Honor Farm (Capital)	\$21,000
Downtown Study	\$50,000

Non-General Fund (Centre Plaza Fund)

Special Events Support Appropriation	\$150,000
Special Events Support Revenue	\$77,000

ORDINANCE NO. 3227 -C.S.

AN ORDINANCE AMENDING ARTICLE 7 OF CHAPTER 3 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE TO CHANGE THE TITLE OF THE RECREATION AND NEIGHBORHOODS DEPARTMENT TO PARKS, RECREATION AND NEIGHBORHOODS DEPARTMENT AND AMENDING THE TITLE OF TITLE 12 OF THE MODESTO MUNICIPAL CODE TO ELIMINATE REFERENCE TO THE "RECREATION AND NEIGHBORHOODS DEPARTMENT" AND TO CREATE THE "PARKS, RECREATION AND NEIGHBORHOODS DEPARTMENT".

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Article 7 of Chapter 3 of Title 2 of the

Modesto Municipal Code is hereby amended to read as follows:

ARTICLE 7. PARKS, RECREATION AND NEIGHBORHOODS DEPARTMENT

2-3.701. CREATION AND FUNCTIONS.

A Parks, Recreation and Neighborhoods Department is hereby established. The functions of the Parks, Recreation and Neighborhoods Department shall include:

- (a) Plan and operate a broad program of public recreation for all age groups, designed to encourage and maintain interest and participation by individuals and by organizations, both public and private.
- (b) Plan, develop and improve park and recreation areas and facilities.
- (c) Plan and establish relationships with community and neighborhood groups in order to initiate and promote improvement of the quality of life in the City of Modesto.
- (d) Perform such other functions as the City Manager may direct.

2-3.702. ORGANIZATION AND DIRECTION.

There shall be a Parks, Recreation and Neighborhoods Director appointed by the City Manager and subject to the City Manager's general administrative direction. The Parks, Recreation and Neighborhoods Director, subject to the approval of the

City Manager, shall organize and maintain such divisions in the Department as in the Director's judgment the operations may require, and shall be responsible for the direction and control of all functions assigned to the Department.

2-3.703. ACTING PARKS, RECREATION AND NEIGHBORHOODS DIRECTOR.

In the case of absence or disability of the Parks, Recreation and Neighborhoods Director, the City Manager shall designate a person to perform the duties and exercise the powers of the Parks, Recreation and Neighborhoods Director.

2-3.704. REFERENCES.

- (a) Whenever this Code or any ordinance, resolution or other official document or action of the City of Modesto refers to or uses the titles Parks and Recreation Director, Community Services and Neighborhood Connections Director, or Recreation and Neighborhoods Director it shall be deemed to refer to the Parks, Recreation and Neighborhoods Director of the City of Modesto in relation to any matter under the jurisdiction of that Director.
- (b) Whenever this Code or any ordinance, resolution or other official document or action of the City of Modesto refers to or uses the name Parks and Recreation Department, Community Services and Neighborhood Connections Department, or Recreation and Neighborhoods Department, it shall be deemed to refer to the Parks, Recreation and Neighborhoods Department of the City of Modesto in relation to any matter under the jurisdiction of that Department.

SECTION 2. AMENDMENT OF CODE: The title of Title 12, entitled "Recreation and Neighborhoods Department", of the Modesto Municipal Code is amended to read as follows:

TITLE 12 - PARKS, RECREATION AND NEIGHBORHOODS

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of July, 2001, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3227-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 17th day of July, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: August 16, 2001

ORDINANCE AMENDING MODESTO MUNICIPAL CODE

1	Attorney
1	Attorney - Shanna Willis
1	Parks, Recreation & Neighborhoods
5	Posting
1	Code Service
<u>1</u>	For any other interested departments
10	

ORDINANCE NO. 3228 -C.S.

AN ORDINANCE AMENDING SECTIONS 2-4.201 AND 2-4.202 OF CHAPTER 4 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO FISCAL ADMINISTRATION.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Sections 2-4.201 and 2-4.202 of Chapter 4 of Title 2 of the Modesto Municipal Code are hereby amended to read as follows:

SEC. 2-4.201. GENERAL.

The provisions of this article recognize that the general claim procedure against local public agencies, including the City, is governed by the provisions of Chapter 1 of Division 3.6 of the Government Code of the State of California (Government Code), commencing with Section 900 and following.

SEC. 2-4.202. SPECIAL CLAIMS PROCEDURE.

Pursuant to the authority contained in Section 935 of the Government Code and Section 1312 of the City Charter, the City establishes the following claims procedure for claims against the City for money or damages: Notwithstanding any other Section or Subsection of this Code, all claims against the City for money or damages, including all claims excepted in Section 905 of the Government Code, shall be presented in the manner prescribed by Sections 910 through 915.4 of the Government Code within the time limitations specified in Section 911.2 of the Government Code, and shall be subject to the provisions of Section 945.4 of the Government Code.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the

City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of July, 2001, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3228-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 17th day of July, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: August 16, 2001

Clerk (15)

ORDINANCE NO. 3229 -C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR THE NORTHEAST QUADRANT OF AREA NO. 20 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED ON THE NORTH SIDE OF FLOYD AVENUE EAST OF ROSELLE AVENUE. (WARREN SMITH LAWSON FAMILY, INC.)

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan is divided into 35 Precise Plan Areas and requires that a Precise Plan be approved prior to development in each Area, and

WHEREAS, an application has been filed by Warren Smith Lawson Family, Inc. for a Precise Plan for the northeast quadrant of Area No. 20 property located on the north side of Floyd Avenue east of Roselle Avenue, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on May 7, 2001, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after considering staff recommendation and testimony from the applicant and general public, the Planning Commission continued the hearing to June 4, 2001, and directed that the precise plan be modified to expand the multi-family area to include an additional 4.5-acre parcel on Roselle Avenue, and directed staff to further study the proposed alignment of Kodiak Drive, and

WHEREAS, the continued public hearing was held by the Planning Commission of the City of Modesto on June 4, 2001, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2001-35, recommended to the City Council approval of a Precise Plan for the northeast quadrant of Area No. 20 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on July 10, 2001, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, the Council declared that said Precise Plan for the northeast quadrant of Area No. 20 of the Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan for the northeast quadrant of Area No. 20 is consistent with the Village One Specific Plan.
2. The proposed Precise Plan for the northeast quadrant of Area No. 20 is consistent with the Modesto Urban Area General Plan.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for the northeast quadrant Area No. 20 of the Village One Specific Plan as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, a copy of which is on file in the City Clerk's Office.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of July, 2001, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

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

Ord. No. 3229-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 17th day of July, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: August 16, 2001

ORDINANCE PRECISE PLAN

1	Attorney
1	Attorney - Shanna Willis
1	Community Development Department
5	Posting
1	Applicant
<u>1</u>	Code Service
10	

Alanta

ORDINANCE NO. 3230-C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED ON THE NORTH SIDE OF FLOYD AVENUE EAST OF ROSELLE AVENUE. (PRECISE PLAN FOR THE NORTHEAST QUADRANT OF AREA NO. 20 - WARREN SMITH LAWSON FAMILY, INC.)

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan requires that concurrent with the review and approval of a Precise Plan, all properties included in the Precise Plan shall be rezoned to Specific Plan-Overlay Zone, SP-O, as set forth in Title 10 of the Modesto Municipal Code, and

WHEREAS, an application has been filed by Warren Smith Lawson Family, Inc. for a Precise Plan for the northeast quadrant of Area No. 20, property located on the north side of Floyd Avenue east of Roselle Avenue, and

WHEREAS, the application package also seeks rezoning from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on May 7, 2001, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after considering staff recommendation and testimony from the applicant and general public, the Planning Commission continued the hearing to June 4, 2001, and directed that the

precise plan be modified to expand the multi-family area to include an additional 4.5-acre parcel on Roselle Avenue, and directed staff to further study the proposed alignment of Kodiak Drive, and

WHEREAS, the continued public hearing was held by the Planning Commission of the City of Modesto on June 4, 2001, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after a public hearing held on June 4, 2001, it was found and determined by the Planning Commission that rezoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 2001-35, adopted June 4, 2001, the Planning Commission recommended that the application of Warren Smith Lawson Family, Inc. to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located on the north side of Floyd Avenue east of Roselle Avenue be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on July 10, 2001, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on July 10, 2001, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and

general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. The rezoning to Specific Plan-Overlay Zone is a necessary prerequisite to development in the Village One Specific Plan.
2. Adequate infrastructure exists to serve the proposed development.

SECTION 2. ZONING CHANGE. Section 13-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the following described property from a Specific Plan-Holding Zone, SP-H, to a Specific Plan-Overlay Zone, SP-O:

SP-H to SP-O, PPA 20

ALL that certain real property situate in the City of Modesto, County of Stanislaus, State of California, being more particularly described as follows:

The Northwest Quarter of the Northwest Quarter of Section 13,
Township 3 South, Range 9 East, Mount Diablo Base And Meridian.

SECTION 3. ZONING MAP. Section 13-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of

Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of July, 2001, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By [Signature]
Community Development Department
Planning Division

Ord. No. 3230-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 17th day of July, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: August 16, 2001

ORDINANCE AMENDING SECTION MAP

1	Attorney
1	Attorney - Shanna Willis
1	Applicant
1	CDD - Becky Jenkins
1	E&T - Engineering Services
5	Posting
1	E & T - Traffic
1	Code Service
1	County Assessor
1	CDD - Construction Administration
1	CDD - Building Inspection
<u>1</u>	Recreation & Neighborhoods - NPU
16	

ORDINANCE NO. 3231 -C.S.

AN ORDINANCE AMENDING THE PRECISE PLAN FOR AREA NO. 14 OF THE VILLAGE ONE SPECIFIC PLAN, TO ALLOW FOR THE REALIGNMENT OF BEAR CUB LANE TO PERMIT THE INSTALLATION OF A DUAL-USE STORMWATER BASIN/RECREATION FACILITY FOR PROPERTY BOUNDED BY HILLGLEN AVENUE ON THE NORTH, KODIAK DRIVE ON THE SOUTH, ROSELLE AVENUE ON THE EAST AND BEAR CUB LANE ON THE WEST (CITY INITIATED)

WHEREAS, the City Council, on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan requires that precise plans be adopted prior to any development in the Village One area, and

WHEREAS, the Village One Specific Plan is divided into 35 precise plan areas, and a precise plan is required prior to development in each area, and

WHEREAS, Ordinance No. 3193-C.S., which became effective on February 1, 2001, adopted a Precise Plan for Area No. 14 of the Village One Specific Plan, and

WHEREAS, Ordinance No. 3194-C.S., which became effective on February 1, 2001, rezoned the property encompassed by Precise Plan for Area No. 14 to Specific Plan-Overlay Zone, SP-O, and

WHEREAS, an application was filed by the City of Modesto for an amendment to the Precise Plan for Area No. 14 to allow for the realignment of Bear Cub Lane to permit the installation of a dual-use stormwater basin/recreation facility for property bounded by

Hillglen Avenue on the north, Kodiak Drive on the south, Roselle Avenue on the east and Bear Cub Lane on the west , and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on July 14, 2001, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution 2001-48, recommended to the City Council approval of an amendment to the Precise Plan for Area No. 14, and

WHEREAS, said matter was set for a public hearing of the Council of the City of Modesto to be held on July 24, 2001, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, a duly noticed public hearing to consider said recommendations of the Planning Commission was held at the date and time above mentioned, and

WHEREAS, the Council declares that said amendment to the Precise Plan for Area No. 14 is required by public necessity, convenience, and general welfare for the following reason:

That the proposed amendment to Precise Plan No. 14 is consistent with the General Plan and Village One Specific Plan.

NOW, THEREFORE, the Council of the City of Modesto does ordain as follows:

SECTION 1. APPROVAL OF AMENDMENT TO THE PRECISE PLAN.

The City Council has reviewed and considered the amendment to the Precise Plan for Area

No. 14 of the Village One Specific Plan to allow for the realignment of Bear Cub Lane to permit the installation of a dual-use stormwater basin/recreation facility for property bounded by Hillglen Avenue on the north, Kodiak Drive on the south, Roselle Avenue on the east and Bear Cub Lane on the west as recommended by the Planning Commission, and the Council does hereby approve said amendment to the Precise Plan for Area No. 14. A copy of said amendment is attached hereto.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of July, 2001, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3231-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the special meeting of the Council of the City of Modesto held on the 9th day of August, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith,

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Sabatino

APPROVED: _____


VICE MAYOR TIM FISHER

ATTEST: _____


JEAN ZAHR, City Clerk

Effective Date: September 8, 2001

ORDINANCE NO. 3232-C.S.

AN ORDINANCE ADDING ARTICLE 20 TO CHAPTER 2, OF TITLE 3 OF THE MODESTO MUNICIPAL CODE TO REGULATE THE PARKING OF OVERSIZED VEHICLES AND TRAILERS IN RESIDENTIAL AREAS.

The Council of the City of Modesto does ordain as follows:

SECTION 1: AMENDMENT OF CODE: Article 20 is hereby added to Chapter 2 of Title 3 of the Modesto Municipal Code to read as follows:

ARTICLE 20. OVERSIZED VEHICLE AND TRAILER PARKING

3-2.2001. FINDINGS.

The City Council finds as follows:

- (a) Parking recreational vehicles and trailers on residential streets interferes with the normal flow of vehicle traffic, parking affects the safety of drivers using such streets, and creates visual obstacles for motorists and pedestrians.
- (b) Current parking regulations are inadequate to address the problem of parking oversized vehicles and trailers on residential streets.
- (c) Persons owning oversized vehicles and trailers should have the opportunity to have limited use of residential streets for short periods of time.
- (d) It is in the public interest to adopt parking regulations that will help alleviate safety and parking concerns regarding oversized vehicles or trailers while also allowing oversized vehicle or trailer owners to use residential streets for a limited time and basis.

3-2.2002. PURPOSE.

This chapter is adopted pursuant to the city's police powers and California Vehicle Code Section 22507.5, and any successor statute or regulation, in order to regulate parking of oversized vehicles or trailers within the city's jurisdiction. The regulations enacted by this chapter are intended to protect public health and safety by, among other things, ensuring that vehicles parked or stopped in and along city

streets, or other public rights-of-way, do not hinder, obstruct, or otherwise endanger drivers engaged in the ordinary flow of traffic.

3-2.2003. DEFINITIONS.

Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this chapter.

- (a) “Out-of-town visitor” means any person who does not reside in the city and who is temporarily visiting a resident of the city.
- (b) “Oversized vehicle” means any vehicle which exceeds twenty (20) feet in length; or exceeds seven (7) feet in width; or exceeds seven (7) feet in height, exclusive of such projecting lights or devices as are expressly allowed pursuant to the California Vehicle Code as it now exists or hereafter may be amended. Oversized vehicle does not include pickup trucks, which are less than twenty-five (25) feet in length and eighty-two (82) inches in height.
- (c) “Residential areas” means those residential areas of the city as defined by local zoning ordinance.
- (d) “Trailer” means a trailer, semi-trailer, camp trailer, unmounted camper, or trailer coach as defined in the California Vehicle Code.

3-2.2004. APPLICATION OF REGULATIONS.

- (a) The prohibitions in this chapter will apply at all times, or at those times specified, except when it is necessary to stop a vehicle to avoid conflict with other traffic or to comply with the directions of a police officer or official traffic control device.
- (b) The time limitations on standing or parking in this chapter will not relieve any person from the duty to observe other and more restrictive provisions of the California Vehicle Code or this code prohibiting or limiting the standing or parking of vehicles in specified places or at specified times.

3-2.2005. APPEALS.

Every person who is issued a notice of parking violation pursuant to this chapter may request review of that notice under California Vehicle Code Sections 40215 et seq.

3-2.2006. OVERSIZED VEHICLES - PARKING PROHIBITED; EXCEPTIONS.

- (a) Except as otherwise provided in this section, it is unlawful for any person to park or leave standing any oversized vehicle or trailer on any street in a residential area Monday through Fridays, inclusive, holidays excepted.
- (b) Exceptions. This section does not apply:
 - (1) To any person loading, unloading, or cleaning an oversized vehicle or trailer as long as said oversized vehicle or trailer is parked on the public street for no more than seventy-two (72) hours;
 - (2) To any person making temporary or emergency repairs to an oversized vehicle or trailer not to exceed twenty-four (24) consecutive hours;
 - (3) To any person picking up or delivering goods, wares, and merchandise, including, without limitation, building materials to be used in “the actual repair”, alteration, remodeling or construction of any building or structure located in the residential zones for which a building permit has previously been obtained;
 - (4) To any person holding a valid oversized vehicle parking permit issued pursuant to this chapter;
 - (5) To any person holding a valid oversized vehicle handicap permit issued pursuant to this chapter;
 - (6) To any public emergency vehicle; or
 - (7) To any person parking their vehicle or trailer on a street within a space already designated for times parking.

3-2.2007. TRAILERS B PARKING PROHIBITED; EXCEPTIONS.

- (a) **Daytime Parking Prohibited.** Except as otherwise provided in this section, it is unlawful for any person to park or leave standing any trailer that is attached to a vehicle capable of moving the trailer in a lawful manner on any street in a residential area Monday through Fridays, inclusive, holidays excepted.
- (b) **Unhitched Trailers Prohibited.** Except as otherwise provided in this section, it is unlawful for any person to park or leave a trailer standing on

any street or alley in a residential area unless it is attached to a vehicle capable of moving the trailer in a lawful manner upon the street.

- (c) The provisions of this section to not apply to:
 - (1) Trailers owned by a public utility or a licensed contractor while actually in use during the construction, installation, or repair of any public utility.
 - (2) Trailer actually in use for the pick-up or delivery of goods, wares, or merchandise or for delivery of materials for repairing, altering, remodeling, or constructing any building.
 - (3) Persons loading or unloading a trailer when making temporary or emergency repairs to a trailer.

3-2.2008. OVERSIZED VEHICLE PARKING PERMITS.

- (a) **Purpose.** The purpose of authorizing the issuance of oversized vehicle parking permits is to give owners of oversized vehicles an opportunity, for a limited time, to park the oversized vehicles on a street/highway adjacent to their residence for the purpose of loading or unloading such oversized vehicles, and to allow an out-of-town visitor to park on a street/highway adjacent to the residence which the out-of-town visitor is visiting for a limited time period, notwithstanding the provisions of this chapter. The purpose of authorizing the issuance of oversized vehicle handicap permits is to allow a handicapped person, whether or not such person has a handicapped license plate, to park a designated oversized vehicle on a street/highway in a residential area.
- (b) Persons holding a valid permit issued pursuant to this chapter may park an oversized vehicle on a street in a residential area.
- (c) The Police Chief or designee, is authorized to issue oversized vehicle parking permits and oversized vehicle handicap permits pursuant to this chapter.
- (d) There will be no fee charged for issuance of an oversized vehicle parking permit.

3-2.2009. OVERSIZED VEHICLE PARKING PERMITS B APPLICATION.

Every person desiring an oversized vehicle parking or handicap permit will file an application with the Police Chief, or designee, containing the following:

- (a) The name, address and phone number of the registered owner and applicant of designated oversized vehicle;
- (b) The license number, make and model of designated oversized vehicle;
- (c) The dates for which the permit is requested;
- (d) The dates and duration of any and all oversized vehicle permits issued to the applicant within the immediately preceding ninety (90) day period;
- (e) Additional information the Police Chief, or designee, may reasonably require; and
- (f) The signature of the applicant under penalty of perjury.

3-2.2010. ISSUANCE.

- (a) The Police Chief will issue a permit if:
 - (1) The application was completed in accordance with this chapter;
 - (2) He determines that the health, safety and general welfare of the neighborhood will not be adversely affected thereby; and
 - (3) The application is signed by the applicant under penalty of perjury.
- (b) Use of any permit issued pursuant to this chapter will conform to the general permit conditions of this chapter.

3-2.2011. DURATION.

- (a) **Oversized Vehicle Parking Permit.** An oversized vehicle parking permit will be valid for a period not to exceed five (5) consecutive calendar days. Upon expiration of an oversized vehicle parking permit issued under this section, the applicant may apply for and be granted additional oversized vehicle parking permits if the applicant still qualifies under the conditions set forth herein. In no event will oversized vehicle parking permits be

issued to an applicant for a total period in excess of ten (10) days within any consecutive ninety-day (90) period.

- (b) **Oversized Vehicle Handicap Permits.** Oversized vehicle handicap permits will be valid for a period of two (2) years, and may be renewed, if the applicant continues to meet the qualifications therefor.

3-2.2012. PERMIT DENIAL.

A permit must be denied if the Police Chief finds that:

- (a) The applicant is not a bona fide city resident;
- (b) The proposed location is not on a street adjacent to the applicant's residence;
- (c) The out-of-town visitor is not the applicant's guest;
- (d) Information submitted by the applicant is materially false; or
- (e) If the application is for an Oversized Vehicle Handicap Permit
 - (1) The applicant is not entitled to receive a handicap placard or license plate under the California Vehicle Code; or
 - (2) The Oversized vehicle is not the applicant's primary mode of transportation.

3-2.2013. FORM.

Permits issued pursuant to this chapter will be in a form prescribed by the Police Chief and will include the license plate number of the oversized vehicle to which it relates, and the date of issuance and the day of expiration.

3-2.2014. DISPLAY.

All permits will be placed at the lower driver's side of the windshield of the oversized vehicle to which it relates so that it is clearly visible from the exterior of the oversized vehicle.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of August, 2001, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Sabatino

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3232-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 4th day of September, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: October 4, 2001

ORDINANCE NO. 3233-C.S.

AN ORDINANCE AMENDING SECTION 2-1.08 OF CHAPTER
1 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE
RELATING TO CITY COUNCIL ORGANIZATION AND
PROCEDURE - ORDER OF BUSINESS.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Section 2-1.08 of Chapter 1 of Title 2

of the Modesto Municipal Code is hereby amended to read as follows:

2-1.08. ORDER OF BUSINESS.

Promptly at the hour set by law on the date of each regular meeting, the members of the Council, the City Clerk, City Attorney and City Manager shall take their regular stations in the Council Chambers, and the business of the Council shall be taken up for consideration and disposition in the following order, with the exception that the Mayor or other presiding officer may take any item out of order as the public necessity and convenience may require:

1. Roll call.
2. Pledge of allegiance to the flag.
3. Invocation.
4. City Clerk's announcements.
5. Declaration of conflicts of interest.
6. Acknowledgments and presentations.
7. Oral communications.
8. Consent items.
9. Written communications.
10. Unfinished business.
11. Hearings.
12. New business.
13. Miscellaneous:
 - a. Legislation.
 - b. Appointments.
 - c. Other.
14. Council comments and reports.
15. Matters too late for the agenda.
16. Adjournment.
17. Closed session items.

Ord. No. 3233-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 18th day of September, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Fisher, Friedman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: Conrad, Frohman

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: October 18, 2001

ORDINANCE NO. 3234-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 24 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED ON THE SOUTH SIDE OF FLOYD AVENUE ON THE WEST SIDE OF CLAUS ROAD. (RENEE ELLIS-SINGLETON)

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan is divided into 35 Precise Plan Areas and requires that a Precise Plan be approved prior to development in each Area, and

WHEREAS, an application has been filed by Renee Ellis-Singleton for a Precise Plan for Area No. 24 property located on the south side of Floyd Avenue on the west side of Claus Road, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on June 4, 2001, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2001-36, recommended to the City Council approval of a Precise Plan for Area No. 24 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on September 18, 2001, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, the Council declared that said Precise Plan for Area No. 24 of the Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan for Area No. 24 is consistent with the Village One Specific Plan.
2. The proposed Precise Plan for Area No. 24 is consistent with the Modesto Urban Area General Plan.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 24 of the Village One Specific Plan as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, a copy of which is on file in the City Clerk's Office.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 18th day of September, 2001, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Friedman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: Frohman

ABSENT: Councilmembers: Fisher

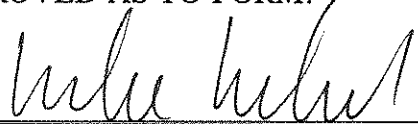
APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3234-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 25th day of September, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: Frohman

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: October 25, 2001

ORDINANCE NO. 3235-C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED ON THE SOUTH SIDE OF FLOYD AVENUE ON THE WEST SIDE OF CLAUS ROAD. (PRECISE PLAN FOR AREA NO. 24 - RENEE ELLIS-SINGLETON)

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan requires that concurrent with the review and approval of a Precise Plan, all properties included in the Precise Plan shall be rezoned to Specific Plan-Overlay Zone, SP-O, as set forth in Title 10 of the Modesto Municipal Code, and

WHEREAS, an application has been filed by Renee Ellis-Singleton for a Precise Plan for Area No. 24, property located on the south side of Floyd Avenue on the west side of Claus Road, and

WHEREAS, the application package also seeks rezoning from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on June 4, 2001, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after a public hearing held on June 4, 2001, it was found and determined by the Planning Commission that rezoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 2001-36, adopted June 4, 2001, the Planning Commission recommended that the application of Renee Ellis-Singleton to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located on the south side of Floyd Avenue on the west side of Claus Road be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on September 18, 2001, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on July 10, 2001, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. The rezoning to Specific Plan-Overlay Zone is a necessary prerequisite to development in the Village One Specific Plan.
2. Adequate infrastructure exists to serve the proposed development.

SECTION 2. ZONING CHANGE. Section 13-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the following described property from a Specific Plan-Holding Zone, SP-H, to a Specific Plan-Overlay Zone, SP-O:

SP-H to SP-O, PPA 24

All that certain real property situated in a portion of the Northeast Quarter of Section 13, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California; described as follows:

All of Parcels C and D, as shown on the map filed in Volume 32 of Parcel Maps at Page 77, Stanislaus County Records, together with all of Parcels A, B, and C, as shown on the map filed in Volume 5 of Parcel Maps at Page 126, Stanislaus County Records;

Also including that portion of Fine Avenue lying east of the centerline of said Fine Avenue, that portion of Sharon Avenue lying north of the centerline of said Sharon Avenue, and that portion of Claus Road lying west of the centerline of said Claus Road; all being immediately adjacent to the above described property.

SECTION 3. ZONING MAP. Section 13-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 18th day of September, 2001, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Friedman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: Frohman

ABSENT: Councilmembers: Fisher

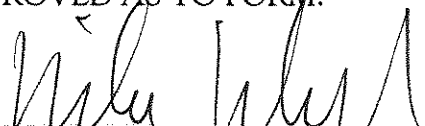
APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By  for GO
Community Development Department
Planning Division

Ord. No. 3235-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 25th day of September, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: October 25, 2001

ORDINANCE NO.3236-C.S.

AN ORDINANCE AMENDING SECTION 29-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM HIGH DENSITY RESIDENTIAL ZONE, R-3, TO PLANNED DEVELOPMENT ZONE, P-D(548), PROPERTY LOCATED AT 201 NEEDHAM STREET. (GREAT VALLEY CENTER)

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 29-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Medium High Density Residential Zone, R-3, to Planned Development Zone, P-D(548):

R-3 to P-D(548)

Lots 18, 19, and 20 in Block 549, of the City of Modesto, as per map filed December 21, 1942 in Volume 15 of Maps, Stanislaus County Records;

also, including the northerly one-half of Needham Street, the westerly one-half of Elmwood Avenue and the easterly one-half of the alley in said Block 549, all being immediately adjacent to the previously described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(548) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed,² as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. For non-medical office use by the non-profit organization known as the Great Valley Center or any other similar office use as approved by the City Council.
2. Off-street parking as approved by the Community Development Director.

SECTION 3. ZONING MAP. Section Map 29-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 25TH day of September, 2001, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith
Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By: *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By: *Steve Mitchell for GO*
Community Development Department
Planning Division

Ord. No. 3236-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 16th day of October, 2001, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: November 15, 2001

ORDINANCE NO. 3237-C.S.

AN ORDINANCE GRANTING AN EXCLUSIVE TWO-YEAR ADVERTISING SIGN FRANCHISE TO SAFER INTERSECTIONS, INC. FOR THE RIGHT, PRIVILEGE AND PERMISSION TO OPERATE A BATTERY BACK-UP SYSTEM EQUIPMENT DONATION FRANCHISE AND OCCUPY THE PUBLIC RIGHT-OF-WAY AT DESIGNATED LOCATIONS ALONG THE STREETS IN THE CITY OF MODESTO FOR ADVERTISING SIGNS.

The City Council of the City of Modesto does ordain as follows:

PURPOSE.

To establish terms, conditions and procedures for granting a Battery Back-up System Equipment Donation Franchise for the exclusive right, privilege and permission to occupy the public right-of-way and to advertise at designated locations along the intersections in the City of Modesto.

SECTION 1. DEFINITIONS

- (a) "Grantee" refers to Safer Intersection, Inc. as the designated donor of a battery backup system placed at various intersections in Modesto, hereinafter called Grantee.
- (b) "The City" means and refers to the City of Modesto.
- (c) "Battery Backup System" or "BBS" refers to a system, as described in Exhibit A, that shall provide reliable emergency power to a traffic signal in the event of power failure or interruption.
- (d) "Designated Intersection" refers to the area where two or more streets cross with traffic signals that both parties have mutually agreed upon for placement of Battery Back-up System equipment or advertising signage.
- (e) "Franchise" means and refers to this ordinance and all of the rights, privileges, obligations, terms, conditions and restrictions set forth herein.

SECTION 2. SCOPE AND TERM OF FRANCHISE.

- (a) **Scope.** Grantee shall have the right, privilege and permission to occupy the public right-of-way to advertise business names at designated locations along the intersections in the City of Modesto

in accordance with this Franchise. The City of Modesto will install and maintain battery back-up system equipment donated in accordance with this Franchise.

- (b) **Term/Termination for Convenience.** The term of this Franchise will last two years. It shall commence on January 1, 2002, and shall end no later than January 1, 2004. The City shall have the right to terminate the Franchise for convenience at any time by providing Grantee written notice of such termination at least ninety (90) days in advance of the date of termination. Notice of termination of Franchise shall be in writing and may be served by certified United States mail. Service of notice of termination of Franchise for convenience shall be deemed complete upon the mailing of the notice to the Grantee – Safer Intersections, c/o James Reed, 2501 Stone Crop Lane, Modesto, CA 95355. Grantee is responsible for notifying the City in writing of any change of address. Failure of Grantee to give City written notice of change of address shall not toll or otherwise prevent the commencement of the ninety (90) day notice period. If either Grantee or City terminates this Franchise, any accompanying signs in place prior to the termination will remain in place for a two-year period of time or less, which is at the discretion of the City Manager or his designee.

SECTION 3. FRANCHISE FEE.

For the exclusive rights and privileges set forth herein, Grantee shall donate the battery back-up system equipment. Said donation shall be deemed just and adequate compensation for granting of this Franchise. Grantee is required to donate a minimum of one (1) BBS in order to fulfil the obligations under this agreement. In the event there is a failure to deliver on at least one (1) battery back-up system equipment, the Grantee agrees to pay the City the total sum of \$500 as just and adequate compensation for granting of this Franchise (See Section 19).

SECTION 4. ADVERTISING PROHIBITED.

No person(s) shall install or maintain a battery back-up system or advertise along any designated intersection in the City except in accordance with this Franchise.

SECTION 5. SIGNS

Advertising signs, in conjunction with each donation, will be provided by the Grantee to the City for installation at designated intersections. The signs will not exceed 24 inches by 30 inches (24"x30") in size and will consist of a blue background with the heading "Modesto is working towards a safer community." The sign will advertise the business name and/or logo of the donor on a white inlet background. Where two businesses may sponsor a battery back-up system equipment donation jointly, their

business names and/or logos will be placed on the same sign. The sign will feature the logos of the City of Modesto and Safer Intersections in the lower left-hand and lower right-hand corners of each sign. All signs will be required to meet the advertising conditions as described in Section 8 of this Agreement.

SECTION 6. SIGN PRINTING SCREENS.

Grantee shall be responsible for the safe storage of the sign printing screens, furnished by Grantee to the City, for the duration of this franchise.

SECTION 7. MAINTENANCE OF SIGNS.

The Grantee will regularly monitor the condition of signs on which advertising will be placed and is responsible for notifying the City when a sign has been damaged or is in need of maintenance. The City is responsible for replacing damaged signs and agrees that the Grantee will pay costs for one/twelfth of needed replacement signs. The City reserves the right to remove any such signs that pose a safety hazard, but will not inspect, repair, or maintain such signs on a regular basis.

SECTION 8. ADVERTISING SIGN RESTRICTIONS.

Grantee shall utilize only the front surface of the intersection sign for the placement of printed matter. No other material whatsoever shall be permitted on any portion of the intersection sign except as specified by City. Printed matter or signs shall be placed in accordance with the following conditions:

- (1) Grantee shall submit to the City Manager or his designee, copies of all ads proposed to be placed on intersection sign for placement or replacement approval.
- (2) Should CITY, in its sole discretion, determine any advertising placed on any intersection sign to be improper, offensive or likely to interfere with, mislead, or distract traffic or conflict with any traffic control system, City shall remove all such material within twenty-four (24) hours and serve written removal notice to Grantee with cause for removal.
- (3) Examples of words included in the prohibition stated in the next preceding paragraph are the words, "Stop," "Look," "Drive-in," "Danger," but this list is not inclusive.
- (4) No advertising or signs or devices shall be permitted in conjunction with BBS advertising which comprise rotating, revolving or flashing lighting devices or any other moving parts.
- (5) No advertising for beverages containing alcohol, tobacco, or any business regulated by Modesto Municipal Code Sections 5-9.101 through 5-9.406 shall be permitted.

- (6) No advertising that, in the sole opinion of the CITY, contains any depiction of an act of an immoral, violent, or debasing nature, or otherwise not in keeping with the standards and surroundings of the intersection, shall be permitted.
- (7) No advertising for products or services on the signage shall be permitted.
- (8) No advertising that discriminates based on gender, race, ethnic origin, or other factors shall be permitted.
- (9) No advertising that is false, misleading, deceptive or clearly defamatory shall be permitted.

SECTION 9. PLACEMENT OF SIGNS BEARING ADVERTISING.

Grantee shall have the right and privilege, subject to prior city approval, to choose among designated intersections for the placement of the accompanying advertising signs related to this Franchise. Subject to the specifications and limitations contained herein, Grantee shall have the right to place up to 4 signs for each battery back-up system donated at designated intersections, or such other place as the City and Grantee may agree. No advertising signs related to this Franchise, will be installed or maintained by the City's Operations and Maintenance Department without the express written approval of the proposed location by the City Manager or his designee.

SECTION 10. REMOVAL OF SIGNS BEARING ADVERTISING.

No advertising signs related to this Franchise, after being installed, shall be removed by Grantee at any time except with the express written approval of the City Manager or his designee. The City Manager or his designee may, for a cause considered by him/her reasonable, order the City's Operations and Maintenance Department to move or remove any advertising sign.

SECTION 11. LEASE OF SIGN POLES/PAYMENT.

For the exclusive rights and privileges set forth herein, Grantee shall lease sign poles from the City for a period no greater than two (2) years. For the right and privilege of leasing the sign poles, Grantee prior to January 1, 2002, shall pay to the City One Dollar and no/100ths dollars (\$1.00), which sum shall thereafter be pre-paid to the City by January 1 each year for the duration of the franchise. Should the City terminate this Franchise, the City shall not reimburse the lease payment to Grantee.

SECTION 12. CITY USE OF ADVERTISING SIGNS.

Grantee shall make available to CITY, at no cost to CITY, a maximum of twenty (20) signs – four signs at five different intersections selected by the City Manager or his designee – at no cost. Said twenty (20) signs will be used for the purpose of

displaying printed messages selected by CITY to promote CITY programs or messages determined by CITY to be of importance to the public. CITY shall have the sole ability to select said twenty (20) locations. CITY shall be responsible for the cost of printing sign screens or otherwise applying its printed message to the signs it utilizes and shall have the ability to utilize the sign advertisement vendor of its choice. CITY shall be responsible for installing said CITY signs. Grantee shall have the ability to request CITY signs be removed from locations that may subsequently be purchased by advertisers but shall relocate displaced CITY signs to other locations selected by CITY.

SECTION 13. BATTERY BACK-UP SYSTEM SPECIFICATIONS.

The battery back-up systems to be donated shall be designed for outdoor applications in accordance with the Caltrans Transportation Electrical Equipment Specifications set forth in Exhibit A.

SECTION 14. PLACEMENT OF BATTERY BACKUP SYSTEMS.

The City, in its sole discretion, will decide the intersection locations for placement of the battery back-up systems. The Battery Back-up System equipment shall be placed, maintained, relocated and removed as required by the City Manager or his designee.

SECTION 15. OWNERSHIP/REMOVAL OF BATTERY BACK-UP SYSTEMS.

Once donated, the battery back-up systems become the sole property of the City. No battery back-up system equipment after being installed at the intersections in the City shall be removed by the Grantee.

SECTION 16. WARRANTY

Grantee will provide in the form of a pass through from the manufacturer any and all warranties on the battery back-up system equipment. Warranty will commence on the date of installation, not on the date of donation.

SECTION 17. INSURANCE.

The Grantee 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 the CITY as may be required by the City Clerk of the 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 given to the Risk Manager of the CITY by registered mail, return receipt requested, for all of the following stated insurance policies.

- A. General Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. This insurance shall indicate on the certificate of insurance the

following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent contractors and subcontractors; products and completed operations; and/or professional liability.

- B. Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. This insurance shall cover any automobile for bodily injury and property damage.
- C. Advertiser's Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for legal liability; damages resulting from libel, slander, or defamation; infringement of copyright, title or slogan; and invasion of rights to privacy.

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 Grantee 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 Grantee 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 Grantee to obtain and/or maintain any required insurance shall not relieve the Grantee from any liability under this Franchise, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Grantee 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 Grantee for the CITY. The Grantee'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.

SECTION 18. INDEMNITY AND HOLD HARMLESS

The Grantee shall hold the 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 Grantee, relating to or during the performance of its obligations under this Franchise.

SECTION 19. PERFORMANCE BOND/SECURITY.

The Grantee shall post a performance bond or other surety approved by CITY'S City Attorney in the sum of Five Hundred and no/100ths to the CITY guaranteeing its performance of the conditions of this franchise and stating that the said sum shall be forfeited to the CITY as liquidated damages in the event that Grantee shall fail to perform the conditions of its franchise. Said bond shall be furnished by a surety company authorized to do business in the State of California and shall be approved by the City Attorney. (Cash, irrevocable letter of credit, or a certified cashiers check may be substituted for a bond.).

SECTION 20. DEFAULT.

In the event that either party shall fail or neglect to do or perform each and all of the terms and conditions of this franchise on his or its part to be performed, the aggrieved party may give the party in default thirty (30) days' written notice to correct the conditions in default, and if the party in default refuses or neglects to make such corrections within the thirty (30) day period, the aggrieved party may terminate this franchise. Should Grantee herein default, Grantee agrees to leave all signs in the positions approved per Section 10 herein.

Should Grantee default, and at all times throughout the term of this franchise ordinance, and notwithstanding City's election at any time to exercise any particular remedy described herein or otherwise available in law or equity, City hereby reserves and retains the right to elect and exercise any and all remedies, whether simultaneously or consecutively, described herein or otherwise available in law and equity.

SECTION 21. INSPECTION OF BOOKS.

The CITY shall have the right at all reasonable times to examine all books, papers, and records of the Grantee for the purpose of verifying the statements or reports required and for any other purpose whatsoever connected with this franchise.

SECTION 22. DEFACING ADVERTISING SIGNS PROHIBITED.

No person shall tamper with or deface any advertising sign placed under the Franchise granted by this ordinance.

SECTION 23. PENALTY FOR VIOLATION OF SECTION 22.

It shall be unlawful for any person to violate the provisions of SECTION 22 of this franchise, or to cause, permit or suffer the same to be done; and any person who does shall be deemed guilty of a misdemeanor, and upon conviction of any such violation, such person shall be punished by a fine of not more than One Thousand and no/100ths Dollars (\$1,000.00) or by imprisonment for not more than one year or by both such fine and imprisonment.

SECTION 24. TRANSFER OR ASSIGNMENT.

This franchise may not be sold, transferred, assigned or otherwise disposed of, in whole or in part, without the prior written consent of the Modesto City Council. The Council may grant or deny any such request and may impose such conditions as it may deem to be in the public interest. Any attempted disposition made without such consent shall be void.

SECTION 25. EFFECTIVE DATE.

This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption, whichever is later, provided that Grantee, prior to said effective date, shall have filed with the City Clerk written acceptance thereof and an agreement to be bound by and comply with all of the requirements thereof, and delivers to the City Clerk the bond and insurance policies required to be furnished pursuant to the provisions of Section 14 and 15 thereof.

SECTION 26. PUBLICATION.

At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

SECTION 27. TAX PROVISION.

Grantee shall be responsible for prompt payment of all tax liabilities created by operation of this franchise including but not limited to, a possessory interest tax levied by Stanislaus County. Grantee's continued failure to pay such tax after written notice from CITY shall constitute grounds for revocation of this franchise.

SECTION 28. PROTESTS MAY BE FILED.

At any time not later than the hour set for the hearing, any person interested may make written protest stating objections against the granting of such franchise. Such protests must be signed by the protestant and be delivered to the City Clerk. (Sec. 6, Ord. 1048-N.S.)

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 16th day of October, 2001, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Mayor Sabatino

NOES: Councilmembers: Serpa, Smith

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:
By *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

By *Don Norris*
DON NORRIS, Risk Manager

Ord. No. 3237-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23rd day of October, 2001, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Mayor Sabatino

NOES: Councilmembers: Serpa and Smith

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: November 22, 2001

ACCEPTANCE OF FRANCHISE

Safer Intersections, Inc. of Modesto, California, located within Stanislaus County, does hereby agree with and accept all of the terms and conditions set forth in Ordinance No.3237-C.S., introduced by the Council of the City of Modesto on October 16, 2001, granting a two-year Battery Back-up System Equipment Donation Franchise.

Dated: 11-08-01. SAFER INTERSECTIONS, INC.

By: James W Reed
Title: PRESIDENT

By: Glenn E Reed
Title Secretary

(SEAL)

APPROVED AS TO FORM:

By: Michael D. Milich
MICHAEL D. MILICH, City Attorney

CERTIFICATE OF CLERK

I hereby certify that the foregoing ACCEPTANCE OF FRANCHISE was received by me at the hour of 3:00 o'clock p.m. on the 8th day of November, 2001.

Jean Fahr
JEAN FAHR, City Clerk

Exhibit A

**Caltrans Specifications for Battery back-up System
For Traffic Signals utilizing
Light Emitting Diodes (LED) Traffic Signal Modules**

August 1, 2001

**Specification for Battery Back-up System
For Traffic Signals utilizing
Light Emitting Diodes (LED) Traffic Signal Modules:**

GENERAL

The battery back-up system (BBS) shall include, but not be limited to the following: inverter/charger, power transfer relay, batteries, a separate manually operated non-electronic bypass switch (See Figure 1 – BBS Block Diagram) and all necessary hardware and interconnect wiring. The BBS shall provide reliable emergency power to a traffic signal in the event of a power failure or interruption.

The BBS shall be capable of providing power for full run-time operation for an “LED-only” intersection (all colors red, yellow, and green) or flashing mode operation for an intersection using Red LED’s.

The BBS shall be designed for outdoor applications, in accordance with the Caltrans Transportation Electrical Equipment Specifications (TEES), dated November 19, 1999, Chapter 1, Section 8 requirements.

1.0 OPERATION

1.1

The BBS shall provide a minimum two (2) hours of full run-time operation for an “LED-only” intersection (minimum 700W/1000VA active output capacity, with 80% minimum inverter efficiency).

1.2

The maximum transfer time from loss of utility power to switchover to battery backed inverter power shall be 150 milliseconds.

1.3

The BBS shall provide the user with 3-sets of normally open (NO) and normally closed (NC) single-pole double-throw (SPDT) relay contact closures, available on a panel-mounted terminal block, rated at a minimum 120V/1A, and labeled so as to identify each contact. For typical configuration, see Figure 3(b).

1.3.1

The first set of NO and NC contact closures shall be energized whenever the unit switches to battery power. Contact shall be labeled or marked “On Batt.”

1.3.2

The second set of NO and NC contact closures shall be energized whenever the battery approaches approximately 40% of remaining useful capacity. Contact shall be labeled or marked "Low Batt."

1.3.3

The third set of NO and NC contact closures shall be energized two hours after the unit switches to battery power. Contact shall be labeled or marked "Timer."

1.4

Operating temperature for both the inverter/power transfer relay and manual bypass switch shall be -37°C to $+74^{\circ}\text{C}$.

1.5

Both the Power Transfer Relay and Manual Bypass Switch shall be rated at 240VAC/30 amps, minimum.

1.6

The BBS shall use a temperature-compensated battery charging system. The charging system shall compensate over a range of $2.5 - 4.0 \text{ mV}/^{\circ}\text{C}$ per cell.

1.6.1

The temperature sensor shall be external to the inverter/charger unit. The temperature sensor shall come with 2 meters (6'6") of wire.

1.7

Batteries shall not be recharged when battery temperature exceeds $50^{\circ}\text{C} \pm 3^{\circ}\text{C}$.

1.8

BBS shall bypass the utility line power whenever the utility line voltage is outside of the following voltage range: 100VAC to 130VAC ($\pm 2\text{VAC}$).

1.9

When utilizing battery power, the BBS output voltage shall be between 110 VAC and 125 VAC, pure sine wave output, $60\text{Hz} \pm 3\text{Hz}$.

1.10

BBS shall be compatible with Caltrans Model 332 Cabinets, Model 170 Controllers, Model 2070 Controllers and cabinet components for full time operation.

1.11

When the utility line power has been restored at above $105 \text{ VAC} \pm 2 \text{ VAC}$ for more than 30 seconds, the BBS shall dropout of battery backup mode and return to utility line mode.

1.12

When the utility line power has been restored at below 125VAC \pm 2 VAC for more than 30 seconds, the BBS shall dropout of battery backup mode and return to utility line mode.

1.13

BBS shall be equipped to prevent a malfunction feedback to the cabinet or from feeding back to the utility service.

1.14

In the event of inverter/charger failure, battery failure or complete battery discharge, the power transfer relay shall revert to the NC state, where utility line power is reconnected to the cabinet.

1.15

Recharge time for the battery, from "protective low-cutoff" to 80% or more of full battery charge capacity, shall not exceed twenty (20) hours.

2.0 MOUNTING/ CONFIGURATION

2.1 GENERAL

2.1.1

Inverter/Charger Unit shall be rack or shelf-mounted.

2.1.2

Power Transfer Relay and Manual Bypass Switch shall be mounted on the 332 Cabinet standard Electronic Industries Association (EIA) rail.

2.1.3

All interconnect wiring provided between Power Transfer Relay, Bypass Switch and Cabinet Terminal Service Block shall be no less than 2 meters (6'6") of #10 AWG wire.

2.1.4

Relay contact wiring provided for each set of NO/NC relay contact closure terminals shall be 2 meters (6'6") of #18 AWG wire.

2.1.5

See Figure 4 which provides clarification as to how BBS Power Transfer Relay and Manual Bypass Switch are interconnected with Model 332A Cabinets in order to ensure interchangeability between all BBS manufacturers.

2.1.6

All necessary hardware for mounting (shelf angles, rack, etc) shall be included in the bid price of the BBS. A minimum of 6 bolts/fasteners shall be used to secure swing-trays to the 332 Cabinet standard EIA 482.6mm (19") rack. All bolts/fasteners and washers shall meet the following requirements:

Screw type: Pan Head Phillips machine screw

Size and Thread pitch: 10-32

Material: 18-8 stainless steel (Type 316 stainless steel is acceptable as an alternate)

Washer: Use one flat washer (18-8 stainless steel) under the head of each 10-32 screw (provided that the screws are properly tightened, lock washers are unnecessary.)

Number of screws per swivel bracket, minimum: 6 screws (minimum) per swivel bracket. Spaced evenly along bracket, with one screw near each end.

2.2 INTERNAL BATTERY OPTION

2.2.1

Complete BBS, including batteries, shall fit inside a typical, fully equipped Caltrans Model 332 Cabinet that includes one Model 170 or 2070 controller.

2.2.2

Mounting method shall be shelf-mount, rack-mount, swing-tray mount or combination of either. Front-mounted available rack space is 3U or approximately 152.4mm (6"). For additional space, see Figure 2 – BBS Mounting Diagram

2.2.3

Batteries mounted below the controller shelf shall be swing-tray mounted. Batteries may be shelf mounted in area behind controller so long as shelf and batteries do not interfere with controller unit and C1 plug.

2.3 EXTERNAL BATTERY CABINET OPTION

2.3.1

Inverter/Charger, Power Transfer Relay and manually operated Bypass Switch shall fit inside a typical fully equipped Caltrans Model 332 Cabinet that includes one Model 170 or 2070 controller.

2.3.2

Batteries shall be housed in a NEMA 3R rated cabinet mounted to the side of the Model 332 Cabinet (see Figure 5 for details). This external battery cabinet shall conform to TEES Chapter 7, Section 2-Housings for the construction and finish of the cabinet.

2.3.3

Batteries shall be mounted on individual shelves.

2.3.4

Four shelves shall be provided. There shall be a minimum of 304.8mm (12") clearance between shelves. Each shelf shall be a minimum of 228.6mm (9") X 635.0mm (25"), and capable of supporting a minimum of 57kg (125 lbs.)

2.3.2

The external battery cabinet shall mount to the Model 332 Cabinet with a minimum of eight bolts. (See Figure 5)

2.3.3

The dimensions of the external battery cabinet shall be as shown in Figure 5.

2.3.4

The external battery cabinet shall be ventilated through the use of louvered vents (2), filters, and one thermostatically controlled fan as per TEES Chapter 7 Section 2-Housings.

2.3.5

External battery cabinet fan shall be AC operated from the same line output of the Manual Bypass Switch that supplies power to the 332 Cabinet.

2.3.6

The external battery cabinet shall have a door opening to the entire cabinet. The door shall be attached to the cabinet through the use of a continuous stainless steel or aluminum piano hinge. The door shall use a padlock clasp in order to lock the door.

2.3.7

The BBS with external battery cabinet shall come with all bolts, conduits and bushings, gaskets, shelves, and hardware needed for mounting.

3.0 MAINTENANCE, DISPLAYS, CONTROLS AND DIAGNOSTICS

3.1

The BBS shall include a display and /or meter to indicate current battery charge status and conditions.

3.2

The BBS shall have lightning surge protection compliant with IEEE/ANSI C.62.41.

3.3

The BBS shall be equipped with an integral system to prevent battery from destructive discharge and overcharge.

3.4

The BBS and batteries shall be easily replaced with all needed hardware and shall not require any special tools for installation.

3.5

The BBS shall include a resettable front-panel event counter display to indicate the number of times the BBS was activated and a front-panel hour meter to display the total number of hours the unit has operated on battery power.

3.6

Manufacturer shall include two (2) sets of equipment lists, operation and maintenance manuals, and board-level schematic and wiring diagrams of the BBS, and the battery data sheets. Manual shall conform to TEES 1999, Chapter 1, Section 1.2.4.2.

4.0 BATTERY SYSTEM

4.1

Individual batteries shall be 12V type, 65 amp-hour maximum, and shall be easily replaced and commercially available off the shelf.

4.2

Batteries used for BBS shall consist of 4 to 8 batteries with a cumulative minimum rated capacity of 240 amp-hours.

4.3

Batteries shall be deep cycle, sealed prismatic lead-calcium based AGM/VRLA (Absorbed Glass Mat/ Valve Regulated Lead Acid).

4.4

Batteries shall be certified by the manufacturer to operate over a temperature range of -25°C to $+74^{\circ}\text{C}$.

4.5

The batteries shall be provided with appropriate interconnect wiring and corrosion-resistant mounting trays and/or brackets appropriate for the cabinet into which they will be installed.

4.6

Batteries shall indicate maximum recharge data and recharging cycles.

4.7

Battery interconnect wiring shall be via modular harness. Batteries shall be shipped with positive and negative terminals pre-wired with red and black cabling that terminates into a typical power-pole style connector. Harness shall be equipped with mating power-pole style connectors for batteries and a single, insulated plug-in style connection to inverter/charger unit. Harness shall allow batteries to be quickly and easily connected in any order and shall be keyed and wired to ensure proper polarity and circuit configuration.

4.8

Battery terminals shall be covered and insulated so as to prevent accidental shorting.

5.0 WARRANTY

Manufacturers shall provide a two (2) year factory-repair warranty for parts and labor on the BBS from date of acceptance by the State. Batteries shall be warranted for full replacement for two (2) years from date of purchase. The warranty shall be included in the total bid price of the BBS.

Battery Back Up System (BBS) Block Diagram

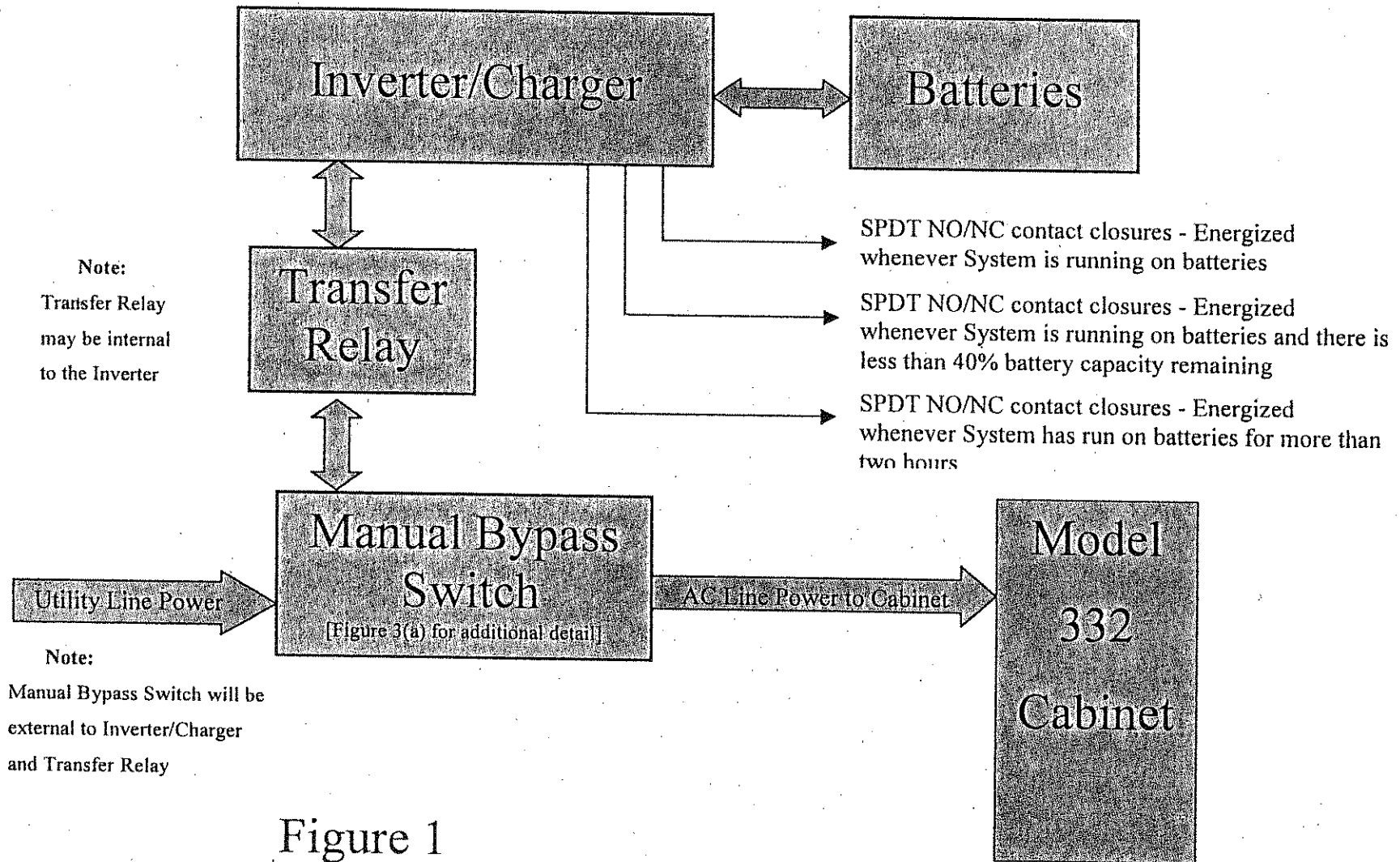
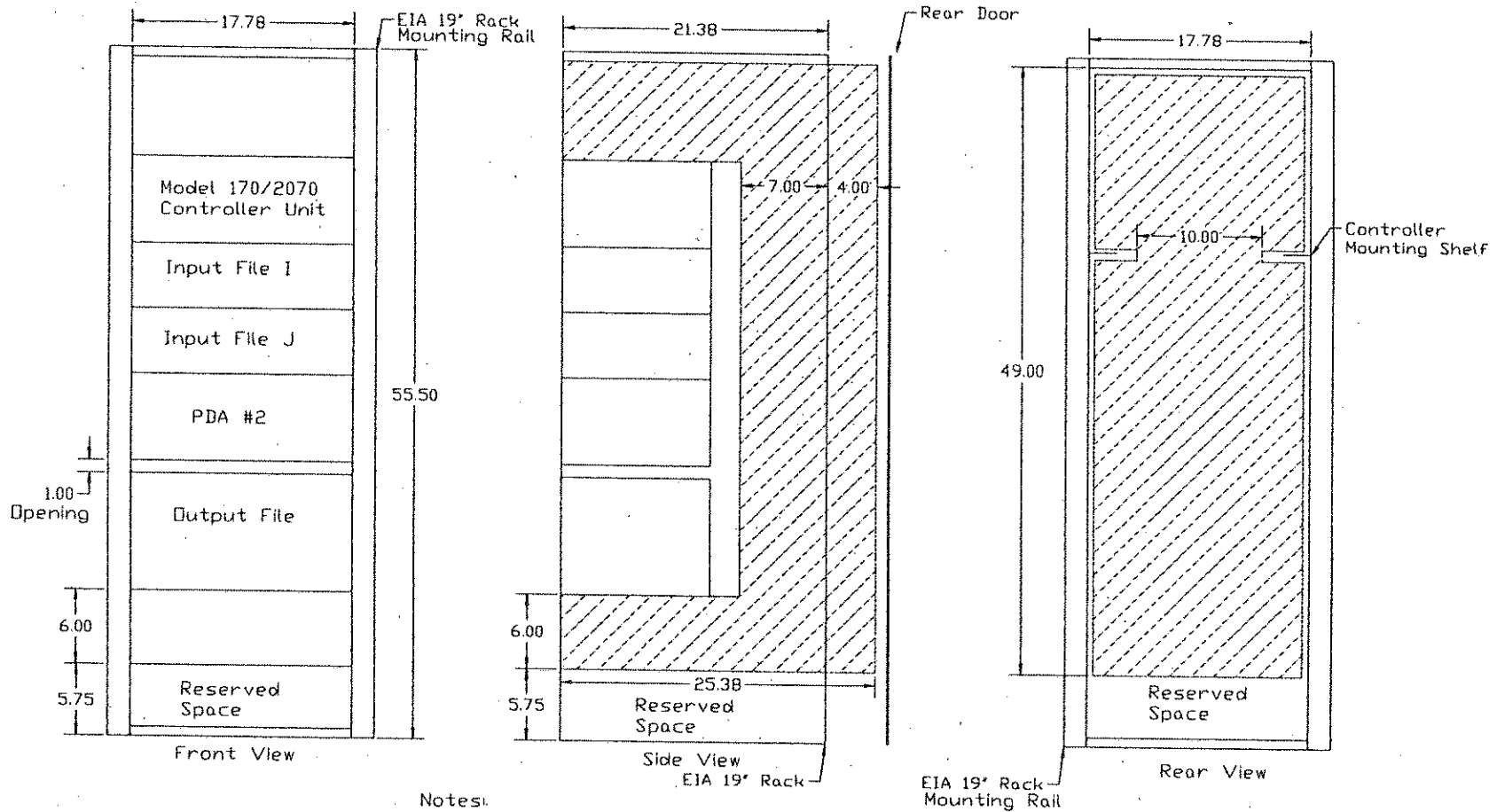


Figure 1

BBS Mounting Diagram

For a typical Model 332 Cabinet

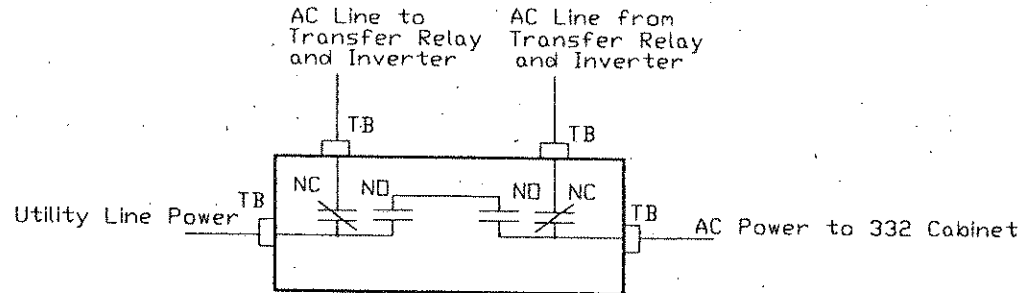


Notes:
 Area inside of dashed lines represents available mounting locations for BBS.
 Prescribed available mounting areas are approximate.
 All dimensions shown are in inches.

Figure 2

BBS Specification Clarifications

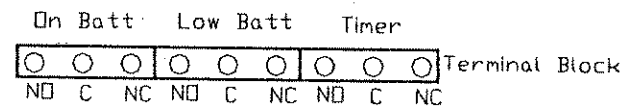
(a) Manual Bypass Switch (typical)



Notes:

1. TB - #8 Terminal Blocks
2. NO - Normally Open
3. NC - Normally Closed
4. NO/NC contacts shall all toggle simultaneously with one single manually operated switch.
5. Manual Bypass Switch shall only switch line. Neutral and Equipment Ground are not switched and shall be connected to 332 Cabinet buses.

(b) Relay contacts (NO/NC) available on panel-mounted terminal block (typical)



Notes:

1. NO/NC contacts may either share or use separate commons.

Figure 3

BBS Utility Power Connection Diagram

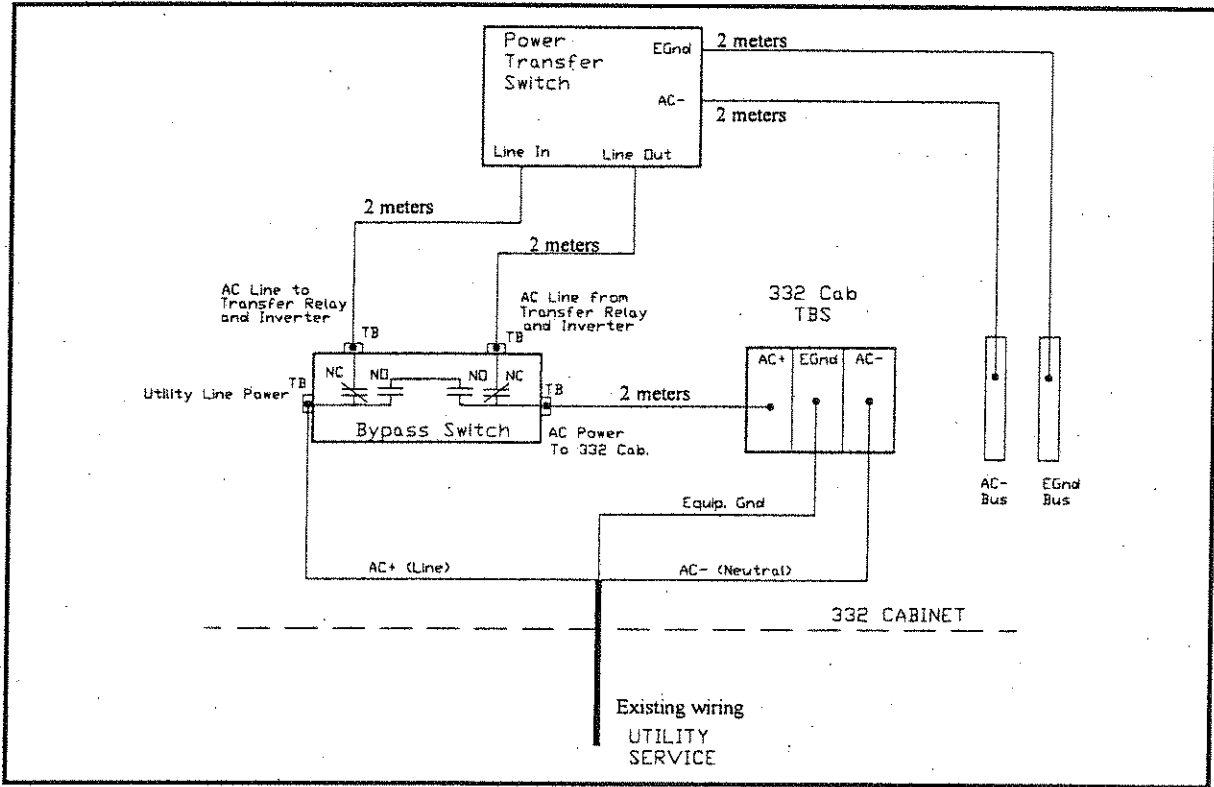


Figure 4

External Battery Cabinet

Date: August 1, 2001

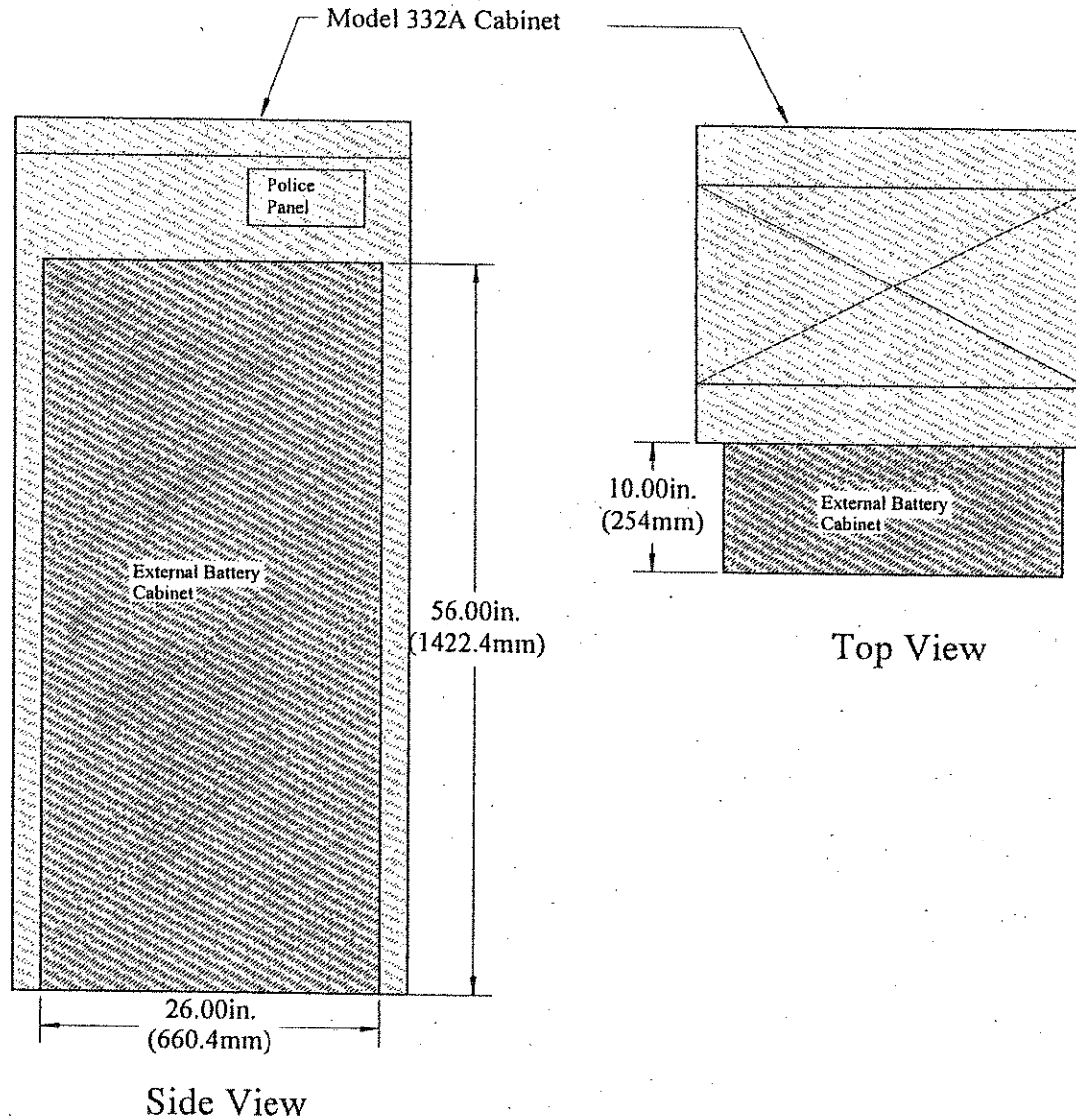


Figure 5

**CITY OF MODESTO
ORDINANCE NO.3238-C.S.**

**AN ORDINANCE AMENDING SECTION 7-3-9 OF THE ZONING MAP TO
REZONE FROM PLANNED DEVELOPMENT ZONE, P-D(510), TO PLANNED
DEVELOPMENT ZONE, P-D(549), PROPERTY LOCATED ON THE WEST
SIDE OF CARVER ROAD NORTH OF MONTCLAIR DRIVE AT 333 CARVER
ROAD. (STANISLAUS COUNTY AFFORDABLE HOUSING CORPORATION)**

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 7-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Planned Development Zone, P-D(510), to Planned Development Zone, P-D(549):

P-D(510) to P-D(549)

All that portion of Lot 1, KNAPP TRACT, according to the Official Map thereof, filed in the office of the Recorder of Stanislaus County, California, on November 16, 1904, in Volume 2 of Maps, page 2, described as follows:

Beginning at a point in the east line of said Lot 1, said point being on the center line of Carver Road and bears south 0 degrees 41 minutes east 593.8 feet from the northeast corner of said Lot 1; running thence north 89 degrees 17 minutes west 250 feet; thence south 0 degrees 41 minutes East 200 feet; thence south 89 degrees 17 minutes east 250 feet on the east line of said Lot 1; thence north 0 degrees 41 minutes west along said east line 200 feet to the point of beginning.

SECTION 2. USES. The following uses shall be permitted in said P-D(549) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Multi-family residential uses permitted in the Medium-Density Residential Zone, (R-2).
2. Off-street parking as approved by the Community Development Director.

SECTION 3. ZONING MAP. Section Map 7-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of November, 2001, by Councilmember Conrad, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Friedman, Frohman, Serpa, Smith
Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:


By: 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By: 
Community Development Department
Planning Division

Ord. No. 3238-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 11th day of December, 2001, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Friedman, Frohman, Smith, Mayor Sabatino

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: Fisher

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: January 10, 2002

**CITY OF MODESTO
ORDINANCE NO. 3239-C.S.**

AN ORDINANCE AMENDING SECTION 19-3-9 OF THE ZONING MAP TO REZONE FROM A PORTION OF PLANNED DEVELOPMENT ZONE, P-D(416), TO PLANNED DEVELOPMENT ZONE, P-D(550), PROPERTY LOCATED AT THE NORTHWEST CORNER OF WEST ORANGEBURG AVENUE AND MARTIN AVENUE. (PACIFIC REGIONAL NEUROSURGERY MEDICAL ASSOCIATES)

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 19-3-9 of the Zoning Map is hereby amended to reclassify the following described property from a portion of Planned Development Zone, P-D(416), to Planned Development Zone, P-D(550):

P-D(416) to P-D(550)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the Northwest Quarter of Section 19, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

All of Lot A as shown on that certain map filed for record on February 17, 1988 of ORANGEVIEW MANOR in Book 32 of Maps, Page 67; and all of Parcel 4 on that certain Parcel Map filed for record on June 30, 1987, in Book 39 of Parcel Maps, Page 67;

Also including all of Teresa Street and all of Martin Avenue and the northerly half of West Orangeburg Avenue, all being immediately adjacent to the above-described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(550) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Business and professional offices as allowed in the Professional Office Zone, (P-O).
2. Off-street parking in accordance with the approved plan.

SECTION 3. ZONING MAP. Section Map 19-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of November, 2001, by Councilmember Conrad, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith
Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By *[Signature]*
Community Development Department
Planning Division

Ord. No. 3239-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 11th day of December, 2001, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: January 10, 2002