CONSTRUCTION CONTRACT

THIS CONTRACT is made and entered into on ____________, by and between Modesto Sand & Gravel, INC., a corporation with a business address at 6137 Hammett Court, Modesto, CA 95358 hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

WHEREAS, plans and specifications for the AIRPORT WAY DEMOLITION (PUR 10-059) hereinafter called "PROJECT," were regularly adopted by Council on ____________; and

WHEREAS, the contract for said work was regularly awarded to CONTRACTOR, on ________________.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto expressly agree as follows:

1. CONTRACTOR agrees:

   (a) To do the work and furnish all the labor, materials, tools, equipment and insurance required for the AIRPORT WAY DEMOLITION (PUR 10-059), in accordance with the proposal submitted to the City on October 7, 2010. Said proposal is incorporated herein by this reference to the same extent as if fully set forth.

   (b) To do and perform the work contemplated hereby in a good and workmanlike manner and to furnish all labor, materials, tools and equipment necessary at the prices specified in Exhibit "A," attached hereto and by reference made a part hereof, under the direction of and to the complete satisfaction of the Economic Development Department Director ("the Director") of the City of Stockton.
(c) The Contractor shall secure all permits necessary for the completion of this project.

(d) CONTRACTOR shall provide insurance and indemnification as set forth in Exhibit "B," which is attached to this contract and incorporated by this reference.

Before permitting any subcontractors to perform work under the contract, CONTRACTOR shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by CONTRACTOR as may be applied to each subcontractor's work.

(e) The performance of said work and the furnishing of said materials shall be executed in accordance with Section 8-1.03 of the City of Stockton Standard Specifications and Plans as adopted on November 25, 2003, by Council Resolution No. 03-0707, effective December 1, 2003, and the provisions of the issued project specifications.

It is agreed by the parties to the contract that in case all the work called for under the contract in all parts and requirements, is not finished or completed within 10 calendar days of the execution of this contract, damage will be sustained by the CITY, and that it is and will be impracticable and extremely difficult to ascertain the actual damage which CITY will sustain in the event of and by reason of such delay; and it is therefore agreed that CONTRACTOR will pay to CITY the sum of FIVE HUNDRED AND NO/100 DOLLARS ($500.00) per day for each and every calendar day's delay in finishing the work in excess of the number of days prescribed; and CONTRACTOR agrees to pay said liquidated damages as herein provided, and in case the same are not paid, agrees that CITY, may deduct the amount thereof from any monies due or that may become due CONTRACTOR under the contract.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the number of days as specified, the CITY shall have the right to increase the number of days or not, as may seem best to serve the interest of CITY, and if the CITY decides to increase the said number of days, the CITY shall further have the right to charge to CONTRACTOR, CONTRACTOR's heirs, assigns or sureties, and to deduct from the final payment for the work, all or any part, as may be deemed proper, the liquidated damages as specified or the
actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension, whichever is greater, except the cost of final surveys and preparation of final estimate shall not be included in such charges.

A working day shall not include, nor shall CONTRACTOR be assessed with liquidated damages nor the additional cost of engineering and inspection during any delay beyond the time named for the completion of the work caused by acts of God or of the public enemy, acts of CITY, fire, floods, epidemics, quarantine restrictions, strikes, and freight embargoes and subject to approval by the Director, inability to get materials ordered by CONTRACTOR or subcontractor due to such causes provided that CONTRACTOR shall notify the Director in writing of the causes of delay within five (5) working days from the beginning of any such delay, and the Director shall ascertain the facts and the extent of the delay, and based on the director's findings an extension of time will either be granted or denied. If denied the contractor may request a conference to meet and confer for the settlement of the extension in dispute.

If CONTRACTOR is delayed by reason of alterations made in these specifications, or by any act of the Director or of the CITY, not contemplated by the contract, the time of completion shall be extended proportionately and CONTRACTOR shall be relieved during the period of such extension of any claim for liquidated damages, engineering or inspection charges or other penalties. CONTRACTOR shall have no claim for any other compensation for any such delay.

(f) To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California.

To forfeit as a penalty to CITY the sum of TWENTY-FIVE AND NO/100 DOLLARS ($25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California.
(g) That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

(h) CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.8, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. CONTRACTOR performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each subcontractor’s responsibility to insure that the prevailing wage rates of concern is current and paid to the employee.

2. CITY agrees:

(a) To pay CONTRACTOR for the work herein contemplated in the following manner: Progress payments will be made on or about the first day of each calendar month, in such sum as shall make the aggregate of payment up to such day equal to ninety percent (90%) of the proportional contract price, upon the basis of the progress certificate of the Director of Economic Development as to the amount of work done and the proportional amount of the contract price represented therefore; and all of the remaining part of the contract price not as aforesaid paid, shall be paid at the expiration of thirty-five (35) days from the completion of said work of construction and the certification by the Project Manager of such completion.

Pursuant to Section 22300 of the Public Contract Code, the contractor will be permitted, at its request and sole expense, to substitute securities for any monies withheld by the CITY to ensure performance under the contract. Said securities will be deposited either with the CITY or with a state or federally chartered bank as escrow agent. Securities eligible for this substitution are those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit. The CONTRACTOR
shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

3. CHANGE ORDERS:

CITY reserves the right to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion or construction of the whole work contemplated.

Any such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the City Manager and/or the City Council.

Processing of change orders shall be in accordance with Section 4-1.03 of the City of Stockton Standard Specifications and Plans as adopted by Council on November 25, 2003, by Resolution No. 03-0707, effective December 1, 2003, except that the $23,578 limit shown in Section 4-1.03 shall be increased to $30,224. When the compensation for an item of work is subject to adjustment under the provisions of Standard Specifications and Plans, Section 4-1.03, CONTRACTOR shall, upon request, promptly furnish the Engineer with adequate detailed cost data for such item of work.

4. AUDITS:

(a) CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under the contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.

(b) CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of the contract. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books,
records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under the contract.

5. It is expressly understood and agreed by and between the parties hereto that a waiver of any of the conditions of this contract shall not be considered a waiver of any of the other conditions thereof.

6. It is further understood and agreed by and between the parties hereto that time is of the essence of this contract in all respects.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

ATTEST:
KATHERINE GONG MEISSNER
CITY CLERK

CITY OF STOCKTON, a municipal corporation
By
CITY MANAGER
"CITY"

APPROVED AS TO FORM:

Dated: 11-17-10
OFFICE OF THE CITY ATTORNEY

MODESTO SAND & GRAVEL, INC
By
"CONTRACTOR"

City Attorney

(Indicate status: corporation, partnership, or sole proprietorship)

94-1730960
Tax Identification No.
BID DOCUMENTS

A) BID – AIRPORT WAY DEMOLITIONS @2202, 2222, 2226, 2230 & 2244 S. AIRPORT WAY APN# 169-163-01 & 169-151-01 FOR THE CITY OF STOCKTON, CALIFORNIA NAME

B) PUR 10-059

C) October 7, 2010

COMPANY NAME: Modesto Sand & Gravel, Inc.
CONTACT NAME: Matt Kellstrom
ADDRESS: 6137 Hammett Ct.
Modesto, CA 95358
TELEPHONE NUMBER: (209) 545-4425
EMAIL: cindy@modestosandandgravel.com
EXHIBIT "A"

BID TO BE SUBMITTED

The bidder hereby agrees to furnish all labor, material and equipment necessary to demolish the herein subject structure in accordance with the specifications and the foregoing special instructions for the amount bid.

Demolition of Airport Way locations per specifications $48,900.00

Demolition to be completed within 10 calendar days from award of contract.

Any questions regarding specifications should be directed to Concepcion Gayotin, Purchasing Division, at telephone (209) 937-8712

Modesto Sand & Gravel, Inc.  6137 Hammett Ct. Modesto, CA. 95358
FIRM

Matt Keltjens  Pies.
SIGNED BY TITLE OR AGENCY

10-10-10 (209) 545-4425
DATE TELEPHONE
BIDDER’S AGREEMENT

In submitting this bid, as herein described, the bidder agrees that:

1. They have carefully examined the specifications and all other provisions of this form and understand the meaning, intent, and requirements of same.

2. They have reviewed and understand all clarifications/questions/answers on the City’s website at http://www.stocklongov.com/bidflash/main

3. They will enter into written contract and furnish the item(s)/service(s) in the time specified in strict conformity with the specifications and conditions contained therein for the price quoted by the bidder on this bid.

4. The proposed price is inclusive of all freight and handling charges and includes delivery to the City of Stockton, Municipal Service Center, or if specified, to the alternate point of delivery shown in the specifications.

5. They have signed and notarized the attached Non-Collusion Affidavit form whether individual, corporate or partnership. Must be “A Jurat” notarization.

NOTE: Bids are invalid which are unsigned, or not accompanied by $2,000.00 bid deposit or a bidder’s bond. If erasures or interlineations appear on your bid form, they must be initialed by the person preparing the bid. Bids shall be mailed or delivered to:

OFFICE OF THE CITY CLERK
FIRST FLOOR, CITY HALL
425 NORTH EL DORADO STREET
STOCKTON, CALIFORNIA 95202-1997

On or before 2:00 p.m. OCTOBER 7, 2010, and publicly opened immediately thereafter in the City Council Chambers.

SPECIAL NOTE: U.P.S. OR OTHER SPECIAL HANDLING SERVICES DO NOT DELIVER DIRECTLY TO THE CITY CLERK’S OFFICE. BIDDERS ARE ADVISED THAT IF A SPECIAL HANDLING SERVICE IS USED, BIDS MAY NOT REACH THE CITY CLERK’S OFFICE IN TIME FOR BID OPENING AND WILL BE REJECTED AND RETURNED TO BIDDER.
No. 1

AFFIDAVIT FOR INDIVIDUAL PROONENT

STATE OF CALIFORNIA, ss.
County of ____________________________

(insert)

being first duly sworn, deposes and says: That on behalf of any
person not named herein; that said Bidder has not colluded, conspired, connived or agreed, directly or indirectly with, or induced or solicited any other bid or
person, firm or corporation to put in a sham bid, or that such other person, firm or corporation shall or should refrain from bidding; and has not in any manner
sought by collusion to secure to themselves any advantage over or against the City, or any person interested in said improvement, or over any other Bidder.

(Signature Individual Bidder)

Subscribed and sworn to (or affirmed) before me on this ______ day of ______, ______.

by ________________________, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal ________________________

Signature ____________________

No. 2

AFFIDAVIT FOR CORPORATION PROONENT

STATE OF CALIFORNIA, ss.
County of ____________________________

(insert)

MATT KELLSTROM

being first duly sworn, deposes and says: That
they are the President of Modesto Sons and General, Inc., a corporation,
which corporation is the party making the foregoing bid, that such bid is genuine and not sham or collusive, or made in the interest or behalf of any person not
named herein; that said Bidder has not colluded, conspired, connived or agreed, directly or indirectly with, or induced or solicited any other bid or person, firm
or corporation to put in a sham bid, or that such other person, firm or corporation shall or should refrain from bidding; and has not in any manner sought by
collusion to secure to themselves any advantage over or against the City, or any person interested in said improvement, or over any other Bidder.

MATT KELLSTROM

Subscribed and sworn to (or affirmed) before me on this ______ day of ______, ______.

by ________________________, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal ________________________

Signature ____________________

No. 3

AFFIDAVIT FOR FIRM, ASSOCIATION, OR CO-PARTNERSHIP

STATE OF CALIFORNIA, ss.
County of ____________________________

(insert)

each being first duly sworn, deposes and say: That they are a member of the firm, association or co-partnership,
designated as ____________________________ who is the party making the foregoing bid; that the other partner, or partners,
are ____________________________, that such bid is genuine and not sham or collusive, or made
in the interest or behalf of any person not named herein; that said Bidder has not colluded, conspired, connived or agreed, directly or indirectly with, or induced
or solicited any other bid or person, firm or corporation shall or should refrain from proposing; and has not in any manner sought by collusion to secure to
themselves any advantage over or against the City, or any person interested in said improvement, or over any other Bidder.

(Signature)

(Signature)

Subscribed and sworn to (or affirmed) before me on this ______ day of ______, ______.

by ________________________, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal ________________________

Signature ____________________
EXHIBIT "A"

Western Surety Company

BID BOND
(Percentage)

Bond Number: 71024785

KNOW ALL PERSONS BY THESE PRESENTS, That we, Modesto Sand & Gravel, Inc.
of 6137 Hammett Rd., Modesto, CA 95358, hereinafter referred to as the Principal, and Western Surety Company as Surety, are held and firmly bound unto City of Stockton of City Hall/Building Department, 425 N. El Dorado St., Stockton, CA 95202, hereinafter referred to as the Obligee, in the sum of $70,000.00 (10%) percent of the greatest amount bid, for the payment of which we bind ourselves, our legal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has submitted or is about to submit a proposal to Obligee on a contract for Airport Way Demolitions Pur. No.10-C59

NOW, THEREFORE, if the said contract be awarded to Principal and Principal shall, within such time as may be specified, enter into the contract in writing and give such bond or bonds as may be specified in the bidding or contract documents with surety acceptable to Obligee; or if Principal shall fail to do so, pay to Obligee the damages which Obligee may suffer by reason of such failure not exceeding the penalty of this bond, then this obligation shall be void; otherwise to remain in full force and effect.

SIGNED, SEALED AND DATED this 7th day of October, 2010.

Modesto Sand & Gravel, Inc. (Principal)

By Matt Willcox (Seal)

Western Surety Company (Surety)

By Lester M Ireland Jr (Seal) (Attorney-in-Fact)
Western Surety Company

POWER OF ATTORNEY - CERTIFIED COPY

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint

LESTER M. IRELAND JR

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, bonds for:

Principal: Modesto Sand & Gravel, Inc.

Obligor: City of Stockton

Amount: $500,000.00

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the Senior Vice President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorney(s)-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signatures of any such officer and the corporate seal may be printed by facsimile."

All authority hereby conferred shall expire and terminate, without notice, unless used before midnight of January 7, 2011, but until such time shall be irrevocable and in full force and effect.

In Witness Whereof, Western Surety Company has caused these presents to be signed by its Senior Vice President, Paul T. Bruflat, and its corporate seal to be affixed this 7th day of October, 2010.

WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

On this 7th day of October, 2010, in the year 2010, before me, a notary public, personally appeared Paul T. Bruflat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.

D. KRELL
Notary Public - South Dakota

My Commission Expires November 30, 2012

I, the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 7th day of October, 2010.

WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President
STATE OF CALIFORNIA
COUNTY OF STANISLAUS

On date before me, here insert name and title of the officer
personally appeared name(s) of signer(s) who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

signature (Seal)
EXHIBIT B
INSURANCE REQUIREMENTS
DEMOLITION AND WRECKING VENDORS

VENDOR shall procure and maintain for the duration of the Agreement, insurance against all
claims for injuries to persons or damages to property which may arise from or in connection with
the performance of the work hereunder by the VENDOR, its agents, representatives, volunteers,
or employees.

1. INSURANCE Throughout the life of this Contract, the Vendor shall pay for and maintain in
full force and effect with an insurance company(s) (Company) admitted by the California
Insurance Commissioner to do business in the State of California and rated not less than "A:
VII" in Best Insurance Key Rating Guide, the following policies of insurance:

A. COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY insurance
including XCU (Explosion, Collapse & Underground) coverage, with limits of
coverage which shall include Contractual Liability, Products and Completed
Operations coverage's, Bodily Injury and Property Damage Liability
insurance with combined single limits of not less than $1,000,000 per
occurrence, and if written on an Aggregate basis, $2,000,000 Aggregate limit
(CG 0001).

B. COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY insurance,
endorsed for "any auto" with combined single limits of liability of not less than
$1,000,000 each occurrence. (CA 0001)

C. WORKERS' COMPENSATION insurance as required under the California
Labor Code and Employers Liability Insurance with limits not less than
$1,000,000 per accident/injury/disease.

Deductibles and Self-Insured Retentions must be declared and are subject to approval by the
CITY.

The Policy(s) shall also provide the following:

1. The Commercial General Liability and Automobile Liability insurance shall be written
on ISO approved occurrence form (see item 1 and 2 above) and endorsed to name:
City of Stockton, its Mayor, Council, officers, representatives, agents, employees and
volunteers are additional insureds. ISO form CG 20 37 10 01 edition shall be used
as the Additional Insured Endorsement. This form must be used with either ISO
form CG 20 10 10 01, or CG 20 33 10 01 (or earlier editions of these forms).

2. For any claims related to products provided under this contract, the Vendor's
insurance coverage shall be primary insurance as respects the City of Stockton its
officers, agents, employees and volunteers. Any coverage maintained by the CITY
shall be excess of the Vendor's insurance and shall not contribute with it. Policy shall
waive right of recovery (waiver of subrogation) against the CITY.

3. Each insurance policy required by this clause shall be endorsed to state that
coverage shall not be cancelled by either party, except after thirty (30) days' prior to
written notice by certified mail, return receipt requested, has been given to the CITY.
Further, the thirty (30) day notice shall be unrestricted, except for workers'
compensation, which shall permit ten (10) days advance notice. The Insurer shall
provide the CITY with notification of any cancellation, major change, modification or
reduction in coverage.
4. Regardless of these contract minimum insurance requirements, the Vendor and its insurer shall agree to commit the Vendor’s full policy limits and these minimum requirements shall not restrict the Vendor’s liability or coverage limit obligations.

5. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

6. The Company shall furnish the City of Stockton with the Certificates and Endorsement for all required insurance, prior to the CITY’s execution of the Agreement and start of work.

7. Proper address for mailing certificates, endorsements and notices shall be: City of Stockton, Attention: Risk Services, 425 N. El Dorado Street, Stockton, CA 95202.

8. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Vendor shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY’s Risk Manager (209) 937-8682. Our fax is (209) 937-8833.

If at any time during the life of the Contract or any extension, the Vendor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately, and all payments due or that may become due to the Vendor shall be withheld until acceptable replacement coverage notice is received by the CITY. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract. In the event of insurance cancellation, the CITY reserves the right to purchase insurance or insure or self-insure) for the above required coverage’s at the Vendor’s full expense.

If the Vendor should subcontract all or any portion of the work to be performed in this contract, the Vendor shall cover the sub-Vendor, and/or require each sub-Vendor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-Vendor’s insurance shall have the same impact as described above.

2. INDEMNIFICATION

a) The Vendor shall indemnify, hold harmless and defend the City of Stockton (CITY) and each of its Mayor, Council, officers, officials, employees, volunteers and agents from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY the Vendor or any other person and from any and all claims, demands an actions in law or equity (including reasonable attorney’s fees and litigation expense), arising or alleged to have arisen directly or indirectly out of the active or passive negligence of the Vendor or any of its employees or agents in the performance of this contract. The Vendor’s obligations under the preceding sentence shall apply regardless of whether the CITY or any of its Mayor, council, officers, officials, employees, volunteers or agents are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of the CITY.
b) If the Vendor should subcontract all or any portion of the work to be performed under this agreement, the Vendor shall require each sub-Vendor to indemnify, hold harmless and defend the CITY, its officers, officials, employees and agents in accordance with the terms of the preceding paragraph.

MODESTO SAND & GRAVEL, INC.
6137 Hammett Ct.
Modesto, CA 95358

Dec. 21, 2010

[Signature]

[Signature]
Western Surety Company

PERFORMANCE BOND

Bond Number: 71010006

KNOW ALL PERSONS BY THESE PRESENTS, That we Modesto Sand & Gravel, Inc., hereinafter referred to as the Principal, and Western Surety Company, hereinafter referred to as the Obligee, in the sum of Forty-Two Thousand Nine Hundred and 00/100 Dollars ($42,900.00), for the payment of which we bind ourselves, our legal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a contract with Obligee, dated the _________ day of ____________, for Airport Way Demolition.

NOW, THEREFORE, if the Principal shall faithfully perform such contract or shall indemnify and save harmless the Obligee from all cost and damage by reason of Principal's failure so to do, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

ANY PROCEEDING, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

NO RIGHT OF ACTION shall accrue on this Bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.

SIGNED, SEALED AND DATED this 14th day of October, 2010.

Modesto Sand & Gravel, Inc.

(Principal)

By Matt Bellstrom (Seal)

Western Surety Company

(Surety)

By Lester M. Irland Jr. (Seal) Attorney-in-Fact

APPROVED AS TO SURETY:

City of Stockton Risk Services Division
Western Surety Company

PAYMENT BOND

Bond Number: 71010306

KNOW ALL PERSONS BY THESE PRESENTS, That we, Modesto Sand & Gravel, Inc., hereinafter referred to as Principal, and Western Surety Company, hereinafter referred to as Surety, are held and firmly bound unto City of Stockton of 425 N. El Dorado St., Stockton, CA 95202, hereinafter referred to as Obligee, in the sum of Forty-Two Thousand Nine Hundred and 00/100 Dollars ($42,900.00), for the payment of which we bind ourselves, our legal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a contract with Obligee, dated , for Airport Way Demolitions, copy of which contract is by reference made a part hereof.

NOW, THEREFORE, if Principal shall, in accordance with applicable Statutes, promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to Surety being waived, then this obligation to be void; otherwise to remain in full force and effect.

No suit or action shall be commenced hereunder

(a) After the expiration of one (1) year following the date on which Principal ceased work on said contract it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

(b) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

SIGNED, SEALED AND DATED this 14th day of October, 2010.

Modesto Sand & Gravel, Inc.
(Principal)

By: Matt Kellstrom (Seal)

Western Surety Company

By: Lester H Ireland Jr (Seal)

Attorney-in-Fact

APPROVED AS TO SURETY:

City of Stockton Risk Services Division
STATE OF CALIFORNIA
COUNTY OF STANISLAUS

On October 19, 2010 before me, Anna Stewart, Notary Public, personally appeared LESTER M. IRELAND JR., who proved to me on the basis of satisfactory evidence to be the person whose names are subscribed to the within instrument and acknowledged to me that she or they executed the same in her/his/their authorized capacity, and that by her/his/their signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Anna Stewart (Seal)
Western Surety Company

POWER OF ATTORNEY - CERTIFIED COPY

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint LESTER M. IRELAND JR. its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, bonds for:

Principal: Modesto Sand & Gravel, Inc.

Obligee: City of Stockton

Amount: $500,000.00

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the Senior Vice President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorney(s)-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

All authority hereby conferred shall expire and terminate, without notice, unless used before midnight of February 8, 2011, but until such time shall be irrevocable and in full force and effect.

In Witness Whereof, Western Surety Company has caused these presents to be signed by its Senior Vice President, Paul T. Bruflat, and its corporate seal to be affixed this 14th day of October, 2010.

[Signature]
Paul T. Bruflat, Senior Vice President

[Stamp]
Western Surety Company

[Stamp]
Notary Public - South Dakota

On this 14th day of October, in the year 2010, before me, a notary public, personally appeared Paul T. Bruflat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.

[Signature]
Notary Public - South Dakota

My Commission Expires November 30, 2012

I the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 14th day of October, 2010.

[Signature]
Paul T. Bruflat, Senior Vice President
BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS:

That we, Modesto Sand & Gravel, INC., a corporation, as Principal and ____________, a corporation, organized and existing under the laws of the State of ____________, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, as obligee, in the just and full sum of FORTY-TWO THOUSAND NINE HUNDRED AND NO/100 DOLLARS ($42,900.00), in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to the said CITY, the said Principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that the above bounded Principal has simultaneously entered into a contract with the CITY, to do and perform the following work, to wit:

AIRPORT WAY DEMOLITION
(PUR 10-059),

NOW, THEREFORE, if the above bounded Principal, CONTRACTOR, Company or Corporation or its subcontractor, shall well and truly perform the work contracted to be done under said contract, then this obligation to be null and void; otherwise to remain in full force and effect.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract, or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY, and no forbearance on the part of the said CITY shall operate to relieve any Surety or Sureties from liability on this bond, and consent by
said Surety is hereby given, and the said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on ________________________________.

MODESTO SAND & GRAVEL, INC.,
a corporation

APPROVED AS TO SURETY:

By ________________________________
"PRINCIPAL"

SURETY

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Dated: 11-17-10

By ________________________________
ATTORNEY-IN-FACT

By ________________________________
CITY ATTORNEY
BOND FOR LABOR AND MATERIAL

KNOW ALL MEN BY THESE PRESENTS:

That we, Modesto Sand & Gravel., INC., a corporation, as Principal and ____________________________, a corporation, organized and existing under the laws of the State of ______________________ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, and unto any and all material suppliers, persons, companies, or corporations furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contemplated to be executed or performed under the contract hereinafter mentioned, and all persons, companies, or corporations renting or hiring teams, or implements of machinery, for or contributing to said work and all persons who perform work or labor upon the same, and all persons who supply both work and materials, and whose claims have not been paid by the contractor, company or corporation in the just and full sum of FORTY-TWO THOUSAND NINE HUNDRED AND NO/100 DOLLARS ($42,900.00), in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to said City of Stockton and to said persons jointly and severally, the said principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligations is such that the above bounden Principal has simultaneously entered into a contract of even date herewith, with the CITY, to do and perform the following work, to-wit:

Airport Way Demolition
(PUR 10-059),

NOW, THEREFORE, if the above bounden Principal, CONTRACTOR, Company or Corporation or its subcontractor, fail to pay for all materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same, in an amount not exceeding the sum specified in this bond, provided that any and all claims hereunder shall be filed and proceedings had in connection therewith as required by the provisions of Division 3, Part 4, Title 15, Chapter 5, Article 1 of the Civil Code of California, provided that in case suit is brought upon this bond, a reasonable attorney's fee shall be awarded by the Court to the prevailing party in said suit; said
attorney's fee to be fixed as costs in said suit, and to be included in the judgment therein rendered.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY and no forbearance on the part of the said CITY shall operate to relieve any surety or sureties from liability on this bond, and consent to make such alterations without further notice to or consent by any such surety is hereby given, and the said sureties hereby waive the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on ________________________________

Modesto Sand & Gravel., INC., a corporation

APPROVED AS TO SURETY:

____________________________________________________

APPROVED AS TO FORM:
Dated 11-17-10

OFFICE OF THE CITY ATTORNEY

By ________________________________
"PRINCIPAL"

SURETY

By ________________________________
ATTORNEY-IN-FACT

CITY ATTORNEY

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