MODESTO CITY COUNCIL
RESOLUTION NO. 2007-478

A RESOLUTION DENYING THE APPEAL OF MR. DENNIS McDONALD AND UPHOLDING THE DECISION OF THE PUBLIC WORKS DIRECTOR AUTHORIZING THE USE OF A PROPOSED TAXICAB COLOR SCHEME BY MR. BOBBY RATHI.

WHEREAS, Modesto Municipal Code, Section 4-6.201 grants the Public Works Director the authority to approve taxicab companies to operate in the City, and

WHEREAS, Mr. Bobby Rathi applied to operate a new taxicab company, and

WHEREAS, Mr. Rathi proposed a color scheme for his taxicabs, and

WHEREAS, the Public Works Director has, considering all the issues and with staff recommendations, given approval for the color scheme proposed by Mr. Bobby Rathi, and

WHEREAS, by letter dated June 12, 2007, Mr. Dennis McDonald filed an appeal, with the Office of the City Clerk, to the decision of the Public Works Director authorizing the use of a proposed taxicab color scheme by Mr. Bobby Rathi, and

WHEREAS, said appeal was set for a public hearing before the City Council at its regular meeting place located in the Tenth Street Place Chambers located at 10101 10th Street, Modesto, California, at 5:30 p.m. on August 8, 2007, and

WHEREAS, after said public hearing the Council found and determined that said appeal should be denied and the decision of the Public Works Director should be affirmed,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the appeal of Mr. Dennis McDonald to the decision of the Public Works Director authorizing the use of a proposed taxicab color scheme by Mr. Bobby Rathi is denied and the decision of the Public Works Director is hereby affirmed.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2007, by Council member Dunbar, who moved its adoption, which motion being duly seconded by Council member Olsen, was upon roll call carried and the resolution adopted by the following vote:

AYES: COUNCILMEMBERS: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS None

Attest: Jean Morris
Jean Morris, City Clerk

APPROVED AS TO FORM:

By Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-479

A RESOLUTION ACCEPTING A STAFF REPORT REGARDING
THE ACTIVITIES AND RESPONSIBILITIES FOR MODESTO TO
SERVE AS A HOST CITY FOR A STAGE START ON FEBRUARY
20, 2008, FOR THE 2008 AMGEN TOUR OF CALIFORNIA.

WHEREAS, this past February, the Amgen Tour of California swept down the
California Coast for eight days generating over $100 million of economic impact to the
12 host cities and the state with over one billion marketing impressions created
worldwide, and

WHEREAS, from San Francisco and Sacramento to Long Beach over 1.6 million
spectators witnessed America’s most important annual cycling race making it the most
attended single sporting event in our state’s history, and

WHEREAS, on May 22, 2007, by Resolution No. 2007-298, the City Council
approved a Request for Proposal (RFP) application for the City of Modesto to apply to
become a “Host City” for the third-annual Amgen Tour of California, and

WHEREAS, the Host City submission requirements were: a Statement of Interest;
race operation commitment; hotel, parking and meal options; route and festival options;
marketing and public relations commitment; and development of a local organizing
committee, and

WHEREAS, at a meeting held on May 7, 2007, the Convention and Visitors
Bureau agreed to be the lead agency in the preparation and submission of the application
and staff from the City’s Police, Fire, Public Works and Parks, Recreation and
Neighborhoods Department provided input into the application, and
WHEREAS, on June 12, 2007, representatives from the Amgen Tour met with staff from the Convention and Visitors Bureau and the City of Modesto and route options and other logistics were presented and discussed, and additional information about Modesto’s qualifications was given to the Amgen representatives, and

WHEREAS, by a letter dated July 1, 2007, the Convention and Visitors Bureau was notified that Modesto has been invited to be a host city for the stage start on Wednesday, February 20, 2008, and

WHEREAS, an agreement between the City of Modesto and Anschutz Entertainment Group (AEG) is required, and

WHEREAS, since the City’s commitment will be less than $50,000, on July 23, 2007, the City Manager signed an agreement with Anschutz Entertainment Group (AEG), and

WHEREAS, as a partner of the Amgen Tour of California, a Stage Start Host City is required to provide support and assume all related costs in the areas of race operations; hotels, parking and meals; a local organizing committee; and a volunteer program as more fully described in Exhibit “A” attached hereto and incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts a staff report regarding the activities and responsibilities for Modesto to serve as a Host City for a Stage Start on February 20, 2008, for the 2008 AMGEN Tour of California.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Olsen, who moved its adoption, which motion being duly seconded by Councilmember Hawn was upon roll call carried and the resolution adopted by the following vote:

AYES:  Councilmembers:  Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES:  Councilmembers:  None

ABSENT:  Councilmembers:  None

APPROVED AS TO FORM:

By:  SUSANA ALCALA WOOD, City Attorney

Attest:  JEAN MORRIS, City Clerk
HOST CITY REQUIREMENTS  STAGE START

As a partner of the Amgen Tour of California, a Stage Start Host City is REQUIRED to provide the following support and assume all related costs as part of their bid submission.

RACE OPERATIONS

POLICE SERVICES - Local (City and/or County) police services and related costs are the responsibility of the host city. In coordination with California Highway Patrol (CHP), CalTrans, as well as the Tour’s motor and road marshals and in conjunction with the LOC volunteer program, local police provide for a safe road closure, which may include fixed-post positions, traffic control, crowd control, enforcing no-parking zones and maintaining general public safety.

PUBLIC WORKS AND ROAD SERVICES - Local Public Works and Road Services are the responsibility of the host city. The city will absorb the cost for all services within the city limits. These services are necessary to support police efforts to ensure road closure and safety of the course. These services include:
- Detours and detour equipment (ATOC will provide 2000 running feet start line fencing (1000 feet of fencing on each side of race course)
- Barricades
- Cones
- Printing/posting of No Parking signs
- Removal/restore and street repair

PERMIT SERVICES - All fees associated with city permits and permit requirements for the operation of the event are to be procured by the host venue on behalf of the Tour. They include, but are not limited to:
- Parking - both on and off street
- Alcoholic beverages - consumption in public, if served at a start, from cups and cans, in a private VIP area
- Road closures and use - closure and use of roads for setup and racing (includes permits for construction of staging, tents, wiring and electrical, portable generators, power equipment, and fork lift)
- Special and Ancillary Events - pre-event and race day
- Banners and Signs - hanging and display of pre-event, race day advertising, and sponsor banners.
- Concession Sales - on-site merchandise and concession stands as requested by ATOC.

EMT/EMS SERVICES - It is the responsibility of the host venue to provide EMT/EMS services for the general public the day of the Stage Start. Please note that the Tour provides medical services for the athletes, team support and staff personnel. Placement of EMT/EMS services will be decided by the Tour’s Technical Director.
RESIDENT/BUSINESS NOTIFICATIONS  Host cities are responsible for notifying local residents and businesses of the impact of the tour including road closures, traffic advisories etc. Notifications should be bi-lingual, including an English and Spanish version.

PORT-O-LETS  Host cities will secure port-o-let services or public restrooms during the day of the Stage Start. The number of units will be mutually agreed upon by the host venue and the Tour's Technical Director.

WASTE MANAGEMENT  Host cities will provide waste management/trash removal services during the event and at the conclusion.

HOTELS, PARKING AND MEALS  (STAGE START)

HOTEL ACCOMMODATIONS

Host Venues are Financially Responsible For:

START ADVANCE CREW ROOM BLOCKS - The host venue is required to provide accommodations for the Tour's start construction crew and start advance staff which consists of 100 people.

- The hotel room commitment is 63 rooms the night before the race stage start, with the following room configuration: 25 singles, 38 doubles rooms.
- It is most advantageous that these rooms be in no more than one (1) hotel property located close (walking distance) to the Start Line area.
- Minimum 3-Star hotel property
- It is preferred that the hotel offers a breakfast meal and also be close to full-service restaurants.

SITE VISIT/LOC MEETING ROOM BLOCK  The host city is required to provide the tour with 20 hotel room nights to be used anytime from July 1 to February 17th for site visit and LOC meetings.

MEALS

BREAKFAST MEAL - The host venue is required to provide breakfast for the start line construction crew and start advance staff (approximately 100 people). Breakfast will need to be served no later than 6 a.m.

- A breakfast per diem of $10 (per person) may be provided for staff in lieu of an organized breakfast (due to early hours).

PARKING REQUIREMENTS

TEAM PARKING AND STAGING AREA  Requires parking for approximately 50 vehicles

VIP / STAFF EVENT PARKING  Requires parking for approximately 150 vehicles adjacent to the finish-line location.
LOCAL ORGANIZING COMMITTEE (LOC)

The host venue is required to form a Local Organizing Committee that best represents the interests of the host venue and the Tour.

STRUCTURE
In order for the Amgen Tour of California (ATOC) to be successful at the local and international level, in terms of support, planning and execution in your community, the following positions are required for your host venue's LOC. Each of the positions outlined below will work directly in cooperation with their respective Tour counterpart ongoing dialogue between the Tour and the LOC is necessary and invaluable.

Chairperson
Tour Venue Director point-of-contact
- Significant community leader required for creating project support, community awareness and fundraising efforts.
- Direct point of contact for Tour Venue Director and staff liaison between TOC staff and LOC members.
- Responsible for communicating Tour plans and directives to all LOC staff members.
- Responsible for coordinating and conducting regular LOC meetings and maintaining all LOC functions based upon TOC-driven timeline.

Technical Director
In cooperation with the Tour Technical Director:
- Assist with all race operations, including, but not limited to, course markings, road closures, course maps, routing, volunteer & marshal placement, communications, venue design and construction, schedule of events, etc.
- Assist with overall conduct of events and remain in constant communication with Tour staff to ensure a properly managed and safe event
- Assist with design of Finish line layout and adjacent areas
- Assist with local police and DOT support
- Coordinate outdoor auxiliary space
- Residential Notifications
- Assist Tour officials with permit process
- Assist Tour officials with securing local vendors (i.e. port-o-johns)
- Assist with identifying a safe overnight location for vehicles and equipment
- Assist Tour officials with course entry into and departure from city limits
- Assist with identifying required parking space for required vehicles
- Assist with procurement of local EMS/EMT services

Operations Director
In cooperation with the Tour Operations Director:
- Coordinate with contracted hotels for all requirements (rooms, meals, auxiliary space)
- Secure housing/rates for additional (paid) housing groups (media, tourists)
- Assist with housing assignments, check-in/out dates for Tour entourage
- Serve as a liaison with the Tour’s Official Race hotel
- Assist with transportation needs of local LOC members, volunteers, etc.

Media/Public Relations Director
In cooperation with the Tour Media/Public Relations Director:
- Assist with all local media inquiries before, during and after the race
- Assist with gathering media applications, credential information from local media
- Assist with scheduling of local press conferences, interviews, appearances, etc.
- Assist Tour with developing local media partners (print, radio, television)
- Coordinate distribution of Tour promotional materials i.e. poster, brochures, etc.
- Assist with maximizing media attendance and coverage through local press releases, telephone calls and personal contacts
- Provide LOC and venue-specific information for inclusion in Tour’s collateral materials

Marketing Director
In cooperation with the Tour Marketing Director:
- Coordinate distribution of Tour promotional materials i.e. poster, brochures, etc.
- Assist Tour and LOC Media Director with developing local media partners (print, radio, television)
- Coordinate distribution of Tour promotional materials i.e. poster, brochures, etc.
- Assist Tour with developing relationships with local retailers and cycling clubs
- Provide LOC and venue-specific information for inclusion in Tour’s collateral materials

Sales/Sponsorship Director
In cooperation with the Tour Sales/Sponsorship Director:
- Determine local sales (cash/VIK) goals
- Coordinate sales approach with Tour’s Director of Development
- Develop proper levels of local sponsorship packages
- Coordinate fulfillment of local sponsorship benefits with Tour’s Community Relations Manager

Volunteer Director
In cooperation with the Tour Volunteer Director:
- Recruit and schedule local volunteer requirements
- Develop job descriptions for local volunteer positions
- Develop volunteer recognition or incentive programs
- Coordinate volunteer needs and placement with Tour’s Technical Director, LOC’s Technical Director and local police/DOT officials
- Determine uniform requirements for local volunteer corps (numbers/sizes)
- Communicate work schedule to volunteer corps
- Direct daily volunteer check-in, uniform distribution and transportation to assignments
- Secure refreshments for volunteers

VIP/Hospitality Director
In cooperation with the Tour’s VIP/Hospitality Director:
- Assist with Tour’s Hospitality area set-up, operations, etc.
- See to all local sponsorship/sponsor needs
- Coordinate awards presenters, athlete escorts, local awards, flowers, etc. with Tour’s Awards Ceremony Coordinator
- Assist with accreditation system (wristbands), including enforcement
- Distribute hospitality invitations to respective LOC guests
- See to all local sponsorship/sponsor needs

Ancillary Events/Lifestyle Festival Liaison
In cooperation with the Tour Festival Director:
- Coordinate festival-like atmosphere before, during and after Tour
- Assist with logistical and communication details regarding the coordination of local activities and Tour activities
- Assist with all aspects of Tour’s Health Fair and Lifestyle Expo

School/Community Involvement Liaison
- Assist Tour with promoting and supporting the Tour of California message and objectives
- Coordinate with local bike shops and clubs the message of bike safety, helmets, etc.
- Assist Tour officials with scheduling appearances, photo ops, etc. regarding above
- Develop and implement local educational campaign regarding Tour aspects, teams/athletes, etc.
- Assistance with distribution of Tour’s Educational/School Booklet
- Creation and coordination of Tour-related topics into school curriculum (ie international aspects of event)
- Coordinate participation and attendance of local school system during event

VOLUNTEER PROGRAM
The host venue will be responsible for securing and organizing local volunteers for the tour. Volunteers will assist the tour and the LOC with coordinating activities on the day of the event. Each venue will have different volunteer requirements, but the total number of volunteers is typically 150 to 200 per host venue.
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-480

A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF SARAH JEPPSON FROM THE GOLF COURSES ADVISORY COMMITTEE

WHEREAS, SARAH JEPPSON was appointed a member of the Golf Courses Advisory Committee, on June 13, 2006, and

WHEREAS, SARAH JEPPSON has tendered her resignation from the aforementioned committee.

NOW, THEREFORE, BE IT RESOLVED that the resignation of SARAH JEPPSON from the Golf Courses Advisory Committee hereby is accepted with regret.

BE IT FURTHER RESOLVED that the Council of the City of Modesto, on its own behalf, and on behalf of the citizens of this City, hereby expresses its sincere appreciation to SARAH JEPPSON for her service to the community.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-481

A RESOLUTION DECLARING SEAT HELD BY ANTHONY GONSALVES ON THE COMMUNITY QUALITIES FORUM VACANT

WHEREAS, ANTHONY GONSALVES was appointed a member of the Community Qualities Forum on June 13, 2006, and

WHEREAS, ANTHONY GONSALVES has not attended regular meetings since October 11, 2006, and

WHEREAS, Section 1105 of the Modesto City Charter states that if a member of a board or commission is absent from three (3) regular meetings, the member’s office shall become vacant and shall be so declared by the City Council,

NOW, THEREFORE, BE IT RESOLVED that the seat held by ANTHONY GONSALVES on the Community Qualities Forum hereby is declared vacant.

BE IT FURTHER RESOLVED that the Council of the City of Modesto, on its own behalf, and on behalf of the citizens of this City, hereby expresses its sincere appreciation to ANTHONY GONSALVES for his service to the community.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

SUSANA ALCALA WOOD, City Attorney

081407/CMO/Puckett

ATTEST: Jean Morris, City Clerk
MODESTO CITY COUNCIL  
RESOLUTION NO. 2007-482

A RESOLUTION APPROVING AN AMENDMENT TO THE AGREEMENT WITH NATIONAL DEMOGRAPHICS CORPORATION TO PROVIDE EXPERT ASSISTANCE AND ADVICE FOR THE CITY AND THE CHARTER REVIEW COMMITTEE REGARDING LOCAL AND ELECTION AND GOVERNANCE OPTIONS IN THE AMOUNT OF $20,200 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT TO THE AGREEMENT

WHEREAS, in February 2007, the City of Modesto entered into an agreement with National Demographics Corporation (NDC) to provide expert assistance and advice for the City and the Charter Review Committee regarding local election and governance options, and

WHEREAS, the services provided under this agreement included 1) Information materials preparation, 2) Moderation services and participation in Charter Review Committee discussions or other public discussions, and 3) Review of proposed districting proposals, and

WHEREAS, the agreement with NDC was for an amount not to exceed $25,000, and

WHEREAS, to date, NDC has provided services to the City in the amount of $13,700 which leaves $11,300 remaining on the contract, and

WHEREAS, on June 26, 2007, the Charter Review Committee presented an interim report to the Council recommending that an advisory vote on the method of electing city Councilmembers be included on the November 2007 Election, and

WHEREAS, the committee recommended that public outreach and education efforts be made to inform the community on the two election methodologies that will be placed on the ballot, and
WHEREAS, the additional services to be provided by NDC are estimated to cost $31,500 and the original contract has a remaining available balance of $11,300 and $20,200 is needed to provide sufficient funds for their work on the Public Outreach and Education Effort,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the agreement between the City of Modesto and National Demographics Corporation is amended by the amount of $20,200 for a new agreement total of $31,500.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Keating, who moved its adoption, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-483

APPROVING THE EXPENDITURE OF FUNDS FOR PUBLIC OUTREACH
UTILITY BILL INSERT PRINTING, UTILITY INSERT POSTAGE COSTS,
AND SIMULTANEOUS SPANISH TRANSLATION SERVICES IN THE
AMOUNT OF $12,625.

WHEREAS, $12,625 is needed to cover 1) the costs of postage and
printing of the informational document that will be mailed out to residents with the utility
bills and 2) the cost of providing simultaneous Spanish translation at three public forums,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that the expenditure of $12,625 is authorized to be spent on the cost of postage and
printing the informational document that will be mailed out to residents with the utility
bills and 2) the cost of providing simultaneous Spanish translation at three public forums.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 14th day of August, 2007, by Councilmember Keating,
who moved its adoption, which motion being duly seconded by Councilmember Olsen,
was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris

JEAN MORRIS, City Clerk
(SEAL)

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-483A

A RESOLUTION AMENDING THE FISCAL YEAR 2007-2008 ANNUAL OPERATING BUDGET TO APPROPRIATE $34,825 FROM 0100-800-8000-8003 GENERAL FUND RESERVE TO 0100-010-0101-0235 CITY COUNCIL TO FUND AN AMENDMENT TO THE AGREEMENT WITH NATIONAL DEMOGRAPHICS CORPORATION (NDC) ($20,200), DOCUMENT PRINTING ($2,000), POSTAGE COSTS ($9,625), AND SIMULTANEOUS SPANISH TRANSLATION SERVICES AT THREE PUBLIC FORUMS ($3,000).

WHEREAS, the City of Modesto has determined it is desirable to provide public outreach and education efforts prior to the advisory vote in November 2007 on the method of electing city councilmembers, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the Fiscal Year 2007-2008 Annual Operating Budget to fund an amendment to the agreement with NDC ($20,200), document printing ($2,000), postage costs ($9,625), and simultaneous Spanish translation services at three public forums ($1,000).

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BE IT FURTHER RESOLVED that the Finance Director, or her designee, is hereby authorized to take the necessary steps to implement the provisions of this resolution.

03/13/07/CMO/BWhiteymer
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Keating who moved its adoption, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By
SUSANA ACALA WOOD, City Attorney

APPROVED AS TO SUFFICIENCY:

By
M. WAYNE PADILLA, Director of Finance
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-484


WHEREAS, an owner of not less than 10 percent of the area of land proposed to be included within the community facilities district herein described has filed with the City Clerk of this City (the "City") a petition requesting that this Council (the "Council") form a community facilities district pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code, commonly known as the "Mello-Roos Community Facilities Act of 1982" (the "Act") in order to: (i) finance certain public facilities having a useful life of 5 years or longer (the "Facilities"), including expenses incidental thereto; and (ii) finance certain services (the "Services") more particularly described in Exhibit B; and

WHEREAS, upon receipt of the petition, this Council is, pursuant to Section 53320 of the California Government Code, required to adopt a resolution of intention to establish the community facilities district; and

WHEREAS, this Council has adopted local goals and policies concerning the use of the Act;

NOW, THEREFORE, BE IT RESOLVED, ORDERED, AND FOUND by the City Council of the City of Modesto that:

SECTION 1. The above recitals are true and correct.

SECTION 2. A community facilities district is proposed to be established under the terms of the Act. The name proposed for the community facilities district is "City of Modesto Community Facilities District No. 2007-2 (Kiernan Business Park West) and is referred to in this Resolution as the "District."
SECTION 3. The boundaries of the District are shown on a map, hereby approved, entitled “Proposed Boundaries of City of Modesto Community Facilities District No. 2007-2 (Kiernan Business Park West) of the City of Modesto, County of Stanislaus, State of California,” a copy of which is on file in the office of the City Clerk. Pursuant to Sections 3110 and 3111 of the California Streets and Highways Code, the City Clerk shall certify on the original and one copy of the map evidencing the date and adoption of this Resolution, file the original in the City Clerk’s office and, within 15 days after the adoption of this Resolution and in no event later than 15 days prior to the date of the public hearing referred to in Section 8, file a copy of the map with the County Recorder of the County of Stanislaus.

The Council finds that no land proposed to be included in the District is devoted primarily to agricultural, timber, or livestock uses and being used for the commercial production of agricultural, timber or livestock products.

SECTION 4. The Facilities proposed to be provided by the District are public facilities authorized to be acquired or constructed under the Act that have a useful life of five (5) years or longer. The Facilities are governmental facilities which the Council is authorized by law to contribute revenue to, or construct, own or operate; or which a local public agency is authorized by law to provide. The Council further determines that such Facilities are necessary to meet increased demands placed upon the City and other local agencies as a result of development occurring within the boundaries of the District.

The Facilities are proposed to include any and all incidental expenses related thereto, as authorized by the Act, including the payment in full of all amounts necessary to eliminate any fixed special assessment liens or to pay, repay, or defease any obligation to pay or any indebtedness secured by any tax, fee, charge, or assessment levied within the area of the District or to pay debt service on that indebtedness.
The Services proposed to be provided by the District are in addition to those provided in the District before its creation, since none of the Services have been or will be provided in the District before its creation.

SECTION 5. The Council determines that the public interest will not be served by allowing the owner(s) of property within the proposed District to enter into a contract pursuant to Section #53329.5(a) of the Act.

SECTION 6. (a) It is the intention of the Council that, except where funds are otherwise available to pay for the Facilities to be financed by the District, the incidental expenses related thereto, and the Services, special taxes sufficient to pay the costs thereof, secured by recordation of a continuing lien against all nonexempt real property in the District, will be levied annually within the boundaries of the District. The rate, method of apportionment and manner of collection of the proposed special taxes is set forth in Exhibit A. Exhibit A provides sufficient detail to allow each landowner or resident within the District to estimate the maximum amount that such person will have to pay for the Facilities and the Services.

(b) In the case of the special tax to pay for the Facilities that is to be levied against any parcel of land used for private residential purposes (as defined and provided in the Act), (1) the maximum special tax has been specified as a dollar amount which will be calculated and thereby established not later than the date of which any such parcel of land is first subject to the special tax because of its use for private residential purposes, and which amount will not be increased over time by an amount exceeding two per cent (2%) per year, (2) after Fiscal Year 2037-2038, the special tax will no longer be levied or collected against any such parcel of land, and (3) under no circumstances will the special tax be increased as a consequence of delinquency or default by the owner of any other parcel or parcels of land within the District by more than ten per cent (10%). The special tax to pay for the Facilities may, however, establish different tax rates for different categories of residential property, and may provide for a change in the dollar
amount of the special tax for the parcel if the size of the residence is increased or if the size or use of the parcel is changed.

(c) The obligation to pay the special tax to pay for the Facilities may be prepaid and permanently satisfied, and the lien of the special tax to pay for the Facilities discharged pursuant to the procedures set forth in Exhibit A.

(d) If the special tax to pay for the Facilities is prepaid and permanently satisfied as to a particular parcel of land, this Council shall cause to be prepared and recorded in the office of the County Recorder of the County of Stanislaus, which shall accept for recordation, a Notice of Cancellation of Special Tax Lien as to that parcel. The Notice of Cancellation of Special Tax Lien shall identify with particularity the special tax to pay for the Facilities which has been prepaid and permanently satisfied, state the book and page number in the records of the County Recorder where the Notice of Special Tax Lien being cancelled is recorded, contain the legal description and assessor's parcel number of the particular parcel of land subject to the lien, and contain the name of the owner of record of the parcel. The County Recorder shall mail the original Notice of Cancellation of Special Tax Lien to the owner of the property after recording the document. This Council may specify a charge for the preparation and recordation of the Notice.

SECTION 7. Pursuant to Section 53314.9 of the Act, this Council may accept advances of funds or work-in-kind from any source, including, but not limited to, private persons or private entities, and may provide, by resolution, for the use of those funds or that work-in-kind for any authorized purpose, including, but not limited to, paying any cost incurred by the City in creating the District.

SECTION 8. A public hearing on the establishment of the District and the proposed rate, method of apportionment, and manner of collection of the special taxes shall be held at 6:00 p.m., or as soon thereafter as practicable, on Tuesday, September 25, 2007, at the
regular meeting place of the City Council, City Council Chambers, Basement Level, 1010 Tenth Street, Modesto, California 95353, such time being not less than 30 or more than 60 days following the adoption hereof.

SECTION 9. The Public Works Director, as the officer of the City who will be responsible for providing the proposed Facilities and Services to be financed by the District, if it is established, is directed to study the proposed District, and, at or before the time of the hearing, cause to be prepared and filed with the Council a report containing: (a) a brief description of the Facilities and Services by type which will in such officer’s opinion be required to adequately meet the needs of the District; (b) an estimate of: (i) the cost of providing the Facilities and Services; (ii) the fair and reasonable cost of any of the Facilities to be purchased; and (iii) the fair and reasonable cost of incidental expenses to be incurred in connection therewith, including the costs of the proposed bond financing and other related costs as provided in Section 53345.3 of the Act.

The report shall be made a part of the record of the hearing.

SECTION 10. At the time and place set forth in this Resolution for the hearing, any interested persons, including taxpayers, property owners and registered voters residing within the boundaries of the proposed District, may appear and be heard, and the testimony of all interested persons for or against the establishment of the District, the extent of the District, the furnishing of the Facilities and Services, or the proposed rate, method of apportionment and manner of collection of the special taxes will be heard and considered. Any protest may be made orally or in writing. However, any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and clearly set forth the irregularities and defects to which the objection is made. All written protests shall be filed with the City Clerk on or before the time fixed for the public hearing. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.
SECTION 11. The City Clerk is directed to publish a notice of the hearing, in the form required by the Act, not later than seven (7) days prior thereto, in a newspaper of general circulation published in the area of the District, being *The Modesto Bee*, and otherwise in accordance with Section 6061 of the California Government Code.

SECTION 12. (a) If fifty percent (50%) or more of the registered voters, or six (6) registered voters, whichever is more, residing within the territory proposed to be included in the District, or the owners of one-half (1/2) or more of the area of the land in the territory proposed to be included in the District and not exempt from the special taxes, file written protests against the establishment of the District, and the protests are not withdrawn so as to reduce the value of the protests to less than a majority, no further proceedings to create the District or to levy the special taxes will be taken for a period of one year from the date of the decision of the Council.

(b) If the majority protests of the registered voters or the landowners are only against the furnishing of a specified type or types of the Facilities or Services within the District, or against levying a specified special tax, those types of Facilities or Services or the specified special tax will be eliminated from the District proceedings.

(c) At the conclusion of the hearing, if the Council determines to establish the District, it will adopt a resolution of formation and then submit the levy of the special taxes to the qualified electors of the District in a special election.

SECTION 13. (a) If, after the hearing, the Council adopts a resolution of formation establishing the District and submits the levy of the special taxes to the qualified electors of the District in a special election, such election will be held at least ninety (90) days, but not more than one hundred eighty (180) days following the adoption of the resolution of formation. The City Clerk shall, within three business days after the adoption of the resolution of formation, provide a copy of the resolution of formation, a certified map of sufficient scale
and clarity to show the boundaries of the District, and a sufficient description to allow the
election official to determine the boundaries of the District, to the official conducting the
election. Assessor’s parcel numbers for the land within the District shall be included if it is a
landowner election or the District does not conform to an existing district’s boundaries and if
requested by the official conducting the election.

(b) If the election is to be held less than one hundred twenty-five (125) days
after the adoption of the resolution of formation, the concurrence of the election official
conducting the election shall be required.

(c) Such time limits, or requirement pertaining to the conduct of the election,
may be waived with the unanimous consent of the qualified electors of the District and the
concurrence of the election official conducting the election.

(e) If at least twelve (12) persons, who need not necessarily be the same
twelve (12) persons, have been registered to vote within the territory of the proposed District for
each of the ninety (90) days preceding the close of the hearing, the vote will be by the registered
voters of the proposed District, with each voter having one vote. Otherwise, the vote will be by
the landowners of the proposed District and each landowner who is the owner of record at the
close of the hearing, or the authorized representative thereof, will have one (1) vote for each acre
or portion of an acre of land that such landowner owns within the proposed District. The number
of votes to be voted by a particular landowner will be specified on the ballot provided to that
landowner.

(f) Ballots for the special election authorized may be distributed to qualified
electors by mail with return postage prepaid or by personal service by the election official. The
official conducting the election may certify the proper mailing or personal delivery of ballots by
an affidavit, which shall constitute conclusive proof of such mailing or personal delivery in the
absence of fraud. The voted ballots shall be returned to the election officer conducting the
election not later than the hour specified in the resolution calling the election. However, if all the qualified voters have voted, the election shall be closed.

(g) Except as otherwise provided in the Act, the provisions of law regulating elections of the City, insofar as they may be applicable, will govern the election. Except as provided in the next sentence, there will be prepared and included in the ballot material provided to each voter an impartial analysis and arguments and rebuttals, if any, as provided in the California Elections Code. If the vote is to be by the landowners of the proposed District, analysis and arguments may be waived with the unanimous consent of all the landowners.

If the election is to be conducted by mail ballot, the election official conducting the election shall provide ballots and election materials, together with all supplies and instructions necessary for the use and return of the ballot. The identification envelope for return of mail ballots used in a landowner election shall contain the following: (1) the name of the landowner; (2) the address of the landowner; (3) a declaration, under penalty of perjury, stating that the voter is the owner of record or the authorized representative of the landowner entitled to vote and is the person whose name appears on the identification envelope; (4) the printed name and signature of the voter; (5) the address of the voter; (6) the date of signing and the place of execution of the declaration described in (3) above; and (7) a notice that the envelope contains an official ballot and will be opened only by the canvassing board.

(h) The procedures set forth in this Section for conducting the consolidated special election may be modified as the Council may determine to be necessary or desirable by a resolution subsequently adopted by the Council.

SECTION 14. This Council may, by ordinance, authorize contributions by the City from any sources of revenue not otherwise prohibited by law, of any specified amount, portion or percentage of such revenue for any of the following: (1) acquiring or constructing any of the Facilities; (2) the acquisition of interests in real property; (3) paying debt service with
respect to the financing of any such acquisition or construction; (4) providing the authorized Services; and (5) the payment of expenses incidental to any of the foregoing.

SECTION 15. This Council reserves to itself the right and authority to allow any interested owner of property within the District, subject to the provisions of Section 53344.1 of the Act and to those conditions it may impose, and any applicable prepayment penalties as described in the bond indenture or comparable instrument or document, to tender in full payment or part payment of any installment of the special tax levied to pay for the Facilities or the interest or penalties thereon which may be due or delinquent, but for which a bill has been received, any bond or other obligation secured thereby, the bond or other obligation to be taken at par and credit to be given for the accrued interest shown thereby computed to the date of tender.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Keating, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: 
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: 
SUSANA ALCALA WOOD, City Attorney
Attachment “A”

CFD 2007-2 (Kiernan Business Park West)
Rate & Method of Apportionment
Special Taxes applicable to each Assessor's Parcel in Community Facilities District No. 2007-2 (Kiernan West) [herein "CFD No. 2007-2" or "the CFD"] shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2007-2, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2007-2 unless a separate Rate and Method of Apportionment is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

"Administrative Expenses" means any or all of the following: expenses incurred by the City in carrying out its duties with respect to CFD No. 2007-2, including, but not limited to, levying and collecting the Special Taxes; the fees and expenses of legal counsel; charges levied by the County Auditor’s Office, Tax Collector’s Office, and/or Treasurer’s Office; costs related to annexing property into the CFD; costs related to property owner inquiries regarding the Special Taxes; and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

"Administrator" means the person or firm designated by the City to administer the Special Taxes according to this Rate and Method of Apportionment of Special Taxes.

"Annual Maintenance Special Tax" means a special tax levied in any Fiscal Year to pay the Annual Maintenance Special Tax Requirement, as defined below.

"Annual Maintenance Special Tax Requirement" means that amount necessary in any Fiscal Year to (i) pay for Authorized Services, (ii) pay Administrative Expenses, and (iii) cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Maintenance Special Taxes which have already taken place) are expected to occur in the current Fiscal Year.
“Assessor’s Parcel” or “Parcel” means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating parcels by Assessor’s Parcel number.

“Authorized Services” means those services that are authorized to be funded by CFD No. 2007-2.

“CFD Formation” means the date on which the Resolution of Formation to form CFD No. 2007-2 was adopted by the City Council.

“City” means the City of Modesto.

“City Council” means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2007-2.

“County” means the County of Stanislaus.

“Final Map” means a final map, or portion thereof, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots which do not need to be further subdivided prior to issuance of a building permit for a structure. The term “Final Map” shall not include any Assessor’s Parcel Map or subdivision map or portion thereof, that does not create lots that are in their final configuration, including Assessor’s Parcels that are designated as remainder parcels.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Maximum Annual Maintenance Special Tax” means the greatest amount of Annual Maintenance Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

“Maximum One-Time Facilities Special Tax” means the greatest amount of One-Time Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

“Maximum Special Taxes” means, collectively, the Maximum One-Time Facilities Special Tax and the Maximum Annual Maintenance Special Tax.

“Net Taxable Acreage” or “Net Taxable Acre” means the total acreage within a Final Map or Parcel less arterial road right-of-ways and property that is defined in the Final Map for use as a park site, school site, or City-owned or CFD-owned storm drainage basin. If a Subdivision Map is recorded which is not a Final Map for some or all Parcels created by the subdivision, the Administrator shall calculate the Net Taxable Acreage of such unsubdivided Parcels by identifying the Acreage of the Parcel and (i) adding a portion of the acreage of any non-arterial right-of-way that
fronts the Parcel determined by drawing lines at right angles to the right-of-way, and (ii) subtracting
a portion of the acreage of any arterial right-of-way that fronts the Parcel determined by drawing
lines at right angles to the right-of-way. The Net Taxable Acreage of a Parcel or Final Map shall be
determined in the sole discretion of the City.

“One-Time Facilities Special Tax” means a Special Tax, levied and collected in full by the City
prior to a structural building permit being issued for new construction on Taxable Property.

“Original Parcel” means an Assessor’s Parcel included in CFD No. 2007-2 at the time of CFD
Formation or added to the CFD upon annexation. A Successor Parcel that is being further
subdivided shall also be considered an Original Parcel for purposes of determining the Maximum
Special Taxes pursuant to Section C below.

“Proportionately” means that the ratio of the actual Annual Maintenance Special Tax levied in any
Fiscal Year to the Maximum Annual Maintenance Special Tax authorized to be levied in that Fiscal
Year is equal for all Assessor’s Parcels of Taxable Property.

“Public Property” means any property within the boundaries of CFD No. 2007-2 that is owned by
the federal government, State of California, County, City, or other public agency.

“Special Taxes” means, collectively, the One-Time Facilities Special Tax and the Annual
Maintenance Special Tax.

“Subdivision Map” means a Final Map, large lot subdivision map, or other map recorded with the
County that results in the subdivision of an Original Parcel into two or more Successor Parcels.

“Successor Parcel” means an Assessor’s Parcel of Taxable Property created by the subdivision or
reconfiguration of an Original Parcel on which construction of a structure is permitted.

“Taxable Property” means all of the Assessor’s Parcels within the boundaries of CFD No. 2007-2
which are not exempt from the Special Tax pursuant to law or Section G below.

“Taxable Public Property” means, in any Fiscal Year, all Parcels of Public Property within CFD
No. 2007-2 that, at the time of CFD Formation, were expected to be Taxable Property, and, based on
this expectation, Maximum Special Taxes were assigned to the Parcels in a prior Fiscal Year.
B. DATA FOR ANNUAL ADMINISTRATION

On or about July 1 of each Fiscal Year, the Administrator shall determine (i) the current Assessor’s Parcel numbers for all Parcels of Taxable Property in CFD No. 2007-2, (ii) the Net Taxable Acreage of each Parcel, and (iii) the Annual Maintenance Special Tax Requirement.

C. MAXIMUM SPECIAL TAXES

1. Original Parcels

Table 1 below identifies the Maximum One-Time Facilities Special Tax and Maximum Annual Maintenance Special Tax assigned to each Original Parcel in the CFD at the time of CFD Formation. Separate Maximum Special Taxes shall be assigned to Parcels added to the CFD as a result of future annexations.

<table>
<thead>
<tr>
<th>Assessor’s Parcel Number</th>
<th>Fiscal Year 2007-08 Maximum One-Time Facilities Special Tax*</th>
<th>Fiscal Year 2007-08 Maximum Annual Maintenance Special Tax*</th>
</tr>
</thead>
<tbody>
<tr>
<td>078-013-006</td>
<td>$74,511</td>
<td>$2,539</td>
</tr>
<tr>
<td>078-013-018</td>
<td>$5,771</td>
<td>$197</td>
</tr>
<tr>
<td>078-013-035</td>
<td>$0</td>
<td>$93,880</td>
</tr>
<tr>
<td>078-013-037</td>
<td>$166,233</td>
<td>$5,665</td>
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<tr>
<td>078-013-040</td>
<td>$153,660</td>
<td>$28,318</td>
</tr>
</tbody>
</table>

*Special Taxes shown in Table 1 are subject to the annual adjustments described in Section D below.

2. Successor Parcels

Upon recordation of a Subdivision Map that subdivides an Original Parcel, the Administrator shall allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels by applying the following steps:

Step 1: Determine the total combined Net Taxable Acreage within all Successor Parcels created from subdivision or reconfiguration of the Original Parcel.

Step 2: Divide the Maximum One-Time Facilities Special Tax and the Maximum Annual Maintenance Special Tax assigned to the Original Parcel by the Net Taxable Acreage determined in Step 1 to determine a Maximum One-Time Facilities Special Tax and a Maximum Annual Maintenance Special Tax per Net Taxable Acre.
Step 3: Multiply the Maximum Special Taxes per Net Taxable Acre determined in Step 2 by the Net Taxable Acreage of each Successor Parcel of Taxable Property to determine the Maximum One-Time Facilities Special Tax and Maximum Annual Maintenance Special Tax for each Parcel.

If, after subdivision of an Original Parcel, a Successor Parcel is further subdivided, the Successor Parcel shall be treated as an Original Parcel for purposes of allocating Maximum Special Taxes pursuant to Section C.2.

After each reallocation of the Maximum Special Taxes upon subdivision or reconfiguration of Original Parcels, the sum of the Maximum Special Taxes assigned to Successor Parcels shall never be less than the Original Parcel's Maximum Special Tax shown in Table 1, escalated to the current Fiscal Year pursuant to Section D below.

D. ESCALATION OF MAXIMUM SPECIAL TAXES

1. One-Time Facilities Special Tax

Beginning in January 2008 and each January thereafter, the Maximum One-Time Facilities Special Tax assigned to each Parcel shall be increased by an amount equal to four percent (4.0%) of the amount in effect for the prior Fiscal Year. Each annual adjustment of the One-Time Facilities Special Tax shall become effective on the subsequent July 1.

2. Annual Maintenance Special Tax

Beginning in January 2008 and each January thereafter, the Maximum Annual Maintenance Special Tax assigned to each Parcel shall be adjusted by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

E. METHOD OF LEVY OF THE SPECIAL TAX

1. One-Time Facilities Special Tax

The Maximum One-Time Facilities Special Tax determined pursuant to Sections C and D above shall be levied on all Taxable Property in CFD No. 2007-2 and shall be collected as set forth in Section F below.
2. **Annual Maintenance Special Tax**

Each Fiscal Year, the Administrator shall determine the Annual Maintenance Special Tax Requirement for that Fiscal Year. The Annual Maintenance Special Tax shall then be levied on all Parcels of Taxable Property as follows:

**Step 1:** The Annual Maintenance Special Tax shall be levied Proportionately on each Parcel of Taxable Property within the CFD up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel for such Fiscal Year.

**Step 2:** If additional revenue is needed after Step 1, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor’s Parcel of Taxable Public Property, up to 100% of the Maximum Annual Maintenance Special Tax assigned to each Parcel of Taxable Public Property.

**F. COLLECTION OF SPECIAL TAX**

The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of any structure on Taxable Property within CFD No. 2007-2, and shall be immediately delinquent if not so paid.

The Annual Maintenance Special Tax for CFD No. 2007-2 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual Maintenance Special Taxes through foreclosure or other available methods. The Annual Maintenance Special Tax shall be levied and collected unless and until the City determines that the Annual Maintenance Special Tax no longer needs to be levied to pay Authorized Services and all Administrative Expenses have been reimbursed.

**G. EXEMPTIONS**

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Taxes, no Special Taxes shall be levied on Public Property except Taxable Public Property, as defined herein.

**H. INTERPRETATION OF SPECIAL TAX FORMULA**

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the Rate and Method of Apportionment of Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City’s discretion. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment of Special Taxes.
I. ENFORCEMENT

All delinquent One-Time Facilities Special Taxes, or delinquent Annual Maintenance Special Taxes billed off the County tax roll, shall be subject to an immediate 10% penalty plus interest charges of 1.5% as of the first day of the month after the delinquency date and on the first day of each month thereafter. Any such delinquent Special Taxes shall, at the City’s discretion, be placed on the next secured property tax roll. The amount placed on the roll shall include the 10% penalty and the interest charges through the following January 1. This shall not prevent the City from simultaneously pursing the delinquency by an action on a contract of guarantee against a third party who promised to pay the taxes, or from assigning such right of action to the property owner or other appropriate party.

Kiernan West CFD No. 2007-2

August 3, 2007
# Table 1

City of Modesto Community Facilities District No. 2007-2
(Kiernan West)

Maintenance Cost Estimates and Parcel Information
(All Figures in 2007 Dollars)

<table>
<thead>
<tr>
<th>Cost Estimates</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Annual Maintenance Costs - All Parcels</td>
<td></td>
</tr>
<tr>
<td>Landscape Maintenance</td>
<td>$16,000</td>
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<tr>
<td>Annual CFD Administration Costs</td>
<td>$15,000</td>
</tr>
<tr>
<td>Total Annual Costs to be Funded by All Parcels in the CFD</td>
<td>$31,000</td>
</tr>
</tbody>
</table>

| Annual Maintenance Costs - Leapin Lizards and Kaiser |          |
| Storm Drainage Maintenance | $99,600 |
| Total Annual Costs to be Funded by Leapin Lizards and Kaiser | $99,600 |
| Total Annual Costs to be Funded by the CFD | $130,600 |

<table>
<thead>
<tr>
<th>Parcel Numbers and Acreage</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Area in Initial CFD Boundaries</td>
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</tr>
<tr>
<td>APN</td>
<td>Acreage</td>
</tr>
<tr>
<td>078-013-006</td>
<td>7.23</td>
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<tr>
<td>078-013-018</td>
<td>0.56</td>
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<tr>
<td>078-013-035</td>
<td>49.43</td>
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<tr>
<td>078-013-037</td>
<td>16.13</td>
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<tr>
<td>078-013-040</td>
<td>14.91</td>
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<tr>
<td>Total CFD Acreage</td>
<td>88.26</td>
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</table>

Goodwin Consulting Group, Inc. 08/03/2007
### TABLE 2
CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2007-2
(Kiernan West)

**CALCULATION OF MAXIMUM SPECIAL TAXES**
(ALL FIGURES IN 2007 DOLLARS)

<table>
<thead>
<tr>
<th>Annual Costs to be Funded by All Parcels at CFD Formation</th>
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</thead>
<tbody>
<tr>
<td><strong>Total Annual Costs to be Funded by All Parcels</strong></td>
</tr>
<tr>
<td><strong>Acreage of All Parcels Included in Initial CFD Boundaries</strong></td>
</tr>
<tr>
<td><strong>Maximum Annual Maintenance Special Tax per Acre</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Annual Costs to be Funded by Leapin Lizards and Kaiser</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Annual Costs to be Funded by Leapin Lizards and Kaiser</strong></td>
</tr>
<tr>
<td><strong>Acreage of Leapin Lizards and Kaiser Parcels</strong></td>
</tr>
<tr>
<td><strong>Maximum Annual Maintenance Special Tax per Acre</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Maximum Annual Special Taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>APN</td>
</tr>
<tr>
<td>Leapin Lizards</td>
</tr>
<tr>
<td>078-013-040</td>
</tr>
<tr>
<td>Bridges</td>
</tr>
<tr>
<td>078-013-006</td>
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<td>078-013-037</td>
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<td><strong>Subtotal</strong></td>
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<tr>
<td>Kaiser</td>
</tr>
<tr>
<td>078-013-035</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Maximum One-Time Special Taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>APN</td>
</tr>
<tr>
<td>Leapin Lizards</td>
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<tr>
<td><strong>Subtotal</strong></td>
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<td>Other</td>
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<tr>
<td>078-013-035</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

/1 Determined by the City of Modesto.
Attachment “B”

CFD 2007-2 (Kiernan Business Park West)
List of Facilities & Services
LIST OF FACILITIES

The facilities described below are all facilities which the City of Modesto Community Facilities District No. 2007-2 is authorized to finance.

- **Dale Road (Principle Arterial) between Kiernane Ave and Pelandale Ave.** This road segment includes a landscaped median and a landscaped parkway strip.
- **Healthcare Way between Dale Road and western edge of Kaise facility.** This road segment includes a landscaped median.
- **Bangs Avenue from Dale Road to American Avenue.** This road segment includes a landscaped median and a landscaped parkway strip.

LIST OF SERVICES

Included in City of Modesto CFD No. 2007- is the maintenance of the landscaping on Dale Road, Healthcare Way and the bike path, as well as the well site. In addition, the maintenance of a storm drainage pump and basin is also included.
Exhibit “B”

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2007-2
(KIERNAN BUSINESS PARK WEST)

DESCRIPTION OF AUTHORIZED SERVICES AND FACILITIES TO BE FUNDED BY
COMMUNITY FACILITIES DISTRICT NO. 2007-2

The authorized services to be funded by special tax revenues include maintenance and repair of
parkways, landscaped medians, the bike path, well site, storm drainage pump and basin, and related
facilities, including but not limited to, concrete curbs and walks, trees, shrubs, vines, ground cover,
turf, lights and irrigation systems. The services to be provided include, but are not limited to, litter
and debris removal, graffiti abatement, painting repairs to landscape structures, pruning, staking,
fertilizing, plant replacement and restoration, fire and weed control, erosion control, mowing of
lawns, trimming of vegetation, and maintenance, repair and replacement of lighting systems.

The facilities described below are the facilities which the CFD is authorized to fund:

- Dale Road between Kiernan Ave. and Pelandale Ave. This road segment includes a
  landscaped median and a landscaped parkway strip.
- Healthcare Way between Dale Road and the western edge of the Kaiser facility. This road
  segment includes a landscaped median.
- Bangs Avenue from Dale Road to American Avenue. This road segment includes a
  landscaped median and a landscaped parkway strip.

The installation of authorized facilities may, but will not necessarily include, concrete curbs and
walks, trees, shrubs, ground cover, lights, and irrigation systems.

The District may also fund any of the following: (i) administrative fees of the City related to the
District, including costs associated with preparing the annual special tax levy, or (ii) costs associated
with legal services, advertising, legal notices, and mailings related to formation or administration of
the District.
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-485

A RESOLUTION APPROVING AN ADVANCED FUNDING AGREEMENT FOR THE FAIRVIEW SPECIFIC PLAN AMENDMENT BETWEEN THE CITY OF MODESTO AND BAVA VILLAS, LP, A CALIFORNIA LIMITED PARTNERSHIP, FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT, FACILITIES MASTER PLAN, INFRASTRUCTURE FINANCE PLAN AND FOR FORMATION OF A COMMUNITY FACILITIES DISTRICT FOR THE FAIRVIEW SPECIFIC PLAN AREA, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, Bava Villas, LP, a California Limited Partnership (the “Applicant”), has agreed to advance all funds necessary to prepare an Environmental Impact Report, (“EIR”), Facilities Master Plan and Infrastructure Finance Plan (“FMP/IFP”) and for formation of a Community Facilities District (“CFD”) for the Fairview Specific Plan Area, and

WHEREAS, the parties agreed to enter into an Advanced Funding Agreement for the Fairview Specific Plan Amendment by and between the City and the Applicant relating to advances made and to be made by the Applicant to the City, and providing for potential reimbursement to the Applicant if and when certain funds from the Fairview Village CFD become available, a copy of which is attached hereto as Exhibit A and incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Advanced Funding Agreement For The Fairview Specific Plan Amendment between the City of Modesto and Bava Villas, LP, a California Limited Partnership, is hereby approved.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Advanced Funding Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen,
Mayo Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
ADVANCED FUNDING AGREEMENT
FOR FAIRVIEW SPECIFIC PLAN AMENDMENT

THIS ADVANCED FUNDING AGREEMENT FOR FAIRVIEW SPECIFIC PLAN AMENDMENT ("Agreement") is made and entered into as of the ___ day of August, 2007 ("Effective Date"), by and between the CITY OF MODESTO, a California municipal corporation ("City"), and BAVA VILLAS, L.P., a California limited partnership ("Applicant").

RECITALS:

A. Applicant has the right to acquire ownership interests in real property located within a portion of the Fairview Specific Plan Area ("Specific Plan"), shown in Exhibit A attached hereto and incorporated herein by this reference, and is interested in pursuing development of properties in the Specific Plan.

B. Applicant is in the process of preparing an Amendment to the Specific Plan ("Amendment") and has requested that the City review and process the proposed Amendment, prepare a Facilities Master Plan, Finance Plan, and appropriate CEQA documentation for the Amendment ("Planning Documents") and create an appropriate financing mechanism, such as, but not limited to, a communities facilities district ("Financing Mechanism") for the principal purpose of master planning the development and financing the various public facilities which are necessary to serve or desirable for the development of the Specific Plan (collectively the "Project").

C. City has either retained, or will retain, outside consultants, to assist it with the Project and, if the City determines to proceed with the formation of one or more Financing Mechanisms, to assist it in connection therewith and with the possible issuance of bonds.

D. Subject to the terms and conditions of this Agreement, Applicant is prepared to deposit with the City the amounts needed to fund all work necessary to process the Project, including without limitation all consultant costs, staff time and expenses, in order to provide the City with a source of funds with which to pay expenses expected to be incurred in connection with the Project. City and Applicant desire that the funding for this work be provided in increments, over time as the Project progresses, with additional deposits to be provided as needed and as described in this Agreement.

E. The City and Applicant are desirous of entering into this Agreement in order to provide monies for the City's costs for preparing the Project on a time and materials basis, to provide mechanisms by which the funds deposited under this Agreement shall be applied and by which Applicant may make additional deposits under the terms and conditions specified herein, to reimburse the Applicant for monies advanced for the benefit of other landowners in the Specific Plan and to refund to Applicant sums deposited by it or on its behalf hereunder which are not applied as contemplated hereby.
F. Pursuant to California Government Code Section 53314.9 and the City’s CFD Policies and Procedures, the City Council of the City is authorized to accept advances of funds or work-in-kind from any source, including, but not limited to, private persons or private entities, and may provide, by resolution, for the use of those funds or work-in-kind for any authorized purpose, including, but not limited to, paying any costs incurred in connection with the construction of infrastructure and the planning and formation of a community facilities district. The City Council of the City is also authorized to enter into an agreement, by resolution, with the person or entity advancing the funds or work-in-kind to repay all or a portion of the funds advanced or to reimburse the person or entity for the cost or value of the work-in-kind provided that certain conditions are met. The conditions to be satisfied with respect to funds advanced require that (1) the proposal to repay the funds or to pay the cost or value of the work-in-kind must be included in the resolution of intention for the proposed community facilities district and in the resolution of formation for the proposed community facilities district, (2) any proposed special tax is approved by the qualified electors of the community facilities district and, if a proposed special tax is not approved, any funds advanced which have not been committed for any authorized purpose by the time of the election must be returned to the person or entity advancing funds and (3) any work-in-kind accepted shall have been performed or constructed as if the work had been performed or constructed under the direction and supervision, or under the authority, of the local agency.

G. Pursuant to California Government Code Section 65456 and Modesto Municipal Code Sections 10-4.101, et seq., the City Council of the City is also authorized to adopt a specific plan fee to cover the cost of developing a specific plan, to charge a specific plan fee to those persons who benefit from the specific plan, and to reimburse those persons, including the City, who have provided funds to prepare the specific plan and related documentation.

H. The City and the Applicant are desirous of entering into this Agreement in accordance with Government Code Sections 53314.9 and 65456, Modesto Municipal Code Sections 10-4.101, et seq., and the City’s CFD Policies and Procedures in order to provide a mechanism by which the Applicant may advance funds for the Project, make additional deposits if determined necessary by both parties hereto and in accordance with the terms hereof and, when and if a Financing Mechanism is created and proceeds are available, the City and/or the Financing Mechanism can reimburse the Applicant for the amounts advanced by the Applicant.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

1. Recitals. Each of the above recitals is incorporated herein and is true and correct.
2. Proposed Preparation of the Planning Documents and Creation of the Financing Mechanism.

(a) Applicant agrees to pay all costs of reviewing, processing and approving the Amendment, preparing the Planning Documents and creating a Financing Mechanism for the Specific Plan so long as City consults with Applicant regarding all cost estimates in advance of their execution or adoption.

(b) This Agreement shall not become effective until City Council approves it, which approval shall occur on or before August 15, 2007 (the "Agreement Approval"). On the express condition that the foregoing Agreement Approval timely occurs, Applicant has deposited the sum of $38,052.00 ("Formal Deposit") with City to be held in trust by the City and used solely for the purposes set forth in this Agreement. City and Applicant acknowledge that Applicant has already paid $38,052.00 toward the costs of reviewing, processing and approving the Project documents and, therefore, City has already proceeded with the Project on a time and materials basis. In connection therewith, the City has either retained, or will retain, the consultants that the City determines necessary or convenient to assist it with the Project and, if the City determines to proceed with the formation of one or more Financing Mechanisms, to assist it in connection therewith and with the possible issuance of bonds.

(c) After the Formal Deposit has been expended on the Project, Applicant shall make additional advances to the City, as provided by subparagraph (d), below, until the Project has been completed or terminated, and all costs associated with the Project have been fully paid.

(d) Applicant shall make additional advances to the City within ten (10) business days following receipt from the City of a request for an additional advance to cover the costs referred to herein. In the event that the Applicant does not deliver any amount requested by the City within such ten (10) business day period, the City will have no obligation to proceed with any activity relating to the Project until such time as the sum so requested is delivered to the City by or on behalf of Applicant; provided, however, that if such sum is not delivered to City within sixty (60) calendar days after a request for an additional advance is made, then City may terminate this Agreement and shall have no further obligation to proceed with any activity related to the Project. The Applicant may notify the City at any time, in writing, of its intention to abandon the Project. Immediately upon City's receipt of such notice, but in no case later than two (2) business days thereafter, the City shall instruct in writing its consultants to cease work immediately. The Applicant shall be responsible for all costs and expenses incurred by the City or any City consultant or advisor in accordance with any cost estimates relating to the Project until City issues this cease work notice. Within twenty (20) working days after receipt of Applicant's notice to abandon the Project, City shall return to Applicant any and all sums previously deposited with City pursuant hereto which have not then been expended in accordance with the terms of this Agreement, as set forth in Paragraph 4(c) hereof.
(c) Applicant agrees that, notwithstanding the Applicant’s funding and reimbursement obligations under this Agreement, the consultants selected by the City shall be the contractors exclusively of the City and not of the Applicant. Except for those disclosures required by law including, without limitation, the Public Records Act, all conversations, notes, memoranda, correspondence, and other forms of communication by and between the City and its consultants shall be, to the extent permissible by law, privileged and confidential and not subject to disclosure to the Applicant. Applicant agrees that it shall have no claim to, nor shall it assert any right in any reports, correspondence, plans, maps, drawings, news releases or any and all other documents or work product produced by City’s consultants. Applicant understands that it will not be a third party beneficiary to City’s contracts with the consultants. City will consult with Applicant prior to replacing its current consultants and shall only replace its current consultants for cause; however, Applicant agrees that City may select other consultants to replace its current consultants and may do so without obtaining Applicant’s approval.

3. City and Applicant to Cooperate with each other and with the City’s Consultants.

(a) City and Applicant shall work cooperatively and in good faith to facilitate completion of the Project as quickly as possible and in the most cost effective way. City and Applicant shall meet and consult on dates and times as may be mutually agreed upon to discuss the progress and any key issues involved in the Project; provided, however, that Applicant’s role is advisory only and City shall control all aspects of the Project. The final work product to be produced by City’s Consultants shall be subject to the City’s approval and control.

(b) City shall prepare a tentative timeline of processing steps through adoption of the Specific Plan, posting of CEQA notices, and potential annexation by the Stanislaus County LAFCO (“Project Schedule”). The Project Schedule shall be prepared in consultation with the Applicant and completed by February 13, 2009 with the understanding that a failure to timely complete the Project Schedule shall entitle Applicant to terminate this Agreement and its participation in the Project, in accordance with Paragraph 2(d) hereof. City and Applicant shall use reasonable efforts to process Applicant’s application in accordance with the Project Schedule. Applicant acknowledges that changes to the Project, delays in resolving infrastructure issues or obtaining information necessary to process the application, the public comment process and other issues beyond the City’s control may result in delays to the Project Schedule.

(c) City and Applicant shall establish a Specific Plan Development Team that regularly shall meet in person or teleconference to coordinate the work contemplated by this Agreement. City’s team members shall include at least one representative from all necessary City departments.

(d) City and Applicant shall each appoint one team leader. The City’s development team leader shall coordinate the City’s various departments in their interaction with the Applicant’s development team. The Applicant’s development team leader shall coordinate the Applicant’s team in its interaction with the City’s development team and shall ensure Applicant’s team timely makes any decisions necessary to move the Project to hearing. City and
Applicant hereby acknowledge that Jim Bissell of Harris & Associates has been hired to act as City's team leader and agree that his functions, among others, shall include adherence to the Project Schedule.

(e) City and Applicant agree that water, wastewater, and storm water infrastructure issues are critical to timely moving the Project to hearing and to ensure the economic viability of the Project. The parties agree to work on these issues in a manner sufficient to ensure that CEQA review of the Project is not unduly delayed, and that the magnitude of infrastructure costs are identified as early in the process as practical.

(f) Prior to making any final decisions regarding the scope of work of any contract or consultant, City will provide the proposed scope of work to the Applicant for review and comment.

(g) Each party shall timely review documents and provide comments so that the Project Schedule can be maintained.

(h) Prior to making any final decisions regarding adoption of the proposed Amendment, the Planning Documents or Financing Mechanism, if any, City will send a draft of the proposed document to Applicant for review and comment.

(i) Applicant agrees to cooperate in good faith with the City's consultants. Applicant agrees that it will instruct its agents, employees, consultants, contractors and attorneys to reasonably cooperate with the City's consultants and to provide all necessary documents or information reasonably requested of it by the City's consultants that are in Applicant's possession or under its control; provided, however, that the foregoing shall not require the disclosure of any documents or information of the Applicant which by law is privileged, proprietary, confidential, or exempt from disclosure under the Public Records Act. City agrees to pursue the Project in good faith, consistent with the Project Schedule and cost estimates, and, in general, to cooperate in good faith with the Applicant and its consultants. City agrees that it will instruct its agents, employees, consultants, contractors and attorneys to reasonably cooperate with Applicant.

4. Reimbursement and Refund Procedure.

(a) If a Financing Mechanism is created, including but not limited to formation of a CFD and issuance of bonds, proceeds in excess of the amount reasonably determined by the City to be required in order to administer the Financing Mechanism and to satisfy the requirements of the City's policies and procedures, including but not limited to City's CFD Policies and Procedures with respect to capitalized interest and reserves, and to pay for facilities and incidental expenses, may be used to reimburse the Applicant for the amounts that the Applicant has advanced to the City in connection with this Agreement. City shall pay interest on any monies to be reimbursed to Applicant through the Financing Mechanism, to the extent legally permissible, with the calculation of such interest to commence as of the date upon which Applicant first advances funds hereunder and to continue through and including the date upon which all sums subject to such reimbursement are paid in full.
(b) In the event that the Planning Documents are not prepared or approved and/or a Financing Mechanism is not created for any reason, or in the event that a Financing Mechanism is created but no revenue stream is generated for any reason (each, a "Reimbursement Event"), the City shall refund any funds which have been advanced by the Applicant pursuant to this Agreement and which have not been expended, obligated or otherwise committed in good faith for any authorized purpose, subject to the complete reimbursement to the City of all of its direct and indirect costs. Such refund of funds to Applicant shall occur within twenty (20) working days immediately following occurrence of the first Reimbursement Event. If requested in writing and in advance by the applicant, such refund shall be accompanied by an itemized reconciliation of amounts so deposited against sums expended by or on behalf of City. If the amounts advanced by the Applicant are insufficient to fully reimburse the City for all of such direct and indirect costs incurred by it, the Applicant shall pay to the City the amount of the deficiency within ten (10) days after receipt of a demand by City. Except as specified in Section 4(a) hereof, City shall not be required to pay interest on any amount required to be refunded pursuant to this Agreement. The City shall be entitled to pay any refund or reimbursement required pursuant to the provisions hereof to the entity that is the signatory to this Agreement irrespective of any changes in the ownership of the property or the organization of the Applicant.

(c) If Applicant notifies City of its intent to abandon or terminate this Agreement for any reason, then immediately upon City's receipt of such notice but in no case later than two (2) business days thereafter, the City shall instruct in writing its consultants to cease work immediately. The Applicant shall be responsible for all costs and expenses incurred by the City or any City consultant or advisor in accordance with any cost estimates relating to the Project until City issues this cease work notice. Within twenty (20) working days after receipt of Applicant's notice to abandon or terminate this Agreement, City shall refund to Applicant any and all sums previously deposited with City pursuant hereto which have not then been expended in accordance with the terms of this Agreement. If Applicant so requests, in writing and in advance, City shall also provide Applicant with an itemized reconciliation of amounts so deposited against sums expended.

5. Abandonment of the Project. The Applicant understands that, subject to the satisfaction of all applicable legal requirements, the decision to review, process, prepare or approve the proposed Amendment, Planning Documents and Financing Mechanism shall be each in the sole discretion of the City. No provision of this Agreement shall be construed as a promise, warranty or agreement by the City to review, process, prepare or approve the proposed Amendment, Planning Documents or Financing Mechanism. Except as specified in Section 4(b) hereof, the City shall have no liability to Applicant for a decision not to review, process, prepare or approve the proposed Amendment, Planning Documents or Financing Mechanism.

6. Indemnification and Hold Harmless. The Applicant hereby assumes the defense of, and shall indemnify and save harmless, the City and each of its officers, directors, agents, contractors, and employees, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of or arising out of any acts or omissions of Applicant or any of the Applicant's officers, employees, contractors and...
agents in connection with the proposed review, processing, preparation or approval of the proposed Amendment, Planning Documents and/or creation of a Financing Mechanism provided by or on behalf of the Applicant or its consultants, except for any action, damages, claims, losses or expenses arising out of the sole negligence or willful misconduct of the City, its officers, directors, employees or agents.

7. Notices. Any and all notices permitted or required to be given hereunder shall be deemed duly given and effective (1) upon actual delivery, if delivery is by hand; or (2) five (5) days after delivery into the United States mail if delivery is by postage paid registered or certified (return receipt requested) mail. Each such notice shall be sent to the parties at the address respectively indicated below or to any other address as the respective parties may designate from time to time.

Applicant: Bava Villas, L.P.
1783 Hester Avenue
San Jose, California 95125
Attention: Mr. Todd Erickson

With a copy to: Mr. Robert N. Kurrasch
16644 Calneva Drive
Encino, California 91436

Mr. George A. Petrulakis
Petrulakis Jensen & Friedrich, LLP
1130 12th Street, Suite B
Modesto, CA 95354

City: City of Modesto
1010 Tenth Street, Suite 6100
Modesto, California 95353
Attention: IFP Administrative Officer

8. Assignment. Neither party hereto shall assign all or any part of its interest in this Agreement without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld. Any assignment or attempt to assign this Agreement shall be deemed null and void as of the date of the purported assignment. All covenants, stipulations, and agreements in this Agreement shall bind any such representatives, successors and assigns.

9. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent permitted by law.

10. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters provided for herein. All previous proposals, offers and communications relative to this Agreement, whether oral or written, are hereby superseded.
except to the extent that they have been expressly incorporated into this Agreement. No future waiver of, or exception to, any of the terms, conditions, and/or provisions of this Agreement shall be considered valid unless specifically agreed to in writing by both parties.

11. Amendments. This Agreement may be amended or modified only by written instrument signed by both parties. Any amendment or addendum to this Agreement shall expressly refer to this Agreement.

12. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

13. No Third Party Beneficiaries. No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the City (and its officers, directors, employees and agents providing services under this Agreement) and the Applicant (and its officers, managers, employees, and agents), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

14. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine and neuter.

15. Termination. This Agreement shall terminate and be of no further force and effect on and after the third anniversary of the Effective Date of this Agreement unless expressly amended by the parties; provided, however, that the (a) Applicant’s obligations under (i) Section 4(b) to reimburse expenses incurred by the City in good faith through and including the effective date of this Agreement’s termination shall continue only until any such required reimbursements (if any) occur and (ii) Section 7 to provide specified indemnities shall continue only until all applicable statutes of limitations expire and (b) the City’s obligation to (i) provide reimbursement for expenses incurred prior to the termination date shall survive termination or expiration of this Agreement.

16. Time is of the Essence. Except as otherwise expressly stated, time is of the essence in the performance of each and every action required pursuant to this Agreement.

17. Language Construction. The language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Agreement.

18. Representations of Authority. Each party signing this Agreement on behalf of a party which is not a natural person hereby represents and warrants to the other party that all necessary legal prerequisites to that party’s execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.
19. **Relationship of Parties.** Nothing contained in this Agreement shall be interpreted or understood by the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between City and Applicant or its agents, employees or contractors. Except as City may specify in writing, Applicant shall have no authority to act as an agent of City or to bind City to any obligation and except as Applicant may specify in writing, City shall have no authority to act as an agent of Applicant.

20. **Title of Parts and Sections.** Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of this Agreement's provisions.

21. **Waiver.** The waiver by any party to this Agreement of any action, obligation, or commitment required by this Agreement or of a breach of any provision hereof shall be in writing and shall not operate or be construed as a waiver of any other or subsequent breach hereof or of any action, obligation, or commitment required by this Agreement unless specifically stated in writing.

22. **Discretion of the City.** City’s execution of this Agreement in no way limits the discretion of City in the permit and approval process in connection with any construction or improvements within or outside the Specific Plan.
IN WITNESS WHEREOF, the CITY OF MODESTO, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2007---, adopted by the Council of the City of Modesto on the ___ day of __________, 2007, and Applicant has caused this Agreement to be executed in duplicate, as of the Effective Date written above.

CITY OF MODESTO, a municipal corporation

By: ____________________________
    GEORGE W. BRITTON, City Manager

ATTEST:

By: ____________________________
    JEAN MORRIS, City Clerk

BAVA VILLAS, a California limited partnership

By: Fairview Properties, LLC, its General Partner

By: Willow Equities, Inc., its Managing Member

By: ____________________________
    Gregory R. Erickson, President

APPROVED AS TO FORM:
SUSANA ALCALA WOOD, City Attorney

By: ____________________________
    DAVID CERVANTES
    Senior Deputy City Attorney

Federal Tax
ID# ____________________________
EXHIBIT "A"

Property Owners & Sub Areas

FAIRVIEW VILLAGE SPECIFIC PLAN

SUB-AREA A
GALAS BROTHERS

SUB-AREA B
BAVA BROTHERS

EXISTING SCHOOL

WESTMORE AVENUE

EXHIBIT 2
SUB-AREA MAP
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-486

A RESOLUTION APPROVING A PUBLIC IMPROVEMENT AGREEMENT BETWEEN 4701 STODDARD, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, GREGORY L. KYLER, CHRISTINE M. KYLER AND THE CITY OF MODESTO AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE A PUBLIC IMPROVEMENT AGREEMENT

WHEREAS, 4701 Stoddard, LLC, a California limited liability company, Gregory L. Kyler, Christine M. Kyler, McCoy Properties, L.P., and Jose T. Zamora are the owners of three parcels located northeast of the intersection of Kansas Avenue and Lone Palm Avenues totaling approximately 3.2 acres ("Property"), and

WHEREAS, 4701 Stoddard, LLC, a California limited liability company, Gregory L. Kyler and Christine M. Kyler are the owners of one of the three parcels, and

WHEREAS, 4701 Stoddard, LLC, a California limited liability company, Gregory L. Kyler, Christine M. Kyler, McCoy Properties, L.P., and Jose T. Zamora filed an application for annexation requesting annexation of the approximately 3.2 acres to the City of Modesto, Modesto Municipal Sewer District No. 1, and Modesto’s Fire District and detachment from the Woodland Fire Protection District in order to allow industrial development on the Property, and

WHEREAS, on April 16, 2007, the Planning Commission adopted Resolution No. 2007-12, A Resolution Recommending To The City Council Adoption Of A Resolution Of Application To The Stanislaus Local Agency Formation Commission To Annex Approximately 3.2 Acres Of Property Located North Of Kansas Avenue And East Of Lone Palm Avenue (Owner Initiated – Uninhabited), and
WHEREAS, Finding and Determination No. 7 of Resolution No. 2007-12 requires that prior to the annexation application being approved by City Council, an improvement agreement between the applicant and the City shall be executed and that the agreement shall stipulate that whether or not development occurs, the applicant or developer shall provide all street dedication and improvements shall be constructed along the frontage(s) of the Property to City standards within five years after annexation or prior to recordation of Final Map, whichever occurs first, with a possible extension of five years for financial hardship, and

WHEREAS, 4701 Stoddard, LLC, a California limited liability company, Gregory L. Kyler and Christine M. Kyler, have executed a Public Improvement Agreement for their parcel, and

WHEREAS, the Public Improvement Agreement complies with Finding and Determination No. 7 of Resolution No. 2007-12,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Public Improvement Agreement between the City of Modesto and 4701 Stoddard, LLC, a California limited liability company, Gregory L. Kyler and Christine M. Kyler.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Public Improvement Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who
moved its adoption, which motion being duly seconded by Councilmember Dunbar, was
upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]
JEAN MORRIS, City Clerk

APROVED AS TO FORM:

By: [Signature]
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-487

A RESOLUTION APPROVING A PUBLIC IMPROVEMENT AGREEMENT BETWEEN JOSE T. ZAMORA AND THE CITY OF MODESTO AND AUTORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE PUBLIC IMPROVEMENT AGREEMENT

WHEREAS, 4701 Stoddard, LLC, a California limited liability company, Gregory L. Kyler, Christine M. Kyler, McCoy Properties, L.P., and Jose T. Zamora are the owners of three parcels located northeast of the intersection of Kansas Avenue and Lone Palm Avenues totaling approximately 3.2 acres ("Property"), and

WHEREAS, Jose T. Zamora is the owner of one of the three parcels, and

WHEREAS, 4701 Stoddard, LLC, a California limited liability company, Gregory L. Kyler, Christine M. Kyler, McCoy Properties, L.P., and Jose T. Zamora filed an application for annexation requesting annexation of the approximately 3.2 acres to the City of Modesto, Modesto Municipal Sewer District No. 1, and Modesto's Fire District and detachment from the Woodland Fire Protection District in order to allow industrial development on the Property, and

WHEREAS, on April 16, 2007, the Planning Commission adopted Resolution No. 2007-12, A Resolution Recommending To The City Council Adoption Of A Resolution Of Application To The Stanislaus Local Agency Formation Commission To Annex Approximately 3.2 Acres Of Property Located North Of Kansas Avenue And East Of Lone Palm Avenue (Owner Initiated - Uninhabited), and

WHEREAS, Finding and Determination No. 7 of Resolution No. 2007-12 requires that prior to the annexation application being approved by City Council, an
improvement agreement between the applicant and the City shall be executed and that the agreement shall stipulate that whether or not development occurs, the applicant or developer shall provide all street dedication and improvements shall be constructed along the frontage(s) of the Property to City standards within five years after annexation or prior to recordation of Final Map, whichever occurs first, with a possible extension of five years for financial hardship, and

    WHEREAS, JOSE T. ZAMORA has executed a Public Improvement Agreement for his parcel, and

    WHEREAS, the Public Improvement Agreement complies with Finding and Determination No. 7 of Resolution No. 2007-12,

    NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Public Improvement Agreement between the City of Modesto and JOSE T. ZAMORA.

    BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Public Improvement Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who
moved its adoption, which motion being duly seconded by Councilmember Dunbar, was
upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen,

Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

JEAN MORRIS, City Clerk

APROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-488

A RESOLUTION APPROVING A PUBLIC IMPROVEMENT AGREEMENT BETWEEN MC COY PROPERTIES, L.P., AND THE CITY OF MODESTO AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE A PUBLIC IMPROVEMENT AGREEMENT

WHEREAS, 4701 Stoddard, LLC, a California limited liability company, Gregory L. Kyler, Christine M. Kyler, McCoy Properties, L.P., and Jose T. Zamora are the owners of three parcels located northeast of the intersection of Kansas Avenue and Lone Palm Avenues totaling approximately 3.2 acres ("Property"), and

WHEREAS, McCoy Properties, L.P., is the owner of one of the three parcels, and

WHEREAS, 4701 Stoddard, LLC, a California limited liability company, Gregory L. Kyler, Christine M. Kyler, McCoy Properties, L.P., and Jose T. Zamora filed an application for annexation requesting annexation of the approximately 3.2 acres to the City of Modesto, Modesto Municipal Sewer District No. 1, and Modesto’s Fire District and detachment from the Woodland Fire Protection District in order to allow industrial development on the Property, and

WHEREAS, on April 16, 2007, the Planning Commission adopted Resolution No. 2007-12, A Resolution Recommending To The City Council Adoption Of A Resolution Of Application To The Stanislaus Local Agency Formation Commission To Annex Approximately 3.2 Acres Of Property Located North Of Kansas Avenue And East Of Lone Palm Avenue (Owner Initiated – Uninhabited), and

WHEREAS, Finding and Determination No. 7 of Resolution No. 2007-12 requires that prior to the annexation application being approved by City Council, an
improvement agreement between the applicant and the City shall be executed and that the agreement shall stipulate that whether or not development occurs, the applicant or developer shall provide all street dedication and improvements shall be constructed along the frontage(s) of the Property to City standards within five years after annexation or prior to recordation of Final Map, whichever occurs first, with a possible extension of five years for financial hardship, and

WHEREAS, McCoy Properties, L.P., has executed a Public Improvement Agreement for its parcel, and

WHEREAS, the Public Improvement Agreement complies with Finding and Determination No. 7 of Resolution No. 2007-12,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Public Improvement Agreement between the City of Modesto and McCoy Properties, L.P.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Public Improvement Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: ____________

SUSANA ALCALA WOOD, City Attorney

ATTEST:

JEAN MORRIS, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-489

A RESOLUTION ACCEPTING THE PUBLIC IMPROVEMENTS FOR THE KODIAK VILLAGE I SUBDIVISION PHASE I AND PHASE II, IN THE VILLAGE ONE SPECIFIC PLAN AREA, AND AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION, AND TO RELEASE SECURITIES UPON EXPIRATION OF STATUTORY PERIODS.

WHEREAS, Meritage Homes of California, Inc., a California Corporation, is the subdivider of the Kodiak Village I SUBDIVISION, and

WHEREAS, Meritage Homes of California, Inc., a California Corporation, has filed irrevocable subdivision bonds to secure faithful performance and payment for labor and materials in the amount of $2,787,093.10 and $1,393,546.50, respectively, and

WHEREAS, Meritage Homes of California, Inc., a California Corporation, has filed a warranty bond in the amount of $278,710.00 to guarantee improvements in the Kodiak Village I Subdivision, and

WHEREAS, the Public Works Director, in a memorandum to Council, indicates that all work required by the Subdivision Agreement has been completed to the satisfaction of the Public Works Department, and

WHEREAS, the Public Works Director has indicated that it would be in order for the City Council to accept the improvements in the SUBDIVISION as complete, and authorize the City Clerk to file a Notice of Completion and release the securities upon expiration of the statutory periods,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that:

1. The public improvements in the SUBDIVISION are hereby accepted and the City Clerk is hereby authorized to file a Notice of Completion for the public improvements.
2. The City Clerk is hereby authorized to release the subdivision bond for faithful performance in the amount of $2,787,093.10 upon recordation of the Notice of Completion.

3. The City Clerk is hereby authorized to release the subdivision bond for labor and materials in the amount of $1,393,546.50 sixty (60) days after recordation of the Notice of Completion, provided no claim is made thereon.

4. The City Clerk is hereby authorized to release the warranty bond to guarantee SUBDIVISION improvements in the amount of $278,710.00 one year and one day after the effective date of this resolution, provided no claim is made thereon.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

**AYES:** Councilmembers: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen, Mayor Ridenour

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: None

**ATTEST:**

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-490

A RESOLUTION ACCEPTING PUBLIC IMPROVEMENTS FOR THE KODIAK VILLAGE II SUBDIVISION, IN THE VILLAGE ONE SPECIFIC PLAN AREA, AUTHORIZING THE CITY CLERK TO RECORD A NOTICE OF COMPLETION AND TO RELEASE SECURITIES UPON EXPIRATION OF STATUTORY PERIODS.

WHEREAS, Meritage Homes of California, Inc., a California Corporation, is the subdivider of the KODIAK VILLAGE II SUBDIVISION ("SUBDIVISION"), and

WHEREAS, Meritage Homes of California, Inc., a California Corporation, has filed irrevocable subdivision bonds to secure faithful performance and payment for labor and materials in the amounts of $956,838.81 and $478,419.40, respectively, and

WHEREAS, Meritage Homes of California, Inc., a California Corporation, has filed a warranty bond in the amount of $95,683.88 to guarantee public improvements in the SUBDIVISION, and

WHEREAS, the Public Works Director, in a memorandum to Council, indicates that all work required by the Subdivision Agreement has been completed to the satisfaction of the Public Works Department, and

WHEREAS, the Public Works Director has indicated that it would be in order for the City Council to accept the improvements in the SUBDIVISION as complete, and authorize the City Clerk to file a Notice of Completion and to release the securities upon expiration of the statutory periods,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that:

1. The public improvements in the SUBDIVISION are hereby accepted and the City Clerk is hereby authorized to file a Notice of Completion for the public improvements.
2. The City Clerk is hereby authorized to release the subdivision bond for faithful performance in the amount of $956,838.81 upon recordation of the Notice of Completion.

3. The City Clerk is hereby authorized to release the subdivision bond for labor and materials in the amount of $478,419.40 sixty (60) days after recordation of the Notice of Completion, provided no claim is made thereon.

4. The City Clerk is hereby authorized to release the warranty bond to guarantee SUBDIVISION improvements in the amount of $95,683.88 one year and one day after the effective date of this resolution, provided no claim is made thereon.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-491

A RESOLUTION APPROVING THE FINAL MAP AND ACCEPTING PUBLIC IMPROVEMENTS FOR THE ANDREA ESTATES SUBDIVISION OF THE CITY OF MODESTO, AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBDIVISION AGREEMENT, AND AUTHORIZING THE CITY CLERK TO RECORD A NOTICE OF COMPLETION. (OWNERS: PRESTON CONSTRUCTION COMPANY, A CALIFORNIA CORPORATION, AND TIMOTHY AND JOAN L. BERRY)

WHEREAS, Preston Construction Company, a California Corporation and Timothy Berry and Joan L. Berry, are possessed of a tract of land situated in the City of Modesto, County of Stanislaus, consisting of 4.08 acres, known as the Andrea Estates Subdivision ("SUBDIVISION"), and

WHEREAS, a tentative map of said tract was approved by the Planning Commission of the City of Modesto on the 6th day of February, 2006, and

WHEREAS, the Secretary of the Planning Commission of the City of Modesto has certified that the final map of said tract substantially conforms to the approved tentative map, and

WHEREAS, the City Engineer of the City of Modesto has certified that the final map of said SUBDIVISION meets all of the provisions of the California Subdivision Map Act and the provisions of the Modesto Municipal Code relating to subdivisions, and that the map is technically correct, and

WHEREAS, the Public Works Director has certified that all public improvements required by the City of Modesto have been completed in said tract to the satisfaction of the Public Works Director, and

WHEREAS, the subdivider has posted a warranty security in an amount equal to 10% of the estimated cost of the public improvements, as determined by the City Engineer, to guarantee and warranty the public improvements for a period of one year after acceptance,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that:

1. The final map is hereby approved.

2. The dedications for public streets and easements as shown thereon within the boundaries of said tract are hereby accepted on behalf of the public for public use.

3. The public improvements completed in Andrea Estates Subdivision are hereby accepted.

4. The City Clerk is hereby authorized to certify the map of said tract on behalf of the City of Modesto, and to record a Notice of Completion on behalf of the City of Modesto after the fees and deposits required by the Modesto Municipal Code in amounts determined by the City Engineer have been paid.

5. The City Manager and the City Clerk are hereby authorized to execute and attest, respectively, an agreement with subdivider as required by Section 4-4.604(c) of the Municipal Code.

6. The City Clerk is further authorized to release the warranty security to guarantee improvements one year and one day after the effective date of this resolution, provided no claim is made thereon.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES:         Councilmembers: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES:         Councilmembers: None

ABSENT:       Councilmembers: None

ATTEST:       

(SIGNATURE)

JEAN MØRRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By          

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-492

A RESOLUTION APPROVING THE FINAL MAP OF VILLAGE ONE TOWN CENTER HOMES IN THE VILLAGE ONE SPECIFIC PLAN AREA OF THE CITY OF MODESTO AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SUBDIVISION AGREEMENT.

WHEREAS, HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS ("Subdivider"), is possessed of a tract of land situated in the City of Modesto, County of Stanislaus, consisting of 5.0 acres, known as VILLAGE ONE TOWN CENTER HOMES ("SUBDIVISION"), in the Village One Specific Plan Area, and

WHEREAS, a vesting tentative map of said tract was approved by the Planning Commission of the City of Modesto on the 17th day of July, 2006, and

WHEREAS, the Secretary of the Planning Commission of the City of Modesto and the City Engineer have certified that the final map of said tract substantially conforms to the approved tentative map, and

WHEREAS, the City Engineer of the City of Modesto has certified that the final map of said SUBDIVISION meets all of the provisions of the California Subdivision Map Act and the provisions of the Modesto Municipal Code relating to subdivisions, and that the map is technically correct,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the final map for Village One Town Center Homes Subdivision is hereby approved; that the dedications for public streets and easements as shown thereon within the boundaries of said tract are accepted on behalf of the public for public use; and that the City Clerk is authorized to certify the map of said tract on behalf of the City of Modesto after the fees and deposits required by the Modesto Municipal Code in amounts
determined by the City Engineer have been paid and after Subdivider has furnished securities, as set forth in Section 4-4.605 of the Modesto Municipal Code, which shall secure the obligations set forth in Section 66499.3 of the Government Code of the State of California. Said securities shall be in forms acceptable to the City Attorney and in the amounts required by the City Engineer.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute a subdivision agreement as required by Section 4-4.604(c) of the Modesto Municipal Code.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ________________________________
JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By _________________________________
SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING AN AGREEMENT FOR SERVICES BETWEEN THE CITY OF MODESTO AND EDAW FOR PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED FAIRVIEW VILLAGE SPECIFIC PLAN AMENDMENT NO. 4 PROJECT (IN AN AMOUNT NOT TO EXCEED $508,365), AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, Willow Equities has applied for a specific plan amendment, referred to as the Fairview Village Specific Plan Amendment No. 4, to allow for the orderly and future development within the approximate 360-acre planning area bounded by Hatch Road to the north, Yuma Avenue to the east, Whitmore Avenue to the south and Carpenter Road to the west, generally located in the southwest Modesto area, and

WHEREAS, the Fairview Village Specific Plan was adopted on December 12, 1995, by City Council Resolution No. 95-584 for the development of 350 acres for predominantly residential development, and

WHEREAS, the east portion of the specific plan area consisting of about 200 acres was annexed into the City of Modesto on June 5, 1996, and

WHEREAS, Fairview Village Specific Plan Amendment No. 1 was adopted on March 18, 1997, by City Council Resolution No. 97-135, to change the funding of certain public facilities from an assessment district to a Mello Roos Community Facilities District, and

WHEREAS, Fairview Village Specific Plan Amendment No. 2 was adopted on March 18, 1997, by City Council Resolution No. 97-138, to delete the requirement for a housing trust fund equity sharing program and collection of an affordable housing fee, and
WHEREAS, Fairview Village Specific Plan Amendment No. 3 was adopted on November 4, 1997, by City Council Resolution No. 97-622, to allow changes to the public services provider, and

WHEREAS, the proposed Fairview Village Specific Plan Amendment No. 4 project proposes to update the land use and circulation plan and to amend the document language and policies to be consistent with current City policies and programs that include providing infrastructure capacity studies, a water supply assessment, a facilities master plan, and an infrastructure financing plan, and

WHEREAS, the proposed Fairview Village Specific Plan Amendment No. 4 project will also involve the following associated entitlements: prezoning of the site; a general plan amendment; annexation of the west portion of the Specific Plan area plus a strip of land from Hatch Road to the Tuolumne River to the City of Modesto and detachment from the Burbank/Paradise Fire District; preparation of a Facilities Master Plan and Infrastructure Finance Plan, and formation of a Community Facilities District (CFD) (collectively “Project”), and

WHEREAS, Section 21080.1 of the California Public Resources Code requires the City of Modesto, as lead agency, to make a determination of whether an environmental impact report is required for the Project, and

WHEREAS, the City of Modesto has determined that an Environmental Impact Report (EIR) will be necessary to ensure that the City of Modesto complies with the requirements of the California Environmental Quality Act for the proposed Fairview Village Specific Plan Amendment No. 4 project and the project applicant now desires to proceed the EIR, and
WHEREAS, City staff recommends an Agreement for services between the City of Modesto and EDA W for preparation an Environmental Impact Report based on the scope of services supplied to City staff for the proposed Fairview Village Specific Plan Amendment No. 4 project be executed in an amount not to exceed $508,365, and

WHEREAS, the applicant will pay the entire cost of the EIR, including staff time spent on said project, and the applicant has deposited funds with the City to cover the initial phase of work outlined in the Scope of Services described in Exhibit "A" of the Agreement for Consultant Services, and the applicant must fund all costs to complete the EIR.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Agreement for services between the City of Modesto and EDA W for the preparation of an Environmental Impact Report for the proposed Fairview Village Specific Plan Amendment No. 4 project, in an amount not to exceed $508,365, and

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(Seal)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
STANDARD AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, made and entered into in the City of Modesto, State of California, this 24th day of April, 2007, by and between the CITY OF MODESTO, a municipal corporation of the State of California, hereinafter referred to as "City", and EDAW, Inc., a Delaware corporation, hereinafter referred to as "Consultant".

This Agreement is made with regard to the following recitals:

A. The City has determined that an Environmental Impact Report should be prepared for the proposed Fairview Village Specific Plan Amendment No. 4 project to ensure compliance with CEQA.

B. The Environmental Impact Report will be prepared in phases, as funding becomes available and that the applicant will fund all costs for preparing the Environmental Impact Report.

C. Consultant represents that it is qualified, willing and able to provide the services to prepare said document(s).

NOW, THEREFORE, in consideration of this Agreement, and the mutual promises, covenants, and stipulations hereinafter contained, the parties agree as follows:

1. SCOPE OF SERVICES.

Consultant shall undertake and complete the scope of work as set forth and described in the documents attached hereto and referred to as Exhibit "A" or "Project". The Consultant shall perform the services as described in Exhibit "A" in a manner compatible with the standards of its profession, and shall produce a fully complete Project that is acceptable to City.
2. **TERM OF AGREEMENT.**

This Agreement is effective as of the date first written above and will continue in effect until City's acceptance of and payment for all services authorized by City and performed by Consultant, unless terminated earlier in accordance with the provisions of the termination clause in this Agreement.

Within ten (10) working days after receipt of all funding necessary to pay for Consultant's services and approval of this Agreement by the City Council, City shall give Consultant a written Notice to Proceed which specifically identifies the tasks and/or projects on which Consultant is authorized to proceed. Consultant shall not commence any work pursuant to this Agreement until such time as Consultant has received a written Notice to Proceed with that work. Upon receipt of a Notice to Proceed, Consultant shall diligently proceed with the work to be performed and agrees to complete said work within the time period set forth in Exhibit A to this Agreement.

3. **COMPENSATION.**

Consultant agrees to accept a sum not to exceed $508,365 as full remuneration for performing all services and furnishing all staffing and materials called for in Exhibit "A" and for performance by Consultant of all of its duties and obligations under this Agreement.

The Compensation shall be paid pursuant in the manner and at the times set forth below:

a. Consultant shall submit monthly invoices to City identifying the work performed and percentage of each Task that has been completed, based on the Task descriptions set forth in Exhibit A and the work authorized under any Notices to
Proceed. City shall make payments on a monthly basis consistent with the percentage of Task(s) completed, until the City has paid a maximum of 90% of the total cost for each Task, based on the amounts allocated for each Task as set forth in Exhibit A. The remaining 10% of the total cost for each Task will be paid by the City upon completion of, and City acceptance of, each Task. All work to be performed under the Agreement shall be billed at the hourly rates shown in Exhibit A. Monthly invoices shall be submitted to City in the form attached hereto as Exhibit B.

b. Reimbursable Expenses. All reproduction, delivery and travel expenses will be billed at cost. The total cost for all reimbursable expenses/direct costs for the Project shall not exceed the amount provided in Exhibit A. It is the responsibility of Consultants to manage reimbursable expenses to ensure that they do not exceed this budget. Any reimbursable expenses that exceed this budget, without prior written approval from the Director of the Community and Economic Development Department ("Director"), will not be reimbursed to Consultant. Reimbursable expenses shall be invoiced to the City. Monthly invoices shall itemize the reimbursable expenses incurred during the preceding month and the amount due.

4. **OBLIGATIONS OF CONSULTANT.**

Throughout the term of this Agreement, Consultant shall possess, or secure all licenses, permits, qualifications and approvals legally required to conduct business. Consultant warrants that it has all of the necessary professional capabilities and experience, as well as all tools, instrumentalities, facilities and other resources necessary to provide the City
with the services contemplated by this Agreement. Consultant further warrants that it will follow the best current, generally accepted and professional practices to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding this project.

5. PERFORMANCE BY KEY EMPLOYEE.

Consultant has represented to City that Randy Chafin, will be the person primarily responsible for the performance of the services referred to in this Agreement. City has entered into this Agreement in reliance on that representation by Consultant. Consultant therefore agrees that 9% percent or more of the time to be devoted to the project that is the subject of this Agreement will be that of the above-named person.

6. OWNERSHIP OF DOCUMENTS/TITLE TO DATA.

Ownership of Documents

All reports, drawings, designs, graphics, working papers and other incidental work or materials furnished hereunder shall become and remain the property of the City, and may be used by City as it may require without any additional cost to City. Any reuse of Project documents by the City for purposes other than those for which they were prepared shall be at the risk of City. No reports shall be used by the Consultant for purposes other than this contract without the express prior written consent of City.

Title to Data

If, as a part of the Agreement, Consultant is required to produce data such as, but not limited to, drawings, plans, specifications, calculations, models, flow diagrams, visual aids and other related materials, the originals of all such data generated under this Agreement will be delivered to City upon the completion or termination of services under this agreement.
All materials, documents, data or information obtained from the City data files or any City medium furnished to Consultant in the performance of this Agreement will at all times remain the property of the City. Such data or information may not be used or copied for direct or indirect use by Consultant after termination of this Agreement without written consent of the City.

7. NEWS AND INFORMATION RELEASE.

Consultant agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from City through the City Manager.

8. INTEREST OF CONTRACTOR.

Consultant warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Consultant warrants that, in performance of this Agreement, Consultant shall not employ any person having any such interest. Consultant agrees to file a Statement of Economic Interests with the City Clerk at the start and end of this Agreement if so required at the option of City.

9. AMENDMENTS.

Both parties to this Agreement understand that it may become desirable or necessary during the execution of this Agreement, for City or Consultant to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with City and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work.
Until a change order is so executed, City will not be responsible to pay any charges Consultant may incur in performing such additional services, and Consultant shall not be required to perform any such additional services.

10. INDEPENDENT CONTRACTOR.

All acts of Consultant, its agents, officers, and employees and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers, or employees of City. Neither party, by virtue of this Agreement, has authority to bind or incur any obligation on behalf of the other. Consultant has no authority or responsibility to exercise any rights or power vested in the City. No agent, officer, or employee of the City is to be considered an employee of Consultant. It is understood by both Consultant and City that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture.

Consultant, its agents, officers and employees are and, at all times during the terms of this Agreement, shall represent and conduct themselves as independent contractors and not as employees of City.

Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to City only for the requirements and results specified in this Agreement, and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect to the physical action or activities of the Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. Consultant is permitted to provide services to others during the same period service is provided to City under this Agreement. If necessary, Consultant has the responsibility for employing
other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision, and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by the Consultant.

It is understood and agreed that as an independent contractor and not an employee of City neither the Consultant or Consultant's assigned personnel shall have any entitlement as a City employee, right to act on behalf of the City in any capacity whatsoever as an agent, or to bind the City to any obligation whatsoever.

It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's personnel.

As an independent contractor, Consultant hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

11. ASSIGNMENT.

Neither this Agreement nor any portion thereof shall be subcontracted or assigned without the express prior written consent of the City in each and every instance.

12. PATENT/COPYRIGHT MATERIALS.

Unless otherwise expressly provided in the contract, Consultant shall be solely responsible for obtaining the right to use any patented or copyrighted materials in the
performance of this Agreement. Consultant shall furnish a warranty of such right to use to City at the request of City.

13. **NOTICES.**

Any and all notices permitted or required to be given hereunder (excepting the insurance notices) shall be deemed duly given and effective (1) upon actual delivery, if delivery is by hand; or (2) five (5) days after delivery into the United States mail if delivery is by postage paid registered or certified (return receipt requested) mail. Each such notice shall be sent to the parties at the address respectively indicated below or to any other address as the respective parties may designate from time to time.

FOR Consultant:

Name: EDAW Inc  
Address: 2022 J Street, Sacramento, CA 95814  
Attention: Randy Chafin  
Phone: 916 414 5800  

FOR CITY:

Name: City of Modesto  
Address: PO Box 642, Modesto, CA 95353  
Attention: Patrick Kelly, Principal Planner  
Phone: 209 577 5268  

14. **INSURANCE REQUIREMENTS.**

The Consultant shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City as may be required by the Risk Manager of the City. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation
or material change in the policy, notices of same shall be given to the Risk Manager of the City by mail for all of the following stated insurance policies.

(a) **Worker's Compensation** - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of $500,000.

(b) **General Liability** insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and $100,000 for property damage or $1,000,000 combined single limit. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent consultants and subcontractors; and products and completed operations.

(c) **Automobile Liability** insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and $100,000 for property damage or $1,000,000 combined single limit. This insurance shall cover “hired and non-owned vehicles” for bodily injury and property damage where Consultant represents in writing to City that it will not utilize owned vehicles in the performance of this Agreement. The insurance shall cover either “scheduled vehicles” or “any auto,” or both, for bodily injury and property damage where Consultant will use owned vehicles in the performance of this Agreement.

(d) **Professional Liability** insurance with a minimum limit of $1,000,000 per claim and policy aggregate.

If at any time during the term of this Agreement any of said policies shall become unsatisfactory to the City, as to form or substance, or if a company issuing such policy shall be unsatisfactory to the City, the Consultant shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon
failure of the Consultant to furnish, deliver or maintain such insurance and certificates as above
provided, this Agreement, at the election of the City, may be forthwith declared suspended, or
terminated. Failure of the Consultant to obtain and/or maintain any required insurance shall not
relieve the Consultant from any liability under this Agreement, nor shall the insurance
requirements be construed to conflict with or otherwise limit the obligations of the Consultant
concerning indemnification. The City, its officers, employees, and designated volunteers shall
be named as an additional insured on all insurance policies required herein, except Workers'
Compensation. The Workers' Compensation insurer shall agree to waive all rights of
subrogation against the City, its officers, employees, and designated volunteers for losses arising
from work performed by Consultant in providing the services for the City under this Agreement.
The Consultant's insurance policy(ies) shall include a provision that the coverage is primary as
respects the City; shall include no special limitations to coverage provided to additional insured;
and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the
Risk Manager. The Consultant must deliver certificates evidencing existence of the insurance
called for in this Agreement to the City Clerk at the time this Agreement is signed.

Consultant shall provide City with separate endorsements evidencing proof of the
City's additional insured status as to both the general liability and automobile liability insurance
policies. In addition, Consultant shall provide City with a Workers Compensation subrogation
waiver by way of a separate endorsement. All endorsements referenced above must include the
applicable policy number.

15. TERMINATION OF AGREEMENT.

Termination on Occurrence of Stated Events
This Agreement shall terminate automatically on the date on which any of the following events occur: (1) bankruptcy or insolvency of Consultant, (2) legal dissolution of Consultant, or (3) death of key principal(s) of Consultant.

Termination by City for Default of Consultant

Should Consultant default in the performance of this Agreement or materially breach any of its provisions, at its option City may terminate this Agreement by giving written notification to Consultant. The termination date shall be the effective date of the notice. For the purposes of this section, material breach of this Agreement shall include but not be limited to any of the following: failure to perform required services or duties in accordance with this Agreement, willful destruction of City's property by Consultant, dishonesty or theft.

Termination by Consultant for Default of City

Should City default in the performance of this Agreement or materially breach any of its provisions, at its option Consultant may terminate this Agreement by giving written notice to City. The termination date shall be the effective date of the notice. For the purposes of this section, material breach of this Agreement shall include but not be limited to any of the following: failure to cooperate reasonably with Consultant, willful destruction of Consultant's property by City, dishonesty or theft.

Termination by City for Lack of Budgeted Funds

The City may terminate this Agreement effective July 1 of any given year upon the City's determination to not appropriate sufficient funds for this Agreement for the ensuing fiscal year. In such event City shall give Consultant not less than 30 days written notice.

Termination by City for Lack of Developer Funds
Consultant understands and acknowledges that the work to be performed under this Agreement will be paid through funds to be provided by one or more private project applicants, and that City has no control over whether or when the project applicants will provide the necessary funding to complete the services for which the City and Consultant have contracted. The City will use best efforts to assure that the necessary funding is available to complete all work authorized under this Agreement. If, however, project applicant funds are not available in a timely manner or if a project applicant chooses to terminate work related to the applicant’s project, the City may, at City’s sole option, temporarily delay or terminate this Agreement, or any portion of the work hereunder, by giving written notification to Consultant. The delay or termination date shall be the effective date set forth in the notice.

**Termination for Failure to Make Agreed-Upon Payments**

Should City fail to pay Consultant all or any part of the payments set forth in this Agreement on the date due, at its option Consultant may terminate this Agreement if the failure is not remedied within thirty (30) days after Consultant notifies City in writing of such failure to pay. The termination date shall be the effective date of the notice.

**Termination by City for Change of Consultant's Tax Status**

If City determines that Consultant does not meet the requirements of federal and state tax laws for independent contractor status, City may terminate this Agreement by giving written notice to Consultant. The termination date shall be the effective date of the notice.

**Voluntary Termination**

The parties may terminate this Agreement upon mutual written agreement.
In the Event of Termination

If this Agreement is terminated pursuant to this Paragraph, Consultant shall cease all its work on the project as of the termination date and shall see to it that its employees, subcontractors and agents are notified of such termination and cease their work. If City so requests, and at City's cost, Consultant shall provide sufficient oral or written status reports to make City reasonably aware of the status of Consultant's work on the project. Further, if City so requests, and at City's cost, Consultant shall deliver to City any work products whether in draft or final form which have been produced to date.

If the Agreement is terminated pursuant to any of the subsections contained in this paragraph, City will pay Consultant an amount based on the percentage of work completed on the termination date, this percentage shall be mutually agreed to by the City and Consultant. If the Agreement is terminated pursuant to the subparagraph entitled Termination by City for Default of Consultant, Consultant understands and agrees that City may, in City's sole discretion, refuse to pay Consultant for that portion of Consultant's services which were performed by Consultant on the project prior to the termination date and which remain unacceptable and/or not useful to City as of the termination date.

16. CERTIFIED PAYROLL REQUIREMENT.

For consultants performing field work on public works contracts on which prevailing wages are required: The Consultant shall comply with the provisions of Section 1776 of the California Labor Code, regarding payroll records, and shall require its subconsultants and subcontractors to comply with that section as may be required by law.

17. INDEMNITY.
Consultant shall hold the City, its agents, officers, employees and volunteers harmless from and save, defend and indemnify them against any and all claims, losses, liabilities, judgments or damages from every cause, including but not limited to injury to person or property or wrongful death, including reasonable costs and expenses of defense of any judicial or administrative action, arising directly or indirectly out of any negligent or intentional act or omission of Consultant, its agents, officers, employees or volunteers relating to or during the performance of its obligations under this Agreement.

Consultant's obligation to defend, indemnify, and hold the City, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Consultant to procure and maintain a policy of insurance.

18. ENTIRE AGREEMENT.

This Agreement and its exhibits contain the entire understanding between Consultant and City. Additional or new terms contained in this Agreement which vary from Consultant's proposal are controlling and are deemed accepted by Consultant by shipment of any article or other commencement of performance hereunder. All previous proposals, offers and communications relative to this Agreement, whether oral or written, are hereby superseded except to the extent that they have been incorporated into this Agreement. No future waiver of or exception to any of the terms, conditions, and provisions of this Agreement shall be considered valid unless specifically agreed to in writing by all the parties.

19. PARTIAL INVALIDITY.
If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

20. WAIVER.

The waiver by any party to this Agreement of a breach of any provision hereof shall be in writing and shall not operate or be construed as a waiver of any other or subsequent breach hereof unless specifically stated in writing.

21. AUDIT.

The City's duly authorized representative shall have access at all reasonable times upon advance notice and during normal business hours to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Consultant's charges to City under this Agreement.

Consultant agrees to retain reports, records, documents, and files related to charges under this Agreement for a period of four (4) years following the date of final payment for Consultant services. City's representative shall have the right to reproduce any of the aforesaid documents.

22. GOVERNING LAW.

This Agreement shall be governed according to the laws of the State of California.

23. HEADINGS NOT CONTROLLING.

Headings used in the Agreement are for reference purposes only and shall not be considered in construing this Agreement.

24. COMPLIANCE WITH LAWS.
Consultant shall insure compliance with all safety and hourly requirements for employees, in accordance with federal, state, and county safety and health regulations and laws. Consultant shall fully comply with all applicable federal, state, and local laws, ordinances, regulations and permits. Consultant will have a City of Modesto business license.

25. **CITY BUSINESS LICENSE.**

Consultant will have a City of Modesto business license.
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. _____, adopted by the Council of the City of Modesto on the _____ day of __________, 20__, and ______ has caused this Agreement to be duly executed.

CITY OF MODESTO, a municipal corporation

By________________________

GEORGE BRITTON, City Manager

ATTEST:

By________________________

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

SUSANA ALCALA WOOD, City Attorney

By________________________

ALISON A. BARRATT GREEN, Senior Deputy City Attorney

APPROVED AS TO RISK MANAGEMENT:

By________________________

DAVID RAWE, Assistant Risk Manager

* Corporations - signature of two (2) officers required or one (1) officer plus corporate seal. Partnership - signature of a partner required Sole Proprietorship - signature of proprietor required
PROJECT UNDERSTANDING

The Fairview Village project has a relatively long history with the City of Modesto. A specific plan was first prepared in 1995. It was analyzed under a focused environmental impact report (EIR) and approved. Subsequently, amendments to the plan have been proposed and approved by the City.

Recently, a large portion of the plan area, identified as Westport Landing, has come forward in the form of a tentative map. No action has been taken on the proposed project.

The fourth amendment to the 1995 specific plan is now proposed, which will be the subject of this EIR. The proposed project is described in a draft plan dated June 6, 2005, prepared by JB Anderson Land Use Planning. Although a final project description is being prepared, following is a basic description of the proposed project:

- Low Density Residential – 243 acres
- Medium Density Residential – 53 acres
- Medium High Density Residential – 16 acres
- Retail Commercial – 12.0 acres
- Park/Basin – 16 acres
- New Elementary School – 10 acres
- Existing Elementary School – 10 acres

The approximately 360-gross acre site is partially within the City of Modesto and partially in unincorporated Stanislaus County. The property is in three ownerships; a portion consisting of about 80 acres (Galas Brothers) has been subdivided and developed with single family dwellings and will be acknowledged with this project; the balance of the site of about 280 acres represents the new development.

The proposed project includes a strip of land on the north side of Hatch Road extending to the Tuolumne River. The strip of land is located in the Tuolumne River Comprehensive District designated for open space use and is part of this project for annexation purposes.

The City is currently involved in a maintenance update of its General Plan. The project proponent intends to prepare the specific plan while the General Plan update is underway, but in a manner consistent with the identified General Plan Preferred Land Use Alternative. The City has agreed to this approach to specific land planning.

WORK PROGRAM

The following work program is based on EDAW's current understanding of the proposed project. As the project description evolves, adjustments to the work program, cost, and schedule may be warranted.

Approach to EIR

The EIR for the Fairview Village Specific Plan will constitute a "focusing in" upon the broader environmental issues addressed in the Master EIR for the General Plan Update and re-assessment of
environmental issues previously raised in the 1995 focused EIR for Fairview Village in light of changes to the proposed plan and changes in the physical and regulatory environment. Information will also be taken from the initial study/mitigated negative declaration (IS/MND) prepared for the Community Facilities District in 2003, as well as the Key Issues Analysis, dated March 10, 2005, prepared by Impact Sciences. CEQA documents prepared for nearby projects, such as the EIR for the Tuolumne River Regional Park CPD will also be used.

We will "focus in" or build upon the more generalized analyses contained in the City's General Plan Master EIR (GPMEIR). The Fairview Village Specific Plan Amendment 4 EIR, however, will not tier from the GPMEIR, since the update GPMEIR will still be in preparation and will not have been certified.

EDAW is committed to the successful performance of all facets of the CEQA process, including initiation and organization; data review and compilation; identification of site opportunities and constraints; participation in the design process; establishment of baseline and cumulative conditions; impact assessment; development of appropriate and effective mitigation measures; report compilation; CEQA adequacy review; participation in scoping; and coordination between the City and the EDAW team and between the EDAW and the project proponent's team. EDAW will review and use any existing documents and studies prepared on this project site that will be helpful in the preparation of this EIR.

The CEQA Guidelines identify several types of EIRs, each applicable to different project circumstances. As discussed below, a Program EIR is appropriate for land use decision making at a broad level that contemplates further, site-specific review of individual development proposals. The form of EIR appropriate for this specific plan is assumed to be a Program EIR since the project does not include project specific proposals such as tentative subdivision maps.

The EIR will address impacts resulting from project development, operation, and maintenance to enable the project proponents, the City, and other regulatory agencies with jurisdiction over the proposed project to examine the overall effects of implementing the proposed project. The analysis also will enable them to take the necessary precautions and to require the implementation of various performance standards for future projects to avoid or reduce adverse environmental effects.

The program-level analysis will address the broad, as well as specific, environmental effects of project implementation. Additionally, the EIR will address the impacts of a buildout year to be provided by the project proponent. As the first step in the environmental review process for implementing the project, the analysis also will identify performance standards (e.g., mitigation measures to protect sensitive resources) that would apply to all subsequent development (e.g., tentative subdivision maps and improvement plans) in the plan area. In addition, the analysis will address the cumulative impacts of developing the proposed project.

The proposed project will encompass separate phases of development. To move forward with a subsequent development project, the project proponent would submit a project application for each subsequent project. At that time, the City would conduct a site-specific analysis of the project's potential impacts, particularly with respect to that project's compliance with the performance standards set forth in the EIR and incorporated into the specific plan (Public Resources Code Section 21083.3; State CEQA Guidelines Sections 15168, 15183). If the project falls within the scope of the analysis of the specific plan EIR, the project would only be required to implement the mitigation measures (i.e., performance standards) identified in the EIR in order to proceed. No further CEQA documentation would be necessary other than documenting consistency with the EIR.
WORK TASK DESCRIPTIONS

The proposed work task descriptions that follow have been organized into three major phases – Initial Study/NOP, Draft EIR, and Final EIR, each with a series of numbered tasks.

PHASE 1 – PROJECT INITIATION, INITIAL STUDY, AND NOTICE OF PREPARATION

Task 1: Initiate Project

_Purpose_

To establish early communication among the various project team members and identify project issues and concerns.

_Approach_

The EDAW principal-in-charge and project manager will attend an initial orientation meeting with the City management team and the project proponent’s team to review the proposed project, clarify the project objectives, discuss the proposed scope of work, and agree on the preferred direction of the environmental analysis and CEQA strategy.

An important issue will be the degree to which the project proponents will be permitted to participate in the review of EDAW work products. Accordingly, we recommend establishing lines of communication and communication protocols between EDAW and the project proponent’s team early in the process.

We will request any other data needed to initiate and complete the environmental analysis.

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<tr>
<th>Task 1 Summary</th>
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<td>Products: Memorandum detailing data needs, if necessary</td>
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Task 2: Perform Site Reconnaissance, and Collect and Analyze Background Information

_Purpose_

To thoroughly familiarize the EDAW team with the site and surrounding area, to collect and gain a solid understanding of all background documents relevant to the project site, and to obtain a complete project description.

_Approach_

EDAW personnel will visit the site to gain a clear understanding of the site characteristics and the relationship of the site to surrounding lands. We recommend that this initial reconnaissance be hosted by the project proponents and also be attended by the City’s management team.

EDAW personnel will contact project proponent team members and other agencies, as appropriate, to obtain copies of all documentation relevant to the site and the project.

After reviewing all application materials submitted by the project proponent, EDAW personnel will create an information needs list that identifies additional information, sorted by environmental topic, that will be needed in order to complete the EIR. This will serve as an initial list since subsequent information needs may arise during the environmental analysis.
Task 3: Prepare Notice of Preparation Package, Participate in Scoping Meeting

Purpose

Complete CEQA Notice of Preparation (NOP) process, including participation in a public scoping session. The NOP process, including scoping session, will be used to narrow the focus, scope, and content of the EIR. Following preparation of the NOP package and scoping, EDAW will confirm or refine the work program for the EIR analysis, if necessary.

Approach

EDAW will assemble the NOP package in coordination with City management team and with assistance from the applicant's team. The NOP package will be prepared in conformance with the State CEQA Guidelines. It will include a description of the proposed project, the project's location on a map, and conceptual site plans. In lieu of an Initial Study, the project description will include a section entitled Probable Environmental Effects. In addition to providing a summary description of environmental effects for each of the major topic areas identified in the CEQA Guidelines, it will provide a basis for dismissing certain topic areas from further environmental analysis in the EIR.

We will submit 20 copies of the draft NOP package to the City management team and the project proponent for review and comment before submission of the final package to the City. EDAW assumes there will be one draft reiteration of the NOP package to obtain comments. The draft NOP will be shared with the project proponent after it has been reviewed and approved by City staff. EDAW will revise the draft NOP package (assuming one reiteration) to incorporate City comments and forward 65 copies of the final NOP package to the City for distribution to the State Clearinghouse, regulatory agencies, City staff, and interested agencies/organizations. EDAW will hand-deliver the NOP package to the State Clearinghouse, if requested.

We will attend one scoping meeting with regulatory agencies and the public. The scoping meeting will be coordinated with the City management team. EDAW's role in the scoping meeting will be determined by the City.

EDAW will consider comments received in response to the NOP in the EIR.

Following preparation of the NOP and results of scoping, we will either confirm or refine the remaining work, cost, and schedule. EDAW is available to attend one meeting with the City and project proponent to confirm the scope of work, if necessary.

Task 4 Summary

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<th>Products</th>
<th>Confirmed or refined project work program, cost, and schedule</th>
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<tr>
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<td>One reiteration of draft NOP package (20 copies)</td>
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<td>Final NOP (65 printed copies)</td>
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<td>PDF files</td>
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<tr>
<th>Meetings</th>
<th>See Task 10 for monthly coordination meetings</th>
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<td>Scoping meeting to be attended by the Project Manager (1)</td>
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PHASE 2 - DRAFT EIR

Task 4: Prepare Administrative Draft EIR

Purpose

Prepare an administrative draft EIR for the proposed project. Up to three iterations of the administrative draft EIR will be submitted to the City for review. City staff may share the second administrative draft with the project proponent for review and comment. EDAW will attend one meeting to review comments. After comments are incorporated, EDAW will produce cut sheets showing revisions to the Draft EIR for approval before submittal of the Public Review Draft EIR to the City.

Approach

EDAW will prepare the EIR to satisfy CEQA, as described earlier in this Scope of Services. As appropriate, as much existing information as possible will be extracted from any available CEQA documents and technical studies for projects in the vicinity. EDAW will prepare the setting, impact analysis, and recommended mitigation measure (including performance standards) sections for the environmental topic areas described below.

In the following environmental topics, EDAW will rely upon technical studies provided by the following subconsultants. We will peer review those technical studies before incorporating them into the EIR. These environmental topics are:

- Traffic (kdAnderson Transportation Engineers)
- Wastewater (Carollo Engineering)
- Surface Hydrology/Water Quality (Stormwater Consulting)
- Water (West Yost Associates)

If any other technical reports become available from the project proponent, we will review those documents as well.

The following subtasks describe the contents of the administrative draft EIR and the steps necessary to complete each section.

1. Table of Contents

2. Executive Summary: An executive summary will be prepared that presents the significant conclusions of the EIR in a manner that is easily understood by the public. An introduction, a project history, a project description, and a description of alternatives will be provided. Summary discussions of each environmental issue evaluated also will be provided with focus on the most critical issues raised in the EIR. A summary table format will be used to identify less-than-significant impacts, significant impacts, significant and unavoidable impacts, cumulative impacts, mitigation measures, and the effectiveness of the recommended mitigation measures for the proposed project after implementation.

Because this chapter summarizes the contents of the EIR, preparing it before client and project proponent review would be inefficient. For this reason, the chapter will be made available in the Public Review Draft EIR that will be submitted to the City (Task 6).
3. Introduction: The introduction will describe the type and uses of the EIR; the environmental process required for the proposed project; the organization of the EIR; the focus of the EIR analysis; and other documents used in the preparation of the EIR. It will also identify the lead, cooperating, responsible, and trustee agencies under CEQA.

4. Project Description: In close coordination with the project proponent, EDAW will assemble project information that will form the CEQA project description. The project description will be used for the NOP package (see Task 4 above), and the EIR. The following CEQA requirements will be presented:

- **Regional and local setting.** The EIR will describe the regional and local project location and physical setting to establish the environmental baseline for analysis.

- **Project background.** This section will contain a brief discussion of the process by which the project proponent determined the need for the project.

- **Project objectives.** Consistent with CEQA requirements, project objectives for the proposed project will be developed and clearly stated to define the range of alternatives and to support the later discussion of alternatives considered but rejected and the adoption of findings for the project.

- **Project characteristics.** The EIR will fully describe the characteristics of the proposed project, including project phasing and on- and off-site infrastructure improvements.

- **Intended uses of the EIR.** As required by Section 15124(d) of the State CEQA Guidelines, the project description will include a list of cooperating, responsible, and trustee agencies expected to use the EIR in decision-making; a list of permits and other approvals required to implement the project; and a list of related environmental review and consultation requirements needed for compliance with federal, State, and local laws and regulations.

- **Required Approvals.** A list of entitlements required to implement the project will be provided.

5. Environmental Setting, Impacts, and Mitigation Measures: Consistent with CEQA requirements, a comprehensive discussion of the existing project setting (i.e., baseline conditions) will be prepared and presented. Also presented will be a regulatory setting which describes the environmental laws, regulations, and ordinances applicable to the proposed project, as well as the significance criteria in which to measure the significance of impacts, impact methodology, and impact analysis. The EIR will provide a clear, concise, and focused description of the direct, indirect, and cumulative impacts of the proposed project. Mitigation measures will be recommended to avoid, eliminate, or reduce impacts to a less-than-significant level.

It is anticipated that the following issues (which will be contained in separate sections) will be addressed in the EIR; this listing may change following completion of the NOP (Task 3): It is assumed that certain topics, such as Population and Minerals, will be “scoped out”.

- Aesthetics
- Air Quality
- Biological Resources (botanical, wildlife, and wetland resources)
- Cultural Resources
- Geology and Soils, and Paleontological Resources
- Hazards and Hazardous Materials
- Land Use and Agricultural Resources
- Noise
• Public Services and Utilities (water supply, wastewater disposal, electricity, natural gas, and communications, law enforcement, fire protection, schools, and solid waste, and parks and recreation)
• Surface Hydrology and Water Quality
• Traffic and Transportation

EDAW's approach to the analysis of each of these resource topics is presented below. In each instance, as previously noted, we will "focus in" or build upon the more generalized analyses contained in the City's GPMEIR. The Fairview Village Specific Plan EIR, however, will not tier from the GPMEIR, since the updated GPMEIR will still be in preparation and will not have been certified.

Aesthetics

EDAW will evaluate the potential for the proposed project to alter views currently seen from adjacent roadways. A reconnaissance-level site visit will be conducted to evaluate the visual character of the project study area and surrounding areas and to take photographs to be included in the EIR. No visual photosimulations will be prepared.

EDAW will develop performance standards, in the form of mitigation measures, to be incorporated and adopted as part of the specific plan based on guidance contained in the General Plan Update. Performance standards are expected to address building style and design, landscaping, lighting, visual buffers, tree retention, and other relevant performance standards to avoid or reduce visual impacts to less-than significant levels.

Air Quality

The proposed project area is located in City of Modesto which is under the jurisdiction of the San Joaquin Valley Air Pollution Control District (SJVAPCD). EDAW will describe the regional and local air quality in the vicinity of the project site. Applicable air quality regulatory framework, standards, and significance thresholds will also be presented.

EDAW will conduct an analysis of air quality impacts in accordance with the recommended methodologies identified by SJVAPCD (SJVAPCD, 2005). The air quality impact analysis will include a general discussion of potential short-term (i.e., construction-generated) air pollutant emissions. Short-term increases in regional criteria air pollutants and precursors (reactive organic gases [ROG], nitrogen oxides [NOX], and particulate matter less than 10 microns in diameter [PM10]) will be modeled for the proposed project using URBEMIS 2002 Version 8.7.0 as recommended by the SJVAPCD. Short-term construction-generated increases in criteria air pollutants will be compared with applicable SJVAPCD thresholds for determination of significance. SJVAPCD mandatory and recommended measures will be provided as mitigation where necessary.

Our air quality specialists will consult with the SJVAPCD for determination of appropriate mitigation measures to be incorporated to reduce long-term air quality impacts. Effects of proposed mitigation measures will be quantified.

Revised 3/8/07
The analysis will include an assessment of local mobile-source carbon monoxide (CO) impacts, where deemed necessary in accordance with SJVAPCD recommended methodologies, using the CALINE4 model with emission factors from EMFAC 2002. Vehicle-type distribution percentages (i.e., light-duty auto, sport utility, medium and heavy-duty trucks) will be based on registration data from the California Department of Motor Vehicles for City of Modesto as contained in EMFAC and heavy-duty truck traffic data from the California Department of Transportation (Caltrans). CALINE4 modeling will be performed in accordance with SJVAPCD- and Caltrans-recommended methodologies. Local mobile-source impacts are typically quantified for congested areas [i.e., level of service (LOS) E or worse] with high background CO concentrations.

Intersections will be modeled with peak-hour traffic data from the transportation analysis that will be prepared for this project (p.m. peak only) for existing and existing-plus-project conditions to determine the potential for localized CO "hot spots." Modeled CO concentrations will be compared with state and national 1- and 8-hour ambient air quality standards to determine impact significance. SJVAPCD-recommended measures will be provided as mitigation where necessary.

EDAW will also prepare a qualitative assessment of the proposed project's contribution to greenhouse gas emissions.

Biological Resources

The project site includes land previously used for growing field crops, as well as a strip of land on the north side of Hatch Road extending to the Tuolumne River. Native plant communities are absent from the project site due to prior agricultural conversion. However, sensitive biological resources, including special-status species and wetlands, could be present. Agricultural land in this region of Stanislaus County can provide important foraging habitat for Swainson's hawk and habitat for burrowing owl.

Our work program includes site reconnaissance and review of existing documentation pertinent to the biological resources on the project site. An electronic search of the California Department of Fish and Game's California Natural Diversity Data Base and the California Native Plant Society's (CNPS's) electronic inventory will be conducted to obtain information regarding sensitive biological resources potentially occurring on and near the site. Documents that describe the status and distribution of sensitive biological resources in the project vicinity will be included as part of the literature review.

EDAW biologists will conduct a reconnaissance-level survey of the site to evaluate the existing biological resources. Important biological resources (e.g., special-status species, sensitive plant communities, etc.) identified on and near the project site will be documented and mapped onto aerial photographs of the site, and the potential of the site to support additional special-status species that may not be identifiable at the time of the field survey will be evaluated.

Based on information obtained through existing documentation review and the results of the field survey, the environmental setting section of the biological resources chapter will be prepared. The setting section will include a description of the existing biological resources on the project site and an exhibit showing the location of any known or potential sensitive biological resources on the project site. An overview of relevant federal, State, and local laws and regulations pertaining to the protection of biological resources at the project site will also be included. This scope of services does not include focused surveys for special-status species or a formal wetland delineation because it is not known at this time if these resources are located in the proposed development area.
Cultural Resources

Prefield Efforts. The initial cultural resources investigation efforts will entail a review of any previous archaeological survey and excavation reports, archaeological site records, and formal property listings on file at the Northwest Information Center (NWIC) of the California Historical Resources Information System. The NWIC search will cover the entire project site. Available historical data will be supplemented with additional research. EDAW will review formal listings of properties included in the National Register of Historic Places and the California Register of Historical Resources.

EDAW will also contact the Native American Heritage Commission (NAHC) to request a search of the Sacred Lands Files to determine if any significant traditional cultural use areas are present within or in the vicinity of the project area. The NAHC will also be asked to provide a list of suitable Native American tribal representatives in the area. These organizations and individuals will be contacted via letter and up to two follow-up phone calls, if necessary. The local Native American community will be informed of the cultural resources portion of the project and their knowledge of significant cultural sites in the area will be solicited.

Field Inventory. A mixed-strategy archaeological inventory will be conducted by archaeologists who will carefully examine the site. Any newly identified archaeological sites encountered within the project area will be recorded in a manner consistent with the Office of Historic Preservation's publication Instructions for Recording Historical Resources (1993). California Department of Parks and Recreation (DPR) Series 523 forms will be prepared, along with appropriate supporting forms (e.g., Archaeological Site Record, Linear Feature record, Site Sketch Map, Location Map). Cultural constituents, site condition, and factors affecting each site will be noted on the DPR forms. Standard color photography will be used to document each resource, and photographic records will be maintained. Only diagnostic artifacts (those with definitive cultural and temporal associations) will be collected during this stage and will be located on project maps and with exact coordinates obtained using state-of-the-art Global Positioning System (GPS) equipment.

If any historic or prehistoric sites are noted, EDAW will use GPS units to collect one point for each small site (less than 10 acres), two or more points for linear resources, and four points for sites greater than 10 acres in extent. Any previously identified resources within the project area will be revisited and, if necessary, updates to existing DPR forms for those resources will be prepared.

An architectural historian will conduct background research to determine whether the existing buildings on the project site are historic (i.e., greater than 45 years old). If historic resources are present, these will be documented according to current professional standards. No subsurface testing or evaluation is included in this scope of work.

Geology and Soils, and Paleontological Resources

The project site topography is relatively flat. Nonetheless, significant quantities of earth will be moved to develop the site. This creates a potential for erosion-related effects. Particular attention will be given to the potential for air- or water-borne earth that is disturbed during the site development process to enter nearby canals or local drainage ditches and to be transported to other water bodies. The potential for geology and soil impacts associated with the proposed project will be evaluated based on the project proponent's geological study, publications from the U.S. Geological Survey, California Division of Mines and Geology, Soil Conservation Service, and the Modesto City General Plan. The EIR will focus on the seismicity of the area, the potential for liquefaction and subsidence, and erosion problems, as applicable. The potential for short-term, construction-related project impacts will be analyzed, and mitigation
measures will be recommended for any potentially significant effects in the EIR. EDAW does not propose to conduct any formal geotechnical studies in this scope of work.

EDAW will assess the potential for project impacts to paleontological resources by identifying and describing the geological formations on which the project is located and assessing their sensitivity for containing significant fossils. We will conduct the sensitivity assessment by: (1) consulting applicable geological and paleontological literature for information on the applicable geological strata, and (2) conducting a records search at the UC Berkeley Museum of Paleontology to identify the nearest known fossil finds. The paleontological analysis will include a site visit (if our preliminary analysis determines that the project could be located on a paleontologically-sensitive rock unit); a discussion of the geologic setting, formations, and stratigraphy of the project site; a discussion of the sensitivity of project site and vicinity and any known paleontologic resources; an assessment of potential project-related impacts on paleontologic resources; and proposed mitigation measures (if necessary).

Hazards and Hazardous Materials

Past uses of the project site have historically been devoted to agricultural uses. The historical uses of the project site will be documented for periods for which data is available. Sources of information to be researched will include historic land use maps, zoning maps, and public records. Additionally, the U.S. EPA’s Envirofacts website database will be searched to determine if the site or properties in the vicinity have been listed on regulatory agency databases. We will also refer to data and conclusions contained in the Phase 1 ESA, dated January 12, 2004 prepared for the plan area. The need for an additional ESA to address portions of the project site that may not included in the January 2004 ESA or a Phase 2 study to will be determined following our review of the January 2004 report. These resources will be used to determine areas of potential contamination on the project site or surrounding property, if any.

The significance of potential impacts will be determined, and mitigation recommended to minimize potential adverse impacts, if necessary. For purposes of this analysis it is assumed that the handling of any hazardous substances would occur in accordance with applicable federal, State, and local regulations.

Land Use and Agricultural Resources

The land use consistency analysis will assess the consistency of the project with the portions of the Modesto General Plan as proposed in the Update Program. The analysis will assess the effects of the project on the character of the project study area and compatibility with the existing and planned land use patterns. Existing land uses in the immediate vicinity of the project will be described from existing information, where available. This section also will address property acquisition and required land use entitlements; the conversion of undeveloped land, including farmland, to other uses; division of established communities; and consistency with plans and policies adopted for the purpose of avoiding environmental impacts.

For the agricultural analysis, existing agricultural resources on the project site and in the surrounding vicinity will be described, including the types of farming activities and description of on-site soils that are suitable for farming activities based on the Farmland Mapping and Monitoring Program. The analysis will focus on impacts associated with the conversion of farmland (as defined by CEQA), and the potential for the project to conflict with or induce conversion of other area agricultural uses. EDAW will determine acreage of Prime Agricultural Land, Agricultural Land of Statewide Importance, and Williamson Act contract status using appropriate agency databases.
An exhibit showing existing land uses will be presented in the EIR. An assessment consisting of each issue area presented in the EIR (i.e., transportation, air quality, noise, etc.) with adopted plans and policies will be conducted as part of each issue area.

Noise

EDAW will describe the existing noise environment on and near the proposed project site, based on existing documentation and reconnaissance-level data. As part of the site reconnaissance, an EDAW noise specialist will conduct a maximum of eight short-term (i.e., 15-minute) noise measurements at various locations on and in the vicinity of the proposed project to characterize the existing noise environment.

Nearby existing, noise-sensitive receptors and noise sources will be identified and discussed. Relevant background information, including noise fundamentals, descriptors, and applicable federal, State, and local regulatory framework, will also be presented.

The analysis will include an assessment of potential short-term, temporary (i.e., construction-related) noise impacts with respect to nearby sensitive receptors and their relative exposure (considering structural barriers and distance). Noise levels of specific construction equipment will be determined and resultant noise levels at those receptors (at given distances from the source) will be calculated.

EDAW will assess potential long-term (i.e., operational) mobile- and stationary-source noise impacts. With respect to traffic, noise levels will be modeled based on traffic volumes obtained from the transportation analysis that will be prepared for this project. A Federal Highway Administration-approved traffic noise prediction model will be used to determine roadway traffic noise levels for existing, existing-plus-project, cumulative, and cumulative-plus-project scenarios for affected roadway segments. EDAW will determine if modeled increases to roadway noise levels would adversely affect nearby existing or proposed noise-sensitive land uses.

EDAW will also provide a qualitative analysis of the compatibility of the proposed land uses with the existing and future predicted noise environments, including operational noise from on-site and off-site mobile and stationary sources, and noise from proposed commercial uses. The potential of short-term and long-term noise impacts will be determined based on comparisons with applicable standards. Where necessary, EDAW will provide mitigation measures along with their relative effectiveness.

Public Services and Utilities

This section will address utilities such as electricity, natural gas, and communications, and public services and facilities such as law enforcement, fire protection, schools, solid waste, water, wastewater, and parks and recreation.

EDAW will contact each of the affected public service providers to obtain relevant baseline and regulatory information, solicit input on potential impacts, and to obtain "will-serve" letters, which will be presented in an appendix to the EIR. Project-related demand for services will be estimated and compared against existing capacity and proposed future capacity associated with the project (e.g., potential construction of on-site parks, fire stations, schools, etc.). Service demand will be determined using population projections and land use information provided by the project proponent. Impacts will be based on whether any new facilities would be needed and if construction of such facilities could generate significant impacts. This scope of services does not include an analysis of the proposed specific plan's potential fiscal impact on the City and other service providers. Separate detailed task descriptions for the water and wastewater analyses are provided below.
An existing Turlock Irrigation District canal that presently transects the project site will need to be re-routed and/or placed in a pipe to allow for the installation of certain public utilities. This will be noted in the EIR and any potential environmental impact of this action will be assessed.

Water

Please refer to the scope of services described below by West Yost Associates (WYA). EDAW will prepare this EIR section based on the technical report prepared by West Yost Associates.

Subtask W1: Review Available Data and Projected Water Demands. Based on the land use plans for the project, to be provided to WYA by EDAW, we will estimate the average day, maximum day, and peak hour demands for the proposed project. WYA will also discuss fire flow criteria and residual pressures required at the hydrants serving the project. We will describe, in a technical memorandum (TM) to be prepared in Subtask W2, the estimated water demands by land use type for the proposed project. A comparison to the water demands previously calculated in the Draft Fairview Specific Plan prepared by others also will be provided. No phasing plans will be included in this analysis, but project phasing could be provided as an additional service if a corresponding budget augmentation is approved.

To facilitate our work on this task and others, WYA requests electronic files containing the proposed land use designations and all landscaping areas for the project, and a graphic that provides the alignment and size of all proposed water lines, and location of proposed streets/roads at the proposed project site.

The information contained in the South Modesto Water Study will be used as a basis for the analysis of the water system required for the Fairview Village project.

Subtask W2: Update the Hydraulic Model and Analyze the System. The City’s existing water system hydraulic model will be modified to be representative of the new water demand of the project. These hydraulic model system modifications will include planned distribution system pipelines and other water facilities, and the major allowable connections to the City’s existing water system. Projected demands will be distributed throughout the project area, according to the projected land use demands.

Using this modified hydraulic model of the City’s existing water system, WYA will evaluate the potential hydraulic impacts of these increased water demands and fire flow analyses on the City’s existing water system. The water system will be evaluated for criteria such as: supply availability, delivery pressure, maximum water velocity and head loss in pipelines under various demand conditions (including fire flows), system pressures, and system redundancy/reliability. If the City’s existing water system cannot meet the City’s minimum water system design criteria with the increased demands of the proposed project at buildout, WYA will make recommendations for whatever new water facilities are required to mitigate the hydraulic impacts of the project. Required water facilities could include any or all of the following: new and/or rehabilitated wells, development/participation in new sources of supply, water storage tanks, booster pump station, additional connections into the existing City system and additional distribution/looping pipelines.

WYA will also prepare an estimate of the probable capital cost for the water facilities recommended to be constructed to mitigate the hydraulic impacts of the proposed project on the City’s existing water system (on-site water facility costs are specifically excluded from this cost estimate). For identified water supply facilities (wells with wellhead treatment) required for the proposed Project, costs will be based on a proportionate share basis, developed based on a ratio of the required peak hour project demand to the sustainable production capacity for the well.
A 10 to 12-page TM describing the water system evaluation criteria, planned sources of supply, and the required water system infrastructure/facilities required to mitigate the hydraulic system impacts of the project on the City's existing water system will be prepared as the work product of this task. WYA will provide EDAW with three (3) hard copies of the Draft TM, and five (5) hard copies of the Final TM.

If requested, WYA will also meet with EDAW once to coordinate our work activities, report on project status, or to receive comments to the draft TM. Any additional meetings or conference calls can be provided if requested, and a budget augmentation is approved.

This technical work is intended to provide an analysis of the ability of the City's existing water system to continue to provide water at adequate pressure and flow to existing customers with the additional system demands of the proposed project at buildout.

Subtask W3: Prepare Water Supply Assessment. WYA will prepare a single bound water supply assessment (WSA) report for the entire 360-acre Fairview Village Project in response to SB 610. Additional analysis beyond that required by SB 610 can be performed, if requested, and a corresponding budget augmentation and time extension is approved. No individual WSA's for any of the various individual property owners, or other project phases will be prepared.

Wastewater

Please refer to the scope of services described below by Carollo Engineers. EDAW will prepare this EIR section based on the technical report prepared by Carollo Engineers.

Subtask WW1: Engineering Support during the EIR Process. Carollo will provide EDAW with information related to the collection system or WWTP improvements required to support the Fairview Village development. For budgetary purposes, a total of 60 hours of engineering effort has been assumed, including attendance at up to two meetings with the EIR consultant. Work beyond the budget for 60 hours of engineering effort will only be performed after receiving written approval of a budget augmentation.

Subtask WW2: Capacity Study. Carollo completed the 2006 Wastewater Collection System Master Plan Study for the City (Master Plan). The work described in this task is supplemental to work completed for the Master Plan and assumes that the City of Modesto or Harris & Associates (HA) will provide the necessary development layout and land use data to complete this Capacity Study. This task includes:

- updating the hydraulic model to reflect changes in planning assumptions that have occurred since the completion of the Master Plan;
- revising sewer improvements to reflect changes in planning assumptions;
- revising the collection system and wastewater treatment plant (WWTP) improvements necessary to accommodate growth based on revisions to the hydraulic model and updates to the WWTP Master Plan;
- developing probable construction cost estimates for recommended capital projects; and
- developing a cost allocation associated with proposed recommended improvements.

Consistent with the Master Plan, revisions to the hydraulic model will not include modeling sewer mains smaller than 10-inches in diameter. Design, including development of plan/profile drawings is outside the scope of these services. It is assumed that HA will provide available ground elevations of the development.
Carollo will provide services on a time-and-material basis against a not-to-exceed maximum fee.

**Surface Hydrology and Water Quality**

Please refer to the scope of services described below by Stormwater Consulting. EDAW will prepare this EIR section based on the technical report prepared by Stormwater Consulting.

Storm Water Consulting, Inc. (SWC) will prepare a technical report that addresses storm drainage issues and requirements pertaining to the Fairview Village Specific Plan Amendment. The technical report will be utilized by EDAW in their preparation of the Hydrology and Water Quality section of the EIR being prepared for the proposed project under contract with the City of Modesto (City). The technical report will be based on a review and interpretation of information contained in the following documents:

- The City's Draft Storm Drainage Master Plan dated October 2006, or a more current version if available
- Original Fairview Village Specific Plan dated November 1997
- Current Draft Amendment to Fairview Village Specific Plan, including the Master Utilities Plan component of said document
- The City's Design Standards for Dual Use Flood Control/Recreation Facilities document dated December 2000
- The City's Guidance Manual for New Development Stormwater Quality Control Measures
- Current City Design Standards, Chapter 4, Storm Drainage Design
- The City's NPDES Permit
- City Code section addressing Floodplain Regulations
- FEMA Flood insurance Rate Maps for City of Modesto and Stanislaus County
- Applicable Soils Maps, published by the Natural Resources Conservation District (NRCD)
- Applicable General Orders published by the State Water Resources Control Board pertaining to storm water quality concerns
- Information available from the State of California Division of Safety of Dams (DSOD) pertaining to Jurisdictional Dams within the upstream watershed for the Tuolumne River
- Monthly Climate Summaries for the Modesto area published by the Western Regional Climate Center (WRCC)
- Clean Water Act 303(d) Listing of Impaired Water Bodies

The technical report will summarize pertinent information contained in these documents as they relate to storm drainage requirements and concerns associated with the proposed development of the Fairview Village Specific Plan Amendment. SWC will review the Fairview Village Specific Plan Amendment with regard to impacts associated with its buildout and will provide recommendations within the technical report to reduce any identified significant impacts to levels that are considered to be less than significant. SWC will also provide independent calculations pertaining to detention volume requirements using the HEC-HMS or HEC-1 computer models and compare the results with information provided in the Fairview Village Specific Plan Amendment.

The preparation of onsite or offsite construction drawings or sizing of onsite storm drainage conveyance facilities are not a part of the work effort.
This work will be completed within the time frame of the deliverables shown below:

- Draft technical report - within 6 weeks of Notice to Proceed and receipt of the Fairview Village Specific Plan Amendment document
- Final technical memorandum - within 4 weeks of receipt of comments from the City/EDAW regarding the Draft version of the technical report

SWC will coordinate the work effort with EDAW and the City during the preparation of the technical report.

Traffic and Transportation

Please refer to the scope of services described below by kdAnderson Transportation Engineers (KDA). EDAW will prepare this EIR section based on the technical report prepared by KDA.

**Subtask TT1: Study Initiation.** KDA will attend an initiation meeting with the applicant, EDAW and City staff to discuss the City's concerns, our study approach, developer objectives for the project, etc. KDA will go over the schedule for our work and for the EIR as a whole.

**Subtask TT2: Collect Traffic Volume Data.** KDA will collect the traffic count information needed for our analysis. For the traffic impact analysis KDA will assemble *a.m. and p.m. peak hour* traffic counts at study intersections. Our budget includes new counts at all study intersections, including:

1. Carpenter Road / Maze Blvd (SR 132)
2. Carpenter Road / California Avenue
3. Carpenter Road / Chicago Avenue
4. Carpenter Road / Beverly Drive
5. Carpenter Road / Paradise Road
6. Carpenter Road / Hatch Road
7. Carpenter Road / Whitmore Avenue
8. Carpenter Road / Service Road
9. Carpenter Road / Robertson Road
10. Paradise Road / Harris Avenue / Beverly Drive
11. Paradise Road / Sutter Avenue / Tuolumne Blvd
12. Hatch Road / Monticello Lane
13. Hatch Road / Rancho Encantano Lane
14. Hatch Road / Ustick Road
15. Hatch Road / Dallas Street
16. Hatch Road / Crows Landing Road
17. Hatch Road / SB SR 99 ramps
18. Hatch Road / Herndon Road
19. Crows Landing Road / NB SR 99 ramps
20. Crows Landing Road / SB SR 99 ramps
21. Crows Landing Road Butte Avenue
22. Crows Landing Road / Winmoore Way
23. Crows Landing Road / Glen Avenue
24. Crows Landing Road / Service Road
25. Crows Landing Road / Hackett Road
26. Whitmore Road / Yuma Avenue
27. Whitmore Avenue / Tucson Avenue
KDA will employ this data to quantitatively describe current traffic conditions in this area in terms of operating Level of Service at study intersections using the definitions contained in the 2000 Highway Capacity Manual (2000 HCM). However, LOS will be calculated using SYNCHRO – Simtraffic. The extent to which current traffic conditions meet City standards will be determined, and the need for improvements to resolve current problems will be noted.

KDA will also catalogue current traffic volumes on key roadway segments in the area of the project, including:

1. Carpenter Road from Maze Blvd to Hatch Road
2. Carpenter Road from Hatch Road to Whitmore Avenue
3. Carpenter Road from Whitmore Avenue to Service Road
4. Hatch Road from Carpenter Road to Ustick Road
5. Hatch Road from Ustick Road to Crows Landing Road
6. Hatch Road from Crows landing Road to SR 99
7. Dezani Lane west of Ustick Road
8. Ustick Road from Hatch Road to Tudor Court
9. Ustick Road from Lassen Avenue to Whitmore Avenue
10. Tucson Lane from Lassen Avenue to Whitmore Avenue
11. Whitmore Avenue from Carpenter Road to Ustick Road
12. Whitmore Avenue from Ustick Road to Crows Landing Road
13. Whitmore Avenue from Crows Landing Road to SR 99
14. Paradise Road east of Carpenter Road
15. Paradise Road west of Carpenter Road
16. SR 99 from Crows Landing Road and Whitmore Road

Subtask TT 3: Evaluate Existing Conditions. KDA will employ this traffic data to quantitatively describe current traffic conditions in this area in terms of operating Level of Service at study intersections using the definitions contained in the 2000 Highway Capacity Manual (2000 HCM). However, LOS will be calculated using SYNCHRO – Simtraffic.

KDA will create separate SYNCHRO – Simtraffic networks for the four arterial street systems addressed by the study. SYNCHRO–Simtraffic runs will be made for a.m. and p.m. scenarios. The extent to which current traffic conditions require improvements will be noted, including consideration of peak hour traffic signal warrants.

Current peak hour volumes on study area street segments will be compared to City GPU capacities in order to identify current Levels of Service.
**Subtask TT 4: Identify Project Traffic Characteristics.** KDA will quantify the trip generation associated with the land uses within the proposed specific plan based on Institute of Transportation Engineers (ITE) rates and/or rates employed in the City-wide traffic model. The directional distribution of project trips will be determined based on “select link” analysis and consideration of existing travel patterns. Trip generation and distribution assumptions will be shared with City staff prior to continuing with the study.

KDA will provide trip generation estimates for project alternatives.

**Subtask TT 5: Identify Short Term (5 Year plus project) Future Volumes.** Standard City requirements ask for evaluation of a.m. and p.m. peak hour conditions occurring at the anticipated opening year with full build out and occupancy or 5 years whichever is more in the future assuming background traffic growth and implementation of projects in the City's CIP and traffic impacts fee program. KDA will work with City staff to identify applicable traffic volume growth rates for area streets and to create an applicable background condition that reflects of the approved projects. The extent of study area circulation system improvements that should be assumed to be in place in 5 years will be determined in consultation with City staff.

"Plus project" volumes will be identified by superimposing project trips onto the background condition to create the "5 Year Future Plus Project" condition.

**Subtask TT 6: Evaluate Short term Conditions / LOS.** KDA will create a series of SYNCR0 – Simtraffic networks for the four EPAP and EPAP plus project scenarios. Roadway segment LOS will also be determined.

**Subtask TT 7: Identify Long Term (2025) Traffic Volumes.** Year 2025 traffic volume forecasts will be prepared for overall roadway segments in order to confirm consistency with the GP EIR, and study intersections will also be evaluated under year 2025 p.m. peak hour conditions.

To produce year 2025 forecasts KDA will disaggregate the current citywide traffic model to accurately assign project traffic to the local street system. Resulting p.m. peak hour forecasts will be created in a manner that is consistent with other recent City EIRs.

**Subtask TT 8: Evaluate Year 2025 Impacts.** KDA will modify the SYNCR0 – Simtraffic networks for the two Year 2025 scenarios and identify Levels of Service. Necessary mitigation measures will be identified. Roadway segment LOS will also be determined.

**Subtask TT 9: Review Project Access.** Proposed project access will be reviewed with regard to City of Modesto standards for intersection spacing, and the extent to which auxiliary lanes / traffic controls are needed will be suggested.

**Subtask TT 10: Identify / Summarize Mitigation Measures.** If unsatisfactory traffic or access conditions are projected KDA will explore alternative mitigation measures and recommend a strategy for reducing impacts to a level of insignificance. However, those impacts that may not be avoidable will be noted as well.

**Subtask TT 11: Prepare Report.** KDA will summarize their evaluation in a written report. The draft report will be provided to EDAW for review prior to finalization for submittal to the City.

Revised 3/8/07

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**Subtask TT 12: Meetings / Coordination.** In addition to the initiation meeting, KDA may need to meet with the client and/or City of Modesto to go over our draft report with the City. KDA have assumed three (3) meetings, and this cost is included in our budget. KDA have also budgeted for participation at one (1) meeting for Planning Commission review of the project and one (1) meeting for City Council review of the project. Additional meetings with City staff may be necessary, but this cost is not included in their base budget.

**Growth-Inducing Impacts**

In accordance with Section 15126.2(d) of the State CEQA Guidelines, EDAW will prepare a chapter that evaluates the potential growth-inducing impacts of the project. Potential sources of growth inducement and their impacts, such as removal of obstacles to growth, will be analyzed qualitatively to the extent they are applicable. “Growth-Inducing Impacts” will be included as a separate section within a chapter entitled, “Other Statutory Requirements.”

**Irreversible and Irretrievable Commitment of Resources**

EDAW will identify any irreversible and irretrievable commitments of resources which would be involved in the proposed project should it be implemented. Irreversible and irretrievable resource commitments are related to the use of nonrenewable resources and the effects this use could have on future generations. Irreversible effects primarily result from the use or destruction of a specific resource (e.g., energy and minerals) that cannot be replaced within a reasonable timeframe. Irretrievable resource commitments involve the loss in value of an affected resource that cannot be restored as a result of the action (e.g., extinction of a threatened or endangered species or the disturbance of a cultural resource). This section will be included as a separate section within a chapter entitled, “Other Statutory Requirements.”

**Significant and Unavoidable Impacts**

EDAW will summarize significant and unavoidable adverse impacts associated with the proposed project, consistent with the State CEQA Guidelines Sections 15126.2(b) and (c). Included in the discussion will be any impacts that can be partially mitigated, but not to a level that is less than significant. Any mitigation measures eliminated from consideration because of new impacts associated with their implementation also will be discussed. “Unavoidable Adverse Effects” will be included as a separate section within a chapter entitled, “Other Statutory Requirements.”

**Alternatives**

EDAW will work with the project proponents and City to develop a reasonable range of alternative land use diagrams to analyze in the EIR (as required by CEQA). Up to four alternatives will be analyzed. In addition to the No Project alternative, other alternatives might include a Reduced Density Alternative and a Biological Resources Avoidance Alternative. Alternatives are typically confirmed during the environmental analysis. The document will also discuss alternatives that were considered, but eliminated from further consideration. This scope of work assumes that a maximum of three alternatives to the proposed project, including the CEQA-required No Project alternative, will be analyzed.

**Cumulative Impacts**

Extracted from the General Plan Update Master EIR, the “Cumulative Impacts” chapter will contain the cumulative impact methodology, contributing projects, list of related projects, cumulative context, and
cumulative impact analysis for each resource area identified in the "Environmental Setting, Impacts, and Mitigation Measures" section. The section will be consistent with Section 15130 of the State CEQA Guidelines that defines what constitutes a cumulative impact under CEQA, provide a summary of the projects that are contributing to cumulative impacts, provides the cumulative context, and lists related projects. The analysis will be based on an updated list of proposed, pending, and approved projects, provided by the City.

Following submission of the Administrative Draft EIR to the City, EDAW's project manager and other appropriate staff will meet with the City's management team to review the ADEIR.

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<th>Task 4 Summary</th>
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<tr>
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<td>First Administrative draft EIR, bound copies (15)</td>
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<td>Second Administrative draft EIR (20)</td>
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<td><strong>Meetings:</strong></td>
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<td>Meeting with City management team and the project proponent team, to be attended by the EDAW Project Manager (1)</td>
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**Task 5: Prepare Public Review Draft EIR and CEQA Notices**

**Purpose**

To respond to City comments on the administrative draft EIR, complete necessary revisions, prepare a screen-check draft EIR for approval, publish the EIR for public review, and prepare the Notice of Availability (NOA) for delivery to the State Clearinghouse. It is assumed that the City will be responsible for publishing the NOA in the newspaper of record.

**Approach**

EDAW will coordinate with City management team; assemble agency comments on, and suggested revisions to, the administrative draft EIR; resolve any substantive issues/concerns; and prepare the public version of the draft EIR.

EDAW's project manager and other appropriate staff will meet with the City's management team to review the Public Review DEIR before it is released for public review.

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**PHASE 3 - FINAL EIR**

**Task 6: Prepare Administrative Final EIR and Responses to Draft EIR Comments**

**Purpose**

To prepare an administrative final EIR with written responses to comments received on the publicly circulated draft EIR that raise significant environmental issues and submit for City review. The final EIR will be consist of comment letters, responses to comments, and a revised version of the public review draft EIR indicating text changes in underlining for additions and strikeouts for deletions, with notations to the relevant response to comment.

Revised 3/8/07
Approach

EDAW will coordinate with the City management team to review written comments on the draft EIR and comments from public meetings/hearings and develop a strategy and framework for responding to public comments. The comment letters, responses to comments, and EIR text revisions will be reviewed by EDAW for CEQA compliance before submittal of the administrative final EIR to the City.

EDAW will submit the administrative final EIR with draft responses to comments for agency review. Responses that are within this scope and budget consist of explanations, elaborations, or clarifications of the data contained in the draft EIR. EDAW has established a budget of 80 hours (various personnel at specified hourly rates) for responses to comments. This is a budget set aside and would be adjusted based on the overall volume and nature of comments.

<table>
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<th>Task 6 Summary</th>
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<td><strong>Products:</strong> Administrative final EIR, bound copies (15)</td>
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<td><strong>Meetings:</strong> Meeting with City management team to discuss administrative final EIR, responses to comments, and findings (1)</td>
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Task 7: Prepare Final EIR

Purpose

To respond to City comments on the administrative final EIR, complete necessary revisions, prepare a screen-check final EIR for approval, publish the final EIR, and prepare the Notice of Determination (NOD) to be posted at the Stanislaus County Clerk's Office.

Approach

EDAW will respond to City comments on, and suggested revisions to, the administrative final EIR; complete necessary revisions; and submit the final EIR to the City for distribution to agencies and the public.

EDAW's project manager and other appropriate staff will meet with the City's management team to review the Final EIR before it is considered by decision makers.

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<th>Task 7 Summary</th>
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<td><strong>Products:</strong> Final EIR, camera-ready, unbound copy (1)</td>
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<td><strong>Meetings:</strong> Meeting with City management team to discuss final EIR (1)</td>
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Task 8: Public Meetings and Hearings

In addition to meetings with management team described in the earlier task descriptions and in Task 10, EDAW management personnel will be present at and participate in two public meetings, including one Planning Commission and one City Council meeting. Participation at these meetings will provide support to the City management team, help EDAW develop an understanding of the public's comments and concerns, and provide a forum to answer questions on environmental issues. Hearings will be attended by EDAW's management team, so that full consideration can be given to issues raised at hearings. Attendance at additional meetings, if requested, will be billed on a time-and-material basis.
Task 9: Project Management and Coordination

Purpose

To manage the EIR preparation effort, maintain close communication between the City management team and EDAW project team members, ensure the technical accuracy and legal defensibility of the work products, and ensure that the project stays on schedule. This is perhaps the most critical task for the successful completion of this project.

Approach

In accordance with the communication protocol established in Task 1, EDAW will communicate on a regular basis throughout all tasks with project team members and City management team regarding compliance with the schedule and scope of work. EDAW will coordinate the work of the team and provide management liaison between the team and the agencies for communication of issues, transmittal of comments, financial management (e.g., invoices), and other project management matters. We will participate in monthly telephone conference coordination meetings with the City's management team. These meetings will cover coordination needed during the EIR preparation process. In addition, we have budgeted for time associated with attendance at monthly meetings in Modesto.

Task 10: Mitigation Monitoring

EDAW will prepare a draft and final mitigation monitoring (MMP) that is consistent with CEQA §21081.6. EDAW anticipates the MMP will include a listing of all mitigation measures and identification of the individuals or organizations responsible for verifying compliance, the phase (or date) of the permit process when each mitigation measure shall be initially implemented, the frequency and duration of required monitoring (if necessary), and the performance criteria for determining the success of the mitigation measure (if appropriate). The MMP will be provided in tabular format. The MMP will be submitted with the Draft EIR in Task 6.

Task 11: CEQA Findings

EDAW will assist City staff with preparation of draft and final written CEQA findings in a standard format for final City action on the project. Findings will be prepared for each significant impact of the project, describing the disposition of the impact and the status of mitigation.
PROPOSED SCHEDULE

Projects must often be performed within very challenging schedules. EDAW strives to understand the client's objectives, and how the environmental documentation fits with other project components, such as planning, into the overall project schedule. EDAW has demonstrated that it has the ability to meet tight timeframes, often on simultaneous projects.

Scheduling systems at EDAW are designed to allocate resources to meet all client due dates, regardless of their timing or the number of deadlines within a given period. EDAW has successfully completed environmental analyses on numerous complex projects with demanding schedules that required attentive project management, coordination and communication. Project managers are responsible for planning and controlling the schedule for a contract. This includes weekly workload management of technical, graphics, word processing and production staff; long-range staffing projections (3 to 6 months); and timeline scheduling for tasks and milestones. The project manager is also responsible for frequent communication with team subconsultants, sufficiently in advance of project milestone deadlines. Ongoing, effective communication will ensure early issue identification and resolution, as needed, prior to the creation of a schedule conflict.

EDAW's proposed schedule for the Fairview Village Specific Plan EIR is provided below.

<table>
<thead>
<tr>
<th>Task</th>
<th>Week Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1 Project Initiation and NOP</td>
<td></td>
</tr>
<tr>
<td>Notice to proceed</td>
<td>1</td>
</tr>
<tr>
<td>Project initiation</td>
<td>1</td>
</tr>
<tr>
<td>Draft project description to City</td>
<td>2</td>
</tr>
<tr>
<td>Project description approved by City</td>
<td>3</td>
</tr>
<tr>
<td>Prepare NOP (2 wks following project description acceptance)</td>
<td>5</td>
</tr>
<tr>
<td>City and applicant review NOP (2 wks. ea.)</td>
<td>9</td>
</tr>
<tr>
<td>Final NOP to City for distribution</td>
<td>11</td>
</tr>
<tr>
<td>Attend Scoping Meetings</td>
<td>During 30-day NOP period</td>
</tr>
<tr>
<td>Phase 2 Draft EIR</td>
<td></td>
</tr>
<tr>
<td>Infrastructure Studies (12 wks to complete; start date varies; see bold)</td>
<td>23</td>
</tr>
<tr>
<td>City comments on Infrastructure Studies</td>
<td>26</td>
</tr>
<tr>
<td>Administrative Draft EIR to City</td>
<td>36</td>
</tr>
<tr>
<td>10 wks after Infra Studies</td>
<td></td>
</tr>
<tr>
<td>City comments to EDAW on ADEIR</td>
<td>40</td>
</tr>
<tr>
<td>2nd Administrative Draft EIR to City</td>
<td>42</td>
</tr>
<tr>
<td>City and applicant comment to EDAW on 2nd ADEIR (2 wks. ea.)</td>
<td>44</td>
</tr>
<tr>
<td>3rd Administrative Draft EIR to City</td>
<td>46</td>
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<tr>
<td>City and applicant comment to EDAW on 3rd ADEIR (2 wks. ea.)</td>
<td>58</td>
</tr>
<tr>
<td>Screen-check Draft EIR to City</td>
<td>50</td>
</tr>
<tr>
<td>City comments to EDAW on Screencheck DEIR</td>
<td>52</td>
</tr>
<tr>
<td>Draft EIR released to public, Notice of Availability filed</td>
<td>54</td>
</tr>
<tr>
<td>Draft EIR public hearing held</td>
<td>During 45-day public review period</td>
</tr>
</tbody>
</table>
The following sections of the EIR cannot be completed until the infrastructure studies are completed and accepted: Water, Wastewater, Surface Hydrology/Water Quality, Traffic, Noise, and Air Quality.
2/ This schedule assumes that the comments received are consistent with the effort outlined in the scope of work.

### COST ESTIMATE

The following table provides a breakdown of our estimated cost of performing the services described in this Scope of Services.

The preceding work program is based on EDAW's current understanding of the proposed project. As the project description evolves, adjustments to the work program, cost, and schedule may be warranted.

### BUDGET ASSUMPTIONS

Our Scope of Services and its associated cost are based on several key assumptions, including the following:

1. The budget is valid for up to six months from the date of submittal/opening, after which it may be subject to revision.
2. City will develop the mailing list for distribution of the EIR and notices. City will be responsible for newspaper cost of publication of notices, which will be billed directly to City, so they are not included in the proposed budget.
3. Photocopy costs included in the proposal are for the specified number of copies of deliverables and reasonable incidental and in-team photocopying. If additional copies of deliverables are needed, they can be provided with an amendment to the proposed budget.
4. Review cycles for preliminary documents are presented in the scope of work. Additional review cycles or additional versions of administrative drafts are assumed to not be needed.
5. The proposed work addresses CEQA requirements of the proposed action. Work related to NEPA compliance, Section 404 compliance, or other permitting processes is not included (although these can be added, as needed, with a contract amendment). Work concludes at the acceptance by the City of the final deliverable.
6. The budget is based on completion of work within an agreed upon schedule. If substantial delay occurs, an amendment of the budget would be warranted to accommodate additional project management time and other costs. Substantial delay is normally defined as 90 days or more.
7. Costs are included for the number of meetings specified in the scope of work. If additional meetings are needed, they can be included with an amendment of the budget.

8. The extent of public comment on a Draft EIR is not predictable. The proposed budget includes a reasonable, preliminary estimate time to respond to comments. EDAW will consult with the City after the evaluation of the comments to determine if the preliminarily estimated budget is sufficient.

9. Costs have been allocated to tasks to determine the total budget. EDAW may reallocate costs among tasks, as needed, as long as the total budget is not exceeded.

10. Once the proposed project description, baseline, and alternatives are approved by the City for analysis in the draft EIR, it is assumed they will not change thereafter. If changes requiring revisions to analysis or re-writing of EIR information occur, an amendment of the budget would be warranted.

11. The CEQA statutes or guidelines may change during the course of this EIR. If amendments require redoing work already performed or substantially increasing effort, a contract amendment may be warranted.
Phase 1: Project Initiation

1. Initiate Project
2. Site Reconnaissance and Callout Information
3. Notice of Public Hearing/Meeting

Phase 2: Draft EIR

4. Administrative Draft EIR (ADIR)
   a. Introduction
   b. Executive Summary
   c. Project Description
   d. Environmental Setting, Impacts, Mitigation
      i. Land Use and Agriculture
      ii. Geology/Groundwater/Geohazard
      iii. Traffic
      iv. Noise
   e. Public Utilities and Services (site see sub cont)
   f. Air Quality
   g. Public Utilities and Services (site see sub cont)
   h. Stormwater
   i. Biological Resources
   j. Historic and Archaeological Materials
   k. Cultural Resources
   l. Significant and Undisturbed Impacts
   m. Cumulative Impacts
   n. Growth-Inducing Impacts
   o. Alternatives
   p. Quality Assurance
5. Public Review Draft EIR and CECU Action
6. Public Review Draft EIR and CECU Action
7. Final EIR
8. Public Meetings and Hearings
9. Project Management and Coordination
10. Mitigation Monitoring Program
11. CECU Findings
12. CECU Findings

Phase 3: Final EIR

13. Final EIR
14. Mitigation Monitoring Program
15. Final EIR

Total DRAFT IBI Costs

Total Draft IBI Costs

DIRECT COSTS
1. Subconsultants
   a. Traffic/Transportation (IslandDesign)
   b. Water, West IRA, West Mall
   c. Water Quality (Crestval)
   d. Water Quality (Crestval)
   e. Soils/Soilscience
   f. Soils/Soilscience
   g. Soils/Soilscience

2. Printing (prices are rounded to nearest whole $)
   a. Draft EIR: 5 copies, $10 each
   b. Final EIR: 5 copies, $5 each
   c. Final EIR: 5 copies, $5 each
   d. Final EIR: 5 copies, $5 each
   e. Final EIR: 5 copies, $5 each
   f. Final EIR: 5 copies, $5 each
   g. Final EIR: 5 copies, $5 each

3. Other Reproduction
4. Materials/Supplies
5. Postage/Shipping/Travel
6. Reprints/Reprints
7. Utilities/Utilities
8. Miscellaneous

Total Draft Costs

TOTAL Estimated Draft EIR

TOTAL Estimated Draft EIR
City of Modesto Account
Community and Economic Development Department
Planning Division
Invoice

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<th>Invoice #</th>
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<th>Previously Billed</th>
<th>Current Billing</th>
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</table>

**TOTALS** | $0.00  | $0.00  | $0.00  | $0.00  | #DIV/0! |

**Note:** Reimbursable and Expense Detail – all reimbursable/expense costs must have detailed expense reports / receipts attached.

**Budget** = $ amount allocated per item and total project.

**Previously Billed** = $ amount of all previous billings

**Current Billing** = $ amount (per item) of current invoice

**Balance** = $ amount remaining. "Balance" = "budget" minus "previously billed" and "current billing".

**% Complete** = % of work complete per item and total project.


EXCEL: Templates/Ping Adin Other/Consultant Invoice Template
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-494

A RESOLUTION AUTHORIZING THE AWARD OF PROPOSAL AND CONTRACT FOR THE FURNISHING OF JANITORIAL SERVICES FOR THE MODESTO CENTRE PLAZA, TO PACIFIC MAINTENANCE CO., SANTA CLARA, CA, FOR A TWO (2) YEAR AGREEMENT WITH THREE (3) ONE-YEAR EXTENSION OPTIONS AT THE SOLE DISCRETION OF THE CITY, FOR A TOTAL ESTIMATED ANNUAL COST OF $77,000

WHEREAS, the Parks, Recreation and Neighborhoods Department and the Joint Powers Agency (JPA) requested janitorial services for the Modesto Centre Plaza (MCP) and 1010 Tenth Street Place, and

WHEREAS, janitorial services consist of daily maintenance for offices, restrooms and lobby areas, and special event clean up at the MCP, and

WHEREAS, on December 6, 2005, Council approved Resolution No. 2005-588, authorizing the Purchasing Manager to issue formal Request for Proposals (RFP) for Janitorial Services for the Parks, Recreation and Neighborhoods Department and JPA, for a two (2) year agreement with three (3) one-year extension options at the sole discretion of the City, and

WHEREAS, in August 2006, the JPA removed itself from the City’s RFP process and aligned with Stanislaus County on an RFP the County was preparing, and

WHEREAS, on November 14, 2006, the Purchasing Division issued Request for Proposal No. 0607-22 for the furnishing of Janitorial Services for the MCP to thirty-two (32) prospective proposers, twelve (12) of which were local companies, posted the proposal on the City’s web site, and formally advertised as required by law, and

WHEREAS, on January 9, 2007, RFP’s were formally opened in the City Clerk’s office. Of the thirty-two (32) prospective proposers, six (6) companies choose to respond, two (2) of which were local companies, and
WHEREAS, on May 15, 2007, the City received a letter from one of the prospective proposers withdrawing their proposal submittal from the RFP process, and

WHEREAS, on May 21, 2007, proposer interviews were held, and

The following companies were in attendance:

- A&N Cleaning, Modesto, CA
- ABM Janitorial Services, Modesto, CA
- Clean Innovation Corporation, Santa Clara, CA
- Pacific Maintenance Company, Santa Clara, CA
- Universal Building Services, Richmond, CA, and

WHEREAS, based on being ranked highest in total evaluation criteria, the evaluation committee recommends the award of proposal and contract to Pacific Maintenance Co., Santa Clara, CA, for a two (2) year agreement with three (3) one-year extension options at the sole discretion of the City, for an estimated annual cost of $77,000, and

WHEREAS, Modesto Municipal Code Section 8-3.203 generally requires all purchases, which meet or exceed $50,000 for material, equipment or contractual services to be formally bid. The award of proposal and contract for the furnishing of janitorial services for the MCP, conforms to the Modesto Municipal Code,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of proposal and contract for the furnishing of Janitorial Services for the MCP, to Pacific Maintenance Co., Santa Clara, CA, for a two (2) year agreement with three (3) one-year extension options at the sole discretion of the City, for a total estimated annual cost of $77,000.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute a two (2) year agreement with three (3) one-year extension options at the sole discretion of the City.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney

ATTEST: Jean Morris, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-495

A RESOLUTION AUTHORIZING THE PURCHASING MANAGER TO SOLICIT BIDS FOR NEW VEHICLES AND HEAVY EQUIPMENT THROUGHOUT FY 07/08 THROUGH VARIOUS COMPETITIVE PROCESSES AND IN A CUMULATIVE AMOUNT NOT TO EXCEED THE BUDGETED AMOUNT OF $3,286,250, AND AUTHORIZING THE PURCHASING MANAGER TO PURCHASE SIXTEEN (16) USED VEHICLES AT WHOLESALE AUCTION, THROUGH CAR RENTAL AGENCIES’ RENTAL RETURNS OR THROUGH OTHER COMPETITIVE PROCESSES FOR AN ESTIMATED TOTAL BUDGETED AMOUNT OF $264,000.

WHEREAS, the City has an ongoing need to purchase vehicles and heavy equipment throughout the year, and

WHEREAS, the expenditures for vehicles and heavy equipment have been approved by Council through the budget process, and

WHEREAS, the vehicles and heavy equipment are purchased by means of formal and informal bid processes, auction, negotiation, and by “piggybacking” off State contracts and other agencies’ competitively bid contracts, and

WHEREAS, in past years Council has authorized the Purchasing Manager to solicit bids and go to auction for said vehicles and heavy equipment without having to go before the Finance Committee and the Council for authorization to issue bids, and

WHEREAS, each vehicle and/or heavy equipment staff report that goes through this process takes approximately 90-120 days to complete and on average accounts for approximately fifteen (15) hours of staff time to process, and

WHEREAS, by authorizing the Purchasing Manager to purchase budgeted vehicles and heavy equipment for the entire fiscal year without returning to Council for subsequent approval for the solicitation of bids, the following benefits are realized:
• Reduces staff time when preparing for and conducting the bidding process,
• Avoids the possibility of missing manufacturer cut-off ordering dates,
• Improves delivery time of new vehicles allowing them to be put into service sooner,
• Improves reaction time as “good deals“ become available, and

WHEREAS, by authorizing the Purchasing Manager or his designee to solicit bids and attend auctions to purchase vehicles and equipment for the entire fiscal year without having to go before Council for bid/purchasing approval the City will save substantial staff and processing time, and

WHEREAS, the request for authorization to award bid and contract for new vehicles and equipment will still come before Council and conform to Modesto Municipal Code (MMC) Section 8-3.203(a), and

WHEREAS, the Purchasing Division will continue to work at increasing local vendor inclusion in the bidding process, and

WHEREAS, upon approval by Council the Purchasing Manager will solicit bids for new vehicles and heavy equipment throughout FY 07/08 through various competitive processes and in a cumulative amount not to exceed the budgeted amount of $3,286,250, and

WHEREAS, upon approval by Council the Purchasing Manager, or his designee, will purchase sixteen (16) used vehicles at auction, through car rental agencies’ rental returns or through various competitive processes for an estimated total budgeted amount of $264,000,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Purchasing Manager is hereby authorized to solicit bids for new vehicles and equipment throughout FY 07/08 through various competitive processes and in a cumulative amount not to exceed the budgeted amount of $3,286,250, returning to Council for authorization to award said new vehicles and equipment.

BE IT FURTHER RESOLVED that the Purchasing Manager, or his designee, is hereby authorized to purchase sixteen (16) used vehicles at auction, through car rental agencies’ rental returns or through various competitive processes without returning to Council for authorization to award said used vehicles and in a cumulative amount not to exceed the budgeted amount of $264,000.

The foregoing resolution was introduced at a meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

BY: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-496

A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PURCHASE OF ROCK, SAND AND GRAVEL FOR THE FINANCE DEPARTMENT, CENTRAL STORES DIVISION, TO TWO COMPANIES: 1) CENTRAL VALLEY CONCRETE, INC., MERCEDE, CA., AND 2) DJ ROCHA TRUCKING, INC., HILMAR, CA., FOR A ONE-YEAR AGREEMENT WITH A ONE-YEAR EXTENSION OPTION, AT THE SOLE DISCRETION OF THE CITY, FOR AN ESTIMATED ANNUAL COST OF $261,442, AND AUTHORIZING THE PURCHASING MANAGER TO ISSUE PURCHASE AGREEMENTS TO THE TWO COMPANIES.

WHEREAS, the Finance Department, Central Stores Division inventories rock, sand and gravel for use by the Public Works Department, and

WHEREAS, the rock, sand and gravel is used for rock well drainage, sand for parks, street maintenance operations, and wastewater pond erosion control, and

WHEREAS, Central Stores will purchase the required rock, sand and gravel from account 7110-120-8311-0439 and the Public Works Department will then purchase the rock, sand and gravel from Central Stores, with charges being made to appropriate accounts, and

WHEREAS, on April 24, 2007, Council approved Resolution No. 2007-221 authorizing the Purchasing Manager to issue formal Request for Bids (RFB) for the purchase of rock, sand and gravel, for the Finance Department, Central Stores Division, and

WHEREAS, on May 15, 2007, the Purchasing Division issued Request for Bid No. 0607-48 for the purchase of rock, sand and gravel to twenty-nine (29) prospective bidders, four (4) of which were local companies, posted the bid on the City’s web site, and formally advertised as required by law, and

WHEREAS, on May 22, 2007, a bidders conference was held, and

WHEREAS, six (6) companies were in attendance, and

WHEREAS, on June 12, 2007, RFB’s were formally opened in the City Clerk’s office,
WHEREAS, of the twenty-nine (29) prospective bidders, nine (9) companies chose to respond, and

WHEREAS, two (2) companies submitted only one (1) original bid document, and

WHEREAS, RFB language requires bidders to submit two (2) original and three (3) copies, failure to furnish two (2) “inked” signed original bid documents shall result in disqualification, and

WHEREAS, both companies bid submittals were disqualified due to being non-responsive and received on further consideration, and

WHEREAS, RFB specification 3.1 Required Documents, states:

- Failure to furnish the two (2) “inked” signed originals bid documents will result in disqualification.
- Failure to furnish the required documents may result in disqualification.

WHEREAS, based on being deemed the lowest responsive and responsible bids, City staff recommends the award of bid and contracts for the purchase of rock, sand and gravel for the Finance Department, Central Stores Division, to two companies: 1) Central Valley Concrete, Inc., Merced, CA., and 2) DJ Rocha Trucking, Inc., Hilmar, CA., for a one-year agreement, with a one-year extension option, at the sole discretion of the City, for an estimated annual cost of $261,442, and

WHEREAS, Modesto Municipal Code Section 8-3.203, generally requires all purchases, which meet or exceed $50,000 for material, equipment or contractual services be formally bid. The award of bid and contracts for the purchase of rock, sand and gravel conforms to the Modesto Municipal Code,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and contracts for the purchase of rock, sand and gravel for the Finance Department, Central Stores Division, to two (2) companies: 1) Central Valley Concrete, Inc., Merced, CA., and 2) DJ Rocha Trucking, Inc., Hilmar, CA., for one-year agreement with a one-year extension options, at the sole discretion of the City, for an estimated annual cost of $261,442.

BE IT FURTHER RESOLVED that the Purchasing Manager is hereby authorized to issue purchase agreements for the purchase of rock, sand and gravel to two (2) companies: 1) Central Valley Concrete, Inc., Merced, CA., and 2) DJ Rocha Trucking, Inc., Hilmar, CA., for a one-year agreement, with one-year extension option, at the sole discretion of the City, for an estimated annual cost of $261,442.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

BY: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-497

A RESOLUTION APPROVING AN AGREEMENT WITH STANISLAUS COUNTY OFFICE OF EDUCATION IN THE AMOUNT OF $50,293 FOR THE PROVISION OF ONE HALF OF A MODESTO POLICE OFFICER’S/SCHOOL RESOURCE OFFICER’S (SRO) SALARY AND BENEFITS AT PETERSEN ALTERNATIVE CENTER FOR EDUCATION (P.A.C.E.) CAMPUS TO PROVIDE DIRECT LAW ENFORCEMENT SERVICES, EXPERTISE AND TRAINING, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Stanislaus County Office of Education requires one Modesto Police Officer to provide direct law enforcement services, expertise and training and act as a School Police Officer at Petersen Alternative Center for Education (P.A.C.E.) campus, and

WHEREAS, the Modesto Police Department can provide a specially trained, uniformed police officer and take any enforcement action at the school site, if warranted, and

WHEREAS, the officer’s presence with the students provides mentoring and protection of youth in our community, and

WHEREAS, the term of this agreement is August 22, 2007 to June 6, 2008, and

WHEREAS, the City shall be compensated by the Stanislaus Office of Education in the amount of $50,293 for the services of this Modesto Police Officer, and

WHEREAS, the City will match the amount of $50,293 in partnership with the Stanislaus County Office of Education,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the agreement between the City of Modesto and the Stanislaus County Office of Education in the amount of $50,293 for the provision of one-half of a
Modesto Police Officer/School Resource Officer salary and benefits to provide direct law enforcement service, expertise and training.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-498

A RESOLUTION APPROVING THE CONCEPTUAL SUPPORT OF THE FIGHT CRIME: INVEST IN KIDS CALIFORNIA AUTHORIZING THE MODESTO POLICE CHIEF TO SIGN A LETTER OF SUPPORT TO THE STATE POLICYMAKERS TO SUPPORT CRIME-PREVENTION INVESTMENTS

WHEREAS, in the coming year, FIGHT CRIME; INVEST IN KIDS California, has an opportunity to make a big difference in the battle against crime by helping support increased investments in crime-prevention programs or preserve existing state funding, and

WHEREAS, the Modesto Police Department, supports this legislation, and

WHEREAS, this legislation takes steps to prevent kids from ever becoming involved in crime—such as providing quality preschool, child care, and after-school programs; interventions for troubled youth; and child abuse and neglect prevention, and

WHEREAS, this legislation would support programs such as the Modesto Police Department’s Police Activities League (PAL) and after-school programs,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a support letter to State Policymakers on FIGHT CRIME: INVEST IN KIDS California,

BE IT FURTHER RESOLVED that the Modesto Police Chief is hereby authorized to sign a letter of support to the State Policymakers to support crime-prevention investments.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 
JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2007-499

A RESOLUTION ACCEPTING TWO PROJECT SAFE NEIGHBORHOOD GRANTS FOR (1) GANG AND GUN VIOLENCE REDUCTION IN THE AMOUNT OF $123,000 FOR A POLICE CLERK FOR TWO YEARS AND (2) GUN VIOLENCE REDUCTION PROGRAM GRANT IN THE AMOUNT OF $100,000 FROM THE DEPARTMENT OF JUSTICE FOR A GANG REDUCTION STRATEGIC COORDINATOR FOR ONE YEAR, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE NECESSARY DOCUMENTS

WHEREAS, the Modesto Police Department submitted an application for two project Safe Neighborhood Grants, and

WHEREAS, the Gang and Gun Violence Reduction will allow for the continuation of an existing police clerk position for two years, which was funded by a Project Safe Neighborhoods Gun Violent Reduction Grant awarded in 2004, and

WHEREAS, the Gun Violence Reduction Program Grant in the amount of $100,000 will provide for a limited-term position for a Police Office position (Gang Reduction Strategic Coordinator) for the life of the grant, and

WHEREAS, acceptance of these grants enhances Healthy and Safe Strategic Action Plan, H.I.B.8., which calls for obtaining public service grants, and

WHEREAS, there is no local match required of the City, and

WHEREAS, these grants will focus on decreasing the gang-related activity and gang-related crimes that occur in Stanislaus County,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the two project safe neighborhood grants for (1) Gang and Gun Violence Reduction in the amount of $123,000 for a Police Clerk for two years and (2) Gun violence Reduction Program Grant in the amount of $100,000 from the Department of Justice for a Gang Reduction Strategic Coordinator for one year,
BE IT FURTHER RESOLVED that the City Manager, or his authorized designee, is hereby authorized to execute the necessary documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2007-500

A RESOLUTION AMENDING THE MULTI-YEAR REIMBURSEABLE GRANT BUDGET TO APPROPRIATE $223,000 FOR REVENUES AND EXPENSES FROM THE DEPARTMENT OF JUSTICE FOR THE PROJECT SAFE NEIGHBORHOOD GRANTS FOR A POLICE CLERK FOR TWO YEARS AND A GANG REDUCTION STRATEGIC COORDINATOR FOR ONE YEAR

WHEREAS, the Modesto Police Department submitted an application for two Project Safe Neighborhood Grants, and

WHEREAS, the Gang and Gun Violence Reduction will allow for the continuation of an existing police clerk position for two years, which was funded by a Project Safe Neighborhoods Gun Violent Reduction Grant awarded in 2004, and

WHEREAS, the Gun Violence Reduction Program Grant in the amount of $100,000 will provide for a Gang Reduction Strategic Coordinator for one year, and

WHEREAS, acceptance of these grants enhances Healthy and Safe Strategic Action Plan, H.I.B.8., which calls for obtaining public service grants, and

WHEREAS, there is no local match required of the City, and

WHEREAS, these grants will focus on decreasing the gang-related activity and gang-related crimes that occur in Stanislaus County,

WHEREAS, the Council of the City of Modesto authorized the City Manager, or his designee, to accept the Project Safe Neighborhood funding,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, that the multi-year reimbursable grant budget is hereby amended as follows:
PSN Gang and Gun Violence Reduction Grant

Appropriate:
To: 0410-190-2906-0110 $115,000 Police Clerk
     0410-190-2906-0209 $ 8,000 Training

Revenue:
To: 0410-190-2906-3490 $123,000 PSN Gang and Gun Violence Reduction Grant

PSN Gun Violence Reduction Program Grant

Appropriate:
To: 0410-190-2907-0110 $100,000 PSN Gang Reduction Strategic Coordinator

Revenue:
To: 0410-190-2907-3490 $100,000 PSN Gun Violence Reduction Program Grant

BE IT FURTHER RESOLVED that the Finance Director, or his authorized designee, is hereby authorized to take the necessary steps 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 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]
JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:
By: [Signature]
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-501

A RESOLUTION APPROVING A SUBTRUNK SEWER REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND KAISER FOUNDATION HOSPITALS, IN AN AMOUNT NOT TO EXCEED $168,829.54, RELATED TO THE INSTALLATION OF 2380 LINEAR FEET OF A 27” SEWER SUBTRUNK LINE IN HEALTHCARE WAY AND DALE ROAD, AND 651 LINEAR FEET OF 30” SEWER SUBTRUNK IN DALE ROAD, WHICH ARE Oversized TO SERVE A LARGER PORTION OF THE KIERNAN BUSINESS PARK SPECIFIC PLAN, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE TO EXECUTE THE AGREEMENT

WHEREAS, KAISER FOUNDATION HOSPITALS (Developer) is in the process of developing a new hospital facility located at the southwest corner of Dale Road and Bangs Road, commonly known as Kaiser Modesto Hospital (Improvements), and

WHEREAS, in connection with the development of said Improvements, Developer is required to install 2380 linear feet of 27” and 651 linear feet of 30” Sewer Subtrunk Lines and appurtenances thereto, located at the southwest corner of Dale Road and Bangs Road, and

WHEREAS, the Improvements are designed to serve a large portion of the Kiernan Business Park Specific Plan, and

WHEREAS, the Improvements will serve other properties in addition to this development and,

WHEREAS, the other properties have or will pay fees to the City to assist in paying the cost of constructing the Improvements and the owners of said other properties have not participated in constructing the Improvements, and

WHEREAS, Modesto Municipal Code Section 4-4.802.1 authorizes the City to enter into an Agreement with the Developer for reimbursement of costs of improvements, and
WHEREAS, Developer has requested, and City has agreed, that Developer be reimbursed for the actual costs, in the amount of $168,829.54, required to construct the Improvements, and

WHEREAS, City has inspected the construction of the Improvements and has accepted the Improvements as part of City’s public sewer system,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Subtrunk Sewer Reimbursement Agreement between the CITY OF MODESTO and Kaiser Foundation Hospitals, in an amount not to exceed $168,829.54, related to the installation of 2380 linear feet of 27” and 651 feet of 30” Sewer Subtrunk Lines.

BE IT FURTHER RESOLVED that the City Manager, or his设计ee, is hereby authorized to execute the Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on August 14th August, 2007, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Keating, Marsh, O’Bryant, Olsen,

Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: [Signature]
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:
By: [Signature]
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-50


WHEREAS, plans and specifications have been prepared for the “2005-2006 Pavement Rehabilitation Program- 9th Street Reconstruction L Street to Modesto Irrigation District Lateral No. 4 and 9th Street Overlay B Street to D Street STPL-5059(143)” and City staff recommends approval to the City Council, and

WHEREAS, the bids received for the “2005-2006 Pavement Rehabilitation Program- 9th Street Reconstruction L Street to Modesto Irrigation District Lateral No. 4 and 9th Street Overlay B Street to D Street STPL-5059(143)” project were opened at 11:00 a.m. on July 24, 2007, and later tabulated by the Public Works Director for the consideration of the Council, and

WHEREAS, the Public Works Director has recommended that the bid of $1,156,256.90 received from Tom Mayo Construction, Inc., be accepted as the lowest responsible bid and the contract be awarded to Tom Mayo Construction, Inc.,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for said project, and accepts the bid of Tom Mayo Construction, Inc., in the amount of $1,156,256.90, and hereby awards Tom Mayo Construction, Inc., the contract titled “2005-2006 Pavement Rehabilitation
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August 2007, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Keating, Marsh, O’Bryant, Olsen,

Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING A NEW FIFTEEN-YEAR AIRPORT LEASE AGREEMENT BETWEEN THE CITY OF MODESTO AND MODESTO FLIGHT CENTER, INC. AND RICHARD CORBETT, INDIVIDUALLY (MFC, INC.), FOR USE OF SPECIFIC AIRPORT PROPERTY TO CONTINUE A BUSINESS PROVIDING FLIGHT INSTRUCTION, AIRCRAFT MAINTENANCE, PILOT SUPPLIES, AIRCRAFT RENTAL AND OTHER SERVICES, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT.

WHEREAS, Modesto Flight Center (MFC) has leased multiple properties at Modesto City County Airport since 1994 for the operation of a business providing flight instruction, aircraft maintenance, pilot supplies, aircraft rental, and other related services, and

WHEREAS, MFC owners recently sold their business to Modesto Flight Center, Inc. and Richard Corbett Individually (MFC, Inc.), and

WHEREAS, MFC, Inc. wishes to lease all of the airport premises previously leased to MFC for continued operation of a business providing flight instruction, aircraft maintenance, pilot supplies, aircraft rental and other related services, and

WHEREAS, the leased premises consist of the following:

(a) Office Building No. 1
(b) Hangar No. 5
(c) A portion of the former Airport Administration Building
(d) Aircraft tie-down spaces in a number and location as needed, agreed in concurrence with Airport Manager

, and

WHEREAS, the Airport, General Aviation tenants and the local economy benefit from the continuation of such business operations as were provided by MFC, and
WHEREAS, the lease agreement is expected to continue revenues of approximately $36,000 a year to the Airport Enterprise Fund Revenue Account No. 6310-440-5412-4413, and

WHEREAS, the City’s policy as stated in Modesto Municipal Code Section 7-3.417 is to enter into lease agreements at Modesto City-County Airport.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a new fifteen-year Airport Lease Agreement between the City of Modesto and Modesto Flight Center, Inc. and Richard Corbett, Individually (MFC, Inc.), for the use of specific airport property to continue a business providing flight instruction, aircraft maintenance, pilot supplies, aircraft rental, and other services.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Airport Lease Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmember: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmember: None

ABSENT: Councilmember: None

ATTEST: ________________________________
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

by ________________________________
SUSAN ALCALA WOOD, City Attorney
A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2004-1 (VILLAGE ONE #2) AND RBF CONSULTING IN AN AMOUNT NOT-TO-EXCEED $285,469 FOR THE DESIGN OF ROSELLE AVENUE BETWEEN SYLVAN AVENUE AND FLOYD AVENUE, AND AUTHORIZING THE COMMUNITY FACILITIES DISTRICT ADMINISTRATOR, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Village One Facilities Master Plan contains a project prioritization list, and

WHEREAS, the widening of Roselle Avenue between Sylvan Avenue and Floyd Avenue is designated as a Priority 3 project and sufficient funding is available for its design in the Village One #2 CFD No. 2004-1, and

WHEREAS, this project will include the widening of Roselle Avenue to a 4-lane arterial between Sylvan Avenue and Floyd Avenue and will include curb, gutter and sidewalk, landscaped median and landscaped parkway strips, and

WHEREAS, the project will also include the construction of two, 2-lane roundabouts at the intersection of Roselle Avenue and Hillglen Avenue and at the intersection of Roselle Avenue and Kodiak Drive, and

WHEREAS, the selection for engineering design services followed the City’s selection procedures for professional consultants as outlined in Administrative Directive 3.1, Selection Procedures for Professional Consultants Who Provide Architectural and Engineering Services for Capital Projects, and

WHEREAS, City staff sent a Request for Qualifications for engineering design services to civil engineering firms that had previously indicated an interest in providing design services to the City, and
WHEREAS, eight consulting firms were asked to provide a proposal on various projects and were interviewed by City staff, and

WHEREAS, RBF Consulting was considered to be the most qualified for the Roselle Avenue between Sylvan Avenue and Floyd Avenue design project, and

WHEREAS, City staff recommends that an Agreement with the consulting firm of RBF Consulting be approved to perform the design services as current workload levels do not provide for timely in-house design, and

WHEREAS, City desires to enter into an Agreement with RBF Consulting in an amount not-to-exceed $285,469 for the design of Roselle Avenue between Sylvan Avenue and Floyd Avenue, and

WHEREAS, RBF Consulting will be paid on a time and materials basis for actual hours required performing individual tasks at a set rate,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement between the City of Modesto Community Facilities District No. 2004-1 (Village One #2) and RBF Consulting in an amount not-to-exceed $285,469 for the design of Roselle Avenue between Sylvan Avenue and Floyd Avenue.

BE IT FURTHER RESOLVED that the Community Facilities District Administrator, or his designee, is hereby authorized to execute the Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By [Signature]
SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AMENDING RESOLUTION NO. 2004-167 TITLED “A RESOLUTION ADOPTING POLICIES AND PROCEDURES AND ESTABLISHING FEES FOR THE PARKS, RECREATION AND NEIGHBORHOODS DEPARTMENT FACILITIES AND SERVICES AND RESCINDING RESOLUTION NO 98-237” TO ESTABLISH A NEW WEEKDAY NON-PROFIT RENTAL RATE OF $1 PER HOUR FOR SENIOR CITIZEN BASED ORGANIZATIONS THAT ACHIEVE CO-SPONSORSHIP STATUS AT THE MODESTO SENIOR CITIZENS CENTER AND TO LIMIT THE NON-PROFIT RATE FOR OTHER QUALIFIED USERS TO WEEKDAYS ONLY.

WHEREAS, on October 10, 1977, Modesto Senior Citizens, Inc. (MSCI), a non-profit group comprised of senior citizens, entered into an agreement with the City of Modesto to pay $100,000 towards the cost of expansion and remodeling of the Modesto Senior Citizens Center, located at 211 Bodem Street, and

WHEREAS, throughout the 30-year agreement, there have been changes in city staff assigned to work at the Modesto Senior Citizens Center, leadership of the non-profit organization, and membership of the MSCI, and

WHEREAS, in 1977, the Modesto Senior Citizens, Inc. was a large and active organization with over 2,000 members and a healthy fund reserve and currently, there are approximately 400 MSCI members, and the organization has not only decreased in membership numbers, but also in the size of its budget and funds in reserve, and

WHEREAS, in addition to the MSCI, there are several other senior citizen based organizations that have approached the City of Modesto regarding the current rental rates at the Modesto Senior Citizens Center, and

WHEREAS, many of these organizations are finding it difficult to pay the full non-profit rental rate in addition to their other expenses, and
WHEREAS, staff from the Parks, Recreation and Neighborhoods Department (PRND) is proposing a new weekday “non-profit senior citizen rate” of $1.00 per hour for senior citizen based organizations that achieve co-sponsorship status and utilize the Modesto Senior Citizens Center on a regular basis which would apply anytime during weekdays (Monday to Friday), and

WHEREAS, staff is recommending that the non-profit rental rate of one-half the regular rental rate ($242.50 for the first 4 hours and $14 each additional hour) be valid for other non-profit use Monday through Friday only, and

WHEREAS, because of the huge demand by the community for banquet/reception type events, such as weddings/wedding receptions, and other special events, staff proposes that all organizations/users using the Modesto Senior Citizens Center during the weekends pay the regular rental rate that became effective July 1, 2007, of $485 for a 4-hour period and $28 for each additional hour, and

WHEREAS, on June 21, 2007, at a meeting between City staff and the Board of Directors from MCSI there was general consensus from the MCSI Board of Directors regarding the City’s proposal on the new rentals rates, and

WHEREAS, the Safety and Communities Committee (S&C) met on July 2, 2007, and supported staff’s recommendation,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that Resolution No. 2004-167 “A Resolution adopting policies and procedures and establishing fees for the Parks, recreation and Neighborhoods Department facilities and services and Rescinding Resolution No 98-237” is hereby amended to establish a new weekday non-profit rental rate of $1 per hour for senior citizen based organizations that achieve co-sponsorship status at the
Modesto Senior Citizens Center and to limit the non-profit rate for other qualified users to weekdays only.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Olsen, who moved its adoption, which motion being duly seconded by Councilmember Keating was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

Attest: [Signature]
JEAN MORRIS, City Clerk
RESOLUTION NO. 2007-506

A RESOLUTION APPROVING ADJUSTMENTS TO THE MAXIMUM RATE SCHEDULE FOR CITY RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL SOLID WASTE COLLECTION SERVICES, AND RESCINDING RESOLUTION NO. 2007-173

WHEREAS, with the adoption of Ordinance No. 3068-C.S. in November of 1997, the City no longer sets rates for the collection of garbage in Modesto, and instead performs a comprehensive review of cost information submitted by the contract garbage haulers, and

WHEREAS, the City sets a maximum rate that the haulers may charge for the various types of services provided under the contracts based on cost data provided by the lowest cost hauler, and

WHEREAS, Section f (2) of the City’s Service Agreements with its solid waste collectors requires that when the City makes adjustments to the collection services provided under the Agreements, any additional costs should be covered by adjustments to the maximum rates, and

WHEREAS, in addition, maximum rates for solid waste collection services are reviewed annually as requested by the City’s garbage collection companies, and

WHEREAS, the City conducted an analysis using the audited financial statements provided by the garbage haulers, supplemental data provided by the garbage haulers, and fuel price information and forecast prices developed by the United States Department of Energy, and

WHEREAS, new maximum rates were calculated, and a recommendation for a new maximum rate schedule was developed, which included a recommendation that quarterly adjustments to the fuel component of the maximum rates be made, and

WHEREAS, the Solid Waste Advisory Committee met on July 26, 2007, and supported the recommendation to approve adjustments to the maximum rate schedule for City
WHEREAS, a report dated July 26, 2007, from the Parks, Recreation and Neighborhoods Department, a copy of which is on file in the office of the City Clerk, sets forth said recommendations, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m. on August 14, 2007, in the Tenth Street Place Chambers, located at 1010 Tenth Street, Modesto California, at which date and time a duly noticed public hearing was held at said time and place, at which time evidence, both oral and documentary, was received and considered, and

WHEREAS, it was found and determined by the Council of the City of Modesto that the existing schedules of rates and charges for garbage service in the City of Modesto should be revised as recommended, and that quarterly adjustments to the fuel component of the maximum rates should be made, and

WHEREAS, staff has adjusted the fuel component of the maximum rates and has incorporated the fuel component adjustment into the schedule of Maximum Charges for Garbage Service attached hereto, marked Exhibit "1" and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Maximum Charges for Garbage Service as attached hereto, marked Exhibit "1" and incorporated herein by reference. Said Maximum Charges for Garbage Service includes twice-a-year bulky item pickup for residential customers and all other residential services as stipulated in the Service Agreements and shall become effective retroactive to August 1, 2007, and shall remain in effect until revised by Council.
BE IT FURTHER RESOLVED that any person who has prepaid garbage service charges for residential garbage service shall be entitled to receive garbage service for the balance of said prepaid period at the prepaid rates.

BE IT FURTHER RESOLVED that Resolution No. 2007-173 is hereby rescinded, effective retroactive to August 1, 2007.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, Olsen,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: Jean Morris, City Clerk

(SEAL)

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
MAXIMUM CHARGES FOR GARBAGE SERVICE

STANDARD CONTAINERS

Maximum Monthly Rates
(Once a Week Pickup Service)

Standard container service shall include the following:

- One, 96-gallon container for garbage/recyclables
- One, 96-gallon container for green waste
- Blue bag recycling
- Countertop container for kitchen scraps
- Drop-off of old TV and computer tubes
- Two bulky item collections per year by appointment

Standard container service customers may opt for smaller containers; however, maximum rates apply. Containers must be placed in a location set forth in Section 5-5.11 of the Municipal Code.

1. **Standard container service** –

   a. The maximum rate for new sign ups for service or changes in service that occur after July 1, 1996, shall be **$19.82 per month** regardless of size of container. **A fuel component of $0.96 per month is included in the maximum rate for the quarter beginning July 1, 2007 and ending September 30, 2007.** The fuel component may be adjusted quarterly.

   b. The maximum rate for each additional garbage container shall be **$14.76 per month.**

2. **60-gallon container service (grandfathered customers)** –

   a. The maximum rate for customers with 60-gallon containers who subscribed to service at an address prior to July 1, 1996 and who have not changed their service address shall be **$16.75 per month. A fuel component of $0.96 per month is included in the maximum rate for the quarter beginning July 1, 2007 and ending September 30, 2007.** The fuel component may be adjusted quarterly.

   b. The maximum rate for each additional garbage container shall be **$14.76 per month.**

3. **Fuel Component adjustments** - The fuel component shall be analyzed quarterly and adjustments shall be made as necessary. The adjustment shall be based on the average price of fuel for a preceding quarter as follows: July 1/January-March; October 1/April-June; January 1/July-September; April 1/October-December. Average prices shall be determined based on published prices for California from the Department of Energy, Energy Information Agency.

DETACHABLE CONTAINERS*
Maximum Monthly Rates
Number of Collections Per Week

<table>
<thead>
<tr>
<th>Container Size</th>
<th>NUMBER OF COLLECTIONS PER WEEK</th>
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<tr>
<td></td>
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<tr>
<td>1 CY</td>
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<tr>
<td>6 CY</td>
<td>$156.11</td>
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</table>

* A detachable container rental rate of $10.00 per month is included in the above schedule.

1. **Weekly rental/Detachable Containers** - Shall not exceed the rate for 1 pickup per week for each size container.

2. **Fuel Component** - A fuel component of $0.20 per cubic yard ($0.86) per month for a 1 cubic yard container collected once a week) is included in the maximum rate for the quarter beginning July 1, 2007 and ending September 30, 2007. The fuel component shall be analyzed quarterly and adjustments shall be made as necessary. The adjustment shall be based on the average price of fuel for a preceding quarter as follows: July 1/January-March; October/April-June; January 1/July-September; April 1/October-December. Average prices shall be determined based on published prices for California from the Department of Energy.

**DROP BOX CONTAINERS**

1. **Pick up charge** - $205.95 per pick up
2. **Rental**
   - $0.85 per day up to 7 day maximum rental
   - $3.00 per day for boxes kept 7 or more days without servicing
   - $10.00 per day for boxes kept 21 or more days without servicing
3. **Disposal charge** - Actual charge to be paid by customer. Garbage company will provide up to 40 CY Drop Box containers for above stated charges subject only to load limit of transfer vehicle.

**COMPACTORS**

Maximum Monthly Rates

Front Loader Type:

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<tr>
<th>Compactor Size</th>
<th>NUMBER OF COLLECTIONS PER WEEK</th>
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8/16/07
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<td>1.</td>
<td>6 CY to 40 CY</td>
<td>$205.95 per pickup</td>
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<td>2.</td>
<td>Medical waste compactors</td>
<td>$265.00 per pickup</td>
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<td>3.</td>
<td>Washing compactor</td>
<td>$30.00</td>
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<td>4.</td>
<td>Disposal Charge:</td>
<td>Actual charge to be paid by customer</td>
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<td>EXTRA PICKUPS</td>
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<td>1.</td>
<td>Standard containers or equivalent</td>
<td>$3.50 plus $1.38/container</td>
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<td>2.</td>
<td>Detachable containers</td>
<td>$12.00 plus $2.75/cubic yard</td>
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<td>SPECIAL SERVICE CONDITIONS</td>
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<td>In situations where none of the above maximum rates reasonably apply, the cost of service is to be negotiated between the garbage company and the customer.</td>
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<td>DETACHABLE CONTAINER ONLY REPLACEMENT AND CLEANING SERVICE</td>
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<td>1 CY</td>
<td>1½ CY</td>
<td>2 CY</td>
<td>3 CY</td>
<td>4 CY</td>
<td>5 CY</td>
<td>6 CY</td>
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<td>$10.12</td>
<td>$11.00</td>
<td>$12.10</td>
<td>$15.40</td>
<td>$20.24</td>
<td>$25.08</td>
<td>$29.92</td>
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<td>NOTATIONS</td>
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<td>1. The above maximum rates include a $0.25 per month per household recycling fee, a $0.05 per cubic yard commercial recycling fee, and a $0.25 per ton industrial recycling fee, payable to the City by the garbage company.</td>
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<td>2. Pursuant to Section 11-6.16(c)(2) of the Modesto Municipal Code, the garbage company may require a deposit equivalent to two (2) months service charge from customers prior to beginning service.</td>
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A RESOLUTION APPROVING THE MODESTO FIRE DEPARTMENT'S 2008-2012 STRATEGIC PLAN.

WHEREAS, the goal of the Strategic Plan is to clearly identify the mission, the operational system, and the future goals of the Modesto Fire, and

WHEREAS, the Strategic Plan is a culmination of a variety of planning processes, which have taken place over the past eighteen (18) years, and

WHEREAS, many pieces of the Strategic Plan have been adopted in other planning documents by the City Council and are recognized as industry “best practices”, and

WHEREAS, the Strategic Plan addresses Fire Department expansion, in an attempt to keep pace with growth in the community and maintain the high service level established by the City Council, and

WHEREAS, in 2006, the Modesto Fire Department embarked on the International Accreditation project through the Center for Public Safety Excellence, and

WHEREAS, a Strategic Plan is an essential element of the fire accreditation project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Modesto Fire Department's 2008-2012 Strategic Plan.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of August, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O’Bryant

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney

ATTEST: Jean Morris, City Clerk
A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF MICHAEL NAVARRO FROM THE BOARD OF ZONING ADJUSTMENT

WHEREAS, MICHAEL NAVARRO was appointed a member of the Board of Zoning Adjustment on March 23, 2004, and

WHEREAS, MICHAEL NAVARRO has tendered his resignation from the aforementioned committee, and

WHEREAS, MICHAEL NAVARRO has been a devoted and sincere public servant and has contributed greatly to our civic progress,

NOW, THEREFORE, BE IT RESOLVED that the resignation of MICHAEL NAVARRO from the Board of Zoning Adjustment hereby is accepted with regret.

BE IT FURTHER RESOLVED that the Council of the City of Modesto, on its own behalf, and on behalf of the citizens of this City, hereby expresses its sincere appreciation to MICHAEL NAVARRO for his outstanding service to the community.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007 by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

Susana Alcala Wood, City Attorney

ATTEST: Jean Morris, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-509

A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF ALAN STRAUSS FROM THE COMMUNITY QUALITIES FORUM

WHEREAS, ALAN STRAUSS was appointed a member of the Community Qualities Forum on October 17, 2000, and

WHEREAS, ALAN STRAUSS has tendered his resignation from the aforementioned committee, and

WHEREAS, ALAN STRAUSS has been a devoted and sincere public servant and has contributed greatly to our civic progress,

NOW, THEREFORE, BE IT RESOLVED that the resignation of ALAN STRAUSS from the Community Qualities Forum hereby is accepted with regret.

BE IT FURTHER RESOLVED that the Council of the City of Modesto, on its own behalf, and on behalf of the citizens of this City, hereby expresses its sincere appreciation to ALAN STRAUSS for his outstanding service to the community.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

Susana Alcald Wood, City Attorney

090407/CMO/Puckett
A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF JULIE (WALTON) HOLLY FROM THE CITIZENS ADVISORY COMMITTEE ON RECYCLING

WHEREAS, JULIE (WALTON) HOLLY was appointed a member of the Citizens Advisory Committee on Recycling on September 6, 2005, and

WHEREAS, JULIE (WALTON) HOLLY has tendered her resignation from the aforementioned committee, and

WHEREAS, JULIE (WALTON) HOLLY has been a devoted and sincere public servant and has contributed greatly to our civic progress,

NOW, THEREFORE, BE IT RESOLVED that the resignation of JULIE (WALTON) HOLLY from the Citizens Advisory Committee on Recycling hereby is accepted with regret.

BE IT FURTHER RESOLVED that the Council of the City of Modesto, on its own behalf, and on behalf of the citizens of the City, hereby expresses its sincere appreciation to JULIE (WALTON) HOLLY for her outstanding service to the community.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-511

A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF WILLIE McDANIEL FROM THE PLANNING COMMISSION

WHEREAS, WILLIE McDANIEL was appointed a member of the Planning Commission on February 28, 2006, and

WHEREAS, WILLIE McDANIEL has tendered his resignation from the aforementioned committee, and

WHEREAS, WILLIE McDANIEL has been a devoted and sincere public servant and has contributed greatly to our civic progress,

NOW, THEREFORE, BE IT RESOLVED that the resignation of WILLIE McDANIEL from the Planning Commission hereby is accepted with regret.

BE IT FURTHER RESOLVED that the Council of the City of Modesto, on its own behalf, and on behalf of the citizens of this City, hereby expresses its sincere appreciation to WILLIE McDANIEL for his outstanding service to the community.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-512

A RESOLUTION AMENDING THE FISCAL YEAR 2007-08 OPERATING BUDGET TO ALLOCATE $50,000 FROM 0100-800-8000-8003, THE GENERAL FUND RESERVE, TO 0100-300-3001-0255 ($45,000), ADMINISTRATION SERVICE CREDITS, AND 0100-300-3001-0315 ($5,000), ADMINISTRATION VOCATIONAL AND RECREATIONAL SUPPLIES, FOR MOBILE HOME ORDINANCE GUIDELINES AND PROCEDURES.

WHEREAS, over the past several months, the City Council Finance Committee and the City Council have been studying issues regarding rent stabilization as it applies to the mobile home parks located in Modesto, and

WHEREAS, on August 14, 2007, by motion, the Modesto City Council took actions to accept the market study report on mobile homes in Modesto and the Council also introduced a Mobile Home Rent Stabilization Ordinance, and

WHEREAS, at the same meeting, staff from the Parks, Recreation and Neighborhoods Department requested an allocation in the amount of $50,000 from the general fund reserve in order to begin work on ordinance guidelines, policies, procedures, forms and monitoring for the mobile home rent stabilization ordinance and any long term lease items on this subject that may require assistance from staff; however, no formal action was taken on this request, and

WHEREAS, any staff involvement in the rent stabilization ordinance is not eligible for funding through Housing and Urban Development (HUD) monies, and

WHEREAS, since the long-term work load is currently unknown, staff requests a $50,000 general fund reserve allocation in order to begin work on ordinance guidelines, policies, procedures, forms and monitoring, and

WHEREAS, in order to avoid co-mingling of General Fund monies with Federal entitlement funds, staff is recommending that this funding be allocated to the
Administration organization of the parks, Recreation and Neighborhoods Department to be paid to HUD-funded staff through service credits,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby amends the Fiscal Year 2007-08 operating budget to allocate $50,000 from 0100-800-8000-8003, the General Fund Reserve, to 0100-300-3001-0255 ($45,000), Administration Service Credits, and 0100-300-3001-0315 ($5,000), Administration Vocational and Recreational Supplies, for Mobile Home Ordinance Guidelines and Procedures.

BE IT FURTHER RESOLVED that the Finance Director, or his designee, is hereby authorized to take the necessary steps 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 4th day of September, 2007, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: Olsen

ABSENT: Councilmembers: None

Attest: \underline{Jean Morris}

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: \underline{SUSANA ALCALA WOOD}, City Attorney
A RESOLUTION APPROVING AN AMENDMENT TO THE STANDARD AGREEMENT FOR CONSULTANT SERVICES WITH PRECISION INSPECTION COMPANY, INC. FOR ADDITIONAL PLAN CHECK SERVICES AND BUILDING PERMIT INSPECTIONS, IN AMOUNT NOT TO EXCEED $50,000, FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED $200,000, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT TO THE AGREEMENT.

WHEREAS, the volume of plan checks and building inspections has continued to grow over the last several years, and

WHEREAS, staffing shortages exist in the plan review area, and

WHEREAS, the target time set for plan review is 10 working days for tenant improvement plans and residential plans and 15 working days for commercial plans, and

WHEREAS, the City had sent commercial plans to Harris & Associates for plan review, and

WHEREAS, the increase in the plan review workload could not be absorbed by Harris & Associates and meet the target time for plan reviews, and

WHEREAS, by Resolution No. 2006-016, the City entered into an Agreement with Precision Inspection Company, Inc. on January 10, 2006 in the amount of $75,000, to assist in conducting plan check services and building permit inspections, and

WHEREAS, said Agreement includes a provision for building inspectors as may be required, and

WHEREAS, by Resolution No. 2006-240, the original agreement was amended on April 25, 2006, to accommodate the needs of the Parks, Recreation and Neighborhoods Department, and

WHEREAS, the original agreement with the Community and Economic Development Department in the amount of $75,000 had been reached, and
WHEREAS, on December 12, 2006, by Resolution No. 2006-765, the Community & Economic Development Department entered into a new agreement with Precision Inspection Company, Inc in an amount not to exceed $150,000 in order to satisfy on-going needs, and to avoid convoluting the Amendment to the original agreement for services provided to the Parks, Recreation and Neighborhoods Department, and

WHEREAS, the remaining balance on that agreement is $50,589, and

WHEREAS, in order to satisfy the on-going needs, the Community and Economic Development Department desires to extend Consultant’s contract for future services for an additional amount not to exceed $50,000, for a total contract amount not to exceed $200,000,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Amendment to the Standard Agreement for Consultant Services with Precision Inspection Company, Inc. for additional plan check services and in conducting building permit inspections in an amount not to exceed $50,000, for a total contract amount not to exceed $200,000.

BE IT FURTHER RESOLVED by the Council that the City Manager, or his designee, is hereby authorized to execute said Amendment to the Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST

JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AUTHORIZING THE COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT TO SOLICIT REQUEST FOR PROPOSALS FOR PROFESSIONAL ASSISTANCE FOR PLAN CHECK SERVICES FOR A THREE-YEAR PROFESSIONAL SERVICES AGREEMENT, WITH OPTIONS FOR TWO (2), ONE-YEAR RENEWALS, NOT TO EXCEED $100,000 EACH YEAR.

WHEREAS, the volume of plan checks and building inspections has continued to grow over the last several years, and

WHEREAS, staffing shortages exist in the plan review area, and

WHEREAS, the target time set for plan review is 10 working days for tenant improvement plans and residential plans and 15 working days for commercial plans, and

WHEREAS, the City had sent commercial plans to Harris & Associates for plan review, and

WHEREAS, the increase in the plan review workload could not be absorbed by Harris & Associates and the target time for plan reviews could not be met, and

WHEREAS, by Resolution No. 2006-016, the City entered into an Agreement with Precision Inspection Company, Inc. on January 10, 2006 in the amount of $75,000, to assist in conducting plan check services and building permit inspections, and

WHEREAS, said Agreement includes a provision for building inspectors as may be required, and

WHEREAS, by Resolution No. 2006-240, the original agreement was amended on April 25, 2006, to accommodate the needs of the Parks, Recreation and Neighborhoods Department, and

WHEREAS, the original agreement with the Community and Economic Development Department in the amount of $75,000 has been reached, and
WHEREAS, by Resolution No. 2006-765, a new agreement with Precision Inspection, Inc. was entered into on December 12, 2006, in an amount not to exceed $150,000 in order to satisfy on-going needs, and

WHEREAS, the volume of plan review workload could not be absorbed by Precision Inspection, Inc. and the target time for plan reviews could not be met, and

WHEREAS, professional services are essential for the Building & Development Services Division to meet the performance measures established for tenant improvement plan checks, commercial plan checks and residential plan checks,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the Community & Economic Development Department to solicit proposals for professional assistance for plan check services for a period of three years, not to exceed $100,000 each year.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby authorizes an option for two (2), one-year renewals, not to exceed $100,000 each year.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

(SEAL)

APPROVED AS TO FORM:
By

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-515

A RESOLUTION APPROVING A CFF RIGHT OF WAY REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND MODESTO MABLE, LLC, A LIMITED LIABILITY COMPANY, WITH A MAXIMUM REIMBURSEMENT AMOUNT OF $433,862.00 FOR RIGHT OF WAY FOR THE FUTURE PELANDALE/CLARATINA EXPRESSWAY AND RIGHT OF WAY LOCATED ON OAKDALE ROAD NORTH OF MABEL AVENUE, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, FINDING THAT THE AGREEMENT IS WITHIN THE SCOPE OF THE GENERAL PLAN MASTER EIR (SCH NO. 1999082041) AND THE NORTH BEYER PARK SPECIFIC PLAN MND (SCH NO. 9610253), AND RESCINDING RESOLUTION NO. 2007-319.

WHEREAS, the City of Modesto’s General Plan calls for Pelandale Avenue/Claratina Road to be constructed as a Class A expressway, and

WHEREAS, the future Claratina Road will be developed as an expressway and additional right of way is necessary for the future realignment of Claratina Road, and

WHEREAS, Modesto Mable, LLC, a Limited Liability Company, ("Developer") has a legal interest in a certain tract of land located at the northwest corner of Oakdale Road and Mable Avenue in North Beyer Park Specific Plan area of the City of Modesto, commonly known as the Rose Villas Subdivision ("Subdivision"), and

WHEREAS, as a condition of approval of the Subdivision, the Developer is required to dedicate 73,979 square feet of right of way for the future Pelandale/Claratina Expressway and 4,313 square feet of right of way for the widening of Oakdale Road north of Mable Avenue (collectively “the Dedication”), and

WHEREAS, on June 5, 2007 Council approved Resolution 2007-319 for a CFF Right of Reimbursement Agreement (“Original Agreement”) between the City of Modesto and Modesto Mable, LLC, (“Developer”), and
WHEREAS, the final map for the subdivision was not recorded within ninety (90) days per the terms of the Original Agreement and the Original Agreement was terminated, and

WHEREAS, the City and the Developer are proposing to enter into a new CFF Right of Way Reimbursement Agreement ("Agreement") between the City of Modesto and Developer to provide for reimbursement for (a portion of) the ROW to be dedicated, and

WHEREAS, the Dedication will be made through the recordation of the Final Map or recordation of a Grant Deed, and

WHEREAS, that portion of the Dedication which will be reimbursable will be reimbursed through the City's Capital Facilities Fees ("CFF") program, and

WHEREAS, said Agreement shall have a maximum reimbursement amount of $433,862, which will be allocated from the Streets CFF fund, and

WHEREAS, the City Council has received and considered the Written Checklist, Environmental Assessment No. EA/C&ED 2006-66, which concludes that the dedication of the right of way for which the Developer will be reimbursed under the proposed Agreement, is within the scope of the General Plan Master EIR (SCH No. 1999082041) and the North Beyer Park Specific Plan MND (SCH No. 96102053, and that, pursuant to Sections 15168(c) and 15182 of the CEQA Guidelines, no new environmental review is required,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds and determines that:

1. The proposed CFF Right of Way Reimbursement Agreement between the City of Modesto and Modesto Mable, LLC ("Project") is consistent
with the North Beyer Specific Plan and the Modesto Urban Area
General Plan.

2. The reimbursement for the proposed right of way is included in the
2003 CFF program.

3. As per Sections 15168(c) and 15182 of the California Environmental
Quality Act ("CEQA") Guidelines, this Project is within the scope of
the projects covered by the General Plan Master EIR and the North
Beyer Park Specific Plan MND ("Program EIR") and no new
environmental document or findings are required by CEQA.

4. There are no substantial changes proposed in the Project which result
in new significant environmental effects or a substantial increase in the
severity of previously identified significant effects and, therefore, no
major revisions to the Program EIR, are required.

5. No substantial changes have occurred with respect to the circum­
cstances under which the Project is undertaken which will result in new
significant environmental effects or a substantial increase in the
severity of previously identified significant effects and, therefore, no
major revisions to the Program EIR, are required.

6. There is no new information of substantial importance that was not
known and could not have been known with the exercise of reasonable
diligence when the Program EIR, was adopted which shows any of the
following:

   a. one or more significant effects which is not discussed in the
      Program EIR; or,
b. significant effects which were previously examined will be substantially more severe than previously shown; or,

c. previously infeasible mitigation measures or alternatives are now feasible and would substantially reduce one or more significant effects of the project, but the Project proponents decline to adopt the mitigation measure or alternative; or,

d. mitigation measures or alternatives which are considerably different from those analyzed in the Program EIR would substantially reduce one or more significant effects on the environment, but the Project proponents decline to adopt the mitigation measure or alternative.

7. The Written Checklist, Environmental Assessment EA/C&ED 2006-66, provides the substantial evidence to support findings 3-7, above.

BE IT FURTHER RESOLVED that the CFF Right of Way Reimbursement Agreement between the City of Modesto and Modesto Mable, LLC is hereby approved.

BE IT FURTHER RESOLVED that the City Manager, or designee, is hereby authorized to execute the Agreement.

BE IT FURTHER RESOLVED that Resolution 2007-319 is hereby rescinded.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE FURNISHING OF MAINTENANCE AND CALIBRATION SERVICES FOR THE PUBLIC WORKS DEPARTMENT, WATER QUALITY CONTROL (WQC) DIVISION TO TELSTAR INSTRUMENTS, INC., OF CONCORD, CA., FOR A TWO (2) YEAR AGREEMENT, WITH THREE (3) ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, FOR AN ESTIMATED ANNUAL COST OF $50,000, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT.

WHEREAS, the Public Works Department-Water Quality Control (WQC) Division at 7007 Jennings Road, has requested the furnishing of maintenance and calibration services, and

WHEREAS, on December 5, 2006, Council approved Resolution No. 2006-757 authorizing the Purchasing Manager to issue formal Request for Bids (RFB) for the furnishing of maintenance and calibration services, for the WQC Division, and

WHEREAS, on May 1, 2007, the Purchasing Division issued Request for Bid No. 0607-07 for the furnishing of maintenance and calibration services to nine (9) prospective bidders, none of which were local companies, posted the bid on the City’s web site, and formally advertised as required by law, and

WHEREAS, on May 10, 2007, a bidders conference was held, and

WHEREAS, two (2) companies were in attendance, and

WHEREAS, on June 5, 2007, RFB’s were formally opened in the City Clerk’s office, and

WHEREAS, of the nine (9) prospective bidders, one (1) company chose to respond, and

WHEREAS, based on receiving a responsive and responsible bid, City staff recommends the award of bid and contract for maintenance and calibration services to
Telstar Instruments, Inc., Concord, CA., for a two (2) year agreement, with three (3) one-year extension options, at the sole discretion of the City, and

WHEREAS, Modesto Municipal Code Section 8-3.203 requires all purchases, which meet or exceed $50,000 for material, equipment or contractual services to be formally bid, and

WHEREAS, this award of bid and contract for the furnishing of maintenance and calibration services conforms to the Modesto Municipal Code, and

WHEREAS, funds are budgeted and available in account number 6210-480-5214-0235 (Sewer Operations Fund) for furnishing of maintenance and calibration services for FY 07/08,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and contract for the furnishing of maintenance and calibration services for the Public Works Department, Water Quality Control (WQC) Division to Telstar Instruments, Inc., Concord, CA., for a two (2) year agreement with three (3) one-year extension options, at the sole discretion of the City, for a total estimated annual cost of $50,000.

BE IT FURTHER RESOLVED that the City Manager, or his designee is hereby authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

BY: [Signature]

Susana Alcala Wood, City Attorney
A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PURCHASE OF LABORATORY FURNITURE FOR THE PUBLIC WORKS DEPARTMENT, WATER QUALITY CONTROL DIVISION TO ISEC, INC., DIXON, CA FOR A TOTAL ESTIMATED COST OF $66,124, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT.

WHEREAS, on September 26, 2006, Council approved Resolution No. 2006-615 authorizing the Purchasing Manager to issue formal Request for Bids (RFB) for the purchase of laboratory furniture for the Water Quality Control Division, and

WHEREAS, on March 6, 2007, the Purchasing Division issued Request for Bid No. 0607-26 for the purchase of laboratory furniture to four (4) prospective bidders, none of which were local companies, posted the bid on the City’s web site, and formally advertised as required by law, and

WHEREAS, on April 10, 2007, RFB’s were formally opened in the City Clerks office. Of the four (4) prospective bidders, one company chose to respond, and

WHEREAS, based on receiving a responsive and responsible bid, City staff recommends the award of bid and contract for the purchase of laboratory furniture to ISEC Inc., Dixon, CA, for a total estimated cost of $66,124, and

WHEREAS, Modesto Municipal Code Section 8-3.203, generally requires all purchases, which meet or exceed $50,000 for material, equipment or contractual services to be formally bid. The award of bid and contract for the purchase of laboratory furniture conforms to the Modesto Municipal Code,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and contract for the purchase of laboratory furniture, to ISEC Inc., Dixon, CA., for a total estimated cost of $66,124.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

ATTEST: Jean Morris, City Clerk

By: Susana Alcala Wood, City Attorney
A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PURCHASE OF A 2000 GALLON WATER TRUCK TO S & C FORD, INC., SAN FRANCISCO, CA, FOR A TOTAL ESTIMATED COST OF $74,626.

WHEREAS, the compost facility owned a 1991 Caterpillar D300B water truck, and due to mechanical and safety issues the water truck was not being operated. In accordance with Air Board regulations, the 1991 Caterpillar D300B water truck would not meet Air Board compliance, and

WHEREAS, Air Pollution Control permits for the City’s Compost Site require that a water truck be on site at all times for dust control during compost operations. If a truck is not present to water down the site, the Air Board staff will issue the City a Notice of Violation, and

WHEREAS, in November 2006, the Purchasing Division issued a sealed bid for the sale of the 1991 Caterpillar D300B water truck, and

WHEREAS, in December 2006, during supplemental budget review, the allocation of $65,000 was approved by the City Council for the purchase of a new water truck, and

WHEREAS, in January 2007, the water truck sold for $26,000 at The Auction Yard. The net revenue of $24,245 was placed in the Compost Fund Reserve account for use in the purchase of a new water truck, and

WHEREAS, on April 24, 2007, the City Council approved Resolution No. 2007-226 authorizing the Purchasing Manager to issue formal Request for Bids (RFB) for the purchase of a 2000 Gallon Water Truck for the Parks, Recreation and Neighborhoods Department, Solid Waste Division Compost Facility, and
WHEREAS, on June 14, 2007, the Purchasing Division issued RFB No. 0607-57 for the purchase of a 2000 Gallon Water truck to twenty-one (21) prospective bidders, one of which is a local company, posted the bid on the City’s web site and formally advertised as required by law, and

WHEREAS, on July 17, 2007, RFB’s were formally opened in the City Clerk’s office. Of the twenty-one (21) prospective bidders, four (4) companies chose to respond. All bidders provided responsive and responsible bids, and

WHEREAS, based on being deemed the lowest responsive and responsible bidder, City staff recommends the award of bid and contract for the purchase of a 2000 Gallon Water Truck to S & C Ford, Inc., San Francisco, CA, for the total estimated cost of $74,626, and

WHEREAS, Modesto Municipal Code Section 8-3.203 generally requires all purchases, which meet or exceed $50,000 for material, equipment or contractual services to be formally bid. The award of bid and contract for the purchase of a 2000 Gallon Water Truck for the Parks, Recreation and Neighborhoods Department, Solid Waste Division Compost Facility, conforms to the Modesto Municipal Code,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and contract for the purchase of a 2000 Gallon Water Truck to S & C Ford, Inc., San Francisco, CA.

BE IT FURTHER RESOLVED that the Purchasing Manager is hereby authorized to issue a Purchase Order for a total estimated cost of $74,626.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-519

A RESOLUTION AMENDING THE 2007-2008 OPERATING BUDGET TO TRANSFER $74,626 FROM THE COMPOST FUND RESERVE ACCOUNT NUMBER 6290-800-8000-8003 TO THE FLEET REPLACEMENT FUND WHERE IT WILL BE APPROPRIATED TO 7210-480-5814-5814 FOR THE PURCHASE OF A 2000 GALLON WATER TRUCK.

WHEREAS, staff recommends the City Council adopt a resolution amending the 2007-2008 operating budget to transfer $74,626 from the Compost Fund Reserve account number 6290-800-8000-8003 to the Fleet Replacement Fund where it will be appropriated to 7210-480-5814-5814 for the purchase of a 2000 Gallon Water Truck,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby adopts a resolution amending the 2007-2008 operating budget to transfer $74,626 from the Compost Fund Reserve account number 6290-800-8000-8003 to the Fleet Replacement Fund reserve where it will be appropriated to 7210-480-5814-5814 for the purchase of a 2000 Gallon Water Truck.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

By: Susana Alcalá Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-520

A RESOLUTION APPROVING A REQUEST TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS) FOR AN EXTENSION OF 18 MONTHS TO COMPLETE RENOVATIONS AND PLACE INTO USE THE FORMER SOCIAL SECURITY BUILDING AT 1230 12TH STREET, AUTHORIZING STAFF TO ISSUE A REQUEST FOR QUALIFICATIONS (RFQ) FOR THE MASTER LEASE OF THE 1230 12TH STREET BUILDING WITH THE CONDITION THAT IF THE CITY DOES NOT RECEIVE A REQUEST THE CITY COULD END THE EXTENSION AND RETURN THE PROPERTY TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND AUTHORIZING STAFF TO RE-ISSUE A REQUEST FOR BID (RFB) TO COMPLETE THE RENOVATION OF THE 1230 12TH STREET BUILDING WHICH WOULD NOT BE EXECUTED UNLESS A QUALIFIED CANDIDATE HAS ENTERED INTO A MASTER LEASE AGREEMENT WITH THE CITY.

WHEREAS, on August 29, 2003, the City of Modesto received a “Notice of Determination,” which indicated that the Social Security Administration (SSA) Building, located at 1230 12th Street (the “property”), (GSA No. 9-G-CA-1610), had been determined to be surplus government property, and

WHEREAS, the notice, issued by the U.S. General Services Administration (GSA) of the Federal Government, reported that the property was also determined to be suitable by the Department of Housing and Urban Development (HUD), and the first priority for use is for homeless programs or services for the homeless, and

WHEREAS, on October 14, 2003, by Resolution No. 2003-548, the City Council authorized staff to submit a “Letter of Interest” to the Department of Health and Human Services (DHHS) in order to receive an application for the surplus property located on 1230 12th Street, previously used by the Social Security Administration, and approved staff recommendation for future use of the former Social Security Administration building, and

WHEREAS, on January 6, 2004, by Resolution No. 2004-019 the City Council approved the submission of an application for the property and authorized the City Manager to execute the agreement and subsequent documents, and
WHEREAS, on September 13, 2004, the City of Modesto received a letter from the DHHS, Division of Property Management with an original Quitclaim Deed. The City indicated its acceptance by signing this document, and

WHEREAS, in accepting the property, the City of Modesto committed to preparing the site for occupancy within 36 months (September 13, 2007) if major renovations are done; or within 12 months (September 13, 2005) if minor repairs need to be done, and

WHEREAS, on January 28, 2005, as the City was preparing to initiate the rehabilitation work to be done on the property, City staff discovered that the property had extensive damage due to vandalism, and

WHEREAS, staff has been working on the rehabilitation of the building as well as working with agencies that provide homeless services and are interested in renting space in the property, and

WHEREAS, staff was working with an anchor agency that was interested in master leasing the property; this agency requested additional remodeling of the property to be able to provide confidential services to their customers, and

WHEREAS, taking into consideration the budget allocated by the City for the property and the additional remodeling needed by this agency, staff requested two architectural estimates, and

WHEREAS, architectural estimate No. 1 came back at $247,738.69, and

WHEREAS, architectural estimate No. 2 came back at $1,116,643.22, and

WHEREAS after reviewing the estimates, the anchor agency indicated that it did not have enough funds to cover the cost of the additional remodeling, and opted not to lease the property, and
WHEREAS, the Parks, Recreation and Neighborhoods Department staff was working with Public Works staff to prepare a Scope of Services to issue a Request for Bid (RFB) for the remodeling of the property, and

WHEREAS, on June 5, 2007, a Blind Bid opening was held at the City Clerk’s office, and no bids were received, and

WHEREAS, staff has not yet re-issued a new bid, and

WHEREAS, based on the loss of the anchor agency, staff brought this issue to the Stanislaus County Support Services Collaborative which is the entity that oversees homeless issues within Stanislaus County, and

WHEREAS, after this item was presented to the Collaborative, some agencies expressed their interest in leasing the property, and

WHEREAS, on June 29, 2007, the City received a letter from United Way indicating their interest in pursuing a Memorandum of Understanding with the City for the future use of the property, and

WHEREAS, on August 16, 2007, the City received a letter from the District Attorney’s office on behalf of the Stanislaus County Family Justice Center Steering Committee indicating their interest in procuring operations and office space at the property, and

WHEREAS, in order to be able to continue with this project the City must request a time extension from the DHHS to complete the renovation of the property, and

WHEREAS, in view of the fact that staff has received new requests from interested parties to lease the property, and the deadline provided by DHHS to complete the renovation and to place the property into use is quickly approaching, staff is recommending that a time extension of 18 months be requested to complete the rehabilitation of the property, and
WHEREAS, staff is recommending releasing a Request for Qualifications (RFQ) to determine the agency that best qualifies to manage the master lease of the property, and

WHEREAS, staff is also recommending that in the event the extension is granted a Request for Bid for the rehabilitation of the property should be re-issued, and

WHEREAS The Citizens Housing and Community Development Committee (CH&CDC) met on August 24, 2007, and recommended: extending the time period for the extension from staff’s original recommendation of 12 months to 18 months; that upon approval of the request, an RFQ for the master lease of the property should be issued, with the condition that if the City does not receive a request the City could end the extension and return the property to the Department of Health and Human Services; and that the RFB to complete the renovation of the property be re-issued, with the provision that it not be executed unless a qualified candidate has entered into a master lease agreement with the City,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a request to the Department of Health and Human Services (DHHS) for an extension of 18 months to complete renovations and place into use the property.

BE IT FURTHER RESOLVED that staff is hereby authorized to issue a Request for Qualifications (RFQ) for the Master Lease of the property with the condition that if the City does not receive a request the City could end the extension and return the property to the Department of Health and Human Services.

BE IT FURTHER RESOLVED that staff is hereby authorized to re-issue a Request for Bid (RFB) to complete the renovation of the property, with the provision that it not be executed unless a qualified candidate has entered into a master lease agreement with the City.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: [Signature]

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING AN AGREEMENT WITH THE COUNTY OF STANISLAUS FOR THE PROVISION OF ONE FULL-TIME MODESTO POLICE SERGEANT POSITION TO SERVE AS TRAINING CENTER COORDINATOR AT THE STANISLAUS COUNTY REGIONAL TRAINING CENTER, IN THE AMOUNT OF $126,297, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the County of Stanislaus has requested a Modesto Police Sergeant to fill its Academy Coordinator position for the regular basic course, and

WHEREAS, the term of the agreement is one year, commencing on July 1, 2007 until June 30, 2008, and

WHEREAS, the County of Stanislaus will reimburse the City of Modesto the total cost—salary and benefits, cellular telephone and computer costs—of one Modesto Police Sergeant, and

WHEREAS, this action is fiscally neutral,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with the County of Stanislaus for the provision of one full-time Police Sergeant position to serve as the Training Center Coordinator at the Stanislaus County Regional Training Center, in the amount of $126,297.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the agreement.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn,
who moved its adoption, which motion being duly seconded by Councilmember
O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen,
       Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:  

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-522

A RESOLUTION ACCEPTING A DONATION OF UP TO $5,000 FROM
RALEY’S/MILK-BONE FOR THE PURCHASE OF A NEW POLICE CANINE,
AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO
EXECUTE THE NECESSARY DOCUMENTS

WHEREAS, Raley’s/Milk-Bone retail customers have partnered to donation
police dogs to law enforcement agencies across the country since 2002, and
WHEREAS, Raley’s/Milk-Bone would like to donate up to $5,000 to the
Modesto Police Department for the purchase of a new canine for the Canine Unit, and
WHEREAS, the donation will be made on September 19, 2007 at the Raley’s
located at 3020 Floyd Ave. Suite #139, and
WHEREAS, the Modesto Police Department will do a police dog demonstration
at the event, and
WHEREAS, there is no fiscal impact to the City of Modesto, and
WHEREAS, the money will be deposited in the K-9 Trust Account, fund 8600,
and balance sheet account 3403,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby accepts a donation from Raley’s/Milk-bone in an amount up to $5,000.

BE IT FURTHER RESOLVED that said amount will be deposited in the K9
Trust Account, Fund 8600, Balance Sheet Account 3403:

Balance Sheet:
To: 8600-3403 $5,000 K9 Trust

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby
authorized to execute the Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION ACCEPTING THE WORK BY RICHARD A. HEAPS ELECTRICAL CONTRACTOR, INC., FOR THE PROJECT TITLED “TRAFFIC SIGNAL MODIFICATIONS: LALOMA AVENUE AT SANTA ANA AVENUE AND NEEDHAM AVENUE AT 12TH STREET/VIRGINIA AVENUE” AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER, AND AUTHORIZING PAYMENT OF AMOUNTS TOTALING $294,713.30

WHEREAS, a report has been filed by the Public Works Director that the project titled “Traffic Signal Modifications at LaLoma and Santa Ana Avenue and Needham Avenue at 12th Street and Virginia Avenue” has been completed by Richard A. Heaps Electrical Contractor, Inc., in accordance with the contract agreement dated August 8, 2006,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the project titled “Traffic Signal Modifications at LaLoma and Santa Ana Avenue and Needham Avenue at 12th Street and Virginia Avenue” is hereby accepted as complete from said contractor, Richard A. Heaps Electrical Contractor, Inc., that the City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder, and that payment of amounts totaling $294,713.30, is authorized as provided in the contract.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Susana Alcala Wood, City Attorney
A RESOLUTION APPROVING AN AMENDMENT TO AN AGREEMENT WITH BROWN & CALDWELL FOR A REVISED SCOPE OF WORK RELATED TO CONSTRUCTION SUPPORT SERVICES FOR THE DISSOLVED AIR FLOTATION FACILITY PROJECT IN THE NOT-TO-EXCEED AMOUNT OF $192,797, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT TO AGREEMENT

WHEREAS, the City of Modesto operates and maintains a secondary treatment system at 7007 Jennings Road, and

WHEREAS, during the late fall, winter, and early spring months discharge to the San Joaquin River is allowed if the treated wastewater is of adequate quality, and

WHEREAS, the Dissolved Air Flotation (DAF) clarifier is the technology chosen to resolve effluent disposal limitations, and

WHEREAS, on January 4, 2005, by Resolution No. 2005-018, the City Council approved an Agreement in the amount of $548,922 with Brown & Caldwell to complete design services and other tasks for the Dissolved Air Flotation Facility project, and

WHEREAS, the Agreement for design services with Brown & Caldwell included: Data Gathering, Site Work, Intake System, DAF Design, Chemical Storage and Feed System, Sludge Storage, Discharge Piping, Electrical Supply, Controls, SCADA, Bidding Assistance, Construction Support, Start-up and Training, and Project Close-out, and

WHEREAS, on January 2, 2007, by Resolution No. 2007-037, Council awarded a $6,010,403 construction contract to Kaweah Construction Company, and

WHEREAS, the largest bid item was to furnish and install the pre-manufactured Dissolved Air Flotation units at the Secondary Wastewater Treatment facility, and
WHEREAS, the design was made around the dimensions of a dissolved air flotation manufacturer, FRC, who was specified in the plans, and

WHEREAS, to make the bid competitive, other manufacturers could be submitted as equal to the FRC manufactured unit, and

WHEREAS, the low bidding contractor, Kaweah Construction Company, submitted a Dissolved Air Flotation Facility manufactured by Nijhuis, which would produce a cost savings of approximately $550,000 to the City, and

WHEREAS, Nijhuis is a larger structure with a need to reroute plumbing and electric facilities, peripheral equipment, access, and controls, already designed by Brown & Caldwell, and

WHEREAS, Brown & Caldwell had a significant effort to integrate the very different requirements of the Nijhuis equipment into the design, and spent numerous hours reviewing submittals, answering requests for information, and re-designing the construction drawings to adapt to the Nijhuis equipment, and

WHEREAS, in July of 2007, Brown & Caldwell submitted a revised fee and scope for construction management services for $192,797, and

WHEREAS, due to the size and complexity of this project, City staff recommends that Brown & Caldwell continue to provide services to complete the construction management services for the Dissolved Air Flotation Facility project, and

WHEREAS, an Amendment to the current Consultant Agreement with Brown & Caldwell for a revised scope of work related to construction management services in the not-to-exceed amount of $192,797 for the Dissolved Air Flotation Facility project is necessary in order to complete the project,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Amendment to Agreement with Brown & Caldwell for a revised scope of work related to construction management services for the Dissolved Air Flotation Facility project, in the not-to-exceed amount of $192,797.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Amendment to Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of September, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 
JEAN MORRIS, City Clerk
(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney