LAFCO APPLICATION NO. 2010-06 – KIERNAN BUSINESS PARK EAST CHANGE OF ORGANIZATION TO THE CITY OF MODESTO

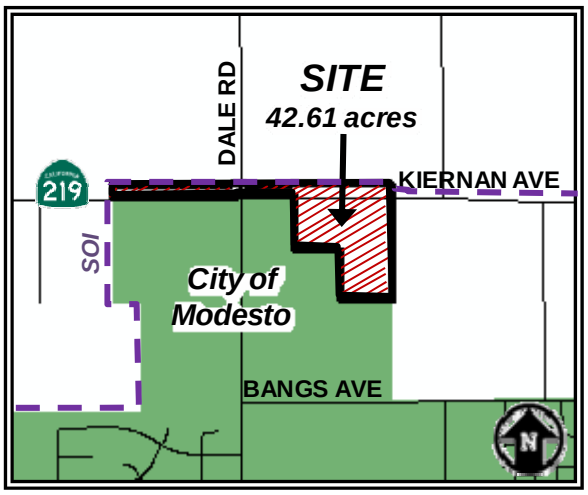
PROPOSAL

A proposal to annex three (3) parcels totaling 42.61 acres, located at 2706, 2742, and 2866 Kiernan Avenue, including the adjacent road right-of-way. (See attached maps, Exhibit "A".)

1. Applicant: City of Modesto, by Resolution of Application.

2. Property Owners: Matthew and Barbara Bruno; Charles and Deborah Phillips; and Stonehedge Developers, LLC. (All of the property owners within the proposed annexation area have consented in writing to the annexation.)

3. Location: East of Dale Road, southwest of the intersection of Kiernan and American Avenues, in an unincorporated area adjacent to the City of Modesto. The site is located within the City's Sphere of Influence.



4. Parcels of Land Involved and Acreage: The proposal includes three (3) whole parcels (Assessor Parcel Numbers 078-015-002, 012, and 013), including adjacent road right-of-way along Kiernan Avenue/CA-219.

5. Reason for Request: According to information provided by the City of Modesto, development of the subject area has been designated for business park development since 1997. (See attached City Resolution No. 97-159, adopting the Kiernan Business Park Specific Plan, Exhibit "B".) The proposed annexation area is within a segment of a 67-acre portion of the City's Kiernan Business Park Specific Plan. No new development is proposed with the application for annexation.

ENVIRONMENTAL REVIEW

The City of Modesto, as "Lead Agency", prepared the necessary environmental documents for the proposed annexation, which included a finding that the project is within the scope of the City's Kiernan Business Park Specific Plan Environmental Impact Report (EIR) – State Clearinghouse No. 2007062071; and pursuant to Section 21157.1(b) of the California Environmental Quality Act (CEQA), no new environmental review is required.

As the City has assumed the role as Lead Agency, the Commission, as a "Responsible Agency", must certify that it has considered the environmental documentation prepared by the City. (See attached environmental documentation, Exhibit "C".)

FACTORS

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 requires several factors to be considered by a LAFCO when evaluating a proposal. The following discussion pertains to the identified factors:

a. Population and Land Use: The area is considered to be uninhabited by state law as it contains less than 12 registered voters. The subject territory is surrounded by agricultural land to the north; rural residential and agricultural land to the east; a medical facility and business park uses to the west; and future business park uses to the south. According to the County Assessor's Office, the current total assessed land value of the subject area is $4,907,360, and it is located within Tax Code Area: 098-001.

b. Governmental Services and Controls: Essential governmental services which are provided to the subject area at the present time, and which will be provided after the proposal is finalized, are indicated in the following chart:

Type	**Now Provided By**	**After Proposed Action, Future Service Provided By:**
Law Enforcement	Stanislaus County	City of Modesto
Fire Protection	Salida Fire District	Same
Planning & Zoning	Stanislaus County	City of Modesto
Building Inspection	Stanislaus County	City of Modesto
Street Maintenance	Stanislaus County	City of Modesto
Schools	Modesto Unified	Same
Water	Modesto Irrigation District	City of Modesto
Sewer	Private Septic Tanks	City of Modesto
Mosquito Abatement	Eastside Mosquito Abatement	Same

The City has adopted Ordinance No. 3035-C.S, approving the prezoning of the subject territory, and also adopted Resolution No. 2010-245 approving the filing of an application for annexation (See Exhibit "D"). The City's Resolution also included a Plan for Services indicating that the City can provide the necessary services to the subject territory.

c. Effect of Proposal on Mutual Social and Economic Interests: The territory is within an area planned for development within the City of Modesto's Kiernan Business Park Specific Plan and General Plan. The business park land uses proposed for the area appear to be compatible with the surrounding area. There are no social or economic communities of interest in the area, as defined by the Commission policies.

d. Conformity with Policies: The proposal is consistent with adopted Commission policies for providing planned, orderly and efficient patterns of urban development.

e. Impact on Agricultural lands: There is one (1) active Williamson Act Contract within the boundaries of the proposal. Contract No. 75-1841 (Current Assessor Parcel Number: 078-015-012 – owner: Matt Bruno) was recorded on January 15, 1975; Vol. 2676, Pages 880-887, Instrument No. 26802. The City of Modesto protested this contract on October 7, 1974 and Stanislaus LAFCO upheld the City's protest on March 29, 1978. A Notice of Non-renewal was filed on this Contract (19.5 acres), with an expiration date of December 31, 2013. The City of Modesto, in its Resolution of Application initiating the annexation proposal, stated it intends not to succeed to the above Contract. (See attached Williamson Act documentation, Exhibit "E".)

As required, pursuant to Government Code Section 56753.5, the Director of the Department of Conservation was notified of this proposal, which included land subject to a Williamson Act Contract. To date, no response has been received from the Department of Conservation.

Pursuant to Government Code Section 51243.5, LAFCO must determine whether a city may exercise an option not to succeed to a Williamson Act Contract upon annexation. A city may exercise its option to not succeed to the rights, duties, and powers of the county under contract, if each of the following had occurred prior to January 1, 1991:

(1) The land being annexed was within one mile of the city's boundary when the contract was executed;
(2) The city had filed with the local agency formation commission a resolution protesting the execution of the contract;
(3) The local agency formation commission had held a hearing to consider the city's protest contract;
(4) The local agency formation commission had found that the contract would be inconsistent with the publicly desirable future use and control of the land; and,
(5) The local agency formation commission had approved the city's protest.

As the subject Williamson Act Contract was protested and upheld by LAFCO, the City may exercise the option to not succeed to the Contract, as the above required findings can be met.

In addition, pursuant to Government Code Section 56856.5, the Commission shall not approve a change of organization that would result in the annexation to a city of territory subject to a Williamson Act contract, unless it makes certain findings. The findings include any of the following:

(1) The city or county that would administer the contract after annexation has adopted policies and feasible implementation measures applicable to the subject territory ensuring the continuation of agricultural use and other uses allowable under the contract on a long-term basis.

(2) The change of organization or reorganization encourages and provides planned, well-ordered, and efficient urban development patterns that include appropriate consideration of the preservation of open-space lands within those urban development patterns.

(3) The change of organization or reorganization is necessary to provide services to planned, well-ordered and efficient urban development patterns that include appropriate consideration of the preservation of open-space lands within those urban development patterns.

The City of Modesto included the subject area in the Kiernan Business Park Specific Plan for business park-type development. The City has also prepared a Plan for Services indicating they have the necessary infrastructure and/or financing plans to ensure that growth and development within the subject area is planned and well-ordered, as well as provides for efficient development patterns. Therefore, if the Commission desires to approve the proposal as requested, the above finding (3) can be made, consistent with Government Code Section 56856.5.

f. Definiteness and Certainty of Boundaries: The proposed boundary includes three (3) whole Tax Assessor parcels, and the adjacent road right-of-way, which is consistent with existing annexation boundaries and adopted Commission policies.

g. Consistency with General/Specific Plan(s) and Regional Transportation Plans: The proposal is consistent with the City's adopted General Plan, as the subject area is designated for "Light and Heavy Business park" uses. In addition, the County's General Plan designation of "Urban Transition" anticipates annexation by the City, and therefore, the proposal is considered to be consistent with the County General Plan. The proposal does not appear to be in conflict with the currently adopted Regional Transportation Plan, prepared by the Stanislaus Council of Governments (StanCOG).

h. Conformance with Spheres of Influence: The subject territory is located within the City's adopted Sphere of Influence. In addition, the proposed territory is located within the Spheres of Influence of the following agencies: Eastside Mosquito Abatement District, Modesto Irrigation District, and the Salida Fire Protection District.

i. Comments of Affected Agencies and Jurisdictions: All affected agencies and jurisdictions have been notified pursuant to State law requirements and the Commission adopted policies.

j. Ability to Serve Proposed Area: The City of Modesto will provide municipal services to the annexation area, such as: domestic water, sanitary sewer, storm drainage, street construction and maintenance, and street lighting. Services will be financed through Public Facility Fees and the General Fund. A Plan for Services has been prepared and is included in the City's Resolution No. 2010-245 (see attached Exhibit "D").

Sanitary Sewer Services - Based on information provided by the City, the annexation area is to be served by a proposed 12-inch sewer line in the future Chopra Parkway, which will direct flows to the existing 30-inch trunk line in Bangs Avenue. There is also a proposed 8-inch line in the future Health Care Way which would direct flows to the existing 30-inch line in Dale Road, which in turn also leads to the Bangs Avenue trunk line. At build-out (based on 500,722 square feet) the business park uses would generate approximately 25,905 gallons per day or 18 gallons per minute of wastewater. The wastewater would be conveyed to the Woodland Lift Station which has a capacity of 14,500 gallons per minute. The peak wet weather flows from the subject territory would be approximately 0.03 percent of the Woodland Lift Station's capacity, and therefore, sufficient capacity to provide sewer services to the subject area.

Fire Services - Upon annexation, the property will not be detached from the Salida Fire Protection District, and the District would continue to provide fire suppression and prevention within the proposed annexation area. In addition, the City of Modesto and the Salida Fire Protection District have adopted an agreement to equitably share future district revenues within the affected territory. (See attached City Resolution No. 2010-247, and signed Agreement; Exhibit "F".)

Police Services - The City, in its Plan for Services, indicates that the police department would have the ability to provide adequate protection to the subject territory without impacting the current level of service. The existing police service level within the City of Modesto is 1.3 officers per 1,000 residents.

k. Water Supplies: The City of Modesto supplies municipal and domestic water supply service within its corporate limits. The City's water supply sources include groundwater from the Stanislaus/Tuolumne and Turlock groundwater basins, and treated surface water from the Modesto Irrigation District (MID). The MID and City are currently moving forward on the Modesto Regional Water Treatment Plant Phase Two expansion and the City's water distribution project. Phase Two is intended to double the capacity of MID's water treatment plant. The City's water distribution project will include the addition of storage tanks and pipelines to deliver the needed water supply to the community. A new distribution system will also be constructed to serve the eastern portion of the Kiernan Business Park Specific Plan area.

According to the Kiernan Business Park (KBP) Facilities Master Plan, the annexation area is to be served by a proposed 10-inch water line in the future Chopra Parkway. This water line would tie into a 12-inch water line under Bangs Avenue, which in turn would be tied to the existing 12-inch water line in Dale Road. There is also a proposed 12-inch water line proposed for the future Health Care Way, which would tie into the existing 12-inch water line in Dale Road.

The KBP Environmental Impact Report (EIR) estimates that the proposed business park uses in the area would require approximately two acre-feet of water per acre, per year; with a demand of 50 gallons per minute (gpm). In addition, a 2007 Water Supply Assessment (WSA) was prepared for the KBP area, which concluded that there are sufficient water supplies to meet the City's existing and projected water demands, including future demands associated with the proposed project.

l. Regional Housing Needs: Not applicable.

m. Landowner Comments: All of the landowners within the affected territory have consented to the change of organization. No other comments from landowners were received prior to the preparation of this report.

n. Other Land Use Information: There is no other land use information related to this project.

o. Environmental Justice: As defined by Government Code §56668, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services. Staff has determined that approval of the change of organization would not result in the unfair treatment of any person based on race, culture or income with respect to the provision of services within the proposal area.

DISCUSSION

The boundaries of the proposal include approximately 42.61 acres, which is adjacent to the City limits. The City, in its Resolution of Application, indicates that it has the ability to provide the necessary services for development within the subject territory. Annexation is appropriate when it can be shown that the City can provide all the necessary services for development and it is consistent with the Commission's adopted policies to provide planned, well-ordered and efficient development patterns. As there is no specific development proposal associated with this annexation request, the Commission's review is based on Government Code §56375(a)(7) which states:

> *The decision of the commission with regard to a proposal to annex territory to a city shall be based upon the general plan and prezoning of the city. When the development purposes are not made known to the annexing city, the annexation shall be reviewed on the basis of the adopted plans and policies of the annexing city or county.*

Therefore, the analysis of this proposal is based on the City's prezoning designation of (P-S) Specific Plan, with a General Plan designation of Business Park (BP). The City has stated that development of the project area was contemplated and within the scope of the Kiernan Business Park Specific Plan Environmental Impact Report (EIR). Additionally, the Government Code restricts cities from making changes to the prezoning designation or general plan on the subject property for two years following the annexation. Section 56375(e) states, in part:

> *No subsequent change may be made to the general plan for the annexed territory or zoning that is not in conformance to the prezoning designations for a period of two years after the completion of the annexation, unless the legislative body for the city makes a finding at a public hearing that a substantial change has occurred in circumstances that necessitate a departure from the prezoning in the application to the commission.*

Williamson Act Considerations

By law, LAFCO must consider agricultural lands and direct urban development away from prime agricultural lands (Government Code Section 56377). As previously discussed, there is one (1) active Williamson Act Contract within the boundaries of the proposal. Evidence has been presented for the Commission to make the determination pursuant to Government Code Section 51243.5, that the City of Modesto may exercise its option not to succeed to the Contract, as the required findings can be made.

The law also allows LAFCO to approve annexations of prime agricultural lands when the Commission can find that planned, orderly and efficient development of an area would be promoted, and that there is appropriate consideration of the preservation of open-space lands within those development patterns (Government Code Section 56856.5). Therefore, it appears from this proposal that the necessary finding can be established as the City has prezoned the territory and adopted the Kiernan Business Park Specific Plan and EIR, which provides for a planned, well-ordered, and efficient development patterns, while ensuring that adequate services can and will be provided to the subject area. Additionally, a Notice of Non-renewal has been filed on the active Williamson Act Contract.

WAIVER OF CONDUCTING AUTHORITY PROCEEDINGS

Government Code Section 56663(c) allows the Commission to waive conducting authority proceedings with regards to uninhabited areas entirely if both of the following conditions are met:

1. All of the owners of land within the affected territory have given their written consent to the change of organization.

2. No subject agency has submitted written opposition to a waiver of protest proceedings.

With regards to the above, all of the landowners within the project area have consented in writing to the change of organization, and the City of Modesto has consented in writing to the waiver of

protest proceedings. Therefore, as the required conditions have been met, and following the Commission's consideration of the proposal, conducting authority proceedings may be waived.

CONSISTENCY WITH ADOPTED COMMISSION POLICIES

The Commission's adopted policies focus on discouraging urban sprawl and encouraging the orderly formation and development of local government agencies, based on local conditions and circumstances. Generally, annexation proposals which conform to the overall policies and purposes of LAFCO will be approved if it can be shown that: (1) the range and level of services currently provided can be maintained in the annexation area; (2) the area is contiguous with existing boundaries; and (3) a planned, orderly and compact urban development pattern will result.

ALTERNATIVES FOR COMMISSION ACTION

After consideration of this report and any testimony or additional materials that are submitted, the Commission should consider choosing one of the following options:

Option 1 APPROVE the proposal, as submitted by the City of Modesto.

Option 2 APPROVE the proposal, with amendment(s).

Option 3 DENY the proposal without prejudice.

Option 4 CONTINUE this proposal to a future meeting (maximum 70 days) for additional information.

STAFF RECOMMENDATION

Approve Option 1. Based on the information and discussion in this report, including evidence presented, it is recommended that the Commission adopt the attached Resolution No. 2011-02, approving the proposal as requested by the City of Modesto.

Respectfully submitted,

Marjorie Blom

Marjorie Blom
Executive Officer

Attachments:

- LAFCO Resolution No. 2011-02 *(pg. 8)*
- Exhibit A - Maps *(pg. 12)*
- Exhibit B - City Resolution No. 97-159, adopting the Kiernan Business Park Specific Plan *(pg. 15)*
- Exhibit C - City Environmental Documentation, including Notice of Determination and City Resolution No. 2010-246 *(pg. 19)*
- Exhibit D - City Ordinance No. 3035 – C.S. and City Resolution No. 2010-245, including Plan for Services *(pg. 53)*
- Exhibit E - Williamson Act Documentation *(pg. 84)*
- Exhibit F - City Resolution No. 2010-247, and signed Fire Agreement *(pg. 104)*

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LAFCO Resolution No. 2011-02

STANISLAUS LOCAL AGENCY FORMATION COMMISSION

DRAFT

RESOLUTION

DATE: January 26, 2011 **NO.** 2011-02

SUBJECT: LAFCO Application No. 2010-06 – Kiernan Business Park East Change of Organization to the City of Modesto

On the motion of Commissioner , seconded by Commissioner , and approved by the following:

Ayes: Commissioners:
Noes: Commissioners:
Absent: Commissioners:
Ineligible: Commissioners:

THE FOLLOWING RESOLUTION WAS ADOPTED:

WHEREAS, the Commission has considered the Kiernan Business Park East to the City of Modesto, a proposal to annex approximately 42.61 acres to the City of Modesto;

WHEREAS, said meeting was conducted pursuant to Section 56663 of the California Government Code without notice and hearing, as the proposal was signed by all owners of land within the proposed change of organization boundaries;

WHEREAS, the property owners within the subject territory have consented in writing to the change of organization;

WHEREAS, there are less than twelve registered voters within the territory and it is considered uninhabited;

WHEREAS, the City of Modesto adopted a comprehensive specific plan and prezoned the subject territory, which is located within the City's Sphere of Influence;

WHEREAS, the City of Modesto prezoned the subject territory, located at: 2706, 2742, and 2866 Kiernan Avenue (Assessor Parcel Numbers 078-015-002, 078-015-012, and 078-015-013);

WHEREAS, the City of Modesto, as Lead Agency, prepared and subsequently approved a finding that the project is within the scope of the City's Kiernan Business Park Specific Plan Environmental Impact Report (EIR) – State Clearinghouse No. 2007062071; in compliance with the California Environmental Quality Act (CEQA) and State CEQA Guidelines;

WHEREAS, the Commission, as a Responsible Agency, has considered the environmental documents, including a Notice of Determination as prepared by the City;

WHEREAS, there is one (1) active Williamson Act contact (No. 75-1841) within the boundaries of the change of organization, and a notice of non-renewal has been filed by the owner of the property under this contract;

DRAFT

WHEREAS, pursuant to Government Code Section 51243.5, the Commission must determine whether a city may exercise an option not to succeed to a Williamson Act contract upon annexation;

WHEREAS, the City of Modesto, has the option not to succeed to Williamson Act Contract No. 75-1841 upon annexation, as the findings in Government Code Section 51243.5 have been met;

WHEREAS, pursuant to Government Code Section 56856.5(c), the Commission may approve a change of organization or reorganization that would result in the annexation of Williamson Act lands only if it makes a specific finding; and,

WHEREAS, the Commission has, in evaluating the proposal, considered the report submitted by the Executive Officer, the factors set forth in Section 56668 of the California Government Code and testimony and evidence presented at the meeting held on January 26, 2011.

NOW, THEREFORE, BE IT RESOLVED that this Commission:

1. Certifies, as a Responsible Agency, that it has considered the environmental documentation prepared by the City of Modesto.

2. Determines that the City of Modesto may exercise its option not to succeed to Williamson Act Contract No. 75-1841, upon annexation, as the criteria contained in Government Code Section 51243.5, has been met.

3. Finds that pursuant to Government Code Section 56856.5, the change of organization is appropriate to provide necessary urban services to a planned, well-ordered, and efficient urban development pattern as the City of Modesto adopted an industrial development plan for the area.

4. Determines that: (a) the subject territory is within the Modesto Sphere of Influence; (b) the approval of the proposal is consistent with all applicable spheres of influence, overall Commission policies and the City of Modesto General Plan and Kiernan Business Park Specific Plan; (c) the property owners within the subject area have consented in writing to the change of organization; (d) there are less than twelve registered voters within the territory and it is considered uninhabited; (e) approval of the proposal will result in planned, orderly and efficient development of the area; and (f) the City has provided sufficient evidence to show that the required services are available and will be provided upon development of the area.

5. Approves the proposal subject to the following terms and conditions:

    a. The applicant is responsible for payment of the required State Board of Equalization fees.

    b. The applicant agrees to defend, hold harmless and indemnify LAFCO and/or its agents, officers and employees from any claim, action or proceeding brought against any of them, the purpose of which is to attack, set aside, void or annul LAFCO's action on a proposal or any action relating to or arising out of such approval, and provide for the reimbursement or assumption of all legal costs in connection with that approval.

DRAFT

c. The effective date shall be the date of recordation of the Certificate of Completion.

d. The application shall be processed as a change of organization consisting of the annexation of 42.61 acres to the City of Modesto.

6. Designates the proposal as the "Kiernan Business Park East Change of Organization to the City of Modesto".

7. Waives the protest proceedings pursuant to Government Code Section 56663 (c) and orders the change of organization subject to the requirements of Government Code Section 57200 et. seq.

8. Authorizes and directs the Executive Officer to prepare and execute a Certificate of Completion in accordance with Government Code Section 57203, upon receipt of a map and legal description prepared pursuant to the requirements of the State Board of Equalization and accepted to form by the Executive Officer, subject to the specified terms and conditions.

ATTEST: _____
Marjorie Blom
Executive Officer

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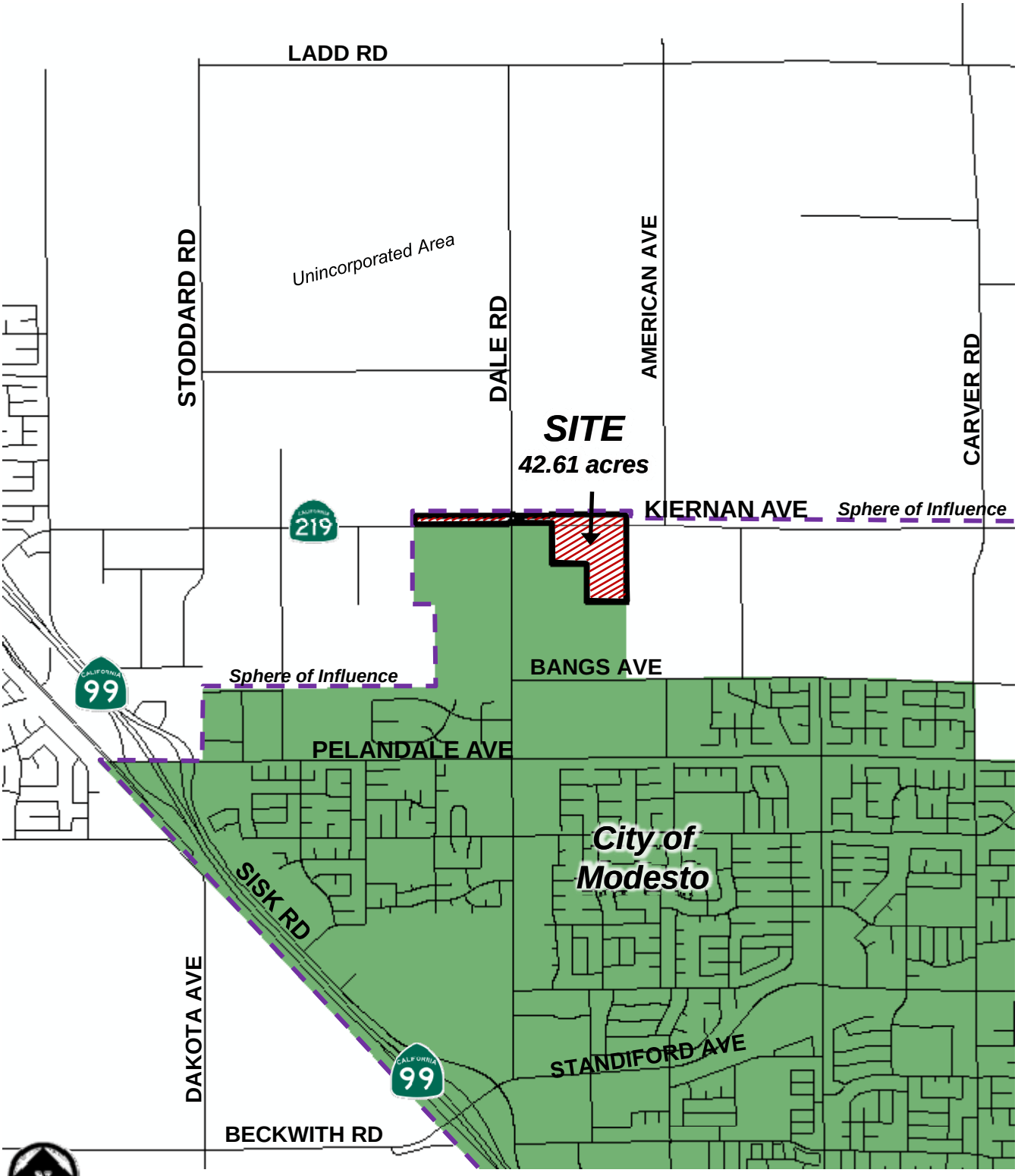
Exhibit A

Maps

LAFCO APPLICATION NO. 2010-06

KIERNAN BUSINESS PARK EAST CHANGE OF ORGANIZATION TO THE CITY OF MODESTO

VICINITY MAP

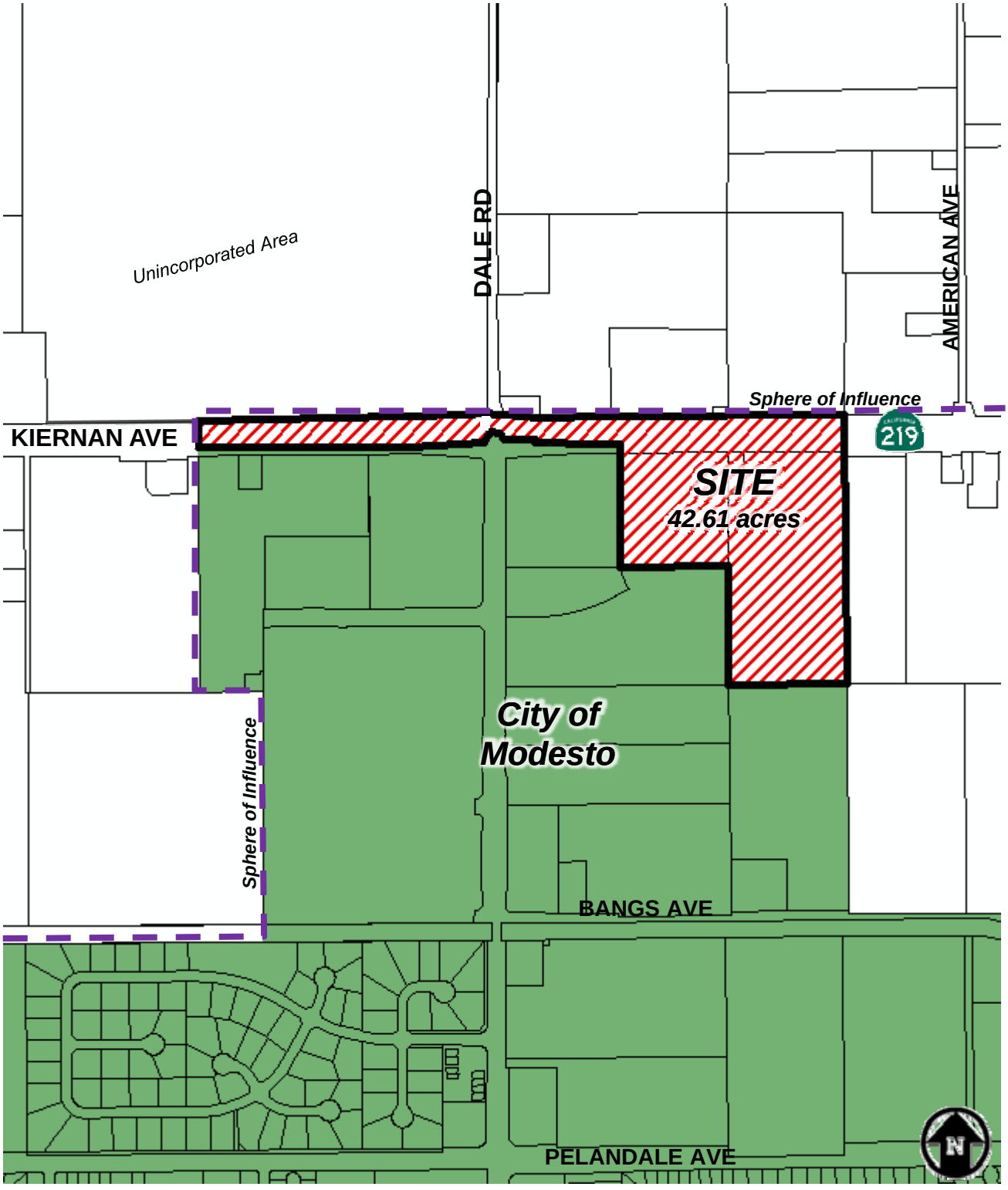


Source: LAFCO Files, County GIS, Dec. 2010

LAFCO APPLICATION NO. 2010-06

KIERNAN BUSINESS PARK EAST CHANGE OF ORGANIZATION TO THE CITY OF MODESTO

AREA MAP



Source: LAFCO Files, County GIS, Dec. 2010

Exhibit B

City Council Resolution No. 97-159
Adoption of the Kiernan Business Park Specific Plan

MODESTO CITY COUNCIL
RESOLUTION NO. 97-159

A RESOLUTION ADOPTING THE KIERNAN BUSINESS PARK SPECIFIC PLAN.

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

WHEREAS, on August 15, 1995, the City Council by Resolution No. 95-409 adopted the City of Modesto Urban Area General Plan which contains Community Development policies including the Kiernan/Carver Comprehensive Planning District which allows implementation through Specific Plans prepared pursuant to Government Code Section 65450, and

WHEREAS, a proposal for the Kiernan Business Park Specific Plan has been prepared to meet the City's General Plan requirements for Comprehensive Plans, Chapter III, Section D, and State Government Code Section 65450, and

WHEREAS, the Specific Plan is for the purpose of developing a 614-acre business park, with a mix of light industrial, research and development, office, and regional commercial uses, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on March 3, 1997, to receive evidence both oral and documentary to consider making a recommendation to the

City Council regarding the adoption of the Draft Specific Plan, and

WHEREAS, by Resolution No. 97-18 adopted on March 3, 1997, the Planning Commission recommended to the City Council the adoption of the Kiernan Business Park Specific Plan, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 7:00 p.m., on April 1, 1997, 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 and evidence both oral and documentary was received and considered,

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

1. That the Final Focused EIR is complete and adequate, and that it has been prepared and completed in accordance with the provisions of CEQA.

2. That the proposed Specific Plan is consistent with the City of Modesto Urban Area General Plan.

BE IT FURTHER RESOLVED that the Council hereby adopts the Kiernan Business Park Specific Plan dated April 1, 1997, a copy of which is attached hereto as Exhibit "A".

BE IT FURTHER RESOLVED that this resolution shall become effective 30 days from the date it was passed.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized and directed to certify copies of this Resolution and said Specific Plan to the Board of Supervisors of the County of

Stanislaus.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of April, 1997, by Councilmember Friedman, who moved its adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES:	Councilmembers:	Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

ATTEST: Jean Adams
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By _____
MICHAEL D. MILICH, City Attorney

THIS IS TO CERTIFY THAT THIS
IS A TRUE COPY OF THE DOCUMENT ON
FILE WITH THIS OFFICE.
DATE July 6, 2010
Stephanie Gray
SIGNATURE
CITY CLERK
CITY OF MODESTO, CA

NOTE: Exhibit "A" on file, available for review upon request.

Exhibit C

City Environmental Documentation

Notice of Determination and
City Council Resolution No. 2010-246

City of Modesto
NOTICE OF DETERMINATION

FILED
10 JUN 15 AM 9:13
STANISLAUS CO. CLERK-RECORDER
BY Alejandra Arenivaz DEPUTY

TO: County Clerk-Recorder
County of Stanislaus
1021 I Street
Modesto, CA 95354

FROM: City of Modesto
Community & Economic Development Dept.
Planning Division
P.O. Box 642
Modesto, CA 95353

SUBJECT: Filing of Notice of Determination in compliance with Section 21152 of the Public Resources Code

Project Title: ANX-09-001, Kiernan Business Park East Annexation

State Clearinghouse Number: Kiernan Business Park Specific Plan Amendment No. 4 Program EIR (SCH No. 2007062071)

Contact Person: Katharine Martin, Associate Planner (ph: 209-577-5465)

Applicants: Benchmark Engineering, 1121 Oakdale Road, Modesto, CA 95355

Project Location: Three parcels located at 2706, 2742, and 2866 Kiernan Avenue, east of Dale Road and southwest of the intersection of Kiernan Avenue and American Avenue (APNs 078-015-002, -012, and -013)

Project Description: Application to annex the above properties comprised of approximately 30.11 acres, plus adjacent right of way along Kiernan Avenue/CA-219, 39 acres total, to the City of Modesto, Modesto Sewer District No. 1, with cost-sharing agreement between the City of Modesto Fire Department and the Salida Fire Protection District in lieu of detachment from the Salida Fire District. The proposed annexation area is a segment of a 67-acre portion of the Kiernan Business Park Specific Plan area not yet annexed to the City, described on Page III.5 of the Kiernan Business Park Specific Plan Amendment #4 Program EIR. No new development is proposed with the application for annexation. All future development shall be by separate application and be analyzed for conformance to the Kiernan Business Park Specific Plan and the Kiernan Business Park Specific Plan Amendment #4 Program EIR.

This is to advise that the City of Modesto, the lead agency, has approved the above-described project on June 9, 2010 and has made the following determinations, pursuant to Section 21157.1 of the CEQA Guidelines:

The project is within the scope of the Program EIR and no new environmental document or Public Resources Code Section 21081 findings are required. The following findings have been found to be true:

1. There are no substantial changes proposed in the application for annexation which result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Kiernan Business Park Specific Plan Amendment #4 EIR are required.

2. No substantial changes have occurred with respect to the circumstances under which the proposed annexation is undertaken which will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Kiernan Business Park Specific Plan Amendment #4 EIR are required.

3. There is no new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence when the Kiernan Business Park Specific Plan Amendment #4 EIR was adopted which shows any of the following:

   a. one or more significant effects which is not discussed in the Kiernan Business Park Specific Plan Amendment #4 EIR, or

   b. significant effects which were previously examined will be substantially more severe than previously shown, or

   c. previously infeasible mitigation measures or alternatives are now feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative, or

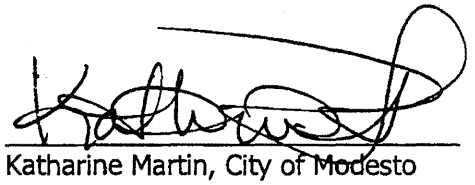
   d. mitigation measures or alternatives which are considerably different from those analyzed in the Kiernan Business Park Specific Plan Amendment #4 EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

4. The Written Checklist, Environmental Assessment No. EA/C&ED No. 2010-09, provides the substantial evidence to support findings 1-3, above, and the City hereby determines that no further environmental documentation is required for the proposed project.

The Initial Study, Environmental Assessment No. EA/C&ED No. 2010-09, on file at the City of Modesto, Community and Economic Development Department, provides substantial evidence to support findings 1 thru 4, noted above.

This is to certify that the Final EIR with comments and responses and record of project approval, is available to the general public at:

City Clerk, City of Modesto, 1010 Tenth Street, Modesto, CA 95354



Katharine Martin, City of Modesto

Date: June 10, 2010 Title: Associate Planner

MODESTO CITY COUNCIL
RESOLUTION NO. 2010-246

A RESOLUTION FINDING THAT THE FOLLOWING PROJECT IS WITHIN THE SCOPE OF THE KIERNAN BUSINESS PARK SPECIFIC PLAN AMENDMENT #4 PROGRAM ENVIRONMENTAL IMPACT REPORT (SCH NO. 2007062071): KIERNAN BUSINESS PARK EAST ANNEXATION

WHEREAS, on September 1, 2009, by Resolution No. 2009-418, the City Council of the City of Modesto certified the Kiernan Business Park Specific Plan Amendment #4 Program Environmental Impact Report ("Program EIR") (SCH No. 2007062071) for the Kiernan Business Park Specific Plan Amendment #4, and

WHEREAS, Benchmark Engineering has proposed the annexation of three properties within the Kieran Business Park Specific Plan, located at 2706, 2742, and 2866 Kiernan Avenue, and adjacent right-of way on Kiernan Avenue/CA-219, 42.61 acres total, to the City of Modesto and Modesto Municipal Sewer District #1, and

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

WHEREAS, the City's Community & Economic Development Department by Environmental Assessment Initial Study EA/C&ED 2010-09 ("Initial Study") reviewed the proposed annexation to determine whether the project is within the scope of the project covered by the Kiernan Business Park Specific Plan Amendment #4 Program EIR ("Program EIR"), and concluded that the proposed project is within the scope of the

Program EIR and will have no additional significant effect on the environment that was not identified in the Program EIR, and further, that no new additional mitigation measures or alternatives are required, and that, therefore, the proposed project is within the scope of the project covered by the Program EIR, and

WHEREAS, in accordance with CEQA guidelines beginning on Wednesday, May 20, 2010, the City caused to be published a 20-day notice of the City's intent to make a finding that the proposed project conforms with the Program EIR, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on June 9, 2010, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council has reviewed and considered the Initial Study prepared for the proposed annexation, a copy of which is **attached** hereto as **Exhibit "A"**, and incorporated herein by reference, and based on the substantial evidence included in said Initial Study makes the following findings:

1. That the proposed project is contemplated and described in the Program EIR (SCH No. 2007062071) as being within the scope of the Program EIR.

2. That the project will have no new significant effects on the environment not identified or examined in the Program EIR, and no new or additional mitigation measures are required.

3. That, as per Section 21157.1 of the Public Resources Code, no new environmental document or findings are required by the California Environmental Quality Act (CEQA).

4. That there are no specific features which are unique to the proposed project that require project specific mitigation measures. Accordingly, the certified mitigation measures identified in the Program EIR will be sufficient for this project.

5. That all feasible mitigation measures set forth in the Program EIR which are appropriate to the project shall be incorporated in the project.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Community & Economic Development Director is hereby authorized and directed to file a notice of approval or determination within five (5) business days with the Stanislaus County Clerk pursuant to Section 21152 of the Public Resources Code.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

AYES:	Councilmembers:	Geer, Hawn, Lopez, Muratore, Olsen, Mayor Ridenour
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	Marsh

ATTEST: _____
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: _____
SUSANA ALCALA WOOD, City Attorney

THIS IS TO CERTIFY THAT THIS IS A TRUE COPY OF THE DOCUMENT ON FILE WITH THIS OFFICE.
DATE July 6, 2010
_____
SIGNATURE
CITY CLERK
CITY OF MODESTO, CA

EXHIBIT A

Initial Study

EA/C&ED 2010-09

City of Modesto

Determination:
Project within the Scope of the
Kiernan Business Park Specific Plan Amendment #4
Program Environmental Impact Report (SCH# 2007062071)
for the Proposed:

Kiernan Business Park East Annexation

(Benchmark Engineering, Applicant)

Prepared by:

City of Modesto
Community & Economic Development Department
Planning Division

March 9, 2010

WRITTEN CHECKLIST

EA/C&ED No. 2010-09

I. Purpose

This written checklist is prepared pursuant to Section 15168(c) of the CEQA Guidelines, which provides for subsequent activities to be examined in the light of a Program EIR to determine whether an additional environmental document must be prepared. If subsequent activities are determined to be within the scope of a Program EIR, no new environmental document is required. Activities are deemed to be within the scope of a Program EIR when the agency finds that, on the basis of the criteria provided by Section 15162, no new effects could occur or no new mitigation measures would be required as a result of implementation of the activity.

II. Program EIR Information

Program Name: Kiernan Business Park Specific Plan Amendment #4

Program Boundaries: The 153-acre area is bounded on the north by Kiernan Avenue, on the west by Dale Road, on the south by Bangs Avenue, and on the east by a line extending south from American Avenue and parallel to Dale Road

Program Description: This program includes the following components, as listed on page II.2 of the EIR:

- Adoption of Kiernan Business Park Specific Plan amendments. Proposed amendments would amend the Land Use Plan Diagram to show the change in land use designation from BP to MU and MHDR; would amend the Circulation Plan Diagram to reflect changes to the planned roads and to show new roads; would amend the Bike Paths Figure to reflect changes to the planned bicycle facilities and to show new bicycle facilities; would amend the Illustrative Public Facilities Diagram to reflect changes to the planned water, storm, and sanitary sewer pipeline alignments and to show new water, storm, and sanitary sewer pipelines; would introduce a Street Cross Section Diagram for Healthcare Way, The Plaza Way, and Chopra Parkway; would amend the text of the Land Use chapter of the Specific Plan to include project-specific Development Standards and Design Guidelines; and would amend the text of the Circulation and Access and Public Facilities chapters of the Specific Plan to reflect the proposed changes.
- Adoption of an amendment to the Urban Area General Plan. The proposed amendment would redesignate the 39-acre area proposed to be modified in the Specific Plan of the Kiernan/Carver Comprehensive Planning District (CPD) of the General Plan from BP to MU.
- Approval of a Development Agreement, if applicable.

- Approval of a Tentative Subdivision Map and/or tentative parcel map, if applicable.
- Adoption of a resolution initiating annexation of a 67-acre portion of the project site.
- Adoption of a resolution to approve rezoning.
- Adoption of a Facilities Master Plan and an Infrastructure Financing Plan.
- Formation of a Community Facilities District.
- Approval by the Local Agency Formation Commission (LAFCO). LAFCO will review reorganization of the amended Kiernan Business Park Specific Plan, including the annexation of the 67-acre portion of the 153-acre project site to the City of Modesto and the Modesto Municipal Sanitary Sewer District No. 1, and simultaneously detach this portion of the project site from the Salida Fire Protection District.
- Approval by MID. MID must review the proposed storm water drainage system, which proposes discharge to MID Lateral No. 6. Upon acceptance of the proposed storm water drainage system, MID would enter into a Drainage Agreement with the City.

Program Certification Date: September 1, 2009

State Clearinghouse Number: 2007062071

III. Project Information

Project Name: Kiernan Business Park East Annexation

Project Location: Three parcels located at 2706, 2742, and 2866 Kiernan Avenue, east of Dale Road and southwest of the intersection of Kiernan Avenue and American Avenue (APNs 078-015-002, -012, and -013)

Project Description: Application to annex the above properties comprised of approximately 30.11 acres, plus adjacent right of way along Kiernan Avenue/CA-219, 39 acres total, to the City of Modesto, Modesto Sewer District No. 1, with cost-sharing agreement between the City of Modesto Fire Department and the Salida Fire Protection District in lieu of detachment from the Salida Fire District. The proposed annexation area is a segment of a 67-acre portion of the Kiernan Business Park Specific Plan area not yet annexed to the City, described on Page III.5 of the Kiernan Business Park Specific Plan Amendment #4 Program EIR. No new development is proposed with the application for annexation. All future development shall be by separate application and be analyzed for conformance to the Kiernan Business Park Specific Plan and the Kiernan Business Park Specific Plan Amendment #4 Program EIR.

General Plan Designation: BP

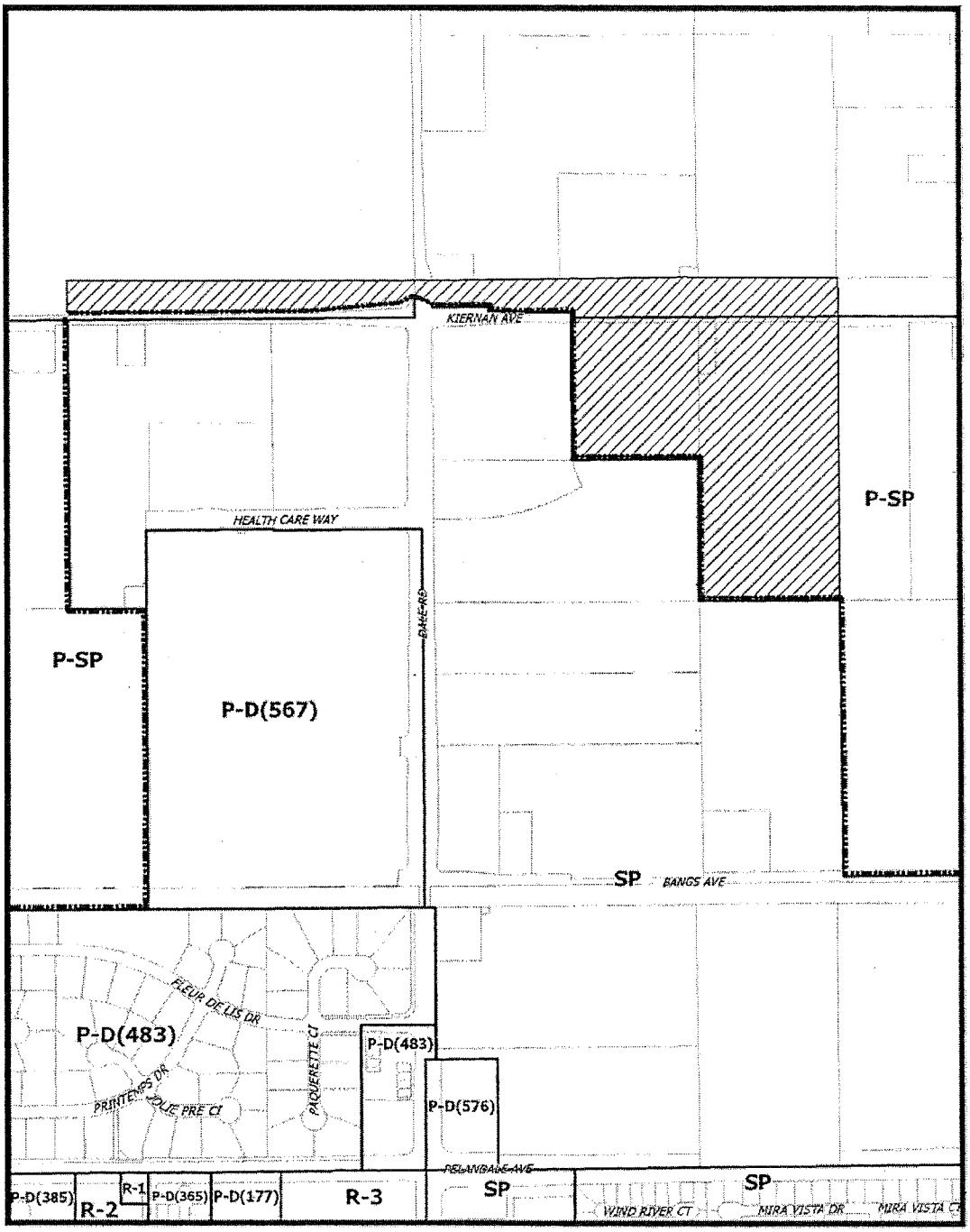
Zoning: Pre-Specific Plan (P-SP)

Lead Agency: City of Modesto, 1010 Tenth St., Modesto, CA. 95354

Contact Person: Katharine Martin, 209-577-5465

Project Applciant: Benchmark Engineering, 213 Sierra Ave., Oakdale, CA 95361

Other Public Agencies whose Approval is Required: None



PROPOSED KIERNAN EAST ANNEXATION AREA

ANX-09-001

IV. Determination:

Based on the analysis contained in this document, staff finds that pursuant to Guidelines Section 15168(c) the following is true for the proposed project:

1. There are no substantial changes proposed in the application for annexation which result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Kiernan Business Park Specific Plan Amendment #4 EIR are required.

2. No substantial changes have occurred with respect to the circumstances under which the proposed annexation is undertaken which will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Kiernan Business Park Specific Plan Amendment #4 EIR are required.

3. There is no new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence when the Kiernan Business Park Specific Plan Amendment #4 EIR was adopted which shows any of the following:

   a. one or more significant effects which is not discussed in the Kiernan Business Park Specific Plan Amendment #4 EIR, or

   b. significant effects which were previously examined will be substantially more severe than previously shown, or

   c. previously infeasible mitigation measures or alternatives are now feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative, or

   d. mitigation measures or alternatives which are considerably different from those analyzed in the Kiernan Business Park Specific Plan Amendment #4 EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

4. The Written Checklist, Environmental Assessment No. EA/C&ED No. 2010-09, provides the substantial evidence to support findings 1-3, above, and the City hereby determines that no further environmental documentation is required for the proposed project.

Original signed copy on file with CEDD

_____ _____

Project Manager Date

V. PROJECT EVALUATION:

The following written Checklist serves to document the evaluation of the site and activity of the proposed project pursuant to CEQA Guidelines Section 15168 (c) (4) to determine whether the environmental effects of the operation were covered in the Kiernan Business Park Specific Plan Amendment #4 Program EIR.

		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
I.	**AESTHETICS.** Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a.	Have a substantial adverse effect on a scenic vista?				X
b.	Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings along a scenic highway?				X
c.	Substantially degrade the existing visual character or quality of the site and its surroundings?				X
d.	Create a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area?				X

Aesthetic and visual impacts are analyzed on pages 21 through 25 of Appendix A, Notice of Preparation and Initial Study of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.- b. The Kiernan Business Park Specific Plan Amendment #4 EIR found that there are no identified scenic vistas or scenic resources on or within the vicinity of the project site. Approval of the proposed 39-acre annexation would not impact scenic views from public open spaces or other sites accessible to the general public, nor substantially damage scenic resources. No mitigation is required.

c. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the development within the Specific Plan area would have a less-than-significant impact on the visual character of the area. The proposed annexation would not change the design or layout of the development proposed within the Kiernan Business Park Specific Plan.

d. Future business park development within the annexation area would create new sources of nighttime light. The Design Guidelines of the Kiernan Business Park

Specific Plan would require measures such as shielding and landscaping to reduce the impact to a less-than-significant level.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
II. AGRICULTURAL RESOURCES. In determining whether impacts on agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X
b. Conflict with existing zoning for agricultural use or conflict with a Williamson Act contract?				X
c. Involve other changes in the existing environment that, due to their location or nature, could result in conversion of Farmland to non-agricultural use?				X

Impacts on agricultural resources are analyzed on pages IV.B.6 through IV.B.10 of the EIR certified in 2008.

Responses to Checklist Questions

a. The Kiernan Business Park Specific Plan Amendment #4 EIR found that land designated as Prime Farmland would be lost as a result of development in the project area. This impact was determined to be significant and unavoidable. The City of Modesto adopted a statement of overriding consideration for this impact. A mitigation measure was provided but would not mitigate the loss of Prime Farmland to less-than-significant level.

b. The Kiernan Business Park Specific Plan Amendment #4 EIR identified one parcel subject to a Williamson Act contract in the proposed annexation area. However, the contract was protested by the City on October 7, 1974, and on March 29, 1978 the protest was upheld by LAFCO. The property owner filed for Non-Renewal in August of 2004. The City does not intend to succeed the contract

and so it will be terminated in conjunction with annexation. The project area has been pre-zoned for consistency with the specific plan, and no lands in the proposed annexation area are zoned for agricultural use.

c. The Kiernan Business Park Specific Plan Amendment #4 EIR identified the conversion of Prime Farmland to new business park, residential, and commercial uses. The Program EIR identified the project would not hinder the continued use of the agricultural lands to the north and east of the project site. Therefore, the project's impacts on surrounding ongoing agricultural operations would be considered less-than-significant.

The proposed annexation area is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Agricultural Resources impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
III. AIR QUALITY. When available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a. Conflict with or obstruct implementation of the applicable air quality plan?				X
b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation?				X
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is a nonattainment area for an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?				X
d. Expose sensitive receptors to substantial pollutant concentrations?				X
e. Create objectionable odors affecting a substantial number of people?				X

Impacts on air quality are analyzed on pages IV.D.26 through IV.D.43 of the EIR certified in 2008.

Responses to Checklist Questions

a.- b. The Kiernan Business Park Specific Plan Amendment #4 EIR found that air pollution from project-related construction and during project operation would contribute to existing violations of ambient air quality standards. The impacts were determined to be significant and unavoidable. Partial mitigation for these impacts is included in the Program EIR, and the City of Modesto adopted a statement of overriding consideration for each impact.

c. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the project would cause a cumulatively considerable net increase of pollutants in the San Joaquin Valley is designated as nonattainment. Project related emissions would cumulatively increase mobile source activity and associated regional emissions of ROG, NOx and PM 10. The impacts were determined to be significant and unavoidable. Partial mitigation for these emissions is included in the Program EIR, and the City of Modesto made a statement of overriding consideration for each impact.

d. The proposed annexation area carries the land use designation of BP (Business Park), for which only Business Park uses would be permitted as allowed by the Kiernan Business Park Specific Plan and Section 10-2.1602 of the City's Municipal Code upon annexation to the City. These uses would not generate substantial TAC emissions that would affect sensitive receptors. The Kiernan Business Park Specific Plan Amendment #4 EIR found that no stationary source of TACs within a one mile radius of the project center has been found to emit TACs at a level that represents an unacceptable increased health risk to the general public.

e. The proposed annexation area carries the land use designation of BP (Business Park), for which only Business Park uses would be permitted as allowed by the Kiernan Business Park Specific Plan and Section 10-2.1602 of the City's Municipal Code upon annexation to the City. The uses permitted by this designation would not generate objectionable odors during routine operation.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Air Quality impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
IV.	**BIOLOGICAL RESOURCES.** Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a.	Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X
b.	Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X
c.	Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marshes, vernal pools, coastal wetlands, etc.) through direct removal, filling, hydrological interruption, or other means?				X
d.	Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?				X
e.	Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X
f.	Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan?				X

Impacts on biological resources are analyzed on pages IV.G.9 through IV.G.14 of the EIR certified in 2008.

Responses to Checklist Questions

a. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the proposed development would result in the loss of occupied Burrowing Owl habitat. Mitigation measures are required that would reduce the impacts on this species to less-than-significant levels.

b. The Kiernan Business Park Specific Plan Amendment #4 EIR did not find that any riparian habitat or other designated sensitive natural community present in the project area, and so found that the project would have a less-than-significant impact.

c. The Kiernan Business Park Specific Plan Amendment #4 EIR did not find any protected wetlands on the project site.

d. The Kiernan Business Park Specific Plan Amendment #4 EIR identified migratory birds, including raptors, as nesting in the vicinity. Mitigation measures are provided to reduce the impact to less-than-significant.

e.-f. The Kiernan Business Park Specific Plan Amendment #4 EIR found no local biological resource protection policies, ordinances, habitat conservation plans, or natural community conservation plans that apply to the project area.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Biological Resources impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
V. CULTURAL RESOURCES. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a. Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5?				X
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?				X
c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				X
d. Disturb any human remains, including those interred				X

outside of formal cemeteries?

Cultural resources impacts are analyzed on pages 36 through 41 of Appendix A, Notice of Preparation and Initial Study of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.- d. The Kiernan Business Park Specific Plan Amendment #4 EIR concluded that there are no known historic, archaeological, or paleontological resources in the proposed annexation area. However, the presence of these cultural resources cannot be conclusively ruled out. Implementation of General Plan policies would ensure potential cultural impacts would be less-than-significant.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Cultural Resources impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new mitigation measures or alternatives are required.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
VI. GEOLOGY AND SOILS. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
1. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				X
2. Strong seismic groundshaking?				X
3. Seismic-related ground failure, including liquefaction?				X
4. Landslides?				X
b. Result in substantial soil erosion or the loss of topsoil?				X
c. Be located on a geologic unit or soil that is unstable or that would become unstable as a result of the project				X

and potentially result in an onsite or offsite landslide, lateral spreading, subsidence, liquefaction, or collapse?

d. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? X

e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems in areas where sewers are not available for the disposal of wastewater? X

Impacts associated with geology and soils are analyzed on pages 41 through 44 of Appendix A, Notice of Preparation and Initial Study of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.- b. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the proposed annexation area is not subject to geologic or soil-related hazards that cannot be adequately mitigated through the implementation of existing city regulations, such as the building code. No significant impacts were identified, and no mitigation measures are required.

c.- d. The Kiernan Business Park Specific Plan Amendment #4 EIR concluded that the underlying soil in the project site is not susceptible to liquefaction, landslides, or shrink/swell or expansion potential. No significant impacts were identified, and no mitigation measures are required.

e. The project site would be served by public sewers. Septic tanks or alternative wastewater disposal systems would not be introduced on the project site and existing septic tanks would have to be removed at time of development.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Geology and Soils impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
VII. HAZARDS AND HAZARDOUS MATERIALS. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a. Create a significant hazard to the public or the environment through the routine transport, use, or			X	

	disposal of hazardous materials?	
b.	Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	X
c.	Emit hazardous emissions or involve handling hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	X
d.	Be located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	X
e.	Be located within an airport land use plan area or, where such a plan has not been adopted, be within two miles of a public airport or public use airport, and result in a safety hazard for people residing or working in the project area?	X
f.	Be located within the vicinity of a private airstrip and result in a safety hazard for people residing or working in the project area?	X
g.	Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	X
h.	Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	X

Impacts associated with hazards and hazardous materials are analyzed on pages IV.F.6 through IV.F.9 of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.– c. The Kiernan Business Park Specific Plan Amendment #4 EIR identified that the proposed project development would not involve the routine transport, use, or disposal of hazardous materials. Construction activities could result in drainage of hazardous materials but would be mitigated to less-than-significant levels as a result of implementing the adopted Guidance Manual for New Development Stormwater Quality Control Measures.

d. The Kiernan Business Park Specific Plan Amendment #4 EIR concluded there is the potential of exposing construction workers to hazardous substance if contaminated soil or ground water is discovered during construction activities. A

mitigation measure is required that would reduce this impact to a less-than-significant level.

e. The project area is located over 7.5 miles from the nearest public airport. There would be no impact. No mitigation is required.

f. The project area is located over 5 miles from the nearest private airport. There would be no impact. No mitigation is required.

g. The Kiernan Business Park Specific Plan Amendment #4 EIR concluded that development of the project area would not interfere with an adopted emergency response plan or emergency evacuation plan. No mitigation is required.

h. The Kiernan Business Park Specific Plan Amendment #4 EIR identified that the surrounding area is largely agricultural or developed. There is no expectation that new development in the project area would expose people or structures to wildland fires. No mitigation is required.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Hazards and Hazardous Materials impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
VIII.	**HYDROLOGY AND WATER QUALITY.** Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a.	Violate any water quality standards or waste discharge requirements?				X
b.	Substantially deplete groundwater supplies or interfere substantially with groundwater recharge, resulting in a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level that would not support existing land uses or planned uses for which permits have been granted)?				X
c.	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation onsite or offsite?				X

d.	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding onsite or offsite?	X
e.	Create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	X
f.	Otherwise substantially degrade water quality?	X
g.	Place housing within a 100-year flood hazard area, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	X
h.	Place within a 100-year flood hazard area structures that would impede or redirect floodflows?	X
i.	Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam?	X
j.	Contribute to inundation by seiche, tsunami, or mudflow?	X

Impacts associated with hydrology are analyzed on pages IV.H10 through IV.H.17 of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a. The Kiernan Business Park Specific Plan Amendment #4 EIR identified the potential for pollutants from construction sites or from future land uses that could be transported to surface waters and groundwater potentially reducing the water quality. Mitigation measures are required that would reduce the impacts to a less-than-significant level.

b. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the construction and operation of the required detention basin system is expected to offset the minor losses of groundwater recharge associated with the increased impervious coverage proposed by the project.

c.– e. The Kiernan Business Park Specific Plan Amendment #4 EIR found that development could substantially alter the existing drainage pattern of the area; however, because there are mitigation measures requiring the project to incorporate an urban storm drain system, the erosion or flooding impacts will be less-than-significant.

f. The Kiernan Business Park Specific Plan Amendment #4 EIR found that existing water supply wells, if not properly managed or decommissioned, could be damaged during construction and cause water quality degradation. A mitigation measure is required that would reduce the impact to a less-than-significant level.

g.– i. The proposed annexation area is not located within any 100-year flood hazard area. The nearest river is the Stanislaus River, approximately 1.88 miles to the north. There would be no additional impact, and no mitigation is required.

j. The project site is located in a flat, inland area not susceptible to seiche, tsunami, or mudflow. There would be no impact. No mitigation is required.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Hydrology and Water Quality impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
IX. LAND USE AND PLANNING. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a. Physically divide an established community?				X
b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, a general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X
c. Conflict with any applicable habitat conservation plan or natural community conservation plan?				X

Impacts associated with land use and planning are analyzed on pages IV.A.9 through IV.A.11 of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.- b. The proposed annexation would not result in any physical changes to the environment beyond those identified in the Kiernan Business Park Specific Plan Amendment #4 EIR. The City has not adopted plans and policies as thresholds for significant impacts. There would be no impact and no mitigation is required.

c. There are no known habitat conservation plans or natural community conservation plans associated with this project. There would be no impact. No mitigation is required.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Land Use and Planning impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new mitigation measures or alternatives are required.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
X. MINERAL RESOURCES. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X
b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?				X

Impacts associated with mineral resources are analyzed on pages 52 through 53 of Appendix A, Notice of Preparation and Initial Study of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.- b. No known mineral resources or important recovery sites are located in the project area. There would be no impact. No mitigation is required.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
XI. NOISE. Would the project when compared to the impacts identified in the Program EIR, create new				

	impacts or increase the level of existing impacts that would:	
a.	Expose persons to or generate noise levels in excess of standards established in a local general plan or noise ordinance or applicable standards of other agencies?	X
b.	Expose persons to or generate excessive groundborne vibration or groundborne noise levels?	X
c.	Result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	X
d.	Result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	X
e.	Be located within an airport land use plan area, or, where such a plan has not been adopted, within two miles of a public airport or public use airport and expose people residing or working in the project area to excessive noise levels?	X
f.	Be located in the vicinity of a private airstrip and expose people residing or working in the project area to excessive noise levels?	X

Impacts associated with noise are analyzed on pages IV.E.12 through IV.E.23 of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.- c. The Kiernan Business Park Specific Plan Amendment #4 EIR identified that project related traffic would not cause substantial noise levels for sensitive receptors in the project vicinity. However, project related traffic could cause substantial noise levels for sensitive receptors within the project area. New stationary and non-stationary sources associated with the proposed project could generate noise levels incompatible with ordinances or goals for the surroundings. Mitigation measures are required that would reduce the noise impacts to a less-than-significant level.

d. The Kiernan Business Park Specific Plan Amendment #4 EIR found that construction of the proposed project could result in a substantial temporary increase in ambient noise levels. Mitigation measures are required that would reduce the noise impacts to a less-than-significant level

e.- f. The Kiernan Business Park Specific Plan Amendment #4 EIR found that project area is not located in an airport land use plan area or within 2 miles of a public airport. The nearest private airport is about 5 miles away. There would be no impact. No mitigation is required.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Noise impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
XII. POPULATION AND HOUSING. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a. Induce substantial population growth in an area, either directly (e.g., by proposing new homes and businesses) or indirectly (e.g., through extension of roads or other infrastructure)?				X
b. Displace a substantial number of existing housing units, necessitating the construction of replacement housing elsewhere?				X
c. Displace a substantial number of people, necessitating the construction of replacement housing elsewhere?				X

Impacts associated with population and housing are analyzed on pages 56 through 58 of Appendix A, Notice of Preparation and Initial Study of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a. The Kiernan Business Park Specific Plan Amendment #4 EIR concluded that the development of the proposed project would induce population growth but at a less-than-significant level.

b.- c. The Kiernan Business Park Specific Plan Amendment #4 EIR identified 13 home sites would be demolished throughout the project area, of which three are within the proposed 39-acre annexation area. The amount of persons displaced was determined to be less-than-significant by the Program EIR. No mitigation is required.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Population and Housing impacts would remain the same as identified in the Program EIR. There are no

new significant impacts or increase in severity of previously identified impacts. No new mitigation measures or alternatives are required.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
XIII. PUBLIC SERVICES. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a. Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or a need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the following public services:				
1. Fire protection?				X
2. Police protection?				X
3. Schools?				X
4. Parks?				X
5. Other public facilities?				X

Impacts on public services are analyzed on pages IV.I.5 through IV.I.20 of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a-1. The nearest City of Modesto Fire Station to the 39-acre proposed annexation area is Station No. 11, located approximately two miles away at Carver Road and Pelandale Avenue. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the existing personnel and apparatus at Station No. 11 would be adequate to meet the need of increased demand for future business park development at the proposed annexation area. Therefore, the physical impact would be at a less-than-significant level. No mitigation is required.

a-2. The Kiernan Business Park Specific Plan Amendment #4 EIR found that upon annexation, the Modesto Police Department would include the 67-acre portion of the project now served by the Stanislaus County Sheriff Department with Patrol Area 65. The portion of the Kiernan Business Park Specific Plan which lies within the City's incorporated area is already served by this Patrol Area. Future

development of the 39-acre proposed annexation area would result in an increase of MPD officer hours; however, long-range financing strategies are in place for each Comprehensive Planning District, allowing the City to allocate the necessary funds to extend those police services to the proposed annexation area. Therefore, the physical impact would be at a less-than-significant level. No mitigation is required.

a-3-5. The Kiernan Business Park Specific Plan Amendment #4 EIR found that development of the proposed project would result in increased use and demand on school and park facilities but not at a significant level. There would be no impact. No mitigation is required.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Public Services impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
XIV. RECREATION. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a. Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				X
b. Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?				X

Impacts associated with recreation are analyzed on pages 61 through 62 of Appendix A, Notice of Preparation and Initial Study of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.- b. No significant impacts on recreation facilities were identified in the Program EIR.

Potentially Significant	Less than Significant	Less-than-Significant	No Impact

		Impact	with Mitigation Incorporated	Impact
XV.	**TRANSPORTATION/TRAFFIC.** Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:			
a.	Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?			X
b.	Cause, either individually or cumulatively, exceedance of a level-of-service standard established by the county congestion management agency for designated roads or highways?			X
c.	Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?			X
d.	Substantially increase hazards because of a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?			X
e.	Result in inadequate emergency access?			X
f.	Result in inadequate parking capacity?			X
g.	Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?			X

Impacts on transportation and traffic are analyzed on pages IV.C.37 through IV.C.85 of the EIR certified on September 1, 2009.

Responses to Checklist Questions

a.- b. The Kiernan Business Park Specific Plan Amendment #4 EIR found that development of the proposed project would result in significant impacts at study intersections and roadway segments. There would also be significant cumulative impacts on road way segments. Mitigation measures were identified in the Program EIR to reduce some of the traffic impacts to a less-than-significant level. Other traffic impacts were determined to be significant and unavoidable because the mitigation measures were found infeasible. The City of Modesto made a statement of overriding considerations for that impact at the time it certified the EIR.

c. Kiernan Business Park Specific Plan Amendment #4 EIR concluded the project would not change air traffic patterns or air traffic related safety. There would be no impact. No mitigation is required.

d. The Kiernan Business Park Specific Plan Amendment #4 EIR determined there would not be a substantial increase in hazards due to a design feature. No mitigation is required.

e. The Kiernan Business Park Specific Plan Amendment #4 EIR did not find that development of the project area would result in inadequate emergency access in the Specific Plan area. Therefore, there would be no impact on emergency service access. No mitigation is required.

f. The Kiernan Business Park Specific Plan Amendment #4 EIR did not find that development of the project area would result in inadequate parking capacity. There would be no impact. No mitigation is required.

g. The Kiernan Business Park Specific Plan Amendment #4 includes bicycle paths and lanes. The proposed annexation does not include any changes related to alternative transportation policies, and would have no impact. No mitigation is required.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Transportation and Traffic impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
XVI. UTILITIES AND SERVICE SYSTEMS. Would the project when compared to the impacts identified in the Program EIR, create new impacts or increase the level of existing impacts that would:				
a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				X
b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X
c. Require or result in the construction of new stormwater drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X
d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or would new or expanded entitlements be needed?				X

e.	Result in a determination by the wastewater treatment provider that serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	X
f.	Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	X
g.	Comply with federal, state, and local statutes and regulations related to solid waste?	X

Impacts on utilities and service systems are analyzed on pages IV.H.10 through IV.H.17, pages IV.J.16 through IV.J.11, and pages IV.K.10 through IV.K.17 of the EIR certified September 1, 2009.

Responses to Checklist Questions

a., e. The Kiernan Business Park Specific Plan Amendment #4 EIR identifies that the proposed project would result in an increased demand for wastewater collection, treatment, and disposal but not at a significant level.

b. The Kiernan Business Park Specific Plan Amendment #4 EIR discusses that new project specific water facility would be need to maintain adequate water pressure. The proposed project would not require new wastewater facilities beyond those facilities already anticipated by the Wastewater Master Plan Update. The impact to water and wastewater facilities are found to be less-than-significant.

c. The Kiernan Business Park Specific Plan Amendment #4 EIR discusses the new storm drainage facilities that will be needed in order to accommodate build out of the project area. The EIR found that, with mitigation, there would be no significant impact on storm drainage facilities.

d. The Kiernan Business Park Specific Plan Amendment #4 EIR found that, based on a Water Supply Assessment, there will be sufficient water supply to serve the project area and the impact on water demand would be less-than-significant. No mitigation is required.

f., g. The Kiernan Business Park Specific Plan Amendment #4 EIR found that the Modesto and Stanislaus County Waste-to-Energy Plant has sufficient capacity to accommodate the project's solid waste disposal needs.

The proposed annexation is a portion of the 67 acres described in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and therefore is contemplated by and consistent with the Program EIR. The analysis and conclusion regarding Utility and Services System impacts would remain the same as identified in the Program EIR. There are no new significant impacts or increase in severity of previously identified impacts. No new or additional mitigation measures or alternatives are required.

		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less-than-Significant Impact	No Impact
XVII.	**MANDATORY FINDINGS OF SIGNIFICANCE.**				
a.	Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?				X
b.	Does the project have impacts that are individually limited but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)				X
c.	Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?				X

Responses to Checklist Questions

a. As described above, the proposed annexation of 39 acres, as a portion of the 67 acres described on Page III.5 of the Kiernan Specific Plan Amendment #4 Program EIR, would not result in any significant impacts on the environment over and above those associated with implementation of the Kiernan Business Park Specific Plan Amendment #4 and as analyzed in the Program EIR. The proposed annexation was contemplated by and is consistent with the Program EIR.

b. As described above, the proposed 39-acre annexation would not result in any significant impacts, either on a project or on cumulative level, over and above those associated with implementation of the Kiernan Business Park Specific Plan Amendment #4 and as analyzed in the Program EIR.

c. As described above, the proposed 39-acre annexation would not result in any significant impacts affecting humans over and above those associated with implementation of the Kiernan Business Park Specific Plan Amendment #4 and as analyzed in the Program EIR.

V. MITIGATION APPLIED TO PROJECT

The proposed annexation area is a segment of a 67-acre portion of the Kiernan Business Park Specific Plan area not yet annexed to the City, described on Page III.5 of the Kiernan Business Park Specific Plan Amendment #4 Program EIR. No new development is proposed with the application for annexation. All future development shall be by separate application and be analyzed for conformance to the Kiernan Business Park Specific Plan, and be subject to further environmental review with mitigation measures identified in the Program EIR applied where applicable.

The additional project-specific mitigation measures listed below are necessary to reduce the identified new significant effect:

Aesthetics Measures: None.

Agricultural Resources Measures: None.

Air Quality Measures: None.

Biological Resources Measures: None.

Cultural Resources Measures: None.

Geology and Soils Measures: None.

Hazard and Hazardous Materials Measures: None.

Hydrology and Water Quality Measures: None.

Land Use and Planning Measures: None.

Mineral Resources Measures: None.

Noise Measures: None.

Population and Housing Measures: None

Public Services Measures: None.

Recreation: None

Transportation/Traffic Measures: None.

Utility and Service System Measures: None.

Exhibit D

City Ordinance No. 3035 – C.S. and City Resolution No. 2010-245

ORDINANCE NO. 3035 -C.S.

AN ORDINANCE AMENDING SECTIONS 1-3-8 AND 2-3-8 OF THE ZONING MAP OF THE CITY OF MODESTO PREZONING CERTAIN PROPERTY LOCATED THEREON. (KIERNAN BUSINESS PARK)

WHEREAS, pursuant to Municipal Code Section 10-2.2604, the City of Modesto proposes to initiate a prezoning of the area designated as the Kiernan Business Park Specific Plan for the purpose of determining the zoning that will apply to the property upon annexation, and

WHEREAS, it is the policy of the Stanislaus Local Agency Formation Commission (policy 021(a)) to require prezoning for annexation to cities, and

WHEREAS, after a public hearing held on March 3, 1997, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, it was found and determined by the Planning Commission that prezoning the Kiernan Business Park Specific Plan as requested is in accordance with Government Code Section 65855 for the following reasons:

1. The requested prezoning is required by public convenience or necessity because the proposed Kiernan Business Park Specific Plan will provide for needed economic development opportunities for the City and its residents.

2. The requested prezoning will result in an orderly planning use of land resources because the proposed prezoning is in accordance with the objectives and policies set forth in the Modesto Urban Area General Plan, which calls for the development of a business park in this area.

3. The requested prezoning is in accordance with the community's objectives as set forth in the General

Plan because it implements the General Plan Economic Development Goals (presented in Section I-D of the General Plan) by providing "adequate land, strategically located to facilitate the expansion of Modesto's economic base..." and the General Plan Community Growth Policies presented in Section II-B of the General Plan.

4. The requested prezoning is in accordance with the policies and goals presented in the Kiernan Business Park Specific Plan.

WHEREAS, by Resolution No. 97-19, adopted on March 3, 1997, the Planning Commission recommended to the City Council an amendment to Sections 1-3-8 and 2-3-8 of the Zoning Map to prezone the hereafter described property to Specific Plan Overlay Zone, SP-O, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on April 1, 1997, at 7:00 p.m., 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 and evidence both oral and documentary was received and considered,

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

SECTION 1. COUNCIL FINDINGS. After a public hearing held on April 1, 1997, this Council finds and determines that the requested prezoning 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 reasons set forth in Planning Commission Resolution No. 97-19 and quoted above.

SECTION 2. CEQA FINDING. That the Final Focused EIR for the Kiernan Business Park and Carver-Bangs Specific Plans is complete and adequate, and that it has been prepared and completed in accordance with the provisions of CEQA.

SECTION 3. ZONING CHANGE. Sections 1-3-8 and 2-3-8 of the Zoning Map are hereby amended to prezone the following described property to Specific Plan Overlay Zone, SP-O:

> All that certain real property situate in a portion of Sections 1 and 2, Township 3 South, Range 8 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:
>
> Starting at the northwest corner of said Section 2-3-8, being the centerline intersection of original 40-foot Stoddard Avenue and original 50-foot Kiernan Avenue, said point being the Point of Beginning; thence easterly 5,310 feet, more or less, along the centerline of Kiernan Avenue, to the northeast corner of said Section 2-3-8, being the centerline intersection of original 50-foot Dale Road and original 50-foot Kiernan Avenue; thence easterly 2,655 feet, more or less, along the centerline of Kiernan Avenue to the centerline intersection of original 40-foot American Avenue and original 50-foot Kiernan Avenue; thence southerly 2,631 feet, more or less, to the southeast corner of Lot 34 as shown on that map of Albermerl Tract Recorded in Book 4, Page 19 of Maps, April 13, 1909, in the Office of the Recorder of Stanislaus County; thence southerly 129 feet, more or less, to the south side of 100-foot M.I.D. Lateral No. 6, thence southerly 1,233 feet, more or less, to a point on the existing City limit line, thence westerly along said City limit 2,599 feet, more or less, to a point on the east side of 100-foot Dale Road; thence northerly along said east line of Dale Road, 1,234 feet, more or less, to the point of intersection of said east line of Dale Road and the south line of 100-foot M.I.D. Lateral No. 6; thence westerly 2,643 feet, more or less, to the quarter Section 2-3-8; thence southerly 1,241 feet, more or

less, to a point on the centerline of 100-foot Pelandale Road; thence westerly along the centerline of Pelandale Road 2,642 feet, more or less, to the northwest corner of the southwest quarter quarter of said Section of 2-3-8; thence northerly 3,389 feet, more or less, to the Point of Beginning.

SECTION 4. ZONING MAP. Sections 1-3-8 and 2-3-8 of the Zoning Map of the City of Modesto are hereby amended to appear as set forth on the map attached hereto and which is hereby made a part of this ordinance by reference.

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 1st day of April, 1997, 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: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: RICHARD A. LANG, Mayor

ATTEST:

By Jean Adams
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By KC
Community Development Department
Development Services

Ord. No. 3035-C.S.

FINAL ADOPTION CLAUSE

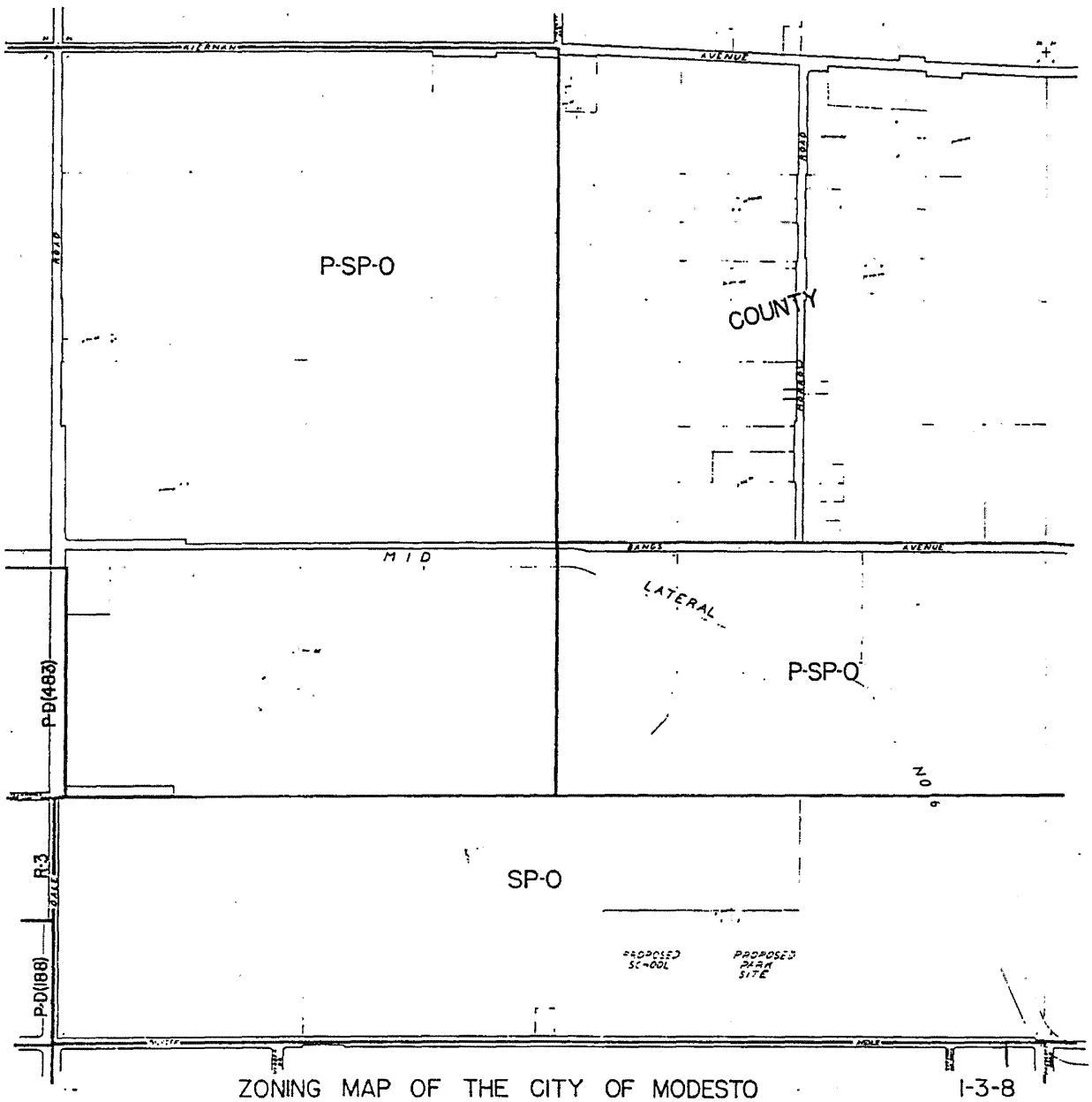
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 15th day of April, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

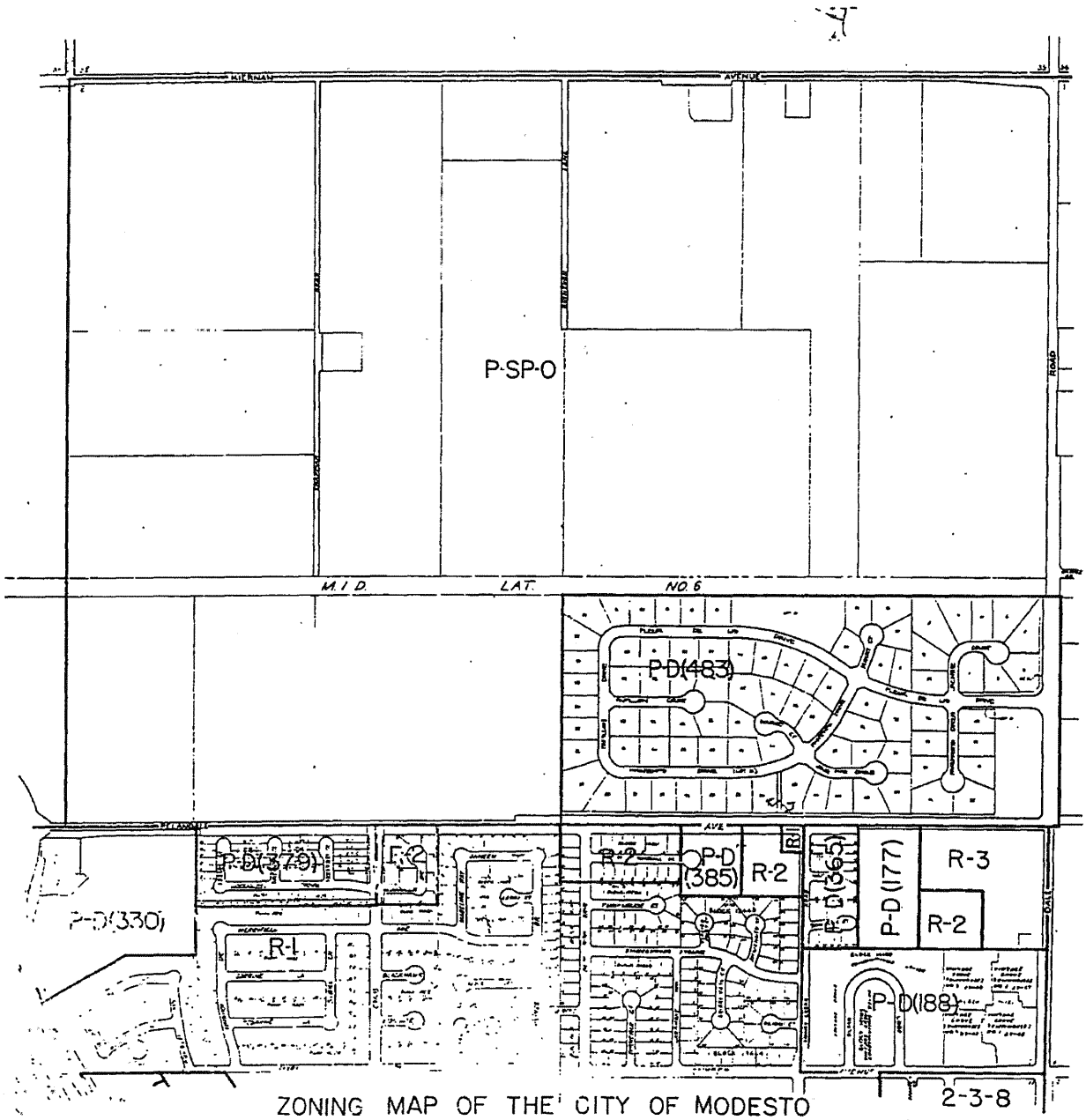
APPROVED: Richard A. Lang
MAYOR RICHARD A. LANG

ATTEST: Jean Adams
JEAN ADAMS, City Clerk

Effective Date: May 15, 1997



ZONING MAP OF THE CITY OF MODESTO I-3-8



ZONING MAP OF THE CITY OF MODESTO

MODESTO CITY COUNCIL
RESOLUTION NO. 2010-245

RESOLUTION APPROVING THE FILING OF AN APPLICATION WITH THE STANISLAUS LOCAL AGENCY FORMATION COMMISSION TO ANNEX APPROXIMATELY 42.61 ACRES OF PROPERTY LOCATED AT 2706, 2742, AND 2866 KIERNAN AVENUE, AND ADJACENT RIGHT-OF-WAY ON KIERNAN AVENUE/CA-219, TO THE CITY OF MODESTO AND MODESTO MUNICIPAL SEWER DISTRICT NO. 1 (OWNER INITIATED – UNINHABITED) (BENCHMARK ENGINEERING)

WHEREAS, Benchmark Engineering ("Applicant") represents the owners of real property within the Kiernan Business Park Specific Plan area, located at 2706, 2742 and 2866 Kiernan Avenue ("Property"), and

WHEREAS, the City has received a written request from the Applicant to initiate annexation of the Property to the City of Modesto under the Cortese-Knox-Hertzberg Local Reorganization Act of 2000, California Government Code Section 56000, et seq, and

WHEREAS, the Resolution of Application is proposed pursuant to California Government Code Sections 56654 and 56700, and

WHEREAS, the Property proposed for annexation is uninhabited as defined by Government Code Section 56046 (fewer than twelve registered voters), and a description of the boundaries of the subject Property is set forth in **Exhibit "A"**, **attached** hereto and by this reference incorporated herein, and

WHEREAS, the subject Property proposed for annexation is within Stanislaus County, contiguous to the existing City limits and within the current Sphere of Influence of the City of Modesto, as adopted by Stanislaus Local Agency Formation Commission, Resolution No. 97-11, on December 19, 1994, and

WHEREAS, before an annexation application may be heard by LAFCO, there must be an agreement with the County providing for the sharing of property taxes following an annexation, and

WHEREAS, the proposed annexation area is covered by the Master Property Tax Agreement entered into between the County of Stanislaus and City of Modesto which was approved by Council Resolution No. 96-170, on April 9, 1996, and

WHEREAS, the proposed Property includes one Williamson Act contract involving one parcel that on October 7, 1974 was protested by the City, and on March 29, 1978, the protest was upheld by LAFCO, and

WHEREAS, it is desired that the proposed annexation be subject to the following terms and conditions:

1. The annexation of said Property, as set forth on **Exhibits "A" and "B" attached** hereto, to the City of Modesto.
2. The Council's approval by separate resolution of a revenue-sharing agreement between the City of Modesto and the Salida Fire Protection District, to allow both agencies to provide fire and life safety services to the annexation area, in lieu of detachment from the jurisdiction of the Salida Fire Protection District, said revenue-sharing agreement as set forth in **Exhibit "D" attached** hereto and by this reference incorporated herein.

WHEREAS, the reasons for this proposed annexation to the City of Modesto are as follows:

1. Staff has received a written request from the Applicant, to annex the Property to the City of Modesto.
2. The proposed annexation is consistent with the Urban Area General Plan and can be served by City services.
3. The proposed annexation will result in planned, orderly and efficient development of the area, and provision of services; and

WHEREAS, pursuant to Government Code Section 56653, a plan for providing services is set forth in **Exhibit "C", attached** hereto and by this reference incorporated herein, and

WHEREAS, on April 19, 2010, City of Modesto Planning Commission held a duly noticed public hearing in the Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which time both oral and documentary evidence were received and considered, and

WHEREAS, after said public hearing, the City of Modesto Planning Commission adopted Resolution No. 2010-10, recommending to the City Council that they adopt the Resolution of Application for an annexation of the Property to the City of Modesto and Modesto Sewer District No. 1, and

WHEREAS, said matter was set for public hearing of the City Council to be held on June 9, 2010, 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 for the purpose of receiving public comment on the proposed annexation, and

WHEREAS, an Initial Study (Environmental Assessment No. EA/C&ED 2010-09) was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the Kiernan Business Park Specific Plan Amendment #4 Program EIR, and

NOW, THEREFORE, the Council of the City of Modesto hereby finds and determines as follows:

1. That the proposed annexation is consistent with the Modesto Urban Area General Plan, because it is consistent with General Plan Urban Growth Policy II.C.1.b., which states "Urban development should be kept as contiguous as possible in order to avoid premature urbanization of valuable farm land, foster resident convenience, and provide for economy

in City services" and because the development resulting from the proposed and annexation is consistent with the General Plan as amended.

2. The type of project is described in Chapter III of the Kiernan Business Park Specific Plan Amendment #4 Program EIR (Program EIR).

3. All applicable policies, regulations, and mitigation measures identified in the Program EIR have been applied to the project or otherwise made Conditions of Approval of the project.

4. An Initial Study was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the Program EIR and it has been determined that the project was described in the Program EIR as being within the scope of the Program EIR.

5. Based on the Initial Study, the City of Modesto finds and determines:

   a. The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 beyond that which was identified in the Program EIR.

   b. No new or additional mitigation measures or alternatives are required.

6. The Initial Study, Environmental Assessment No. EA/C&ED 2010-09, provides the substantial evidence to support findings 2-5 above.

7. An agreement for the sharing of property taxes for the Property was approved by the Master Property Tax Agreement entered into between the County of Stanislaus and City of Modesto which was approved by Council Resolution No. 96-170 on April 9, 1996.

8. An agreement between the City of Modesto and the Salida Fire Protection District for the allocation of District revenues, subject to consideration and approval by the City Council, will allow for the joint provision of Fire and Life Safety service to the annexation area.

9. As determined by the Department of Utility Planning and Projects, there is reasonable certainty that the City will have adequate wastewater capacity to serve the proposed annexation based on the following findings:

   a. The Property is in Sewer Tributary Area 1 (Area 1) of the 2007 Wastewater Master Plan (WWMP) from which is served by both the North Trunk and West Trunk sewers. Wastewater collected by the North Trunk flows into the West Trunk. The West Trunk is approximately nine miles long and will convey approximately 35 percent of the City's total average dry weather flow (ADWF) at build-out.

b. There will be future peak wet weather flow (PWWF) capacity deficiencies, as well as rehabilitation and reliability improvements along the West Trunk required to serve build-out of Area 1; however, anticipated sewer flow from this annexation area is not expected to trigger those specific Capital Improvement Projects in the near term. The WWMP states that approximately half of the City's Comprehensive Planning Districts are located in Area 1. Therefore, there will be substantial growth and increased wastewater flows generated from build-out of Area 1. The annexation area is proposed for land uses consistent with those anticipated in the 2007 WWMP, thus no additional Capital Improvement Projects are necessary beyond those already identified to serve the annexation area.

c. The City is planning to implement capacity, new service extensions, rehabilitation, and reliability projects in Area 1. These projects were identified in the 2007 WWMP and were included in the subsequent Sewer Capacity Charge and Sewer Rate Analyses. Therefore, these projects are included in the City's Capital Improvement Program budget.

d. The City has received a new National Pollutant Discharge Elimination System (NPDES) discharge permit for its wastewater treatment plan. The City is on schedule with the design of its Phase 1 tertiary treatment facilities, which will provide additional treatment capacity beyond the Dissolved Air Flotation facilities. The wastewater treatment capacity needed by the Kiernan Business Park Specific Plan area will be available once the City has completed its Phase 1A Tertiary Treatment Project (expected in early 2010).

e. Therefore, the engineering solution and funding is in place to address wastewater collection system capacity for the Kiernan Business Park Specific Plan area, and the treatment capacity and the City's wastewater discharge permit are in place. With respect to timing, the proposed Kiernan Business Park Specific Plan area is compatible with the City's Capital Improvement Project schedule for pipeline and wastewater treatment improvements.

10. The Property is located within Stanislaus County, is within the City's existing Sphere of Influence, and is contiguous to the existing City limits. The proposed annexation will result in planned, orderly and efficient development of the area and the most efficient provision of City services.

11. The Property proposed to be annexed to the City of Modesto is uninhabited as defined by Government Code Section 56046 (fewer than twelve registered voters), and a description of the boundaries of the subject Property is set forth in Exhibits **"A" and "B," attached** hereto and by this reference incorporated herein.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the filing of an Application with the Stanislaus Local Agency Formation Commission to annex approximately 42.61 acres of property located at 2706, 2742 and 2866 Kiernan Avenue, and adjacent right of way on Kiernan Avenue/CA-219, to the City of Modesto and Modesto Municipal Sewer District No. 1.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that in accordance with Section 56663(c) of the Cortese-Knox-Hertzberg Act, the City hereby consents to a waiver of conducting authority proceedings.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City exercise its option not to succeed to the Williamson Act Contract No. 75-1841 pursuant to California Government Code Section 51243.5, and cancel said contract.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that pursuant to Government Code Section 56653, the City Council submit the plan for providing services as set forth in **Exhibit "C", attached** hereto and by this reference incorporated herein.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City Council submit the revenue-sharing agreement between the City of Modesto and the Salida Fire Protection District, upon the Council's consideration and approval of said revenue-sharing agreement, to allow both agencies to provide fire and life safety services to the annexation area in lieu of detachment from the jurisdiction of the Salida Fire Protection District, as set forth in **Exhibit "D", attached** hereto and by this reference incorporated herein.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that The property owners and developers shall, at their sole expense, defend, indemnify and hold harmless the City of Modesto, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

AYES:	Councilmembers:	Geer, Hawn, Lopez, Muratore, Olsen, Mayor Ridenour
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	Marsh

ATTEST: _____
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: _____
SUSANA ACALA WOOD, City Attorney

THIS IS TO CERTIFY THAT THIS IS A TRUE COPY OF THE DOCUMENT ON FILE WITH THIS OFFICE.
DATE July 6, 2010
_____
SIGNATURE
CITY CLERK
CITY OF MODESTO, CA

Exhibit "A"

LEGAL DESCRIPTION

All that certain real property in portions of Sections 35 and 36, Township 2 South, Range 8 East and Section 1 Township 3 South, Range 8 East, Mount Diablo Meridian, more particularly described as follows:

Bearings are based on the 1992 adjustment of the California High Precision Geodetic Network, California Coordinate System Zone 3, North American Datum of 1983.

Commencing at the southeast corner of said Section 35; thence coincident with the east line of said Section 35 North 00° 26' 39" West, 94.95 feet to the **POINT OF BEGINNING** of this description; thence leaving said east line South 89° 33' 21" West, 25.00 feet to a point on the general northerly line of the Kaiser-Cornerstone Reorganization to the City of Modesto recorded October 25, 2004 in Document No. 04-0175542-00; thence coincident with said northerly line the following three (3) courses: 1) South 37° 13' 18" West, 57.65 feet, 2) South 86° 09' 08" West, 420.74 feet, 3) South 89° 34' 39" West, 1186.91 feet to a point on the northerly projected west line of Parcel 2 described in the Grant Deed to Malik, recorded April 29, 2003, as Instrument No. 2003-0066261,Official Records of Stanislaus County; thence coincident with said projected west line North 00° 09' 38" West, 150.56 feet to a point on the northerly Right of Way line of Kiernan Avenue, California State Route 219 as described in the Final Order of Condemnation recorded July 29, 2009 as Instrument No. 2009-0075149-00 Official Records of Stanislaus County; thence coincident with said Right of Way line the following two (2) courses: 1) North 89° 32' 54" East, 1528.20 feet, 2) North 80° 27' 29" East, 57.63 feet; thence leaving said line North 89° 22' 34" East, 162.56 feet to a point on the northerly Right of Way of said Kiernan Avenue as described in the Final Order of Condemnation recorded January 16, 2008 as Instrument No. 2008-000-4624-00 Official Records of Stanislaus County; thence coincident with said northerly Right of Way the following two (2) courses 1) South 85° 52' 47" East, 120.44 feet; 2) North 89° 32' 54" East, 456.13 feet to a point on the east line of Parcel A as shown on the map recorded April 10, 2000 in Volume 50 of Parcel Maps at Page 10, Stanislaus County Records; thence continuing coincident with said northerly Right of Way as described in the Grant Deed to the State of California recorded March 17, 2008 as Document No. 2008-0026745-00, North 89° 32' 54" East, 568.65 feet; thence continuing coincident with said northerly Right of Way as described in the Grant Deed to the State of California recorded May 11, 2007 as Document No. 2007-0060146-00 the

SIGNATURE
CITY CLERK
CITY OF MODESTO, CA

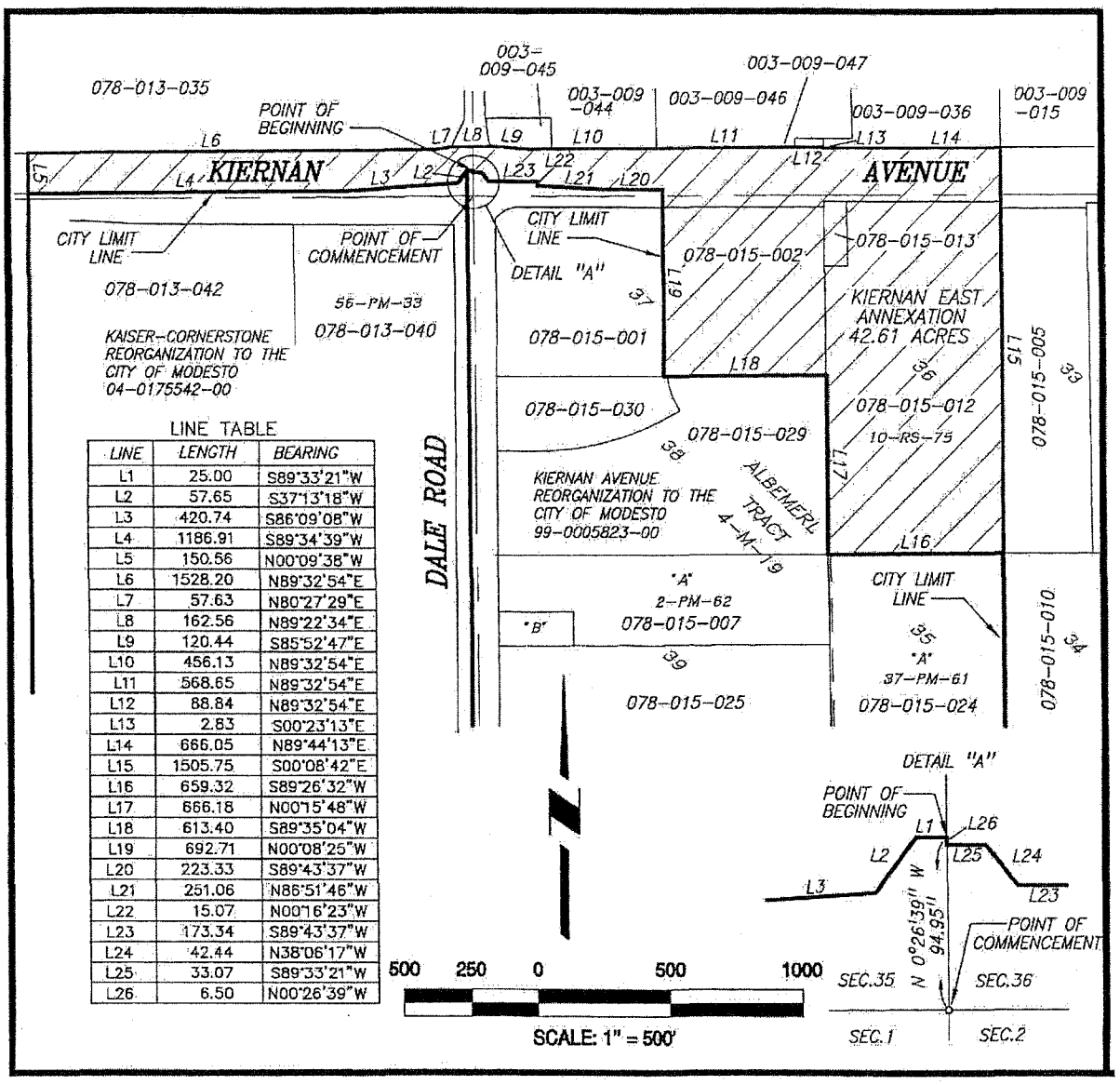
following two (2) courses: 1) North 89°32' 54" East, 88.84 feet, 2) South 00° 23' 13" East, 2.83 feet; thence continuing coincident with said northerly Right of Way as described in the Final Order of Condemnation recorded December 18 as Document No. 2008-0132471 Official Records of Stanislaus County, North 89° 44' 13" East, 666.05 feet; to a point on the northerly projected east line of Lot 36 as shown on the map of the Albemerl Tract recorded in Book 4 of Maps at Page 19, Stanislaus County records; thence coincident with said east line South 00° 08' 42" East, 1505.75 feet to the northeast corner of Parcel B as shown on the map recorded in Volume 37 of Parcel Maps at Page 61 Stanislaus County records, said corner also being an angle point in the easterly line of the Kiernan Avenue Reorganization to the City of Modesto recorded January 20, 1999 as Instrument No. 99-0005823-00, Official Records of Stanislaus County; thence coincident with the said line of the Kiernan Avenue Reorganization the following ten (10) courses: 1) South 89° 26' 32" West, 659.32 feet, 2) North 00° 15' 48" West, 666.18 feet, 3) South 89° 35' 04" West, 613.40 feet, 4) North 00° 08' 25" West, 692.71 feet, 5) South 89° 43' 37" West, 223.33 feet, 6) North 86° 51' 46" West, 251.06 feet, 7) North 00° 16' 23" West, 15.07 feet, 8) South 89° 43' 37" West, 173.34 feet, 9) North 38° 06' 17" West, 42.44 feet, 10) South 89° 33' 21" West, 33.07 feet to a point on the east line of said Section 35; thence coincident with said east line North 00° 26' 39" West, 6.50 feet to the **POINT OF BEGINNING**.

Containing 42.61 Acres, more or less.

James S. Conti
PLS 8001
04/16/2010

Exhibit "B"

ANNEXATION PROPOSAL MAP



LINE TABLE

LINE	LENGTH	BEARING
L1	25.00	S89°33'21"W
L2	57.65	S37°13'18"W
L3	420.74	S86°09'08"W
L4	1186.91	S89°34'39"W
L5	150.56	N00°09'38"W
L6	1528.20	N89°32'54"E
L7	57.63	N80°27'29"E
L8	162.56	N89°22'34"E
L9	120.44	S85°52'47"E
L10	456.13	N89°32'54"E
L11	568.65	N89°32'54"E
L12	88.84	N89°32'54"E
L13	2.83	S00°23'13"E
L14	666.05	N89°44'13"E
L15	1505.75	S00°08'42"E
L16	659.32	S89°26'32"W
L17	666.18	N00°15'48"W
L18	613.40	S89°35'04"W
L19	692.71	N00°08'25"W
L20	223.33	S89°43'37"W
L21	251.06	N86°51'46"W
L22	15.07	N00°16'23"W
L23	173.34	S89°43'37"W
L24	42.44	N38°06'17"W
L25	33.07	S89°33'21"W
L26	6.50	N00°26'39"W

Exhibit "C"

KIERNAN BUSINESS PARK EAST ANNEXATION
PLAN FOR PROVIDING SERVICES

Pursuant to Government Code Section 56653, the following Plan for Services to be extended to the affected territory has been prepared for the Kiernan Business Park East Annexation.

Project area and service requirements

The project site is comprised of three parcels in addition to adjacent right of way of Kiernan Avenue/CA-219, and is part of the Planned Urbanizing Area as described in the Modesto Urban Area General Plan, adopted August 15, 1999 and subsequently amended. As part of the approval, community facilities and services were analyzed in detail in the Environmental Impact Report (EIR) for the Kiernan Business Park East Specific Plan Amendment No. 4 (SPA) Project (SCH 2007062071). Additionally, the Kiernan Business Park East Facilities Master Plan (FMP), approved with the SPA, defines the public facilities required to service development within the Specific Plan area in accordance to City Standards. These services include traffic and circulation, waste water collection, water delivery, storm water drainage, solid waste disposal, schools, parks, fire protection, and police protection. The City of Modesto is a full service city that intends to provide the following services.

1. Traffic and Circulation: The project site is bounded to the north by Kiernan Avenue/CA-219, approximately 700 feet east of the intersection of Kiernan Avenue/CA-219 and Dale Road and approximately 650 feet west of the intersection of Kiernan Avenue/CA-219 and American Avenue. The annexation area also includes adjacent right-of-way of Kiernan Avenue/CA-219 from the property frontages to the northwest corner of the previously annexed Kaiser-Cornerstone Reorganization Area. The dedication and construction of roadway improvements along the Kiernan Avenue/CA-219 corridor are identified as Mitigation Measures of the EIR; however, the Kiernan Avenue/CA-219 improvements are to be completed by the City of Modesto and CalTrans. The project developers shall be responsible for the dedication and construction of new roadways to serve the project as outlined in the Proposed Circulation Plan of the EIR [Figure III.7] and detailed in the FMP.

2. Waste Water Collection: Upon annexation, the project site will annex to Modesto's Sewer District No. 1, which is served by the West Trunk line under American Avenue south of Bangs Ave, and the North Trunk line under Bangs Avenue from Dale Road to Carver Road. In 2007 the City approved the Wastewater Master Plan Update, which identified necessary improvements to existing wastewater facilities and construction of new wastewater facilities, including rehabilitation and reliability improvements to the West Trunk. The project site is proposed for land uses consistent with those anticipated in the 2007 Wastewater Master Plan Update, and no additional capital improvement projects are needed beyond those already identified to serve the annexation area. The FMP identifies sewer

improvements to consist of 10- and 12-inch diameter lines that will flow from the project area to the North and West Trunk, the installation of which are to be the responsibility of the project developers. All improvements will be provided according to City Standards.

3. Water Delivery: Water service will be provided to the project as identified in the Mitigation Measures of the EIR and the FMP. Project area improvements shall be funded and installed by the project developers. The City shall construct localized system improvements with the project developer paying fair share of localized system improvements through payment of water fees.

4. Storm Water Drainage: All stormwater drainage for the project site must be contained on site. Prior to approval of development plans for all new development on the project site, the City must approve stormwater drainage plans to ensure their adequacy.

5. Solid Waste Disposal: Weekly pick-up of solid waste will be extended to the project area upon the effective date of annexation.

6. Fire Protection: Instead of detachment from the jurisdiction of the Salida Fire Protection District, the City and District propose to enter into a cost-sharing agreement that would allow for both agencies to provide fire and life safety services to the annexation area. Under this agreement, the annexation area is to be served by the closest available Fire and Life Safety resource. City of Modesto Fire Station No. 11 is located at 4225 Carver Road, approximately two miles southeast of the annexation area, and Salida Fire Protection District Station No.1 is located at 4820 Salida Boulevard, approximately two miles west of the annexation area. This cost-sharing agreement is to be considered by the City Council and LAFCO with the proposed annexation.

7. Police Protection: The City of Modesto Police Department will serve the area. The project site is located adjacent to Patrol Area 65 in the City's northwestern area of command.

1 Level and range of services

The City of Modesto is a full service provider of municipal services and intends to provide the complete service for those areas identified above.

2 When can services be provided?

The above services can be provided upon the effective date of annexation.

3 Improvements required as a condition of annexation

No improvements are required as a condition of annexation. The following improvements will be required as a condition of development:

- Prior to issuance of a building permit at the project site, the project developers shall provide for roadway, sewer, water and stormwater improvements as

identified in the Mitigation Measures of the EIR and the FMP, to the satisfaction of the City Engineer.

4 How will services be financed?

Services will be financed through City fees and Capital Facilities Fees provided by project developers. Additionally, a Community Facilities District (CFD) is to be formed for the overall Kiernan Business Park East, which will provide additional funding for localized improvements.

Exhibit "D"

AGREEMENT BETWEEN THE CITY OF MODESTO AND THE SALIDA FIRE PROTECTION DISTRICT FOR THE ALLOCATION OF DISTRICT REVENUE RESULTING FROM THE ANNEXATION OF PROPERTY WITHIN THE KIERNAN BUSINESS PARK TO THE CITY

This agreement ("Agreement") is entered into by and between the City of Modesto ("CITY") and the Salida Fire Protection District ("DISTRICT"), a California special district organized and governed by the Fire Protection Law of 1987 (California Health & Safety Code Section 13800, et seq.).

RECITALS

This Agreement is made with reference to the following facts:

A. DISTRICT is responsible for fire suppression and prevention within the territory governed by this Agreement and receives the District Revenue generated within the DISTRICT boundaries;

B. CITY and DISTRICT desire to enter into this Agreement to allocate District Revenues in the event of Annexation of the territory covered by this Agreement to the CITY.

C. CITY and DISTRICT agree it is in the best interest of the area subject to annexation that it receives fire and life safety services jointly from CITY and DISTRICT.

D. CITY and DISTRICT agree it is the intent of both parties, and in the overall public interest, to ensure both agencies receive sufficient District Revenues to provide adequate levels of fire and emergency services within the affected Territory and are able to provide assistance to other fire protection agencies in a cooperative manner; and

E. It is agreed that an equitable sharing of future District Revenue from the Affected Territory will benefit the overall organization of fire protection agencies and their cooperative ability to provide adequate emergency services.

NOW THEREFORE the CITY and DISTRICT hereby agree as follows:

1. Effect of Recitals.

   The foregoing recitals set forth the intent of the CITY and DISTRICT in entering into this Agreement.

2. Definitions.

2.1 "Affected Territory" means that territory defined in the Kiernan Business Specific Plan Amendment #4 for which a change of organization or reorganization is proposed or ordered. The Affected Territory includes APN Nos. 078-015-002, 078-015-012, and 078-005-013. Gov't Code section 56033. Gov't Code section 56015.

2.2 "Annexation" means the annexation, inclusion, attachment, or addition of territory to a city or district. Gov't Code section 56017.

2.3 "Detachment" means the detachment, deannexation, exclusion, deletion, or removal of any portion of the territory of that city or district. Gov't Code section 56033.

2.4 "Change of Organization" means an Annexation to, or detachment from a city or district. Gov't Code section 56021.

2.5 "District Revenues" shall mean any allocation of the property tax due the District from the Affected Territory. It shall also include any District special tax as authorized by Health & Safety Code Section 13911, any District special tax as authorized by Health & Safety Code Section 13912, any District special tax for fire protection as authorized by Health & Safety Code Section 13913, any District assessment for fire suppression service as authorized by Health & Safety Code Section 13914, and District assessments to finance capital improvements as authorized by Health & Safety Code Section 13915 and any fee authorized by Health & Safety Code Section 13916 for services of the District levied on an interested party and other public agency, except the City. District Revenues shall not include grants, gifts, bequests or litigation or insurance recoveries.

2.6 "Effective Date" means the date at which the Change of Organization becomes effective. This is the date the Change of Organization is recorded by the Stanislaus LAFCO staff, unless a different Effective Date is set forth in the LAFCO resolution approving the Change of Organization.

2.7 "Fiscal Year" means July 1 of any given year – June 30 of the next year utilized for property tax purposes.

2.8 Upon the Effective Date of the Annexation of the Affected Territory to the CITY, the amount of District Revenue generated from the affected territory in the

calendar year in which the Effective Date occurs shall be designated as the "Base District Revenue".

3. Effect of Annexation on Affected Territory.

Upon the annexation of Affected Territory to the CITY, the CITY and DISTRICT will jointly be responsible for fire suppression and prevention within the Affected Territory. The Affected Territory will not be Detached from the DISTRICT.

4. Allocation of District Revenue to CITY.

Beginning in the Calendar Year following the calendar year in which Effective Date the District Revenue attributable to DISTRICT from the Affected Territory shall be reapportioned as follows:

The District shall retain the Base District Revenue for the entire calendar year in which the Effective Date falls. This will likely result in City providing joint fire and life safety services with District in the Affected Territory for a period of several months until District Revenues are received in the normal course of business during the first Fiscal Year after the Effective Date. In the first Fiscal Year following the Effective Date, and in each Fiscal Year thereafter, City shall receive 100% of District Revenues actually received by District in excess of the Base District Revenue. In the first Fiscal Year after the Effective Date in which District Revenues exceed two times the Base District Revenue, and in each Fiscal Year thereafter, the amount of District Revenue actually received by District in excess of two times Base District Revenue shall be split evenly between District and City. The parties intend that all District Revenues will ultimately be split equally between them.

5. Annual Transfer of Funds From DISTRICT to CITY.

In the next Fiscal Year following the Effective Date and in each Fiscal Year thereafter, the DISTRICT shall transfer to CITY, within 60 days of receiving its District Revenue allocations from the County, the amount of District Revenue owed to City in accordance with Section 4 above.

6. Support for Annexation to the City.

DISTRICT agrees not to oppose or attempt to frustrate the Annexation of the Affected Territory to the CITY and CITY agrees to not request Detachment of the Affected Territory from the DISTRICT, in any Change of Organization proceeding before LAFCO.

7. Assurances on Use of Revenue.

CITY recognizes that District Revenues transferred to it by this Agreement could have been appropriated by DISTRICT to meet public safety service demands. CITY agrees to utilize District Revenues to maintain levels of service in the Affected Territory equal to or greater than levels of service provided by CITY elsewhere. City agrees to ensure funds it receives pursuant to this Agreement will be available to benefit the Affected Territory under mutual aid or other cooperative agreements.

8. No Restriction on District or City Discretion.

Nothing in this Agreement is intended or shall be construed to limit or restrain DISTRICT or CITY discretion to make budgetary, legislative or staffing decisions regarding levels of service that it deems necessary for overall safety and welfare of the Affected Territory.

9. Term of Agreement and Termination.

The Agreement shall become effective on the date that it becomes approved by both CITY and DISTRICT. It shall terminate only upon the mutual agreement of the parties.

10. Renegotiation Due to Change in Law.

In entering into this Agreement, the parties mutually assume the continuation of the existing statutory scheme for the allocation and distribution of available District Revenue to local government. Accordingly, it is mutually understood and agreed that should changes in law occur that materially affect the terms of this Agreement the parties shall meet to attempt to resolve any difficulties that are thereby created. "Materially Effect" as used in this Agreement shall include but not be limited to a decrease in District Revenue of five percent (5%) in any single Fiscal Year and only applies to a change in law, not a change in the facts serving as the basis for this Agreement. Any party contending this section applies shall give written notice pursuant to this section, which notice shall include an

explanation of the reasons for the request to meet and attempt to resolve any claim of Material Effect.

11. Modification.

This Agreement may be modified or amended only by a writing duly authorized and executed by CITY and DISTRICT.

12. Administrative and Ministerial Action.

City and District will insofar as is legally possible, fully carry out the intent and purposes hereof, if necessary, by administrative and ministerial action independent of their legislative power.

13. Integration.

This Agreement is intended to be an integrated agreement and supersedes any and all previous negotiations, proposals, commitments, writings and understandings of any nature whatsoever between CITY and DISTRICT as to the subject matter of this Agreement.

14. Notice.

All notices, requests, determinations or other correspondence required or allowed by law or this Agreement to be provided by the parties shall be in writing and shall be deemed given and received when delivered to the recipient by certified mail or by facsimile transmission at the following addresses:

City Manager
City of Modesto
1010 10th Street
Suite 6100
Modesto, CA 95354

Fire Chief
Salida Fire Protection District
P.O. Box 1335
4820 Salida Boulevard
Salida, CA 95368

Fire Chief
Modesto Fire Department
600 11th Street
Modesto, CA 95354

15. Dispute Resolution.

Any dispute arising out of or relating to the interpretation or application of this Agreement, or any District Revenue or Base District Revenue calculation hereunder shall be submitted to the respective Fire Chiefs of City and District for resolution. If the dispute is not resolved there, it maybe submitted to mediation upon mutual agreement of City and District. In the event the dispute is not settled by the Fire Chiefs and/or in mediation, within six months after one party gives the other party notice in accordance with this Agreement of the dispute, the matter shall be submitted to final and binding arbitration before one arbitrator in Modesto. The arbitrator will be chosen from a panel of three proposed by the American Arbitration Association by alternate strikes. Arbitration may be requested by either party.

This Agreement to arbitrate shall be specifically enforceable under the jurisdiction of the Superior Court of the State of California in Stanislaus County, but any award rendered by the arbitrator may be entered in any court having jurisdiction. This section shall result in the conclusive, final and binding resolution of arbitrable claims between the parties. Arbitration shall proceed according to the "fast track" rules of the American Arbitration Association then in effect. District and City shall have the right to take no more than three (3) depositions apiece as a matter of right, without regard to the "fast track" rules. The arbitrator shall apply the substantive law of California.

The arbitrator may grant any remedy or relief deemed by the arbitrator just and equitable under the circumstances, whether or not such relief could be awarded in a court of law. The arbitrator shall be empowered to award monetary sanctions against a party for failure of cooperation in the arbitration. The arbitrator shall, in written award, allocate all the costs of the arbitration, including fees of the arbitrator and the reasonable attorney fees of the prevailing party, against the party who did not prevail. The prevailing party shall be the party in whose favor the majority of the central issues in the case are resolved.

Notwithstanding anything in this provision to the contrary, the arbitrator shall have no power to award punitive damages or other damages not measured by the party's actual damages (excluding litigation costs and fees) against any party.

This limitation of the arbitrator's powers under this Agreement shall not operate as an exclusion of the issue of punitive damages from this Agreement to Arbitrate sufficient to vest jurisdiction in a court with respect to that issue.

The parties hereby waive any rights provided by Title 9.2 of the California Code of Civil Procedure, Section 1296. The arbitrator's award shall be deemed final, conclusive and binding to the fullest extent allowed by California law.

16. Assignment.

This Agreement and its terms and conditions shall be binding upon and inure to the benefit of the parties to this Agreement and their respective administrators. This Agreement may not be assigned by either party without written consent of the other party.

17. Governing Law.

This Agreement shall be governed by the laws of the State of California without reference to its choice of law jurisprudence.

18. Severability.

If any provision of this Agreement, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severed from the remainder of the Agreement and shall not in any way impair the enforceability of any other provision of this Agreement.

19. Compliance with Applicable Law.

In providing the services required by this Agreement, CITY and DISTRICT shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations.

20. Authority to Contract.

CITY and DISTRICT each warrant that they are respectively legally permitted and otherwise have the authority to enter into this Agreement and perform their respective obligations.

21. Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create any such rights.

22. No Party Deemed to be Draftsman.

The parties acknowledge and agree that this Agreement has been arrived at through negotiation and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code section 1654.

23. Counterparts.

This Agreement may be executed in multiple counterparts, which may be transmitted by facsimile, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and the same instrument.

24. Indemnity.

City agrees to indemnify, defend and hold District harmless with respect to City's negligence or other wrongful acts arising out of or relating to City's performance of it's fire and/or life safety services pursuant to this Agreement without regard to the availability of insurance coverage.

District agrees to indemnify, defend and hold City harmless with respect to District's negligence or other wrongful acts arising out of or relating to District's performance of it's fire and/or life safety services pursuant to this Agreement without regard to the availability of insurance coverage.

25. Additional Insured Requirement.

District and City shall each cause the other to be included as an additional insured to their insurance policies offering or potentially offering coverage for fire and/or life safety services.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date set forth below.

SALIDA FIRE PROTECTION DISTRICT

By: _____
Tom Burns
Chairman of the Board of Directors

Dated: _____, 2010

APPROVED AS TO FORM:

By:_____
William D. Ross
District Counsel

Dated: _____, 2010

CITY OF MODESTO

By:_____
GREG NYHOFF, City Manager

Dated: _____, 2010

APPROVED AS TO FORM:

By:_____
Susana Alcala Wood
Modesto City Attorney

Dated: _____, 2010

Exhibit E

Williamson Act Documentation

1010 TENTH STREET, 3RD FLOOR
MODESTO, CA 95354

Stanislaus
LAFCO
LOCAL AGENCY FORMATION COMMISSION

PHONE: (209) 525-7660
FAX: (209) 525-7643
www.stanislauslafco.org

DATE: September 20, 2010

TO: Director of Conservation

FROM: Marjorie Blom, Executive Officer

SUBJECT: NOTICE PURSUANT TO GOVERNMENT CODE SECTION 56753.5 - PROPOSED ANNEXATION OF LANDS UNDER WILLIAMSON ACT CONTRACT (KIERNAN BUSINESS PARK EAST CHANGE OF ORGANIZATION TO THE CITY OF MODESTO)

Our office has received a land-owner initiated application requesting to annex approximately 42.61 acres to the City of Modesto. The territory requested for annexation includes one (1) active Williamson Act Contract (see attached Williamson Act Contract information and project map).

The following information pertains to the subject Williamson Act Contracted lands:

- Contract No. 75-1841 (Current Assessor Parcel Number: 078-015-012 – owner: Matt Bruno) was recorded on January 15, 1975; Vol. 2676, Pages 880-887, Instrument No. 26802. The City of Modesto protested this contract on October 7, 1974 and Stanislaus LAFCO upheld the City's protest on March 29, 1978. A Notice of Non-renewal was filed on this Contract (19.5 acres), with an expiration date of December 31, 2013.

The City of Modesto, in its Resolution of Application initiating the annexation proposal, stated it intends not to succeed to the above contract (See attached - Modesto City Council Resolution No. 2010-245).

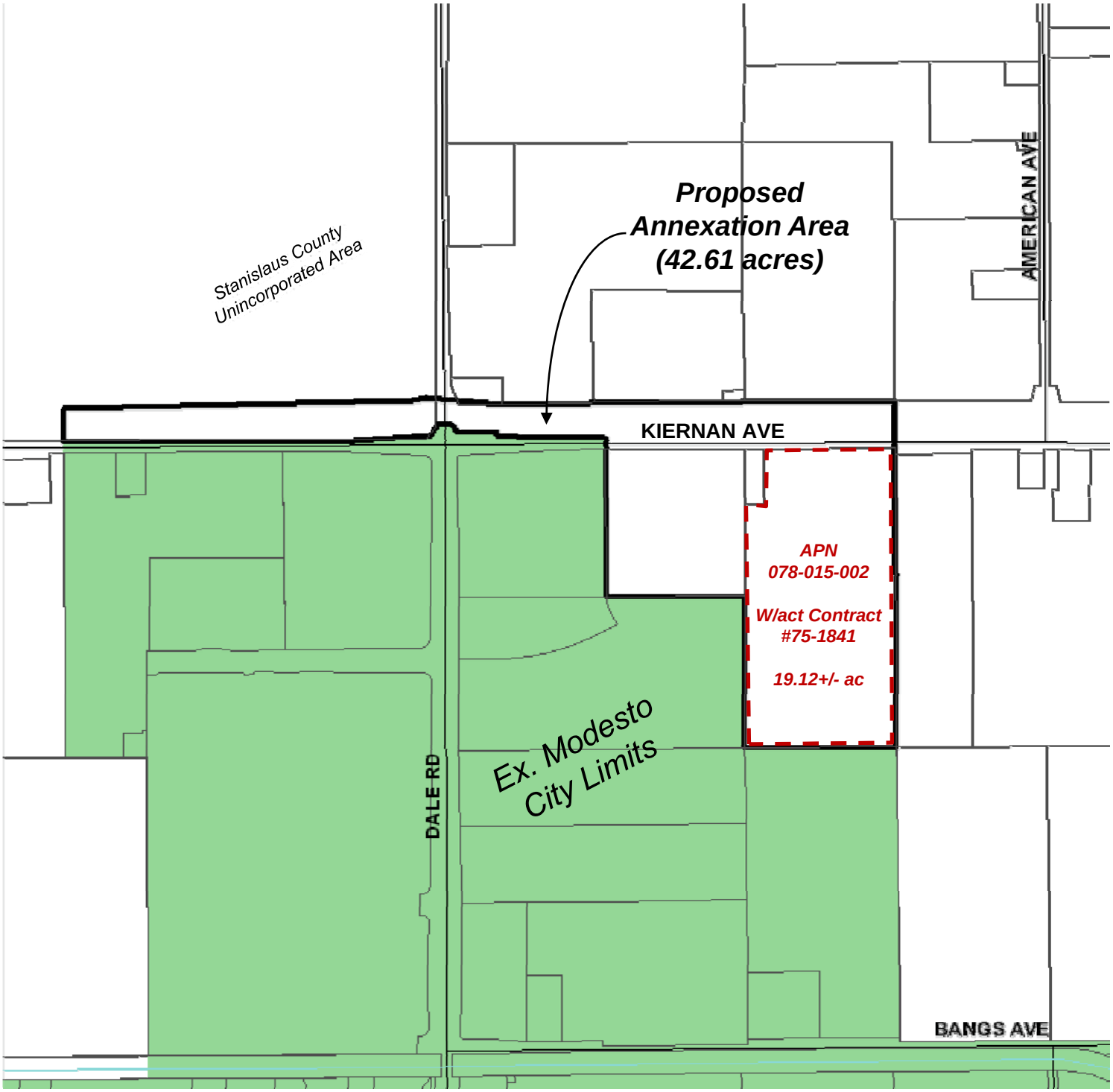
Should you have any questions regarding this matter, please call me at your earliest convenience.

Attachments: Map of Williamson Act Contracted Land within the proposed annexation area
Copy of Williamson Act Contract No. 75-1841 and Notice of Non-renewal
LAFCO Resolution dated March 29, 1978
Modesto City Council Resolution No. 2010-245

(I:\LAFCO\Admin\CITIES\MODESTO\Kiernan Business Park East\Director of Conservation.doc)

KIERNAN BUSINESS PARK EAST CHANGE OF ORGANIZATION TO THE CITY OF MODESTO

WILLIAMSON ACT CONTRACTED LAND



Source: LAFCO Files, County GIS, Sept. 2010

APPLICATION NO. 75-1841

RECORDED AT REQUEST OF:
Stanislaus County
Board of Supervisors

WHEN RECORDED RETURN TO:
Stanislaus County
Planning Department

THIS SPACE FOR RECORDER ONLY

This agreement recorded on January 15, 1975, in Vol. 2676, Page 582-587
Instrument No. 2686
Stanislaus County Records.

CALIFORNIA LAND CONSERVATION CONTRACT NO. 75-1841

THIS CALIFORNIA LAND CONSERVATION CONTRACT is made and entered into this 14 day of JANUARY, 1975, by and between the County of Stanislaus, a political subdivision of the State of California, hereinafter referred to as "County" and the undersigned landowners or the successors thereof, hereinafter referred to as "Owner" as follows:

WHEREAS, Owner is the legal owner of certain real property, herein referred to as the subject property, situate in the County of Stanislaus, State of California; and

WHEREAS, the subject property is presently devoted to agricultural and compatible uses; and

WHEREAS, subject property is located in an agricultural preserve heretofore established by County by Resolution dated October 20, 1970; and

WHEREAS, both Owner and County desire to limit the use of subject property to agricultural and compatible uses in order to discourage premature and unnecessary conversion of such land from agricultural uses, recognizing that such land has definite public value as open space, that the preservation of such land in agricultural production constitutes an important physical, social, esthetic, and economic asset to the County to maintain the agricultural economy of County and the State of California, and that the common interest is served by encouraging and making feasible the orderly expansion of development of the urban and commercial sectors of the County to avoid the disproportionate expense involved in providing municipal services to scattered development; and

WHEREAS, both Owner and County intend that the Contract is and shall continue to be through its initial term and any extension thereof an enforceable restriction within the meaning and for the purposes of Article XXVIII of the California Constitution and thereby qualify as an enforceable restriction as defined in Revenue and Taxation Code Section 422;

NOW, THEREFORE, the parties, in consideration of the mutual covenants and conditions set forth herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

(1) The Contract is made and entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 of Part 1 of Division 1 of Title 5 of the California Government Code, commencing with Section 51200), hereinafter referred to as the Act, as such Act has been amended or may hereafter be

2075L-23P

(15) Owner and holders of security interests designate the following person as the Agent for Notice to receive any and all notices and communications from County during the life of the Contract. Owner will notify County in writing of any change of designated person or change of address for him:

DESIGNATED AGENT: Lloyd C. Wissner

MAILING ADDRESS: 1908 Lyon Ave
Belmont, Ca. 94002

(16) I desire to place the following parcels of real property under Contract:

ASSESSMENT NO.	CODE AREA	ACREAGE	SITUS ADDRESS
005-1512-002	98-01	19.32	2706 Kiernan

(List the Assessment Number and Acreage for each parcel of property to be included under the Contract. Also, attach to this application a copy of the Assessor's Map for each parcel.)

IN WITNESS WHEREOF, the parties hereto have executed the within Contract the day and year first above written.

OWNERS:

NAME (print or type)	SIGNATURE (all to be notarized)	DATE	SIGNED AT (city)
Lloyd C. Wissner	Lloyd C. Wissner	Aug 8 1974	Modesto
Bendora R. Wissner	Bendora R. Wissner	Aug 8 1974	Modesto

SECURITY HOLDERS:

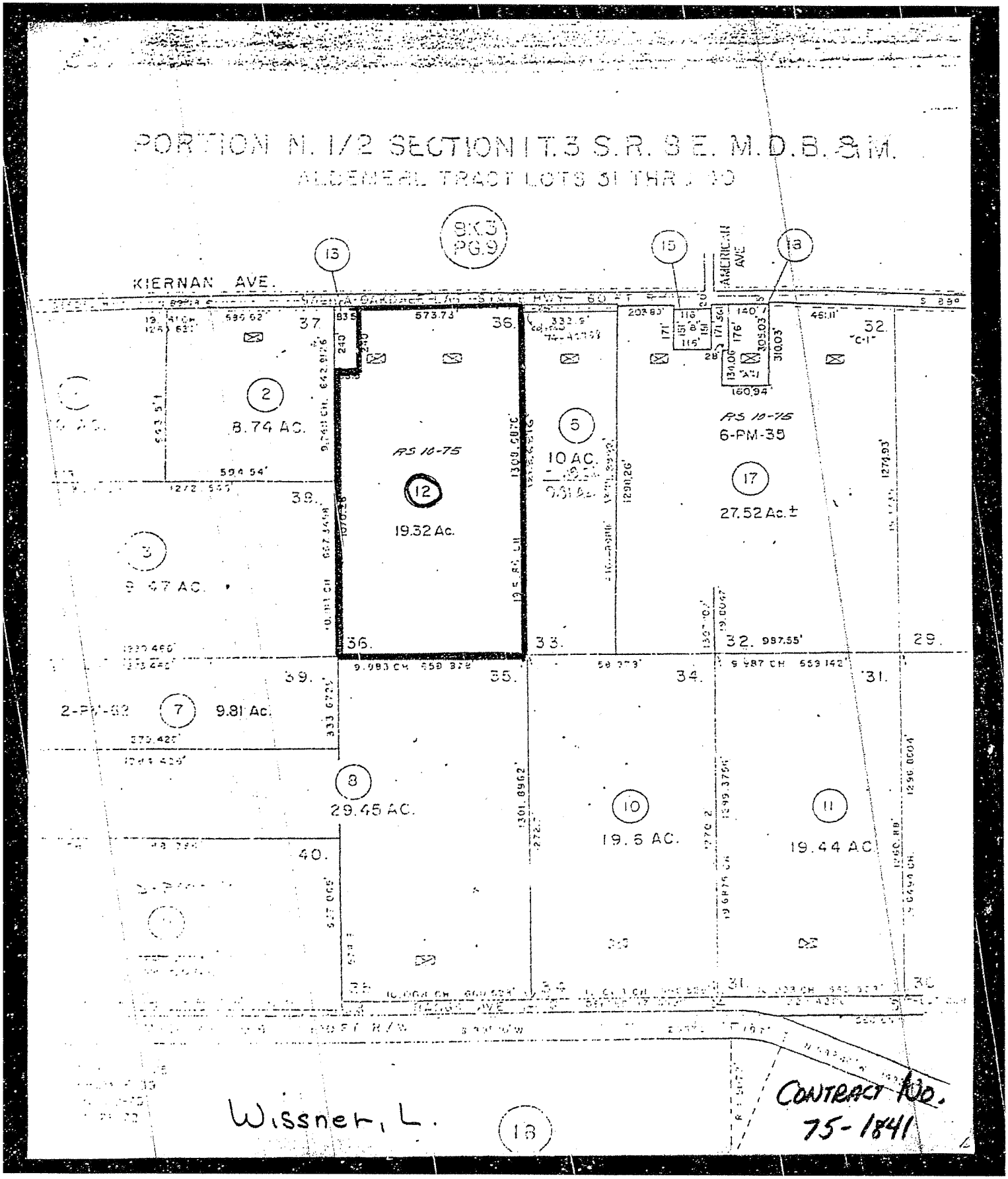
NAME (print or type)	SIGNATURE (all to be notarized)	DATE	SIGNED AT (city)

COUNTY:

JAN 14 1975
Dated

Haig Arakelian, Jr.
Chairman, Board of Supervisors

(Staple notary certificates here)


PORTION N. 1/2 SECTION 1 T. 3 S. R. 9 E. M. D. B. & M.
ALDEN REAL TRACT LOTS 31 THRU 40
BK 3 PG 9
KIERNAN AVE.
AMERICAN AVE
8.74 AC.
10 AC.
9.81 Ac.
19.32 Ac.
27.52 Ac.±
9.47 AC.
29.45 AC.
19.6 AC.
19.44 AC
6-PM-35
Wissner, L.
CONTRACT NO. 75-1841

Date January 14, 1975

TO: Board of Supervisors

FROM: Stanislaus County Planning Commission

SUBJECT: Application for Contract--Land Conservation Act

The following application to establish an Open Space Contract, as provided by the Land Conservation Act of 1965, has been received and is found to comply in all respects with the requirements of the Uniform Rules adopted and recorded by your Board:

CONTRACT NO. 75-1841

ASSESSOR PARCEL NO. 98-01 5-1512-002 2706 Kiernan Ave.

School District _____ Supervisorial District 3

Applicant Lloyd & Bendora Wissner or agent _____

Address 1908 Lyon Avenue

Belmont, California 94002

Total Acres Applied for 19.32 Zoning A-2

September 19, 1974

City Council, City of Modesto

P.O. Box 642

Modesto, California 95353

Gentlemen:

RE: 75-1841
Open Space Contract Application

The Board of Supervisors has received an application for a California Land Conservation Act of 1965 contract for the property shown on the attached sketch or legal description.

The applicant's name is Lloyd C. Wissner, 1908 Lyon Ave.,Belmont 94002

Situs address of property 2706 Kiernan Avenue

Modesto 95350

This property is now zoned an "A-2" (Exclusive Agricultural) District and therefore is eligible for being included in the "Open Space" program.

Pursuant to California Government Code Section 51243.5 you are hereby notified that this property or part thereof lies within one mile of the corporate limits of your city and that you may file a resolution protesting the execution of a contract with the local agency formation commission. The Board of Supervisors intends to consider the execution of the contract on October 22, 1974.

Very truly yours,

STANISLAUS COUNTY PLANNING COMMISSION

Daryl J. Weitl, Associate Planner

DJW:dl:du

APPLICATION

CALIFORNIA LAND CONSERVATION ACT OF 1965

STANISLAUS COUNTY

The undersigned hereby requests the County of Stanislaus, California, to enter into the California Land Conservation Contract attached hereto.

The persons who have signed the contract are the only persons with legal and security interests in the subject property.

Each person who has signed the contract is an adult who is not incapacitated to contract, or the signature is by an authorized guardian or conservator.

I declare under penalty of perjury that the foregoing is true and correct and this application was executed on _____, 19 , at _____, California.

_____
Signature of Applicant
(Any owner or designated agent.)

(Application must be sworn to
and signed before a notary
if executed outside California.)

MODESTO CITY COUNCIL
RESOLUTION NO. 74-866

A RESOLUTION OF THE MODESTO CITY COUNCIL PROTESTING THE EXECUTION OF AN OPEN SPACE CONTRACT APPLICATION NO. 75-1841 (LLOYD C. WISSNER)

WHEREAS, an Open Space Contract Application has been referred to the City of Modesto by the County of Stanislaus, and

WHEREAS, the effect of said application on the City of Modesto has been fully considered, and

WHEREAS, the City staff has recommended that the City protest the execution of said Open Space Contract,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it does hereby protest the execution of an Open Space Contract on Application No. 75-1841 (Lloyd C. Wissner).

BE IT FURTHER RESOLVED that this protest be filed with the Stanislaus County Board of Supervisors and the Stanislaus County Local Agency Formation Commission and the Local Agency Formation Commission is hereby requested to hold a hearing and consider this protest as provided for in Section 51243.5 of the Government Code of the State of California.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of October, 1974, by Councilman Dunlap, who moved its adoption, which motion being duly seconded by Councilman Mensinger, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmen: Dunlap, Elliott, Kullijian, Mensinger, Simon, Mayor Davies

NOES: Councilmen: None

ABSENT: Councilmen: Newton

ATTEST: W. T. Chynoweth
W. T. CHYNOWETH, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Elwyn L. Johnson
ELWYN L. JOHNSON, City Attorney

RECORDED AT REQUEST OF:
Stanislaus County
Board of Supervisors

WHEN RECORDED RETURN TO:
Stanislaus County Department
of Planning and Community Development

Stanislaus, County Recorder
Lee Lundrigan Co Recorder Office
DOC- 2004-0139119-00
Wednesday, AUG 25, 2004 10:13:24
Ttl Pd $0.00 Nbr-0001572112
BOT/R2/1-3

NOTICE OF NON-RENEWAL LAND CONSERVATION ACT CONTRACT

CONTRACT NO. 1841 of 1975

ASSESSOR PARCEL NO. 078-015-012 Exhibit "A" TOTAL ACREAGE: 19.5 Acres ✓

LOCATION: 2706 Kiernan Ave. Modesto, Ca. S-T-R: 1-3-8

ORIGINAL APPLICANT: Lloyd & Bondora Wissner

MAILING ADDRESS: 2706 Kiernan (City) Modesto (State) Ca (Zip) 95356 Phone

NOTICE IS HEREBY GIVEN BY "OWNER" that the Land Conservation Contract by and between the owners listed below and the County of Stanislaus, which was recorded 1-15-1975 (date), as Instrument Number 26802, in Book 2676, Pages 880 through 887 of the Official Records of Stanislaus County, California, is **NOT TO BE RENEWED.**

OWNERS:

NAME (PRINT)	SIGNATURE (ALL TO BE NOTARIZED)
Theodore Kramer	Theodore Kramer
Theresa Kramer	Theresa Kramer

This notice filed with Stanislaus County Planning Department on 8/13/04 M. Wilson (date). The expiration date of said agreement is the last of December, 2013.

Stanislaus County Board of Supervisors:
Sandra Regalo Deputy Clerk for
Sandra Regalo, Deputy Clerk for
Christine Ferraro Tallman
Chairman of the Board

I:\PLANNING.FRM\Applications\WILLIAMSON ACT NOTICE OF NON RENEWAL.wpd

3/8

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Stanislaus } ss.

On 8-12-04 (Date) before me, Sarla V. Patel, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared Theodore Kramer & Theresa Kramer (Name(s) of Signer(s))

☐ personally known to me
☑ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Sarla V. Patel
Signature of Notary Public

SARLA V. PATEL
Commission # 1467730
Notary Public - California
Stanislaus County
My Comm. Expires Feb 3, 2008

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Request for Record - Stanislaus County

Document Date: 8-12-04 Number of Pages: 1

Signer(s) Other Than Named Above: _____

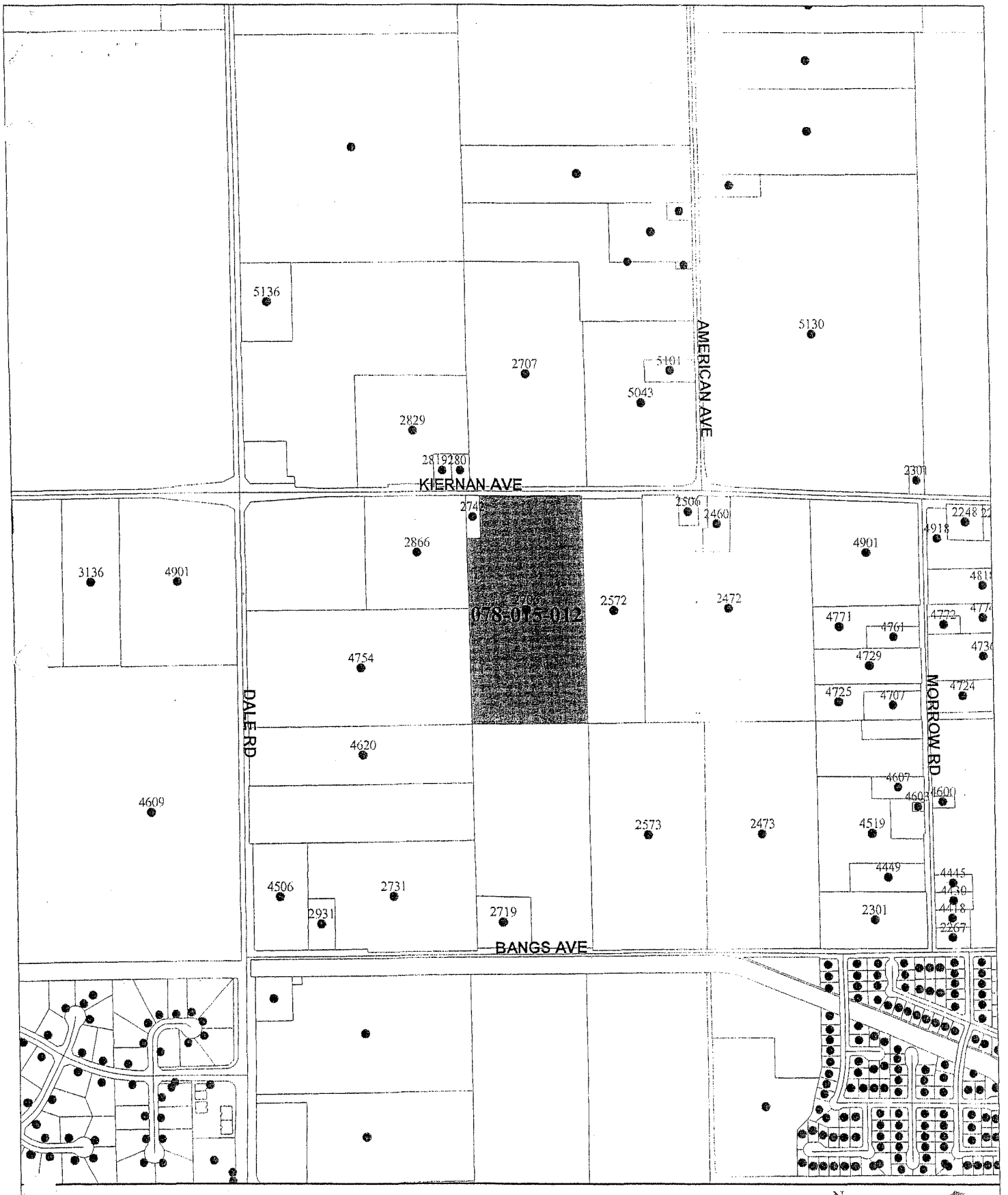
Capacity(ies) Claimed by Signer

Signer's Name: Theodore Kramer & Theresa Kramer

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____


5136
5130
AMERICAN AVE
2707
5101
5043
2829
KIERNAN AVE
2301
2506
2460
2248
4918
4901
2866
3136
4901
2572
2472
078-015-012
4771
4761
4772
4729
4754
4725
4707
4724
MORROW RD
DALE RD
4620
4607
4609
2573
2473
4519
4449
4445
4506
2731
2931
2719
2301
2267
BANGS AVE
EXHIBIT "A"
N
W
E
S
354 0 354 708 Feet
Public Works
Stanislaus County
This map is for display purposes only.
Map printed: 8/18/2004

STANISLAUS COUNTY

LOCAL AGENCY FORMATION COMMISSION

IN RE:

CALIFORNIA LAND CONSERVATION ACT CONTRACT PROTESTS

RESOLUTION

March 29, 1978

WHEREAS, various cities in the County of Stanislaus have filed protests of Williamson Act contracts within the statutory distance from corporate boundaries; and

WHEREAS, this Commission finds and determines that the areas concerned on the following-listed contracts are designated as "Urban Transition" in land use and inconsistent with the publicly-desirable future use and control of the land in question:

Contract No.	Name	City
72-0665	Ruth Osburn Underhill	Newman
73-1371	Marion Lee and Mary Lou Fries	Oakdale
73-1523	Ora and Francis Skiles	Modesto
75-1817	Sandra Ostler	Modesto
75-1818	Shirlee R. Court	Modesto
75-1819	Warren and Sally Lawson	Modesto
75-1820	Smith Lawson Enterprises	Modesto
75-1826	Charlotte Pike	Modesto
75-1841	Lloyd and Bendora Wissner	Modesto
75-1842	Ruth Smith, et al	Modesto
75-1854	Jack and Charlotte Linn	Turlock
75-1858	Ernest Kappler	Modesto
75-1877	Donald and Doenda Smith	Turlock
75-1898	Verne And Barbara Crowell	Turlock
75-1899	Michael and Jonette Crowell	Turlock
75-1909	Alvin and Ruth Ohlson	Modesto
75-1920	Leonard Jackson	Modesto
75-1925	Lena Overson	Modesto
75-1930	Arlo and Marvene Hilkey	Modesto
75-1934	Marshall and Adele Ney	Modesto
75-1942	Helen Decker	Turlock
75-1943	Gertrude Markley	Turlock
75-1948	George and Imogene Nufer	Modesto
75-1949	Carl and Betty Harms	Modesto
75-1961	Robert and Margaret Offermann	Modesto
75-1965	Wesley Brendler, et al	Modesto
75-1967	E. O. Edwards	Oakdale

Contract No.	Name	City
76=1981	Louis and Emma Luchessa	Modesto
75-1982	William Luchessa, et al	Modesto
75-1985	Ruby J. Holloman	Modesto
75-1992	Vain and Amy Bird	Modesto
75-1994	Paul Couture, et al	Modesto
75-1995	Paul Couture, et al	Modesto
75-1997	Elvin and Edith Nolen	Modesto
75-2007	Roy and Jeanette Nevins	Modesto
75-2008	Hans and Donald Wagner	Modesto
75-2012	Redrock Ranch	Modesto
75-2013	Burchell Nursery, Inc.	Oakdale/Modesto
75-2015	Rose E. Caster	Modesto
75-2016	John Kramer, et al	Modesto
75-2019	Marjorie Paine, et al	Modesto
75-2020	Sverre and Melba Osnes	Patterson
75-2021	George Brichetto, et al	Oakdale
75-2025	William Burchell, et al	Oakdale
75-2028	Stanley and Marilyn Lyons	Patterson

WHEREAS, this Commission further finds and determines that the areas concerned in the following-listed contracts are not designated as "Urban Transition" in land use and are consistent with the publicly-desirable future use and control of the land in question:

Contract No.	Name	City
72-0744	Wilbur and Alvena Plecker	Riverbank
72-0788	Albert Rossini, et al	Oakdale
72-0815	Marion Lee Fries	Oakdale
72-0842	Gerald and Hugh Barton	Riverbank
72-0857	Frank Deniz, Jr., et al	Riverbank
72-0890	Leroy Kaufman, Sr.	Oakdale
72-0891	Leroy Kaufman, Jr.	Oakdale
72-1089	Leona Mattos, et al	Newman
72-1126	Herbert and Walter McWilliams	Riverbank
72-1130	Jacob and Anna Van Vliet	Oakdale
72-1148	John F. Gookin	Oakdale
72-1176	William and Caroline Hoekstra	Oakdale
73-1282	Roy and Doris Johnson	Turlock
73-1350	Gerald and Hugh Barton	Riverbank
73-1387	Tim Hudelson	Oakdale
73-1408	Edward and Ann Tilma	Riverbank
73-1473	Frank R. Deniz	Riverbank
73-1484	Emily and Manuel Damas	Riverbank
73-1528	Manuel and Carol Vierra	Oakdale

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Contract No.	Name	City
75-1852	Primo and Edvige Freddi	Riverbank
75-1905	John and Maria Alma	Turlock
75-1916	Daniel and Barbara Dias	Turlock
75-1924	Isaac and Helen Eshio	Turlock
75-1929	Jack and Sharon Copland	Oakdale
75-1958	Ralph Kenworthy, et al	Newman
75-1987	C. E. Hellberg, et al	Turlock
75-2026	John and Lois Rumble	Riverbank
75-2027	Ezra and Florence Boone	Riverbank
75-2033	John and Anthony Ban	Patterson

NOW, THEREFORE, BE IT RESOLVED that the hereinabove-listed protests on land designated as "Urban Transition" be, and hereby are, upheld.

BE IT FURTHER RESOLVED that the protests as hereinabove-listed and designated as other than "Urban Transition" be, and hereby are, rejected and not upheld.

Upon motion by Commissioner Garcia , seconded by Commissioner Ulm , the foregoing resolution was duly passed and adopted at a regular meeting of the Stanislaus County Local Agency Formation Commission this 29th day of March , 1978, by the following called vote:

AYES:	Commissioners:	Ulm, Garcia, and Chairperson Siefkin.
NOES:	Commissioners:	None
ABSENT:	Commissioners:	Arakelian and Alternate Rootlieb.
ABSTAINING OR DISQUALIFIED:	Commissioners:	Altnerate Condit.

ATTEST: George Gaeckle
Executive Officer

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WILLIAMSON ACT PROTESTS

Section 51243.5 of the California Government Code stipulates that a proposed Williamson Act Contract which includes land that is within one mile of the exterior boundary of a city must be reviewed by the subject city. If the city files a resolution with LAFCO "protesting" the execution of the contract, and LAFCO upholds the protest, the city then has the option of not succeeding to the contract, should the land involved be annexed to the city. However, to uphold a protest by a city, LAFCO must find that the Williamson Act Contract is inconsistent with the publicly desirable future use and control of the land in question.

The following contracts have been protested by the respective cities:

Contract No.	Name	City
72-0665	Ruth Osburn Underhill	Newman
73-1371	Marion Lee and Mary Lou Fries	Oakdale
73-1523	Ora and Francis Skiles	Modesto
75-1817	Sandra Ostler	Modesto
75-1818	Shirlee R. Court	Modesto
75-1819	Warren and Sally Lawson	Modesto
75-1820	Smith Lawson Enterprises	Modesto
75-1826	Charlotte Pike	Modesto
75-1841	Lloyd and Bendora Wissner	Modesto
75-1842	Ruth Smith, et. al.	Modesto
75-1854	Jack and Charlotte Linn	Turlock
75-1858	Ernest Kappler	Modesto
75-1877	Donald and Doenda Smith	Turlock
75-1898	Verne and Barbara Crowell	Turlock
75-1899	Michael and Jonette Crowell	Turlock
75-1909	Alvin and Ruth Ohlson	Modesto
75-1920	Leonard Jackson	Modesto
75-1925	Lena Overson	Modesto
75-1930	Arlo and Marvene Hilkey	Modesto
75-1934	Marshall and Adele Ney	Modesto
75-1942	Helen Decker	Turlock
75-1943	Gertrude Markley	Turlock
75-1948	George and Imogene Nufer	Modesto
75-1949	Carl and Betty Harms	Modesto
75-1961	Robert and Margaret Offermann	Modesto
75-1965	Wesley Brendler, et. al.	Modesto
75-1967	E. O. Edwards	Oakdale

(over)

Contract No.	Name	City
75-1981	Louis and Emma Luchessa	Modesto
75-1982	William Luchessa, et. al.	Modesto
75-1985	Ruby J. Holloman	Modesto
75-1992	Vain and Amy Bird	Modesto
75-1994	Paul Couture, et. al.	Modesto
75-1995	Paul Couture, et. al.	Modesto
75-1997	Elvin and Edith Nolen	Modesto
75-2007	Roy and Jeanette Nevins	Modesto
75-2008	Hans and Donald Wagner	Modesto
75-2012	Redrock Ranch	Modesto
75-2013	Burchell Nursery, Inc.	Oakdale/Modesto
75-2015	Rose E. Caster	Modesto
75-2016	John Kramer, et. al.	Modesto
75-2019	Marjorie Paine, et. al.	Modesto
75-2020	Sverre and Melba Osnes	Patterson
75-2021	George Brichetto, et. al.	Oakdale
75-2025	William Burchell, et. al.	Oakdale
75-2028	Stanley and Marilyn Lyons	Patterson

All of the parcels are within "Urban Transition" designations on the Stanislaus County General Plan. In addition, they are within the project's sewer boundary of the appropriate city. Consequently, we feel that your Commission can make the required finding that the contracts are inconsistent with the publicly desirable future use and control of the land in question. We recommend that you do so, and uphold the protests.

The following contracts were also protested but are not within the "Urban Transition" designation on the County General Plan.

Contract No.	Name	City
72-744	Wilbur and Alvena Plecker	Riverbank
72-788	Albert Rossini, et. al.	Oakdale
72-815	Marion Lee Fries	Oakdale
72-842	Gerald and Hugh Barton	Riverbank
72-857	Frank Deniz, Jr. et. al.	Riverbank
72-890	Leroy Kaufman, Sr.	Oakdale
72-891	Leroy Kaufman, Jr.	Oakdale
72-1089	Leona Mattos, et. al.	Newman
72-1126	Herbert and Walter McWilliams	Riverbank
72-1130	Jacob and Anna Van Vliet	Oakdale

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Contract No.	Name	City
72-1148	John F. Gookin	Oakdale
72-1176	William and Caroline Hoekstra	Oakdale
73-1282	Roy and Doris Johnson	Turlock
73-1350	Gerald and Hugh Barton	Riverbank
73-1387	Tim Hudelson	Oakdale
73-1408	Edward and Ann Tilma	Riverbank
73-1473	Frank R. Deniz	Riverbank
73-1484	Emily and Manuel Damas	Riverbank
73-1528	Manuel and Carol Vierra	Oakdale
75-1852	Primo and Edvige Freddi	Riverbank
75-1905	John and Maria Almy	Turlock
75-1916	Daniel and Barbara Dias	Turlock
75-1924	Isaac and Helen Eshio	Turlock
75-1929	Jack and Sharon Copland	Oakdale
75-1958	Ralph Kenworthy, et. al.	Newman
75-1987	C. E. Hellberg, et. al.	Turlock
75-2026	John and Lois Rumble	Riverbank
75-2027	Ezra and Florence Boone	Riverbank
75-2033	John and Anthony Ban	Patterson

Since the above contracts lie neither within the "Urban Transition" area nor the proposed sewer boundary, we feel that your Commission cannot make the necessary finding that the contracts are inconsistent with the publicly desirable future use and control of the land in question. We, therefore, recommend that you not uphold the protests on these contracts.

GEORGE GAEKLE
EXECUTIVE OFFICER

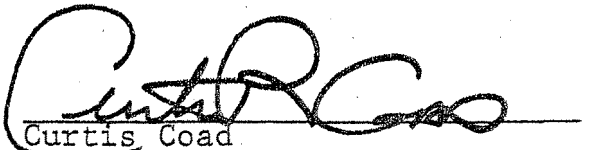
By: 
Curtis Coad
Assistant Executive Officer

Exhibit F

City Resolution No. 2010-247
(Fire Agreement)

MODESTO CITY COUNCIL
RESOLUTION NO. 2010-247

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MODESTO AND THE SALIDA FIRE PROTECTION DISTRICT FOR THE ALLOCATION OF DISTRICT REVENUE RESULTING FROM THE ANNEXATION OF PROPERTY WITHIN THE KIERNAN BUSINESS PARK TO THE CITY OF MODESTO; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Salida Fire Protection District is responsible for fire suppression and prevention within the area of City's proposed Kiernan Business Park, and

WHEREAS, City and District desire to enter into an Agreement to allocate District revenues in the event of annexation of the territory within City's proposed Kiernan Business Park to the City, and

WHEREAS, City and District agree it is in the best interest of the proposed Kiernan Business Park annexation area to receive fire and life safety services jointly from City and District, and

WHEREAS, City and District agree that it is their intent to insure that both agencies receive sufficient District revenues to provide adequate levels of fire and life safety services within the territory of the proposed Kiernan Business Park that is subject to annexation to City, and

WHEREAS, it is agreed that an equitable sharing of future District revenue from the affected Kiernan Business Park territory will benefit the overall organization of fire protection agencies and their cooperative ability to provide adequate emergency services,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement between the City of Modesto and the Salida Fire

Protection District for the allocation of district revenue resulting from the annexation of property within the Kiernan Business Park to the City.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City Manager, or his designee, is hereby authorized to execute the Agreement.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of June, 2010, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote:

AYES:	Councilmembers:	Geer, Hawn, Lopez, Muratore, Olsen, Mayor Ridenour
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	Marsh

ATTEST: _____
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: _____
SUSANA ALCALA WOOD, City Attorney

THIS IS TO CERTIFY THAT THIS
IS A TRUE COPY OF THE DOCUMENT ON
FILE WITH THIS OFFICE.
DATE July 6, 2010
_____
SIGNATURE
CITY CLERK
CITY OF MODESTO, CA

AGREEMENT BETWEEN THE CITY OF MODESTO AND THE SALIDA FIRE PROTECTION DISTRICT FOR THE ALLOCATION OF DISTRICT REVENUE RESULTING FROM THE ANNEXATION OF PROPERTY WITHIN THE KIERNAN BUSINESS PARK TO THE CITY

This agreement ("Agreement") is entered into by and between the City of Modesto ("CITY") and the Salida Fire Protection District ("DISTRICT"), a California special district organized and governed by the Fire Protection Law of 1987 (California Health & Safety Code Section 13800, et seq.).

RECITALS

This Agreement is made with reference to the following facts:

A. DISTRICT is responsible for fire suppression and prevention within the territory governed by this Agreement and receives the District Revenue generated within the DISTRICT boundaries;

B. CITY and DISTRICT desire to enter into this Agreement to allocate District Revenues in the event of Annexation of the territory covered by this Agreement to the CITY.

C. CITY and DISTRICT agree it is in the best interest of the area subject to annexation that it receives fire and life safety services jointly from CITY and DISTRICT.

D. CITY and DISTRICT agree it is the intent of both parties, and in the overall public interest, to ensure both agencies receive sufficient District Revenues to provide adequate levels of fire and emergency services within the affected Territory and are able to provide assistance to other fire protection agencies in a cooperative manner; and

E. It is agreed that an equitable sharing of future District Revenue from the Affected Territory will benefit the overall organization of fire protection agencies and their cooperative ability to provide adequate emergency services.

NOW THEREFORE the CITY and DISTRICT hereby agree as follows:

1. Effect of Recitals.

The foregoing recitals set forth the intent of the CITY and DISTRICT in entering into this Agreement.

2. Definitions.

2.1 "Affected Territory" means that territory defined in the Kiernan Business Specific Plan Amendment #4 for which a change of organization or reorganization is proposed or ordered. The Affected Territory includes APN Nos. 078-015-002, 078-015-012, and 078-005-013. Government Code Section 56033. Government Code Section 56015.

2.2 "Annexation" means the annexation, inclusion, attachment, or addition of territory to a city or district. Government Code Section 56017.

2.3 "Detachment" means the detachment, de-annexation, exclusion, deletion, or removal of any portion of the territory of that city or district. Government Code Section 56033.

2.4 "Change of Organization" means an Annexation to, or detachment from a city or district. Government Code Section 56021.

2.5 "District Revenues" shall mean any allocation of the property tax due the District from the Affected Territory. It shall also include any District special tax as authorized by Health & Safety Code Section 13911, any District special tax as authorized by Health & Safety Code Section 13912, any District special tax for fire protection as authorized by Health & Safety Code Section 13913, any District assessment for fire suppression service as authorized by Health & Safety Code Section 13914, and District assessments to finance capital improvements as authorized by Health & Safety Code Section 13915 and any fee authorized by Health & Safety Code Section 13916 for services of the District levied on an interested party and other public agency, except the City. District Revenues shall not include grants, gifts, bequests or litigation or insurance recoveries.

2.6 "Effective Date" means the date at which the Change of Organization becomes effective. This is the date the Change of Organization is recorded by the Stanislaus LAFCO staff, unless a different Effective Date is set forth in the LAFCO resolution approving the Change of Organization.

2.7 "Fiscal Year" means July 1 of any given year – June 30 of the next year utilized for property tax purposes.

2.8 Upon the Effective Date of the Annexation of the Affected Territory to the CITY, the amount of District Revenue generated from the affected territory in the calendar year in which the Effective Date occurs shall be designated as the "Base District Revenue".

3. Effect of Annexation on Affected Territory.

Upon the annexation of Affected Territory to the CITY, CITY and DISTRICT will jointly be responsible for fire suppression and prevention within the Affected Territory. The Affected Territory will not be Detached from DISTRICT.

4. Allocation of District Revenue to CITY.

Beginning in the Calendar Year following the calendar year in which Effective Date the District Revenue attributable to DISTRICT from the Affected Territory shall be reapportioned as follows:

The District shall retain the Base District Revenue for the entire calendar year in which the Effective Date falls. This will likely result in CITY providing joint fire and life safety services with DISTRICT in the Affected Territory for a period of several months until District Revenues are received in the normal course of business during the first Fiscal Year after the Effective Date. In the first Fiscal Year following the Effective Date, and in each Fiscal Year thereafter, City shall receive 100% of District Revenues actually received by District in excess of the Base District Revenue. In the first Fiscal Year after the Effective Date in which District Revenues exceed two times the Base District Revenue, and in each Fiscal Year thereafter, the amount of District Revenue actually received by DISTRICT in excess of two times Base District Revenue shall be split evenly between DISTRICT and CITY. The parties intend that all District Revenues will ultimately be split equally between them.

5. Annual Transfer of Funds From DISTRICT to CITY.

In the next Fiscal Year following the Effective Date and in each Fiscal Year thereafter, the DISTRICT shall transfer to CITY, within 60 days of receiving its District Revenue allocations from the County, the amount of District Revenue owed to CITY in accordance with Section 4 above.

6. Support for Annexation to the City.

DISTRICT agrees not to oppose or attempt to frustrate the Annexation of the Affected Territory to the CITY and CITY agrees to not request Detachment of the Affected Territory from the DISTRICT, in any Change of Organization proceeding before LAFCO.

7. Assurances on Use of Revenue.

CITY recognizes that District Revenues transferred to it by this Agreement could have been appropriated by DISTRICT to meet public safety service demands. CITY agrees to utilize District Revenues to maintain levels of service in the Affected Territory equal to or greater than levels of service provided by CITY elsewhere. City agrees to ensure funds it receives pursuant to this Agreement will be available to benefit the Affected Territory under mutual aid or other cooperative agreements.

8. No Restriction on District or City Discretion.

Nothing in this Agreement is intended or shall be construed to limit or restrain DISTRICT or CITY's discretion to make budgetary, legislative or staffing decisions regarding levels of service that it deems necessary for overall safety and welfare of the Affected Territory.

9. Term of Agreement and Termination.

The Agreement shall become effective on the date that it becomes approved by both CITY and DISTRICT. It shall terminate only upon the mutual agreement of the parties.

10. Renegotiation Due to Change in Law.

In entering into this Agreement, the parties mutually assume the continuation of the existing statutory scheme for the allocation and distribution of available District Revenue to local government. Accordingly, it is mutually understood and agreed that should changes in law occur that materially affect the terms of this Agreement the parties shall meet to attempt to resolve any difficulties that are thereby created. "Materially Effect" as used in this Agreement shall include but not be limited to a decrease in District Revenue of five percent (5%) in any single Fiscal Year and only applies to a change in law, not a change in the facts serving as the basis for this Agreement. Any party contending this section applies shall

give written notice pursuant to this section, which notice shall include an explanation of the reasons for the request to meet and attempt to resolve any claim of Material Effect.

11. Modification.

This Agreement may be modified or amended only by a writing duly authorized and executed by CITY and DISTRICT.

12. Administrative and Ministerial Action.

City and District will insofar as is legally possible, fully carry out the intent and purposes hereof, if necessary, by administrative and ministerial action independent of their legislative power.

13. Integration.

This Agreement is intended to be an integrated agreement and supersedes any and all previous negotiations, proposals, commitments, writings and understandings of any nature whatsoever between CITY and DISTRICT as to the subject matter of this Agreement.

14. Notice.

All notices, requests, determinations or other correspondence required or allowed by law or this Agreement to be provided by the parties shall be in writing and shall be deemed given and received when delivered to the recipient by certified mail or by facsimile transmission at the following addresses:

City Manager
City of Modesto
P. O. Box 642
Modesto, CA 95353

Fire Chief
Salida Fire Protection District
P.O. Box 1335
4820 Salida Boulevard
Salida, CA 95368

Fire Chief
Modesto Fire Department
600 11th Street
Modesto, CA 95354

15. Dispute Resolution.

Any dispute arising out of or relating to the interpretation or application of this Agreement, or any District Revenue or Base District Revenue calculation hereunder shall be submitted to the respective Fire Chiefs of CITY and DISTRICT for resolution. If the dispute is not resolved there, it maybe submitted to mediation upon mutual agreement of CITY and DISTRICT. In the event the dispute is not settled by the Fire Chiefs and/or in mediation, within six months after one party gives the other party notice in accordance with this Agreement of the dispute, the matter shall be submitted to final and binding arbitration before one arbitrator in Modesto. The arbitrator will be chosen from a panel of three proposed by the American Arbitration Association by alternate strikes. Arbitration may be requested by either party.

This Agreement to arbitrate shall be specifically enforceable under the jurisdiction of the Superior Court of the State of California in Stanislaus County, but any award rendered by the arbitrator may be entered in any court having jurisdiction. This section shall result in the conclusive, final and binding resolution of arbitrable claims between the parties. Arbitration shall proceed according to the "fast track" rules of the American Arbitration Association then in effect. DISTRICT and CITY shall have the right to take no more than three (3) depositions apiece as a matter of right, without regard to the "fast track" rules. The arbitrator shall apply the substantive law of California.

The arbitrator may grant any remedy or relief deemed by the arbitrator just and equitable under the circumstances, whether or not such relief could be awarded in a court of law. The arbitrator shall be empowered to award monetary sanctions against a party for failure of cooperation in the arbitration. The arbitrator shall, in written award, allocate all the costs of the arbitration, including fees of the arbitrator and the reasonable attorney fees of the prevailing party, against the party who did not prevail. The prevailing party shall be the party in whose favor the majority of the central issues in the case are resolved.

Notwithstanding anything in this provision to the contrary, the arbitrator shall have no power to award punitive damages or other damages not measured by the party's actual damages (excluding litigation costs and fees) against any party.

This limitation of the arbitrator's powers under this Agreement shall not operate as an exclusion of the issue of punitive damages from this Agreement to Arbitrate sufficient to vest jurisdiction in a court with respect to that issue.

The parties hereby waive any rights provided by Title 9.2 of the California Code of Civil Procedure, Section 1296. The arbitrator's award shall be deemed final, conclusive and binding to the fullest extent allowed by California law.

16. Assignment.

This Agreement and its terms and conditions shall be binding upon and inure to the benefit of the parties to this Agreement and their respective administrators. This Agreement may not be assigned by either party without written consent of the other party.

17. Governing Law.

This Agreement shall be governed by the laws of the State of California without reference to its choice of law jurisprudence.

18. Severability.

If any provision of this Agreement is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severed from the remainder of the Agreement and shall not in any way impair the enforceability of any other provision of this Agreement.

19. Compliance with Applicable Law.

In providing the services required by this Agreement, CITY and DISTRICT shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations.

20. Authority to Contract.

CITY and DISTRICT each warrant that they are respectively legally permitted and otherwise have the authority to enter into this Agreement and perform their respective obligations.

21. Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create any such rights.

22. No Party Deemed to be Draftsman.

The parties acknowledge and agree that this Agreement has been arrived at through negotiation and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

23. Counterparts.

This Agreement may be executed in multiple counterparts, which may be transmitted by facsimile, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and the same instrument.

24. Indemnity.

CITY agrees to indemnify, defend and hold DISTRICT harmless with respect to CITY's negligence or other wrongful acts arising out of or relating to CITY's performance of it's fire and/or life safety services pursuant to this Agreement without regard to the availability of insurance coverage.

DISTRICT agrees to indemnify, defend and hold CITY harmless with respect to DISTRICT's negligence or other wrongful acts arising out of or relating to District's performance of it's fire and/or life safety services pursuant to this Agreement without regard to the availability of insurance coverage.

25. Additional Insured Requirement.

DISTRICT and CITY shall each cause the other to be included as an additional insured to their insurance policies offering or potentially offering coverage for fire and/or life safety services.

IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2010-247, adopted by the Council of the City of Modesto on the 9th day of June, 2010, and the Salida Fire Protection District has caused this Agreement to be duly executed in duplicate as of the Effective Date.

SALIDA FIRE PROTECTION DISTRICT

By: _____
TOM BURNS, Chairman of the Board of Directors

Dated: July 3, 2010

APPROVED AS TO FORM:

By: _____
WILLIAM D. ROSS, District Counsel

Dated: _____, 2010

CITY OF MODESTO

By: _____
GREG NYHOFF, City Manager

Dated: _____, 2010

ATTEST:

By: _____
STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:
SUSANA ALCALA WOOD, City Attorney

By: _____
ROLAND R. STEVENS, Assistant City Attorney

IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2010-_____, adopted by the Council of the City of Modesto on the 9th day of June, 2010, and the Salida Fire Protection District has caused this Agreement to be duly executed in duplicate as of the Effective Date.

SALIDA FIRE PROTECTION DISTRICT

By: _____
TOM BURNS, Chairman of the Board of Directors

Dated: _____, 2010

APPROVED AS TO FORM:

By: William D. Ross
WILLIAM D. ROSS, District Counsel

Dated: _____, 2010

CITY OF MODESTO

By: _____
GREG NYHOFF, City Manager

Dated: _____, 2010

ATTEST:

By: _____
STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:
SUSANA ALCALA WOOD, City Attorney

By: _____
ROLAND R. STEVENS, Assistant City Attorney