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Hearing and Speech
Impaired Only
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September 9, 2009

Honorable Jack M. Jacobson
Presiding Judge
Stanislaus County Superior Court
P.O. Box 3488
Modesto, CA 95353

Re: City of Modesto Response to 2008-2009 Civil Grand Jury Report
Case 09-06C – *City of Modesto Public Works*

Dear Judge Jacobson:

Pursuant to Penal Code Sections 933 and 933.05, the City of Modesto (City) submits the following response to the 2008-2009 Civil Grand Jury Report, released on July 1, 2009, entitled *City of Modesto Public Works*. The Grand Jury requested that the City respond to five (5) recommendations contained in the Report.

RECOMMENDATION #1: THE LEASE FOR HANGAR #7 SHOULD BE RENEGOTIATED

RESPONSE: The City disagrees in part with the finding.

On February 28, 2006, the City entered into a legally binding lease agreement with Mr. James Sorensen for a period of fifteen (15) years. On August 18, 2006, the City assigned the remainder of the lease to Mr. Thomas Hillier. The existing lease expires on February 27, 2021. Absent a failure on the part of Mr. Hillier to abide by the terms of the lease, there is no provision for the City to renegotiate, modify or terminate the lease. Should the opportunity occur as provided in the lease agreement, the City agrees that it would be appropriate to negotiate different terms.

This recommendation will not be implemented - It is not possible under the terms of the existing lease agreement with Mr. Hillier to require him to renegotiate the lease. Should opportunity arise to negotiate new terms for the lease, consideration will be given at that time.

RECOMMENDATION #2: THE CITY OF MODESTO SHOULD HAVE A PROPERTY MANAGER REVIEW ALL LEASES

RESPONSE: The City agrees with the finding.

This recommendation will be implemented in the future – The City will have the property agent review lease agreements before recommendation to the Council.

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RECOMMENDATION #3: A COPY OF THE UPDATED AIRPORT MASTER PLAN BE SUBMITTED TO THE CIVIL GRAND JURY

RESPONSE: The City disagrees in part with the finding.

The most recent Master Plan was adopted by City Council on April 29, 1993. An update was initiated in 2002 which was neither finalized nor adopted by Council. Currently the Airport is developing an Airport Layout Plan (ALP) at the request of the Federal Aviation Administration. This document will serve as the planning document until a new Master Plan can be developed.

This recommendation will not be implemented - Once the ALP is adopted by Council, a copy will be forwarded to the Civil Grand Jury. Completion of the ALP is estimated for the end of 2009.

RECOMMENDATION #4: REASSESS THE PROCESS IN WHICH THE GROUND LEASES ARE GIVEN EXTENSIONS

RESPONSE: The City disagrees in part with the finding.

The City agrees it is good practice to periodically review such processes. However, City believes that the current process for considering lease extensions at the Airport is appropriate, providing for a full examination of the costs and benefits of an extension. When a tenant approaches the City with a request to extend an existing lease, an Agenda Item is prepared for Council consideration at the next feasible date. It is the responsibility of the Council to evaluate the risks, costs and benefits of each request and to make a decision, as caretakers of this public asset, to deny or grant the request. In taking this action Council may hear from a variety of interested parties including the proponent, staff, legal council, advisory committees, and the public.

The recommendation will not be implemented - The City believes that the current process for considering lease extensions at the airport is appropriate.

RECOMMENDATION #5: ANY FUTURE LEASES BE OPEN TO PUBLIC DISCUSSION

RESPONSE: The City agrees with the finding.

The Civil Grand Jury Report included a finding that “City of Modesto Council Agenda Report presented the leases as a Consent item”. Subsequently, a recommendation that “Any future leases be open to public discussion” was made. In the specific case of Hangar #7, the lease was presented to the Economic Development Committee (EDC), a sub-committee of the Modesto City Council, on February 13, 2006. With the supportive recommendation from EDC, the item was placed before Council on February 28, 2006 and approved by a 7-0 vote. The EDC and Council meetings were posted as public meetings in compliance with the Brown Act, inviting the public to be heard on the subject. It appears from the Grand Jury’s report

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that there is some misunderstanding regarding the public's ability to be heard when an item is listed as a consent item on the agenda. The City has attached a copy of the February 28, 2006 Council Minutes in question and would call attention to the statement preceding the Consent items:

“An item may be removed from consent and discussed at the request of an audience member or Councilmember.”

The recommendation has been implemented – As outlined in this response, the recommendation reflects the City's current practice of inviting public discussion. No change in this practice is being considered at this time.

The City of Modesto appreciates the time the Civil Grand Jury spent reviewing the leasing practices at the Modesto City/County Airport.

On behalf of the Modesto City Council, thank you for your consideration of our response.

Sincerely,



JIM RIDENOUR, Mayor

Attachment A – Modesto City Council Minutes, February 28, 2006

2005-2006 budget to recognize and appropriate new Congestion Mitigation and Air Quality (CMAQ) grant revenues of \$4,510,404 for Fiscal Year 2005-2006.

ACTION: Resolution 2006-117 (Dunbar/Keating; Hawn absent) amending the 2005-2006 Capital Improvement Program (CIP) to include CMAQ-funded CIP projects.

CONSENT

17. Consider approving a new five-year airport lease agreement with the California Central Valley Squadron of the Commemorative Air Force (CAF) for Airport Hangar No. 1 at the established annual rate of \$17,172.00.

· Resolution approving a new five-year lease with the California Central Valley Squadron of the Commemorative Air Force (CAF) for Airport Hangar No. 1 at the established annual rate of \$17,172.00 and authorizing the City Manager or his designee to execute the agreement recommended.

Public Works; Michael Musca, 577-5318, mmusca@modestogov.com

ACTION: Resolution 2006-118 (Marsh/Dunbar; unan) approving a new five-year lease with the California Central Valley Squadron of the Commemorative Air Force (CAF) for Airport Hangar No. 1 at the established annual rate of \$17,172.00 and authorizing the City Manager or his designee to execute the agreement.

CONSENT

18. Consider approving an extension of the ground lease for Hangar No. 7 with James C. Sorenson for an additional 15-year period at the established annual rate of \$828.00.

· Resolution approving an extension of the ground lease for Hangar No. 7 with James C. Sorenson for an additional 15-year period at the established annual rate of \$828.00 recommended.

Public Works; Michael Musca, 577-5318, mmusca@modestogov.com

ACTION: Resolution 2006-119 (Marsh/Dunbar; unan) approving an extension of the ground lease for Hangar No. 7 with James C. Sorenson for an additional 15-year period at the established annual rate of \$828.00.

REMOVED FROM CONSENT

19. Consider rejecting the two bids for the project titled "Shade Structures for Modesto Parks" and authorizing staff to re-advertise the project at a future date.

· Resolution rejecting the two bids for the project titled "Shade Structures for Modesto Parks" and authorizing staff to re-advertise the project at a future date recommended.

Public Works; Dean Phillips, 577-5260, dphillips@modestogov.com

ACTION: Resolution 2006-120 (Hawn/Keating; unan.) rejecting the two bids for the project titled "Shade Structures for Modesto Parks" and authorizing staff to re-advertise the project at a future date.

CONSENT

20. Consider approving an Amendment to the Agreement with Ross G. Stephenson Associates, Inc., in the amount of \$30,253, expanding the scope of work by expanding the limits of the project titled "Roselle & Floyd Intersection Widening," and authorizing the District Administrator to execute the Amendment.

· Resolution approving an Amendment to the Agreement with Ross G. Stephenson