RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT (this "**Agreement**") is entered into as of _____, 20____ (the "**Effective Date**"), by and between the City of Modesto, a California charter city (the "**City**"), and _____, a [California corporation, individual, married couple, etc.] (the "**Owner**"), to provide for access to certain property located in unincorporated Stanislaus County.

RECITALS

A. Owner owns that certain parcel of real property located at Address:_____ (the "**Property**"), within the unincorporated Stanislaus County.

B. Owner is interested in connecting to sewer service provided by the City of Modesto. The Owner understands and agrees that this expression of interest is to allow the City of Modesto and authorized parties to complete design and prepare for construction of necessary improvements to connect Owner's property to the City of Modesto sewer system.

C. The City desires to access the Property in order to design and construct the sewer system necessary to provide a connection to the Property.

D. City has requested, and Owner has agreed to provide, access and use of the Property for certain activities as described herein.

E. This agreement is contingent upon Stanislaus County receiving grant funds from the State Water Resources Control Board ("SWRCB") for financing through the Clean Water State Revolving Fund.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Owner do hereby agree as follows:

1. **License to Enter.** The Owner hereby grants to City, County of Stanislaus, State Water Resources Control Board, and the State Auditor, and their employees, contractors, subcontractors and agents (collectively the "**Authorized Parties**") a non-exclusive and non-possessive license to enter upon the Property for the purpose of completing tasks necessary to design and construct the sewer system (the "**Permitted Activities**"). The Permitted Activities shall include, but are not limited to: inspecting the Premises, testing materials on the Premises, preparing the Premises (including landscape removal), hardscape removal (concrete, asphalt), installing sewer laterals between the sewer collection system and dwellings on the Premises, disconnection of existing septic tank, and septic abandonment and destruction in compliance with State and County standards, and such other related activities.

2. **Conditions of Entry.** City may engage in the Permitted Activities subject to the following conditions:

(a) City will initiate contact with the property owner after receiving notice from the County that Program funds are available. City will contact the property owner to enter property for design purposes. Prior to starting construction, the City will coordinate with the property owner to establish a construction schedule. City to provide a 24-hour notice to the property owner prior to starting scheduled construction work.

(b) City will permit only its employees Authorized Parties to enter upon the Property.

(c) City and Authorized Parties will comply with all applicable laws, regulations, rules and permits pertaining to the Property, whether federal, state or local.

(d) City and Authorized Parties shall exercise good faith and act with reasonable skill and care in carrying out the acts authorized by the Agreement.

(e) City shall at all times keep the Property free and clear of all liens and encumbrances affecting title to the Property in connection with the Permitted Activities. Upon notice of any such lien or claim, City may bond and contest in good faith the validity and the amount of such lien, but City shall immediately pay any judgment rendered, shall pay all proper costs and charges, shall have the lien or claim released at its sole expense and will indemnify, defend, protect and hold the Owner harmless from and against all such claims.

(f) City shall return the property to owner in substantially the same condition as it existed prior to the permitted activities.

3. **Term.** The right of entry granted in this Agreement will commence on the Effective Date and shall remain in full force and effect until the Premises is connected to the City's sewer system (the "**Term**"). The City may terminate or suspend this Agreement by written notice to Owner. Owner may terminate this Agreement by written notice to City following City's breach of its obligations under this Agreement, but only if City has failed to cure such breach within thirty (30) days of written notice from Owner. Owner may terminate this Agreement, without cause, upon ninety (90) days prior written notice to City.

4. **Owner's Obligations.**

(a) Permits. At no expense to the Owner, the Owner authorizes the City and Authorized Parties to prepare and submit any necessary City or County permits necessary for the work.

(b) Maintenance. Owner understands and agrees that Owner shall operate and maintain the components of the sewer system that are installed on the Premises, including but not limited to sewer laterals.

(c) Notice of Hazards. Owner shall make Owner's best efforts to provide information about any known sewer lines, utilities, septic tanks, underground storage tanks, and water lines located on the Premises to City.

5. **Hold Harmless**. Owner shall indemnify, defend, and hold harmless the Parties, and any of their officers, agencies, agents, contractors, employees, and volunteers ("Indemnified Parties"); against any and all claims, deductibles, self-insured retentions, demands, liability,

judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, personal injury, charges or costs of any kind or character, including attorneys' fees and court costs, in law or in equity (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to actions arising out of this Agreement, Permitted Activities or exercising the right of entry onto the Property, except such Claims that arise from the gross negligence or willful misconduct of the Indemnified Parties.

6. **Release & Waiver**. Owner hereby releases, discharges and waives any and all claims in law or equity, for loss, damage, expense, personal injury, charges or costs of any kind or character, including attorneys' fees and court costs, which Owner could assert arising out of or in any way connected to actions arising out of this Agreement, against the City or the Authorized Parties, except to the extent such claims arise as a result of gross negligence or recklessness of the City or Authorized Parties.

7. **No Assumption of Liability for Damage to Premises**. In consideration of the assistance provided to Owner under this Agreement at no cost to Owner, and subject to the obligation to exercise good faith and act with reasonable skill and care, the Indemnified Parties, assume no liability or responsibility pertaining to the Permitted Activities and Owner shall not seek to recover from the Indemnified Parties the costs of remediating any damages to the Premises incurred as a result of acts or omissions taken pursuant to this Agreement, except to the extent the acts or omissions involve a lack of good faith or reasonable skill and care.

8. **Miscellaneous Provisions.**

(a) No Real Property Interest. It is expressly understood that this Agreement is non-possessory and does not in any way grant or convey any permanent easement, lease, fee or other interest in the Property to City.

(b) Waiver. No failure by either City or Owner to insist upon strict performance of any term or condition of this Agreement will constitute a waiver of such term or condition or of a breach thereof. Any such waiver must be in writing and signed by the waiving party.

(c) Modification. This Agreement may be modified only in writing, signed by the City and Owner.

(d) Interpretation. This Agreement will be performed entirely within California and shall be construed in accordance with the laws of the State of California and any action to enforce the terms of this Agreement must be brought in the County of Stanislaus, State of California.

(e) Notices, Demands and Communications between the City and Owner. Any approval, disapproval, demand, document or other notice which either City or Owner may desire to give to the each other under this Agreement must be in writing and may be given by first class mail, postage prepaid, or reputable overnight delivery service or personal delivery addressed to the City or Owner as set forth below, or at any other address as that party may later designate:

To City of Modesto:

City of Modesto
Fourth Floor, Suite 4500
Utilities Department
1010 10th Street

Modesto, CA 95354
Attn: Miguel Alvarez
(209) 577-5348
malvarez@modestogov.com

To Owner:

[Insert]
[Insert]
[Insert]
Attn: [Insert]

Any written notice, demand or communication shall be deemed received immediately if delivered by hand or upon the third day from the date it is postmarked if delivered by first class, registered or certified mail.

(f) Integration. This Agreement contains the entire understanding between the City and Owner relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the City and Owner or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. The City and Owner is entering this Agreement based solely upon the representations set forth herein and upon the City's and Owner's own independent investigation of any and all facts the City and Owner deems material.

(g) Successors & Assigns. This Agreement shall bind and benefit the City and Owner and their successors and assigns, except as may otherwise be provided herein.

(h) Partial Invalidity. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

(i) Authorized Representative. Each person signing on behalf of the City and Owner warrants that he/she is the authorized representative of the City or Owner for whom he/she is signing and has been expressly authorized to bind the City or Owner being represented to this Agreement and will provide proof of such authority if requested.

(j) Counterparts. This Agreement may be executed in counterparts, all of which taken together shall be deemed one and the same Agreement.

IN WITNESS WHEREOF, the City and Owner hereto have entered into this Agreement as of the date first set forth above.

[Name of Owner(s)]

Print Name: _____

Signature: _____ Phone:(___)_____

[Name of Owner(s)]

Print Name: _____

Signature: _____ Phone:(___)_____

City of Modesto

_____
[Name, Title]

Staff use only
APN_____