

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Steven Kueny, City Manager *SK*

DATE: October 29, 2014 (CC Meeting of 11/5/14)

SUBJECT: Consider Sustainability Fee Memorandum of Understanding (MOU) between County of Ventura (County) and City of Moorpark (City)

BACKGROUND

In 2011, the County of Ventura Board of Supervisors (Board) approved an Addendum Agreement for a Sustainability Fee at the Simi Valley Landfill and Recycling Center (Landfill). The fee is a surcharge imposed on waste brought to the Landfill that is generated outside of Ventura County.

The City of Moorpark presented comments at the Board's hearings on the Landfill Expansion Project (Major Modification No. 8 to Conditional Use Permit 3142) and related Environmental Impact Report. As a result of those comments, though not a part of the Board's formal action on the Landfill, the Board committed to allocate a portion of its future Sustainability Fee revenue as a contribution to acquire open space in the Moorpark area and assist with construction of a sound wall on Los Angeles Avenue (SR 118) in the City of Moorpark.

DISCUSSION

Since July 2011, the County and City have been working to develop a MOU to memorialize the County's commitment to share a portion of its Sustainability Fee revenue with the City for the acquisition of open space (either fee title or conservation easements) within a portion of the City and the City's Area of Interest. The area eligible is referred to in the MOU as the Designated Area. The County agrees to commit \$1,500,000 for the acquisition of open space (either fee title or conservation easements). The funds will be provided during the 2014/15 FY, and the City must acquire the open space by September 30, 2017.

Honorable City Council
Re: Consider Sustainability Fee MOU between County and City
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The County also agrees to commit \$500,000 towards a City-sponsored sound wall project for the south side of Los Angeles Avenue. The project would need to have a contract awarded for the project by July 1, 2025. The County's obligation to commit funds for a sound wall project would be subject to the Board of Supervisor's fund appropriation at some point in the future.

A copy of the County's staff report and MOU are attached. The Ventura County Board of Supervisors approved the MOU on October 28, 2014.

FISCAL IMPACT

The City would potentially receive \$2,000,000 from the County of Ventura for the purposes specified in the MOU. City staff costs are not eligible to be funded by the County's funds. City staff would be used to implement most of the City's obligations under the MOU. The City would be responsible for ongoing maintenance and other costs for the acquired property.

STAFF RECOMMENDATION

Approve the Sustainability Fee Memorandum of Understanding subject to final language approval of City Manager and City Attorney and authorize Mayor to sign on behalf of the City.

SK:db

Attachment: October 28, 2014, Board Letter recommending Approval of MOU and Sustainability Fee MOU between County and City

October 28, 2014

Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009

J. Matthew Carroll
Assistant County Executive Officer

Paul Derse
Assistant County Executive Officer/
Chief Financial Officer

Catherine Rodriguez
Assistant County Executive Officer/
Labor Relations & Strategic Development

Kelly Shirk
Director Human Resources

SUBJECT: Approve The Sustainability Fee Memorandum of Understanding Between The County of Ventura (County) And City of Moorpark (City) Providing For Payments From The County To The City Contributing to Purchase of Open Space and/or The Acquisition Of Conservation Easements and The Construction of a Sound Wall In The City; Find that Approval of the MOU is Exempt from the California Environmental Quality Act (CEQA); Supervisorial District No. 4.

RECOMMENDATIONS:

1. It is recommended that your Board approve the Sustainability Fee Memorandum of Understanding (MOU) between the County of Ventura (County) and the City of Moorpark (City).
2. Find that the County's approval of the MOU is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3).

MANDATORY: No

FISCAL IMPACT: \$1.5 million to \$2.0 million

SOURCE OF FUNDING: General Fund: Fund Balance Assigned – Fixed Asset Investment Commitments

DISCUSSION:

In July, 2011, the County and Waste Management of California, Inc. (Waste Management) entered into an Addendum Agreement for a Sustainability Fee at the Simi Valley Landfill and Recycling Center (Landfill) pursuant to which Waste Management agreed to provide County with sustainability fee payments (Sustainability Fees) for certain solid waste and recovered materials received by the Landfill originating from outside the geographic boundaries of the County.

Since the City of Moorpark may be impacted by the additional traffic to the Landfill due to the Addendum Agreement for a Sustainability Fee, the County has agreed to allocate a portion of the Sustainability Fees to the City to help the City acquire open space property

or acquire conservation easements in the eastern portion of the City and in a portion of the City's Area of Interest and to help construct a sound wall along Los Angeles Avenue (SR 118).

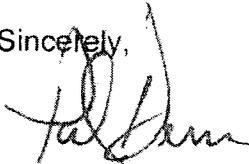
The attached MOU between the County and the City provides for a payment from the County to the City of \$1,500,000 on or before June 30, 2015 contributing to the acquisition of open space and conservation easements on or before September 30, 2017, within the Designated Area, as provided in Exhibits A-1 and A-2 to the MOU. The City will select the property to be acquired, subject to County's consent, which may consist of one or more parcels within the Designated Area. Funds were set aside in General Fund: Fund Balance Assigned - Fixed Asset Investment Commitments for this purpose and we will return to your Board with necessary budget adjustments later in the fiscal year.

In addition, the MOU provides for a payment from the County to the City up to a maximum of \$500,000 contributing toward the construction of a sound wall along any portion of the south side of Los Angeles Avenue (SR 118) between the current western City limits and 150 feet west of Maureen Lane. To receive these funds, the City must award a contract to construct the sound wall project no earlier than July 1, 2017, and no later than July 1, 2025.

The County's approval of the MOU will not have a significant effect on the environment. The action is therefore exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3). As recognized in the MOU, the City will conduct CEQA review prior to its acquisition of the open space property and its initiation of the sound wall project. A Notice of Exemption will be filed with the County Clerk after your Board's approval of the MOU.

This letter has been reviewed by County Counsel and the Auditor-Controller's Office. If you have any questions, please contact Paul Derse at 662-6792.

Sincerely,



Paul Derse
Assistant County Executive Officer
Chief Financial Officer



Michael Powers
County Executive Officer

Exhibit 1 – Sustainability Fee MOU
Exhibit 2 – A-1: Designated Area Map
Exhibit 3 – A-2: Parcels Included in Designated Area

SUSTAINABILITY FEE MEMORANDUM OF UNDERSTANDING BETWEEN COUNTY OF VENTURA AND CITY OF MOORPARK

This Sustainability Fee Memorandum of Understanding (MOU) is entered into by and between the County of Ventura (County) and the City of Moorpark (City) and shall become effective on the date last signed by the parties below. The County and City are collectively referred to herein as “parties” and each individually as “party.”

RECITALS

WHEREAS, on July 19, 2011, the County and Waste Management of California, Inc. (Waste Management) entered into an Addendum Agreement for a Sustainability Fee at the Simi Valley Landfill and Recycling Center (Landfill) pursuant to which Waste Management agreed to provide County with sustainability fee payments (Sustainability Fees) for certain solid waste and recovered materials received by the Landfill originating from outside the geographic boundaries of the County; and

WHEREAS, County is willing to provide a portion of the anticipated Sustainability Fees to City to help fund City’s proposed project to construct a sound wall along Los Angeles Avenue (SR 118) and to help acquire open space property or acquire conservation easements in the eastern portion of the City and in a portion of the City’s Area of Interest (collectively the “Designated Area,”) as shown on Exhibit A-1 and described on Exhibit A-2 hereto; and

WHEREAS, the parties desire to memorialize their mutual understanding of these matters in this MOU;

AGREEMENT

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. The above recitals are incorporated by reference and made a part of this MOU.

Section 2. On or before June 30, 2015, County agrees to pay City One Million Five Hundred Thousand Dollars (\$1,500,000.00) (Funds) for the acquisition of open space and conservation easements on or before September 30, 2017, within the Designated Area, as provided below.

- A. City shall select the property to be acquired, subject to County’s express written consent which shall not be unreasonably withheld, which may consist of one or more parcels within the Designated Area. Both parties agree that matters related to water rights and oil and natural gas extraction and operations will be considered in selection of any property to be

acquired.

- B. The parties must agree to the purchase price prior to close of escrow for each parcel of property. By mutual agreement of the parties, purchase price may include a separate purchase of mineral rights for the property. Both parties agree to cooperate in accomplishing this task in an expeditious manner.
- C. In addition to the purchase price for the property or the price to acquire conservation easements, the City shall be entitled to expend the Funds for the City's acquisition costs in an amount not to exceed twenty percent (20%) of the purchase price of each parcel acquired or conservation easement acquired. Acquisition costs are limited to property appraisals, phase 1 and phase 2 environmental studies, CEQA compliance, engineering, legal and real estate services (title insurance, typical closing costs, escrow and commissions) (hereinafter, Acquisition Costs).
- D. Acquisition may be by fee title or in the form of a conservation easement. If acquisition is in fee title, fee ownership shall be held by City with a conservation easement granted to County pursuant to Section 2.E below. If acquisition is in the form of a conservation easement, such easement shall be consistent with Civil Code Section 815.1 with separate easements granted to City and County.
- E. After each property is acquired and before City's transfer of any property to an Authorized Transferee pursuant to Section 2.F. below, City shall convey to County, and County shall immediately record in the official records of Ventura County, a permanent conservation easement as defined in Civil Code Section 815.1 in a form approved by County and City for the purpose of ensuring the acquired property remains as permanent open space and in its then-natural condition.
- F. After each property is acquired or after each conservation easement is acquired, City, with the prior written consent of County which shall not be unreasonably withheld, may transfer fee title or City's conservation easement to another governmental entity or non-profit entity (Authorized Transferee) as permitted and provided by Civil Code Sections 815.2 (a) and 815.3 so long as the property remains subject to the County's conservation easement and is maintained as permanent open space with no development.
- G. Neither City nor any Authorized Transferee shall engage in any new oil or natural gas production from any property acquired pursuant to this Section 2.
- H. After close of escrow of each property acquired or after the recordation of

each conservation easement pursuant to this Section 2, City shall, within forty-five (45) days, provide County with a full accounting and supporting documentation of the purchase price and Acquisition Costs incurred by City (Accounting Date).

- I. Upon receipt, City agrees to immediately place the Funds in the County of Ventura Investment Pool until such time as all or a portion of said Funds are expended or repaid to the County pursuant to Section 2.J. below. The interest earned on the Funds may be used by City in the same manner as the Funds.
- J. Any Funds not expended by City for purchase prices and Acquisition Costs in accordance with this Section 2, including any interest accrued on said Funds, shall be repaid to County on the earlier to occur of: (1) sixty (60) days after the Accounting Date following City's acquisition of the last parcel(s) of real property hereunder provided that said parcel(s) is/are acquired on or before September 30, 2017; or (2) October 15, 2017.
- K. County shall not be responsible for any costs or potential liabilities related to ownership and maintenance of any property acquired pursuant to this MOU, including but not limited to weed abatement, liability risk and insurance, property taxes, and all other fees, costs, liabilities (including but not limited to that arising from oil and gas operations) and assessments.

Section 3. In addition to the Funds specified in Section 2 of this MOU, County agrees to contribute to City's proposed sound wall project as provided below:

- A. The City's sound wall project shall be to construct a sound wall along any portion of the south side of Los Angeles Avenue (SR 118) between the current western City limits and 150 feet west of Maureen Lane. The sound wall shall be designed to serve as a noise barrier from Los Angeles Avenue traffic and be no less than eight feet (8') high from sidewalk grade. The City shall award a contract to construct the sound wall project no earlier than July 1, 2017, and no later than July 1, 2025.
- B. Within forty-five (45) days following City's filing of a notice of completion for the sound wall project, City shall provide County with a full accounting and supporting documentation of City's Sound Wall Project Costs as defined below. County shall remit payment to City within forty-five (45) days of County's receipt of said accounting and supporting documentation. County's payment shall not exceed one-half of the Sound Wall Project Costs up to a maximum amount of Five Hundred Thousand Dollars (\$500,000.00).
- C. Sound wall project costs toward which County will contribute pursuant to this MOU shall only consist of the following: amount of awarded

construction contract and any City-approved change orders thereto, CEQA compliance, engineering (conceptual design, project design, preparation of plans and specifications, preparation of legal description, contract administration, and project inspection), assessment engineering if an assessment district is proposed for the sound wall whether or not formed, permits, and other costs charged by other governmental entities for the project including but not limited to Caltrans and public utilities, utility relocations, landscaping and irrigation installation (excluding ongoing maintenance), any items required by Caltrans encroachment permits, and legal services regarding project procurement (collectively, "Sound Wall Project Costs"). Sound Wall Project Costs shall not include any land acquisition-related expenses, fees or costs.

Section 4. County, in its sole discretion, may suspend any or all of its obligations under this MOU upon thirty (30) days written notice to City if the validity of the Sustainability Fees is challenged in a legal action against County. County, in its sole discretion, may also terminate any or all of its obligations under this MOU upon thirty (30) days written notice to City if the Sustainability Fees are legally invalidated through judicial or legislative action that is binding on County. County shall reimburse City for its eligible costs in acquiring property or conservation easements under Section 2 and its Sound Wall Project Costs under Section 3 to the extent incurred by City prior to the effective date of MOU suspension. Except as provided herein, County shall have no other liability to City in the event County exercises its right to suspend and/or terminate its obligations under this MOU in accordance with this Section 4.

Section 5. Miscellaneous.

- A. Integrated Agreement. This MOU is an integrated agreement and constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, communications, representations, or warranties, whether oral or written, by either party or any agent, officer, partner, employee, or representative of either party.
- B. Amendments. This MOU may not be modified, altered, amended, or rescinded except by an instrument in writing, which is signed by both parties hereto.
- C. Severability. Should any part, term or provision of this MOU be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this MOU.
- D. Construction. This MOU is the product of negotiation, drafting and preparation by and among the parties and their respective attorneys. The

parties expressly acknowledge and agree that this MOU shall not be deemed prepared or drafted by one party or another and its attorneys, and will be construed accordingly. Any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this MOU.

- E. Notices. All notices that are required to be delivered under this MOU in writing shall be personally delivered or sent by overnight mail, registered or certified mail, postage prepaid, or facsimile, as follows:

To City: City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021
Attention: City Manager
Fax: 805-529-8270

To County: County of Ventura
800 South Victoria Avenue #1940
Ventura, California 93009
Attention: County Executive Office
Fax: 805-658-4500

Such addresses may be changed from time to time by the addressee by serving notice as heretofore provided. Service of such notice or demand shall be deemed complete on the date of actual delivery as shown by the addressee's registry or certification receipt or at the expiration of the third day after the date of mailing (whether or not actually received by the addressee), whichever is earlier in time.

- F. Governing Law. This MOU is made and entered into in the State of California and shall, in all respects, be interpreted, governed and enforced in accordance with the laws of the State of California applicable to contracts entered into and fully to be performed therein.
- G. Further Assurances. Each party shall from and after the date hereof execute, acknowledge and deliver such further instruments and perform such additional acts as any other party may reasonably request to effectuate the intent of this MOU.
- H. Third Party Beneficiaries. No term or provision of this MOU is intended to or shall be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder.
- I. Defense and Indemnity. City agrees to indemnify, hold harmless and defend at its sole expense, with counsel reasonably acceptable to County,

any claims, actions, proceedings, demands, judgments, damages, fines and liabilities of whatever nature (Claims and Liabilities) against County and all of County's boards, agencies, departments, officers, employees, agents and volunteers (County Parties) arising from or related to this MOU including but not limited to the acquisition, ownership and maintenance of the open space property and implementation, design and construction of the proposed sound wall project, unless the Claims and Liabilities be caused by the sole negligence or willful misconduct of County Parties. County may, at its sole discretion, participate in the defense of any Claims and Liabilities at County's cost, but such participation shall not relieve City of its obligations under this section.

- J. Budgeting. County's obligations to provide funding under this MOU are subject to County's annual budget process and the making of necessary budget appropriations in the fiscal year in which County would pay the obligations, and would receive the benefits of the projects, set forth in this MOU. The obligation of the County to provide funding under this MOU does not constitute an obligation for which County is obligated to levy or pledge any form of taxation or for which County has levied or pledged any form of taxation. Nor do the obligations of County to provide funds under this MOU constitute an indebtedness of County within the meaning of any constitutional debt limitation or restriction. County shall use reasonable efforts to make such budget decisions and appropriation of funds. Except for the \$1,500,000 referenced in Section 2 above, in the event such budget decisions and appropriations do not occur, County may, upon five (5) days written notice to City, terminate this MOU as to that obligation and project.

IN WITNESS WHEREOF, the undersigned each has executed this MOU as of the date written below.

COUNTY OF VENTURA

Date: _____

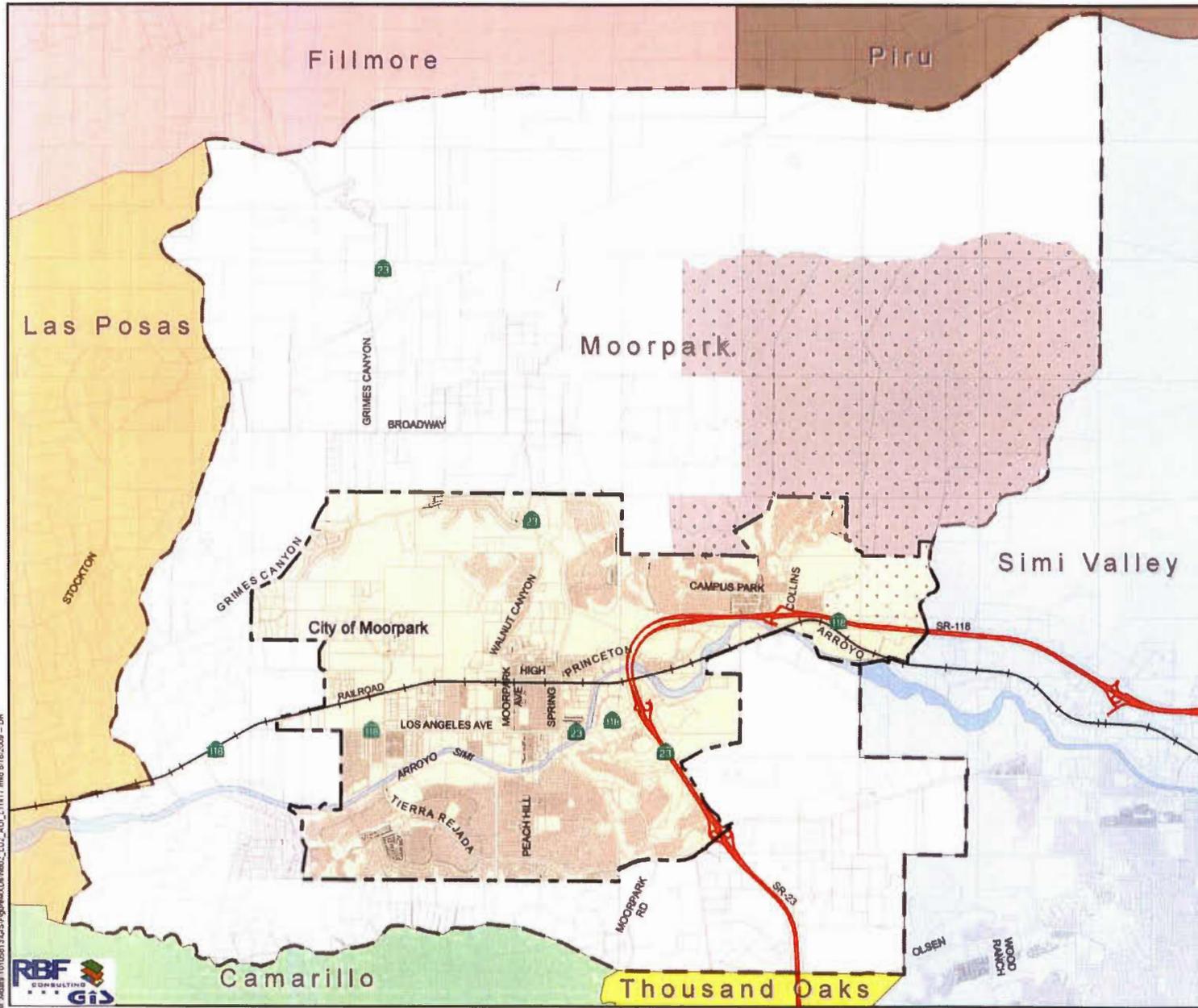
By: _____

CITY OF MOORPARK

Date: _____

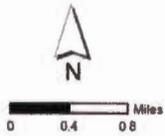
By: _____

Attachments: Exhibit A-1 and A-2



Legend

- Moorpark Area of Interest
- Camarillo Area of Interest
- Fillmore Area of Interest
- Las Posas Area of Interest
- Piru Area of Interest
- Simi Valley Area of Interest
- Thousand Oaks Area of Interest
- Freeway
- Railroad
- Arroyo Simi
- Parcels
- City of Moorpark
- Potential Open Space
- Designated Area



Sources:
 City of Moorpark, March 2014
 County of Ventura GIS data, March 2014
 County of Ventura RMA data
 Prepared: March 2014

Note: A copy of the City's Planning Area Figure is available for download at <http://www.moorparkca.gov> or for purchase at Moorpark City Hall, 799 Moorpark Avenue, Moorpark, CA 93021

Designated Area in Moorpark and its Area of Interest Updated August 2014

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Parcels Included in Designated Area in Moorpark and its Area of Interest
(Listed by Assessor Parcel Number)

500-0-120-065

500-0-170-135

500-0-180-125; -135; -145; -155; -165; -175; -185; -195; -205; -215; -225; -235; -255

500-0-281-035; -045; -165; -185; -195; -205; -215; -465; -475; -535; -545

500-0-292-015; -035; -135; -195; -215; -225

615-0-010-045

615-0-110-165; -175; -205; -215

615-0-150-185