MODESTO CITY COUNCIL
RESOLUTION NO. 2015-379

A RESOLUTION REAPPOINTING SANDRA LUCAS TO THE CITY OF MODESTO PLANNING COMMISSION

WHEREAS, Section 1102 of the Charter of the City of Modesto authorizes the City Council to appoint members to various Boards and Commissions, and

WHEREAS, the Appointments Committee met on September 15, 2015 and recommended reappointment of Sandra Lucas to the Modesto Planning Commission for a second four-year term.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Council of the City of Modesto as follows:

SECTION 1. Sandra Lucas is hereby reappointed to the Modesto Planning Commission for a second four-year term, expiration date of January 1, 2020.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Modesto Planning Commission, and the Secretary thereof.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of October, 2015, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None
ATTEST:  

(Seal)

APPROVED AS TO FORM:

ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-380

A RESOLUTION APPOINTING JESSICA SELF TO THE CITY OF MODESTO BOARD OF ZONING ADJUSTMENT

WHEREAS, Section 1102 of the Charter of the City of Modesto authorizes the City Council to appoint members to various Boards and Commissions, and

WHEREAS, the Appointments Committee met on September 15, 2015 and recommended appointment of Jessica Self to the Modesto Board of Zoning Adjustment.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Council of the City of Modesto as follows:

SECTION 1. Jessica Self is hereby appointed to the Modesto Board of Zoning Adjustment with a term expiration of January 1, 2020.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed member of the Modesto Board of Zoning Adjustment, and the Secretary thereof.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of October, 2015, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and the resolution adopted by the following vote:

AYES:       Councilmembers:         Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES:       Councilmembers:         None

ABSENT:     Councilmembers:         None
ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

[Signature]

ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-381

RESOLUTION APPROVING AN AGREEMENT WITH CORNERSTONE ONDEMAND OF SANTA MONICA, CA TO PROVIDE AN ONLINE PERFORMANCE EVALUATION SYSTEM IN ACCORDANCE WITH THE AGREED UPON SCOPE OF WORK, FOR A TOTAL COST OF $49,320; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the completion of performance evaluations is often time consuming, cumbersome, and require retroactive salary adjustments, and

WHEREAS, the City currently utilizes a manual process to complete performance appraisals, and

WHEREAS, the City of Modesto desires to have a high functioning and integrated Performance Management System that provides timely feedback to employees, produces reports on organizational performance, and connects employee performance to the City’s Strategic Plan, and

WHEREAS, an automated system would address current deficiencies currently identified and would provide efficiencies in the completion of performance evaluations; and

WHEREAS, representatives from the City Manager’s Office, Human Resources, and Information Technology reviewed multiple systems in accordance with a prescribed set of system requirements; and

WHEREAS, the representatives unanimously identified Cornerstone OnDemand as the system that best fits the functionality desired by the City; and
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with Cornerstone OnDemand of Santa Monica, CA to provide an Online Performance Evaluation System in accordance with the agreed upon scope of work; and authorizing the City Manager, or his designee, to execute the agreement, in substantially similar form as attached hereto as Exhibit A and as approved by the City Attorney.

The foregoing resolution was introduced at regular meeting of the Council of the City of Modesto held on the 13th day of October 2015 by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: __________________________

(SEAL)

APPROVED AS TO FORM:

BY: __________________________

ADAM U. LINDGREN, City Attorney
Cornerstone OnDemand – Master Agreement

COVER PAGE

Effective Date ("ED"): [Date of the last signature below]

Client Name ("Client"): City of Modesto, CA
Client Address: [Same as Client Address]
Billing Address: [Same as Client Address]
Federal Tax ID# / VAT #: 

<table>
<thead>
<tr>
<th>Primary Contact</th>
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*NOTE: All invoices will be emailed to Client unless otherwise agreed by the parties.

Is Client exempt from applicable sales/VAT tax? □ Yes ("No," unless box is checked)
Does Client require a purchase order ("PO")? □ Yes ("No," unless box is checked)
PO Number (if applicable):

By signing below, each party acknowledges that it has read, understands, and agrees to the provisions set forth in the Master Agreement (the "Agreement"). No other terms and conditions will apply. Capitalized terms set forth in the Agreement shall have the respective meanings set forth in the Master Terms and Conditions. Except as otherwise expressly set forth herein, all purchases are non-cancelable and non-refundable. Fees are exclusive of applicable sales, use, VAT, and other taxes, and are net of withholding taxes.

<table>
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<tr>
<th>Client</th>
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Approved as to form:
Cornerstone OnDemand – Master Agreement
MASTER TERMS AND CONDITIONS

These Master Terms and Conditions are made a part of and incorporated by reference into the Cornerstone OnDemand – Master Agreement by and between Client and Cornerstone OnDemand ("Cornerstone") (the "Agreement").

1. Definitions.
   a) "Active User" means, in a given calendar month, a user established on the Software with a designation of "active" at any time during that month. Client has the ability to determine who is an Active User.
   b) "Affiliate" means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
   c) "Client Content" means any and all courses, learning objects, certifications, quizzes, tests, materials, instructor-led sessions, or documents created and/or supplied by Client.
   d) "Client Data" means proprietary or personal data regarding Client or any of its users under this Agreement.
   e) "Confidential Information" means any non-public information of Cornerstone or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; (iv) was independently developed by the recipient, where such independent development has been documented by the recipient; or (v) is required to be disclosed under law including the California Public Records Act or a court order.
   f) "Content Delivery" means the delivery of Client Content to Active Users. Content Delivery volume is calculated as follows: size of Client Content (in gigabytes) multiplied by the number of Active Users receiving the Client Content.
   g) "Implementation" means implementation, deployment, and/or training relating to the Software.
   h) "Order" means a Product purchase in a schedule, statement of work, addendum, or amendment signed by both parties.
   i) "Products" means any and all Services, work product resulting from Services, and Software.
   j) "Service" means any service rendered by Cornerstone specifically to Client, including, but not limited to: (i) hosting of the Software; (ii) hosting, delivery, and/or distribution of eLearning content; (iii) provision of customer and/or technical support for the Software; (iv) Implementation; (v) development of Software functionality specially requested by Client; and/or (vi) any consulting service.
   k) "Software" means: (i) any and all of Cornerstone's proprietary web-based applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto, software applications, including regular backups, security and incident response protocols, and application and infrastructure monitoring; and (iii) any consulting service.
   l) "Subscriber" means an Active User that accesses the Software for a flat fee.
   m) "Transaction" applies only to the Extended Enterprise Product and means a course registration, self-assessment, or task undertaken by an Active User who is grouped in a specially-designated organizational unit separate and apart from Subscribers. Unused Transactions expire upon the earlier of: (i) termination of the applicable Order; or (ii) one year from purchase date. For clarity, employees of Client or any of its Affiliates may only access the Software as Subscribers.

2. Cornerstone Obligations. In accordance with the terms and conditions of the Agreement, Cornerstone will: (i) make the Products available on a non-exclusive basis to Active Users via the Internet; (ii) maintain appropriate safeguards for protection of Client Data, including regular back-ups, security and incident response protocols, and application and infrastructure monitoring; and (iii)
5. Support. After Implementation is completed, Cornerstone shall provide the level of technical support stated in the applicable Order. Only the number of administrators set forth in the applicable support package (i.e., not all Subscribers) may contact Cornerstone for support. Client agrees to promptly provide Cornerstone with sufficient documentation, data and assistance with respect to any reported errors, and to reasonably cooperate with Cornerstone, in order for Cornerstone to comply with its support obligations hereunder. In no event shall Cornerstone be responsible or liable for any errors, bugs or other problems contained in or originating from hardware or software not provided by Cornerstone.

6. Fees and Payment. Client will be invoiced for fees according to the applicable Order. Payment of fees will be due within 30 days after the date of the invoice, except where an Order expressly prescribes other payment dates. Except where otherwise stated, all fees set forth in an Order are in U.S. dollars and must be paid in the currency set forth in the Order. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse Cornerstone for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.

7. Term and Termination.
   a) Term. The term of this Agreement runs from the Effective Date through the later of: (i) three (3) years; and (ii) expiration of the last Order.
   b) Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within thirty (30) days of the breaching party’s receipt of written notice describing the breach in reasonable detail.
   c) Bankruptcy Events. A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within
ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.

d) Effect of Termination. Immediately following termination of this Agreement, Client shall cease using all Products. Upon request, at no additional charge, Client may retrieve Client Data via Client’s secure FTP site in the same format in which the Client Data was originally inputted into the Software. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. Cornerstone will maintain a copy of Client Data for no more than six (6) months following termination of the Agreement, after which time any Client Data not retrieved will be destroyed.

8. Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of Cornerstone providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party’s rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.

9. Intellectual Property. As between the parties, Cornerstone will and does retain all proprietary and intellectual property rights, title and interest in and to the Products. Client retains all proprietary and intellectual property rights, title and interest in and to Client Data and Client Content.

10. Indemnification.

a) Indemnification by Cornerstone. Cornerstone agrees to indemnify, defend, and hold harmless Client from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney’s fees and related court costs and expenses) (collectively, “Damages”) incurred or suffered by Client which directly relate to or directly arise out of the violation or infringement of any third-party intellectual property rights by Client’s authorized use of the Products. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of: (i) Client Data; (ii) Client Content; or (iii) unauthorized or negligent use and/or alteration of the Products.

b) Indemnification by Client. Client agrees to indemnify, defend, and hold harmless Cornerstone from and against any and all Damages incurred or suffered by Cornerstone which directly relate to or directly arise out of the violation or infringement of any third-party intellectual property rights by Client Data or Client Content. The foregoing provisions of this section shall not be applicable to the extent the Damages relate to or arise from Cornerstone’s use of Client Data or Client Content in violation of this Agreement.

c) Indemnification Procedures. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor’s option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.

d) Infringement Cures. Should the Products or any part thereof become, or in Cornerstone’s
reasonable opinion be likely to become, the subject of a claim for infringement of a third party intellectual property right, then Cornerstone shall, at its sole option and expense: (i) procure for Client the right to use and access the infringing or potentially infringing item(s) of the Software free of any liability for infringement; or (ii) replace or modify the infringing or potentially infringing item(s) of the Software with a non-infringing substitute otherwise materially complying with the functionality of the replaced system.

e) Exclusive Remedies. The remedies set forth in this section shall be exclusive with respect to any infringement claim hereunder.

11. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CORNERSTONE WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS INCLUDING STANDARDS RELATING TO INFORMATION SECURITY, AND THAT THE SOFTWARE WILL PERFORM SUBSTANTIALLY IN MATERIAL ACCORDANCE WITH THE AGREEMENT AND APPLICABLE DOCUMENTATION PROVIDED BY CORNERSTONE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CORNERSTONE DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT (EXCEPT FOR THE INFRINGEMENT INDEMNIFICATION PROVIDED HEREUNDER) AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

12. Liability.

a) Liability Cap. EXCEPT FOR (i) A PARTY’S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS; (ii) BREACH BY CLIENT OF SECTION “CLIENT RESTRICTIONS”; OR (iii) A PARTY’S WILLFUL MISCONDUCT, EACH PARTY’S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL FEES PAID OR PAYABLE BY CLIENT TO CORNERSTONE HEREUNDER FOR THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CORNERSTONE ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY’S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.

b) Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, PROVIDING REPLACEMENT SOFTWARE (EXCEPT AS SET FORTH IN SECTION “INFRINGEMENT CURES’”), OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. Communications. Neither party shall issue any press release using the name of the other party as a customer or provider without the other party’s consent (not to be unreasonably withheld or delayed).


a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. Cornerstone and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in
b) **Force Majeure.** Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party’s reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.

c) **Counterparts; Facsimile.** This Agreement may be executed in any number of counterparts and in facsimile or electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.

d) **Entire Agreement.** This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. Orders and the schedules and exhibits hereto constitute a part hereof as though set forth in full herein. Purchase orders submitted by Client are for Client’s internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force and effect. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.

e) **Assignment.** Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party’s prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.

f) **No Third Party Beneficiaries.** The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.

g) **Statistical Data.** Without limiting the confidentiality rights and intellectual property rights protections set forth in this Agreement, Cornerstone has the perpetual right to use aggregated, anonymized, and statistical data (“Statistical Data”) derived from the operation of the Software, and nothing herein shall be construed as prohibiting Cornerstone from utilizing the Statistical Data for business and/or operating purposes, provided that Cornerstone does not share with any third party Statistical Data which reveals the identity of Client, Client’s users, or Client’s Confidential Information.

h) **Suggestions.** Cornerstone shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Products any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client or its users relating to the operation of the Products.

i) **Responsibility for Third-Party Offering.** The Software may contain features capable of interoperating with third-party applications. To use such features, Client may be required to obtain access to such applications from a third-party provider. Cornerstone shall not be responsible for Client’s access to, or operation of, third-party applications not offered or sold by Cornerstone to Client.

j) **Export Controls.** Client understands that the use of Cornerstone’s Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department’s Office of Foreign Assets Control.

k) **Rule 10b-5 Limitations.** Each party acknowledges that United States securities laws prohibit any person who has material, non-public information about a publicly-traded company from purchasing or selling securities of such company, or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell securities of such company.

l) **Severability.** If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.

m) **Notices.** Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by facsimile, or mailed by registered or certified mail, return receipt
requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of facsimile delivery (if followed up by such registered or certified mail); and five days after being so mailed.

n) Independent Contractors. Client and Cornerstone are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and Cornerstone. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.

o) Subcontractors. Cornerstone shall notify Client of its use of any subcontractors to perform Client-specific Services. Cornerstone shall be responsible for its subcontractors' performance of Services under this Agreement.

p) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.

q) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.

r) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.
RESOLUTION APPROVING AN EXCEPTION TO THE VILLAGE ONE SPECIFIC PLAN TO ALLOW FOR THE CONSTRUCTION OF A RESTROOM AND EXPANSION OF AN EXISTING BREAKROOM TO THE EXISTING BUILDING LOCATED AT 1612 CLAUS ROAD, MODESTO

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 October 16, 1990, the City Council, by Resolution No. 90-828A, adopted the Village One Specific Plan, to guide the development of 1,780 acres located in northeast Modesto; and

WHEREAS, Westurf Nursery ("Applicant") contacted the City to construct a restroom and expansion of an existing breakroom located at 1612 Claus Road, Modesto, CA ("Parcel"); and

WHEREAS, the Parcel is located within the ultimate boundaries of the City of Modesto Community Facilities District No. 2004-1 (Village One CFD #2); and

WHEREAS, the Village One Specific Plan states that no precise plan, final map, final development plan, building permit or other development entitlement for currently unvested property shall be consistent with this Specific Plan until and unless the affected parcel is required to form or annex to the Village One CFD #2; and

WHEREAS, the Village One Specific Plan does allow City to defer the requirement to form or annex to the Village One CFD if it meets the following criteria:
1) Residential properties of less than ten acres, until there is a land division, addition of any dwelling unit or change of use, or

2) The existing commercial properties in Precise Plan Area No. 2....unless there is a change of use, physical expansion of the existing buildings, construction of new buildings, or division of property; and

WHEREAS, Applicant did not meet above-referenced deferral criteria, staff recommended Council approve an exception to the Village One Specific Plan for the following reasons:

1) The project did not trigger the need for preparation of a Precise Plan,

2) The existing business was operating on the site before the Parcel was annexed into the City limits.

3) Circumstances had changed since the Village One CFD #2 was formed in 2004, reprioritization of the projects had occurred and the infrastructure that would be available to the Parcel was intended to be part of a separate and distinct financing mechanism to be developed and implemented in the future; and

WHEREAS, on October 25, 2011, the City Council, by Resolution No. 2011-406, approved a One-Time Exception to the Village One Specific Plan to construct a 5,496 square foot retail nursery building expansion; and

WHEREAS, on December 4, 2012, the City Council, by Resolution No. 2012-485, approved an Exception to the Village One Specific Plan to allow for the construction of shade structures; and
WHEREAS, Staff believes the determinations made in October 2011 and December 2012 apply in this situation and recommend that an additional exception be approved; and

WHEREAS, upon future development, the Parcel will be required to participate in a separate and distinct financing mechanism to be developed and implemented in the future;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that is hereby approves an exception to the Village One Specific Plan to allow for the construction of a restroom and the expansion of an existing breakroom to the existing building located at 1612 Claus Road.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of October, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

BY: ADAM U. LINDGREN, City Attorney
RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE NECESSARY PROGRAM DOCUMENTS ACCEPTING AB 109 FUNDS FROM THE STATE OF CALIFORNIA, BOARD OF STATE AND COMMUNITY CORRECTIONS (BSCC), FOR A MINIMUM OF $209,814.37 FOR POLICE OVERTIME, SPECIALIZED TRAINING, EQUIPMENT, AND TECHNOLOGY

WHEREAS, California Assembly Bill 109 (AB 109), commonly called "Public Safety Realignment," was enacted in 2011, and

WHEREAS, individuals are eligible for local supervision if their most recent conviction was a non-violent, non-serious, and non-sexual offense and will be supervised under local probation departments as "Post-Release Community Supervision" (PRCS) offenders, and

WHEREAS, AB 109 has changed the responsibility of the PRCS offenders to local probation departments rather than state parole jurisdiction, and

WHEREAS, offenders are serving their sentences in local jails, rather than state prison, and

WHEREAS, on March 28, 2013, the Chiefs of Modesto, Oakdale, Turlock and Ceres to determine the allocation and use of the funds provided through the BSCC for front line law enforcement, and

WHEREAS, it was determined that the funding would be allocated via population using the formula similar to SDEA funding, and

WHEREAS, Modesto will receive a minimum of $209,814.37, and
WHEREAS, the Modesto Police Department will use the Public Safety Realignment Funds for police overtime, specialized training, equipment, and technology, and

WHEREAS, police overtime costs will be used for special interagency operations and target enforcements,

WHEREAS, the fiscal agent will be the City of Ceres, and

WHEREAS, each city receiving money will be required to report use of force data that results in death or hospitalization on a quarterly basis, and

WHEREAS, the term of this funding is October 1, 2015 to June 30, 2016, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager, or his designee, to execute the necessary program documents accepting AB 109 funds from the State of California, Board of State and Community Corrections (BSCC), for a minimum of $209,814.37 for police overtime, specialized training, equipment, and technology,

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of October, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None
APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2015-384  

RESOLUTION AUTHORIZING THE DIRECTOR OF FINANCE, OR HER DESIGNEE, TO AMEND THE MULTI-YEAR 2015/2016 OPERATING BUDGET TO APPROPRIATE REVENUES AND EXPENDITURES OF AT LEAST $209,814.37 FOR THE CITY OF MODESTO'S AB 109 ALLOCATION FROM THE STATE OF CALIFORNIA, BOARD OF STATE AND COMMUNITY CORRECTIONS (BSCC) AND IMPLEMENT THE PROVISIONS OF THIS RESOLUTION  

WHEREAS, California Assembly Bill 109 (AB 109), commonly called "Public Safety Realignment," was enacted in 2011, and  

WHEREAS, individuals are eligible for local supervision if their most recent conviction was a non-violent, non-serious, and non-sexual offense and will be supervised under local probation departments as “Post-Release Community Supervision” (PRCS) offenders, and  

WHEREAS, AB 109 has changed the responsibility of the PRCS offenders to local probation departments rather than state parole jurisdiction, and  

WHEREAS, offenders are serving their sentences in local jails, rather than state prison, and  

WHEREAS, on March 28, 2013, the Chiefs of Modesto, Oakdale, Turlock and Ceres to determine the allocation and use of the funds provided through the BSCC for front line law enforcement, and  

WHEREAS, it was determined that the funding would be allocated via population using the formula similar to SDEA funding, and  

WHEREAS, Modesto will receive a minimum of $209,814.37, and
WHEREAS, the Modesto Police Department will use the Public Safety Realignment Funds for police overtime, specialized training, equipment, and technology, and

WHEREAS, police overtime costs will be used for special interagency operations and target enforcements, and

WHEREAS, the term of this funding is October 1, 2015 to June 30, 2016, and

WHEREAS, these funds result in increased revenue and offsetting expenses to the City for a minimum of $209,814.37 and these funds will reside in Multi-Year Operating Account 1342-19998-42131-100902,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the Director of Finance, or her designee, to amend the Multi-Year 2015/2016 Operating Budget to appropriate revenues and expenditures of at least $209,814.37 for the City of Modesto’s AB 109 allocation from the State of California, Board of State and Community Corrections (BSCC) and implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of October 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

SEAL

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-385

RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE NECESSARY GRANT DOCUMENTS AND ACCEPTING THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT, FOR A JOINT AWARD WITH THE COUNTY OF STANISLAUS AND THE CITY OF MODESTO IN THE AMOUNT OF $143,219

WHEREAS, on June 23, 2015, the City Council, by Resolution No. 2015-208, approved a Memorandum of Agreement between the County of Stanislaus and the City of Modesto for a joint application to the Edward Byrne Memorial Justice Assistance Grant Formula Program in the amount of $143,219, and

WHEREAS, the City of Modesto will use its allocation of $112,491 to purchase 800 Mhz Radios, and

WHEREAS, the County of Stanislaus will use its allocation of $27,249 for the Probation Department and the Sheriff's Operations Division, and

WHEREAS, the Memorandum of Agreement states that the City agrees to provide the County with a quarterly financial and programmatic report not later than fifteen calendar days after the end of each quarter, and

WHEREAS, the project start period is October 1, 2014, and there is a statutory four-year period within which to spend the funds, and

WHEREAS, the Memorandum of Agreement was approved at the Board of Supervisors meeting on June 9, 2015,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager, or his designee, to execute the necessary grant documents and accepting the Edward Byrne Memorial Justice Assistance
Grant, for a joint award with the County of Stanislaus and the City of Modesto in the amount of $143,219.

The foregoing resolution was introduced at a meeting of the Council of the City of Modesto held on the 13th day of October, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

SEAL

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)
RESOLUTION AUTHORIZING THE DIRECTOR OF FINANCE, OR HER DESIGNEE, TO AMEND THE MULTI-YEAR 2015/2016 OPERATING BUDGET, ESTIMATING REVENUE OF $112,491 FROM THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM, AND APPROPRIATING EXPENDITURES IN FUND 1341

WHEREAS, on June 23, 2015, the City Council, by Resolution No. 2015-208, approved a Memorandum of Agreement between the County of Stanislaus and the City of Modesto for a joint application to the Edward Byrne Memorial Justice Assistance Grant Formula Program in the amount of $143,219, and

WHEREAS, recommended distribution of the 2015 grant is as follows:

<table>
<thead>
<tr>
<th>Agency</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stanislaus County Probation</td>
<td>$6,812</td>
</tr>
<tr>
<td>Stanislaus County Sheriff</td>
<td>$20,437</td>
</tr>
<tr>
<td>Stanislaus County (Admin Fee)</td>
<td>$3,479</td>
</tr>
<tr>
<td>Modesto Police Department</td>
<td>$112,491</td>
</tr>
</tbody>
</table>

WHEREAS, the City of Modesto will use its allocation of $112,491 to purchase 800 Mhz Radios, and

WHEREAS, the City agrees to provide the County with a quarterly financial and programmatic report not later than fifteen (15) calendar days after the end of each quarter, and

WHEREAS, the project start date is October 1, 2014, and there is a statutory four-year period within which to spend the funds,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves authorizing the Director of Finance, or her designee, to amend the Multi-Year 2015/2016 Operating Budget, as indicated in Attachment A, which is attached hereto.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of October 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

SEAL

APPROVED AS TO FORM:

By: 

ADAM U. LINDGREN, City Attorney
Attachment A: Budget Adjustment for 2015 BJAG Grant

Fund 1341- Operation Grants Reimbursed:

<table>
<thead>
<tr>
<th>Description of Account</th>
<th>Increase/ (Decrease)</th>
<th>Expense:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>To:</td>
</tr>
<tr>
<td>Comm. Equipment $&lt;5K</td>
<td>$112,491</td>
<td>MY-100840-Appr. C</td>
</tr>
</tbody>
</table>

Revenue:

<table>
<thead>
<tr>
<th>Description of Account</th>
<th>Increase/ (Decrease)</th>
<th>Revenue:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>To:</td>
</tr>
<tr>
<td>Intergov – Federal – Dept. of Justice</td>
<td>$112,491</td>
<td>MY-1341-19998-42040-100840</td>
</tr>
</tbody>
</table>
RESOLUTION AUTHORIZING THE PURCHASE OF FOUR (4) TRANSIT BUSES FOR THE MODESTO AREA EXPRESS (MAX) TRANSIT SERVICE FROM GILLIG LLC, AND AUTHORIZING THE PURCHASING MANAGER, OR HIS DESIGNEE, TO EXECUTE A PURCHASE ORDER FOR A TOTAL ESTIMATED COST OF $2,202,140

WHEREAS, the City desires to purchase four (4) transit buses for use with its Modesto Area Express (MAX) fixed route transit system, and

WHEREAS, on January 7, 2014, the City adopted Resolution 2014-20 approving an agreement with Gillig LLC for the purchase of up to thirty (30) buses over a five year period, and

WHEREAS, to date the City has purchased twenty-two (22) buses under said agreement, all of which have been delivered and are operating satisfactorily, and

WHEREAS, Gillig LLC has provided the City of Modesto with a total price for four (4) new low floor transit buses based on the prices contained in the agreement between the City and Gillig LLC, and

WHEREAS Gillig LLC will furnish the four (4) buses at an estimated price, Freight on Board (F.O.B.) Modesto, including state and local sales taxes, of Two Million, Two Hundred Two Thousand, One Hundred Forty and No One-Hundredths Dollars ($2,202,140), and

WHEREAS, the final price will be determined after pre-production meetings, and other discussions between City staff and Gillig LLC.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the purchase of four (4) transit buses for the Modesto Area
Express (MAX) transit service from Gillig LLC and authorizes the Purchasing Manager, or his designee, to execute a purchase order for a total estimated cost of $2,202,140.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of October, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

SEAL

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney
RESOLUTION AMENDING THE FISCAL YEAR 2015-2016 OPERATING BUDGET IN THE AMOUNT OF $2,251,640 TO FUND THE TOTAL PROJECT COST INCLUDING INITIAL PURCHASE, POST-DELIVERY EQUIPMENT ADDITIONS AND CONTINGENCY

WHEREAS, certain budgetary transactions are necessary in the amount of $2,251,640, in order to fund the purchase of four transit buses from Gillig, LLC, and

WHEREAS, the Fiscal Year 2015-2016 Operating Budget must be amended as shown in Exhibit A, which is incorporated by reference herein.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the amendment of the Fiscal Year 2015-2016 Operating Budget as shown in Exhibit A.

BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of October, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: __________________________

(Seal)

APPROVED AS TO FORM:

By: __________________________

ADAM U. LINDGREN, City Attorney
Exhibit A

Amend the FY 15/16 Operating Budget to fund the purchase of four (4) transit buses as follows:

1. Increase appropriations in fund 4560 (Bus Purchases) in the amount of $2,251,640.
2. To fund this purchase recognize revenue in the amounts of:
   - $1,453,804 – Prop 1B Transit Funds
   - $387,092 – Federal Transit Administration
   - $410,744 – Transportation Development Act
REQUEST FOR PROPOSALS FOR
PURCHASE AND DELIVERY OF HEAVY DUTY BUSES
RFP 2012-MA-02

APPENDIX A
AGREEMENT
PAGE 1

CONTRACT AGREEMENT FOR PROCUREMENT OF TRANSIT BUSES

THIS AGREEMENT is made as of the ______ day of January ______, 2014, by and between the City of Modesto (AGENCY) and GILLIG, LLC ("CONTRACTOR").

WHEREAS, the AGENCY desires to purchase a minimum of 9 and a maximum of 30 buses (which bus quantities may be assigned to other public agencies) to be delivered over the term of the Contract and has participated in the Request for Proposals RFP 2012-MA-02 dated December 26, 2012, a copy of which is attached and incorporated as Exhibit A; and

WHEREAS, the CONTRACTOR desires to furnish such services and submitted a written proposal dated April 26, 2013 a copy of which is attached and incorporated as Exhibit B.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **RENDITION OF SERVICES**

The CONTRACTOR agrees to provide services to the AGENCY in accordance with the terms and conditions of this Agreement.

2. **SCOPE OF WORK**

The Contractor shall perform all work and furnish all the labor, materials, tools, equipment, services, and incidentals as set forth in Exhibit A, as supplemented by Exhibit B, except when inconsistent with Exhibit A.

3. **TERM OF AGREEMENT**

The term of this Agreement will be for a five-year period commencing upon the AGENCY’S issuance of a written Notice to Proceed or unless sooner terminated pursuant to Section 22 of this Agreement. The CONTRACTOR shall furnish the AGENCY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Contract Specifications.

It is further understood that the term of Contract is subject to the AGENCY’S right to terminate the Contract in accordance with Section 22 of this Agreement.

4. **OWNERSHIP OF WORK**

All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for the services to be performed by CONTRACTOR are and shall be the property of the AGENCY. The AGENCY shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the CONTRACTOR or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to the AGENCY. If any materials are lost, damaged, or destroyed before final delivery to the AGENCY, the CONTRACTOR shall replace them at its own expense and the CONTRACTOR assumes all risks of loss, damage, or destruction of or to such materials. The CONTRACTOR may retain a copy of all material produced under this Agreement for its use in its general business activities.
5. **CONFIDENTIALITY**

Any AGENCY materials to which the CONTRACTOR has access or materials prepared by the CONTRACTOR during the course of this Agreement ("confidential information") shall be held in confidence by the CONTRACTOR, who shall exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the CONTRACTOR as necessary to accomplish the rendition of services set forth in Section 2 of this Agreement.

The CONTRACTOR shall not release any reports, information, or promotional materials prepared in connection with this Agreement, whether deemed confidential or not, without the approval of the AGENCY'S General Manager.

6. **USE OF SUBCONTRACTORS**

The CONTRACTOR shall not subcontract any services to be performed by it under this Agreement without the prior written approval of the AGENCY, except for service firms engaged in drawing, reprographics, typing, and printing. The CONTRACTOR shall be solely responsible for reimbursing any subcontractors and the AGENCY shall have no obligation to them.

7. **CONTRACTOR’S KEY PERSONNEL**

It is understood and agreed by the parties that at all times during the term of this Agreement that Javier Hernandez Jr. shall serve as the primary staff person of CONTRACTOR to undertake, render, and oversee all of the services under this Agreement.

8. **CHANGES**

The AGENCY may, make changes at any time, by written order, within the scope of services described in this Agreement. If such changes cause an increase or decrease in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed shall be made in the limit on compensation as set forth in Section 16 of this Agreement. In the event that CONTRACTOR encounters any unanticipated conditions or contingencies that may affect the scope of work or services and result in an adjustment in the amount of compensation specified herein, or identifies any AGENCY conduct (including actions, inaction, and written or oral communications other than a formal contract modification) that the CONTRACTOR regards as a change to the contract terms and conditions, CONTRACTOR shall so advise the AGENCY immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in compensation. This notice shall be given to the AGENCY prior to the time that CONTRACTOR performs work or services related to the proposed adjustment in compensation. The pertinent changes shall be expressed in a written supplement to this Agreement prior to implementation of such changes. Failure to provide written notice and receive AGENCY approval for extra work prior to performing extra work may, at the AGENCY’S sole discretion, result in nonpayment of the invoices reflecting such work.

9. **CLAIMS OR DISPUTES**

The CONTRACTOR shall be solely responsible for providing timely written notice to AGENCY of any claims for additional compensation and/or time in accordance with the provisions of this Agreement. It is the AGENCY’S intent to investigate and attempt to resolve any CONTRACTOR claims before the CONTRACTOR has performed any disputed work. Therefore, CONTRACTOR’s failure to provide timely notice shall constitute a waiver of CONTRACTOR’s claims for additional compensation and/or time.

The CONTRACTOR shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the AGENCY, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given the AGENCY due written notice of potential claim. The potential claim shall set forth the reasons for which the CONTRACTOR believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.
If based on an act or failure to act by the AGENCY, such notice shall be given to the AGENCY prior to the time that the CONTRACTOR has started performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice shall be given within 10 days after the happening of the event or occurrence giving rise to the potential claim.

If there is a dispute over any claim, the CONTRACTOR shall continue to work during the dispute resolution process in a diligent and timely manner as directed by the AGENCY, and shall be governed by all applicable provisions of the Contract. The CONTRACTOR shall maintain cost records of all work which is the basis of any dispute.

If an agreement can be reached which resolves the CONTRACTOR claim, the parties will execute a Contract modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the CONTRACTOR claim, they may choose to pursue a dispute resolution process or termination of the contract.

10. DISADVANTAGED BUSINESS ENTERPRISES

The AGENCY, as a recipient of Federal financial assistance from the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA), is committed to and has adopted a Disadvantaged Business Enterprise (DBE) Program for Contracts in accordance with Federal regulations 49 CFR §26, issued by the U.S. Department of Transportation (DOT).

It is the policy of the AGENCY to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which Disadvantaged Business Enterprises (DBE) can compete fairly for contracts and subcontracts relating to the AGENCY'S construction, procurement, and professional services activities. To this end, the AGENCY has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE Program. Concerning the performance of this contract, the CONTRACTOR will cooperate with the AGENCY in meeting those commitments and objectives.

Pursuant to 49 CFR §26.13, and as a material term of any agreement with the AGENCY, the CONTRACTOR hereby makes the following assurance and agrees to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

"The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR §26 in the award and administration of U.S. DOT-assisted contracts. Failure by the CONTRACTOR or subcontractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the AGENCY deems appropriate."

11. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

In connection with the performance of this Agreement the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, gender, sexual orientation, age (over 40), marital status, pregnancy, medical condition, or disability as specified in federal, State, and local laws. The CONTRACTOR shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
12. **CONFLICT OF INTEREST**

Depending on the nature of the work performed, a CONTRACTOR of the AGENCY is subject to the same conflict of interest prohibitions established by the Federal Transit Administration and California law that govern AGENCY employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.). During the proposal process or the term of the Agreement, CONTRACTOR and their employees may be required to disclose financial interests.

The CONTRACTOR warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §1090 et seq. or §87100 et seq. during the performance of services under this Agreement. The CONTRACTOR further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, CONTRACTOR may be required to publicly disclose financial interests under the AGENCY's Conflict of Interest Code. Upon receipt, the CONTRACTOR agrees to promptly submit a Statement of Economic Interest on the form provided by AGENCY.

No person previously in the position of Director, Officer, employee or agent of the AGENCY may act as an agent or attorney for, or otherwise represent the CONTRACTOR by making any formal or informal appearance, or any oral or written communication, before the AGENCY, or any Officer or employee of the AGENCY, for a period of one year after leaving office or employment with the AGENCY if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant, or contract.

13. **PROHIBITED INTEREST**

No member, officer, or employee of the AGENCY during his or her tenure or for one year after that tenure shall have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement, nor shall any such person act as an agent or attorney for, or otherwise represent, a Bidder or Contractor/Consultant by making a formal or informal appearance, or any oral or written communication, before the AGENCY, or any Officer or employee of the AGENCY, for a period of twelve months after leaving office or employment with the AGENCY if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a Contract.

14. **RESPONSIBILITY: INDEMNIFICATION**

The CONTRACTOR shall indemnify, keep and save harmless the AGENCY, and its directors, officers, agents and employees against any and all suits, claims, or actions arising out of any injury to persons or property, including but not limited to damages arising from the infringement of intellectual property rights of third parties, that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONTRACTOR caused by a negligent act or omission of the CONTRACTOR or its employees, subcontractors or agents. The CONTRACTOR further agrees to defend any and all such actions, suits, or claims and pay all charges of attorneys and all other incurred costs and expenses. If any judgment is rendered against the AGENCY or any of the other individuals enumerated above in any such action, CONTRACTOR shall, at its expense, satisfy and discharge the same. This indemnification shall survive termination or expiration of this Agreement.

15. **INSURANCE**

The insurance requirements specified in this section shall apply to CONTRACTOR and any subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that CONTRACTOR authorizes to work under this Agreement (hereinafter collectively referred to as "Agents"). CONTRACTOR is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. CONTRACTOR is also
required to assess the risks associated with the work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover risks; the limit for the commercial general liability insurance in each subcontract shall not be less than $1 million. Such insurance shall remain in full force and effect throughout the term of this Agreement. To the extent that any Agent does not procure and maintain such insurance coverage, CONTRACTOR shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONTRACTOR's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONTRACTOR or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONTRACTOR's insurance be primary without any right of contribution from the AGENCY. Prior to beginning work under this contract, CONTRACTOR shall provide the AGENCY with satisfactory evidence of compliance with the insurance requirements of this section.

A. Types of Insurance

1. Workers' Compensation and Employers' Liability Insurance
   a. Workers' Compensation with Statutory Limits, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto governing the liability of employers to their employees.
   b. Employer's Liability coverage with minimum limits of $1 million.
   c. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
      - Waiver of Subrogation.

2. Commercial General Liability Insurance

Commercial General Liability insurance for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least $1 million per occurrence or claim and a general aggregate limit of at least $1 million. Such insurance shall cover all of CONTRACTOR's operations both at and away from the project site.

   a. This insurance shall include coverage for, but not be limited to:
      - Premises and operations.
      - Products and completed operations.
      - Contractual liability.
      - Personal injury.
      - Advertising injury.
      - Explosion, collapse, and underground coverage (xvu).
      - Broad form property damage.

   b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
      - Additional Insured.
      - Cross Liability or Severability of Interests Clause.
      - Primary and Non-Contributory wording.
      - Waiver of Subrogation.

Products and completed operations insurance shall be maintained for three years following termination of this Agreement.
3. **Automobile Liability Insurance**

   Business Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least $1 million per occurrence.

   a. This insurance shall include coverage for, but not be limited to:
      - All Owned vehicles.
      - Non-owned vehicles.
      - Hired or rental vehicles.

   b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
      - Additional Insured.
      - Primary and Non-Contributory wording.
      - Waiver of Subrogation.

4. **Property Insurance**

   Property and/or transit insurance, whichever is applicable, with Special Form coverage including theft but excluding earthquake, with limits at least equal to the replacement cost of the property described below.

   a. This Insurance shall include coverage for, but not be limited to:
      - CONTRACTOR's own business personal property and equipment to be used in performance of this Agreement.
      - Materials or property to be purchased and/or installed on behalf of the AGENCY, if any.
      - Debris removal.
      - Builders risk for property in the course of construction.

   b. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
      - Waiver of Subrogation.

B. **Endorsements**

   1. **Additional Insured**

      The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds the AGENCY and its directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

   2. **Waiver of Subrogation**

      The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the AGENCY and its officers, directors, employees, volunteers and agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

   3. **Primary Insurance**

      The referenced policies and any Excess or Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance affected or which may be affected by the AGENCY.
4. Severability of Interests or Cross Liability

The referenced policies and any Excess or Umbrella policies shall contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of the AGENCY as an Additional Insured shall not in any way affect AGENCY's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONTRACTOR. Said policy shall protect CONTRACTOR and the AGENCY in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

C. Evidence Of Insurance

All Coverages - Prior to commencing work or entering onto the Property, CONTRACTOR shall provide the Director of Maintenance of the AGENCY with a certificate evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate shall also show that the CONTRACTORS' policy(ies) will not be cancelled or coverage altered without 30 days prior written notice to the AGENCY's Director of Maintenance.

D. General Provisions

1. Notice of Cancellation

The policies shall provide that the CONTRACTORS' policies will not be cancelled or have limits reduced or coverage altered without 30 days prior written notice to the AGENCY's Director of Maintenance.

2. Acceptable Insurers

All policies will be issued by insurers acceptable to the AGENCY (generally with a Best's Rating of A-10 or better).

3. Self-insurance

Upon evidence of financial capacity satisfactory to the AGENCY and CONTRACTOR's agreement to waive subrogation against the AGENCY respecting any and all claims that may arise, CONTRACTOR's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

4. Failure to Maintain Insurance

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONTRACTOR's personnel and equipment have been removed from the AGENCY property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

E. Claims Made Coverage

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

1. Policy retroactive date coincides with or precedes the CONTRACTOR's start of work (including subsequent policies purchased as renewals or replacements).
2. CONTRACTOR shall make every effort to maintain similar insurance for at least three years following project completion, including the requirement of adding all named insureds.

3. If insurance is terminated for any reason, CONTRACTOR agrees to purchase an extended reporting provision of at least three years to report claims arising from work performed in connection with this Agreement.

4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

F. Deductibles and Retentions

CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR’s policies without right of contribution from the AGENCY.

16. COMPENSATION

The CONTRACTOR agrees to perform all the services included in Section 2, in accordance with the cost information provided in its Cost Proposal included in Exhibit B, which shall include all labor, materials, taxes, profit, overhead, insurance, delivery costs, subcontractor costs, and other costs and expenses incurred by the CONTRACTOR.

The Contractor’s Base Offer per Bus as submitted on Appendix B, Cost Proposal, shall remain firm during the first 180 days of the Contract. After the initial 180 days of the Contract, the Contractor will be allowed, upon written request, to adjust prospectively the Base Offer per Bus based on the Producer Price Index (PPI). If requested, the Base Offer per Bus shall be that quoted plus/minus any adjustment which will be calculated based on the U.S. Department of Labor/Bureau of Labor Statistics Producer Price Index (PPI) Category 1413, "Trucks and Bus Bodies" formula as described in the Section 13.T of the RFP. However, in no event will the price(s) for any order issued exceed, by more than five percent, the price(s) that would have been in effect 12 months prior to the date of issuance of the order.

17. MANNER OF PAYMENT

AGENCY shall pay the full price of each bus upon issuance of final acceptance of the bus and receipt of an approved invoice, as provided for in the RFP. Invoice entries shall conform to the rates specified in the Cost Proposal set forth in Exhibit B, as agreed upon. The AGENCY will endeavor to pay approved invoices within 30 days of their receipt. Invoices shall be mailed or delivered to the AGENCY.

18. CONTRACTOR’S STATUS

Neither the CONTRACTOR nor any party contracting with the CONTRACTOR shall be deemed to be an agent or employee of the AGENCY. The CONTRACTOR is and shall be an independent CONTRACTOR and the legal relationship of any person performing services for the CONTRACTOR shall be one solely between that person and the CONTRACTOR.

19. ASSIGNMENT

The CONTRACTOR shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the AGENCY.

20. AGENCY WARRANTIES

The AGENCY makes no warranties, representations, or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.
21. **AGENCY REPRESENTATIVE**

Except when approval or other action is required to be given or taken by the Board of Directors of the AGENCY, the AGENCY'S Director of Maintenance or such person or persons as they shall designate in writing from time to time, shall represent and act for the AGENCY.

22. **TERMINATION**

The AGENCY shall have the right to terminate this Agreement at any time by giving written notice to the CONTRACTOR. Upon receipt of such notice, the CONTRACTOR shall not commit itself to any further expenditure of time or resources.

If the Agreement is terminated for any reason other than a default by CONTRACTOR, the AGENCY shall pay to CONTRACTOR in accordance with the provisions of Sections 16 and 17 all sums actually due and owing from the AGENCY for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessarily incurred by CONTRACTOR to effect such or termination. If the Agreement is terminated for default, the AGENCY shall only pay CONTRACTOR the contract price for goods delivered and accepted in accordance with the requirements set forth in this contract.

23. **MAINTENANCE, AUDIT AND INSPECTION OF RECORDS**

The CONTRACTOR shall permit the authorized representatives of the AGENCY, to inspect, audit, make copies and transcriptions of books and all data and records of the CONTRACTOR relating to its performance under the Agreement. CONTRACTOR shall maintain all such records for a period of three years after the AGENCY makes final payment under this Agreement.

24. **NOTICES**

All communications relating to the day to day activities of the project shall be exchanged between the AGENCY'S designee, and the CONTRACTOR's.

All other notices and communications deemed by either party to be necessary or desirable to be given to the other party shall be in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

If to the AGENCY:  
Attn: Greg Nyhoff
City Manager / City of Modesto
P.O. Box 642
Modesto, CA 95353

If to the CONTRACTOR:  
Attn: Joseph Poliscpio
Vice President Sales and Marketing
25800 Clawiter Rd
Hayward, CA 94545

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.
25. **ATTORNEYS' FEES**

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover reasonable attorneys' fees, in addition to all court costs.

26. **APPLICABLE LAW**

This Agreement, its interpretation and all work performed under it shall be governed by the laws of the State of California.

The CONTRACTOR must comply with all federal, State, and local laws, rules, and regulations applicable to the Agreement and to the work to be done hereunder, including all rules and regulations of the AGENCY.

27. **RIGHTS AND REMEDIES OF THE AGENCY**

The rights and remedies of the AGENCY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

28. **BINDING ON SUCCESSORS**

All of the terms, provisions, and conditions of this Agreement shall be binding upon and insure to the benefit of the parties and their respective successors, assigns and legal representatives.
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has caused this Agreement to be executed by its City Manager and attested by its City Clerk under the authority of Resolution No. 2014-20 , adopted by the Council of the City of Modesto on the 7th day of January, 2014, and CONTRACTOR has caused this Agreement to be executed.

CITY OF MODESTO, a municipal corporation

By: ____________________________
Greg Nyhoff, City Manager

CONTRACTOR* (GILLIG LLC)

By: ____________________________
Derek Maunus, President

By: ____________________________
Joseph Policarpio, Vice President

(Seal)

Contractor's Federal ID# 26-308536

ATTEST: ____________________________
Stephanie Lopez, City Clerk

ATTEST: ____________________________
Adam Lindgren, Interim City Attorney

ATTEST: ____________________________
Mary Akin, Risk Manager

*Corporations – signature of two (2) officers required or one (1) officer plus corporate seal
Partnering – signature of partner required
Sole Proprietorship – signature of proprietor required
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-389

RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE NECESSARY PROGRAM DOCUMENTS ACCEPTING THE STATE SUPPLEMENTAL LAW ENFORCEMENT GRANT, IN THE AMOUNT OF AT LEAST $100,000, FROM THE STATE SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND FOR POLICE OVERTIME, TRAINING, TECHNOLOGY, AND EQUIPMENT

WHEREAS, in 1996, the State Legislature passed, and the Governor signed, Assembly Bill 3229, the Supplemental Law Enforcement Services Act, and

WHEREAS, the purpose of the law is to provide additional resources for local law enforcement, and

WHEREAS, Supplemental Law Enforcement Services Fund (SLESF) monies cannot be transferred to, or intermingled with, the monies in any other fund except that monies may be transferred from the SLESF to the City’s General Fund to the extent necessary to facilitate the appropriation and expenditure of funds, and

WHEREAS, SLESF monies cannot be used to supplant existing budgeted funds, and

WHEREAS, a SLESF has been established in each county, and

WHEREAS, the funding for each county and city is based upon proportionate population, and

WHEREAS, the allocation to the City of Modesto, for Fiscal Year (FY) 2015/2016, of at least $100,000, to be made in four installments of $25,000 each, and

WHEREAS, the City Council is required to hold a public hearing to consider and approve the SLESF Expenditure Plan,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager, or his designee, to execute the necessary program documents accepting the State Supplemental Law Enforcement Grant, in the amount of at least $100,000, from the State Supplemental Law Enforcement Services Fund for police overtime, training, technology, and equipment.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of October, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

SEAL

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2015-390

RESOLUTION AUTHORIZING THE DIRECTOR OF FINANCE, OR HER DESIGNEE, TO AMEND THE FISCAL YEAR 2015/2016 MULTI-YEAR OPERATING BUDGET TO APPROPRIATE REVENUES AND EXPENDITURES OF AT LEAST $100,000 FOR THE CITY OF MODESTO’S ALLOCATION FROM THE STATE SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND

WHEREAS, in 1996, the State Legislature passed, and the Governor signed, Assembly Bill 3229, the Supplemental Law Enforcement Services Act, and

WHEREAS, the purpose of the law is to provide additional resources for local law enforcement, and

WHEREAS, Supplemental Law Enforcement Services Fund (SLESF) monies cannot be transferred to, or intermingled with, monies in any other fund except that monies may be transferred from the SLESF to the City’s General Fund to the extent necessary to facilitate the appropriation and expenditure of funds, and

WHEREAS, SLESF monies cannot be used to supplant existing budgeted funds, and

WHEREAS, a SLESF has been established in each county, and

WHEREAS, the funding for each county and city is based upon proportionate population, and

WHEREAS, the allocation to the City of Modesto for Fiscal Year (FY) 2015/2016 of at least $100,000, to be made in four installments of $25,000 each, and

WHEREAS, the City Council is required to hold a public hearing to consider and approve the SLESF Expenditure Plan,
WHEREAS, the adopted FY 2015/2016 Police SLESF allocation in the amount of at least $100,000 will be applied to account number 1340-19998-42140-100901,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves authorizing the Director of Finance, or her designee, to amend the Fiscal Year 2015/2016 Multi-Year Budget to appropriate revenues and expenditures of at least $100,000 for the City of Modesto’s allocation from the State Supplemental Law Enforcement Services Fund as shown in Exhibit A attached hereto.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of October, 2015, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM U. LINDGREN, City Attorney
**Exhibit A**

The SLESF allocation for Fiscal Year 2015/16 will be applied to:

FUND 1340 – Police Grants

<table>
<thead>
<tr>
<th>Revenue</th>
<th>Increase/(Decrease)</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>To:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MY-1340-19998-42140-100901</td>
<td>$100,000</td>
<td>Intergov. – State – SLESF Revenue</td>
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**Expense**

<table>
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<th>To:</th>
<th></th>
<th></th>
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<tbody>
<tr>
<td>MY-100901-Appr A-51200</td>
<td>$ 5,000</td>
<td>Overtime</td>
</tr>
<tr>
<td>MY-100901-Appr C-52301</td>
<td>$ 60,000</td>
<td>Computer Equip. &lt; $5K</td>
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<tr>
<td>MY-100901-Appr C-53025</td>
<td>$ 9,000</td>
<td>Training Expenses</td>
</tr>
<tr>
<td>MY-100901-Appr C-52300</td>
<td>$ 5,000</td>
<td>Tools &amp; Field Supplies &lt;5K</td>
</tr>
<tr>
<td>MY-100901-Appr C-52304</td>
<td>$16,000</td>
<td>Communication Equip. &lt;$5K</td>
</tr>
<tr>
<td>MY-100901-Appr C-52305</td>
<td>$ 5,000</td>
<td>Office Equipment &lt;$5K</td>
</tr>
</tbody>
</table>

$100,000
RESOLUTION NO. 2015-391

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO AUTHORIZING THE APPROVAL OF A TERM SHEET RELATING TO THE ISSUANCE OF WASTEWATER REFINANCE OBLIGATIONS AND AUTHORIZING THE NEGOTIATION OF FINAL TERMS AND CONDITIONS

RECITALS:

WHEREAS, the City of Modesto, California (the “City”), is a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California;

WHEREAS, the City operates facilities for the disposal or reuse of wastewater (collectively, the “Wastewater Enterprise”) to serve the City; and

WHEREAS, the City previously issued $36,495,000 City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005A (the “2005A Bonds”), which 2005A Bonds were used to refund both the City’s Wastewater Revenue Bonds, Series 1993 and the City’s Wastewater Treatment Facility Revenue Bonds, Series 1997, and to fund a reserve fund and pay the costs of issuance of the 2005A Bonds;

WHEREAS, the City previously issued $16,535,000 City of Modesto, California Wastewater Revenue Bonds, Series 2006A (the “2006A Bonds”), which 2006A bonds were used to finance the acquisition and construction of improvements to the Wastewater Enterprise, and to fund a reserve fund and pay the costs of issuance of the 2006A Bonds;

WHEREAS, this Council desires and finds it in the City’s best interest to refinance all of the outstanding 2005A Bonds and a portion of the 2006A Bonds through the issuance of refunding revenue bond obligations (“Refunding Obligations”) in order to achieve debt service savings;
WHEREAS, the City Finance Director, upon the advice of Public Financial
Management, Inc., the City’s financial advisor (the “Financial Advisor”), solicited
proposals from banking institutions to directly purchase the City’s Refunding
Obligations, and as a result of such solicitation, received three responsive proposals;

WHEREAS, Capital One Public Funding, LLC provided a term sheet (“Term
Sheet”) with the lowest bid, subject to the negotiation of final documentation and certain
other terms and conditions set forth in Term Sheet;

WHEREAS, the Finance Director, upon the advice of the Financial Advisor, has
recommended that the City accept the Purchaser’s proposal, subject to the successful
negotiation of documents;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF MODESTO AS FOLLOWS:

Section 1. Authorization to Negotiate Terms with Capital One. Each of the
City Manager of the City and the Finance Director (each an “Authorized Officer”), acting
singly, is hereby authorized and directed, for and in the name and on behalf of the City,
(i) to accept the Capital One proposal as set forth in their Term Sheet, (ii) with the advice
of the City’s financial advisor and its bond counsel, Sidley Austin LLP, to enter into
negotiations for final documentation to issue the Refunding Obligations to Capital One
pursuant to such Term Sheet, and (iii) if such negotiations are successful, to present to
this Council the final documentation for approval.

Section 2. Other Acts. All actions previously taken by any Authorized
Officer or other City official in furtherance of this undertaking are hereby ratified and
confirmed.
The foregoing resolution was introduced at a meeting of the City of Modesto held on the 13th day of October, 2015, by Councilmember Gunderson, 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: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

APPROVED AS TO FORM:

By: [Signature]

ADAM U. LINDGREN, City Attorney