
WHEREAS, pursuant to Government Code Section 87300, every local agency must adopt a conflict of interest code, and

WHEREAS, the City Clerk is authorized to maintain a current list of the City agencies/departments which have adopted conflict of interest codes, and

WHEREAS, pursuant to Government Code Section 82011, this Council is the code reviewing body for agencies of the City of Modesto, and

WHEREAS, the Council, at its meeting of September 26, 2006 considered the adoption of amended conflict of interest codes for various City departments, including the Public Works Department.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto hereby adopts an amended Conflict of Interest Code for the Public Works Department of the City of Modesto as submitted, a copy of which Code is attached hereto.

BE IT FURTHER RESOLVED that Resolution No. 2004-481 adopted by the Council is hereby rescinded.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September 2006, 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

2006-598
CONFLICT OF INTEREST CODE
OF THE
PUBLIC WORKS DEPARTMENT
OF THE CITY OF MODESTO

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. 18730) which contains the terms of a standard conflict of interest code. After public notice and hearing it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code of the Public Works Department.

Designated employees shall file their statements with the Office of the City Clerk and Auditor which will make the statements available for public inspection and reproduction. (Gov. Code Section 81008). Statements for all designated employees will be retained by the Office of the City Clerk & Auditor.
## Designated Positions

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Category</th>
</tr>
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<tbody>
<tr>
<td>Administrative Analyst II</td>
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</tr>
<tr>
<td>Administrative Services Officer</td>
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<tr>
<td>Airport Maintenance Crewleader</td>
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<td>Associate Traffic Engineer</td>
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<tr>
<td>Consultant</td>
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<td>Deputy Director of Public Works</td>
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<td>Electrical Supervisor</td>
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<td>Environmental Compliance Inspector</td>
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<td>Fleet Manager</td>
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<td>Laboratory &amp; Environmental Monitoring Supervisor</td>
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<td>Land Surveyor</td>
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<td>Regulatory Compliance Supervisor</td>
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### SCADA Supervisor

<table>
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<td>Senior Environmental Compliance Inspector</td>
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<td>Transit Manager</td>
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<td>Transportation Planner</td>
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<td>Urban Forestry Superintendent</td>
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<td>Wastewater Collection Superintendent</td>
<td>1</td>
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<tr>
<td>Wastewater Treatment Plant Manager</td>
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</tr>
</tbody>
</table>
Disclosure Categories

An investment, interest in real property, or income is reportable if the business entity in which the investment is held, the interest in real property, or the income, or source of income may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of the employee's position.

Group 1: Designated employees in this group shall report all business positions, all investments, interests in real property, income, loans or gifts from individuals or businesses - Schedules A, B, C, D, E and F - from all sources located in or doing business within the jurisdiction. (Real property shall be deemed to be "within the jurisdiction" if the property or any part of it is located within or not more than two miles outside the boundaries of the city or within two miles of any land owned or used by the City.)

Group 2: Designated employees in this group shall report all business positions, all investments, income, loans or gifts from individuals or businesses - Schedules A, C, D, E and F - from business entities located in or doing business within the jurisdiction which manufacture, sell or supply equipment, including but not limited to horticulture, construction, craft, office and safety supplies and/or equipment.

Group 3: A consultant is any person who under contract provides information, advice, recommendation or counsel to any agency. The head of the department which hires a consultant shall determine on a case-by-case basis the appropriate disclosure of economic interest which the consultant is required to file with the City Clerk on beginning and ending the job.
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-599

A RESOLUTION APPROVING A MASTER PROFESSIONAL SERVICES AGREEMENT FOR CONSULTANT SERVICES WITH HARRIS AND ASSOCIATES FOR THE PREPARATION OF FACILITIES MASTER PLANS, INFRASTRUCTURE FINANCE PLANS, AND FOR FORMATION OF COMMUNITY FACILITIES DISTRICTS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the City, has determined that Facilities Master Plans ("FMPs"), and Infrastructure Finance Plans, ("IFPs") should be prepared for new Specific Plan areas to provide for the public facilities and services needed to serve these areas and to provide for phasing and funding mechanisms, such as Community Facilities District ("CFDs") to ensure that the infrastructure necessary to serve development will be available in a timely manner, and

WHEREAS, the City has also determined that various technical studies and finance-related studies are needed to support the preparation of the FMPs and IFPs, and

WHEREAS, Harris and Associates ("Consultant") has been pre-qualified and approved by the Council to provide the services to prepare said FMPs and IFPs, and

WHEREAS, City and Consultant desire to enter into a Master Professional Services Agreement for Consultant Services ("Master Agreement") pursuant to which Consultant shall prepare FMPs, IFPs, technical studies and related on-call services as assigned by City, and

WHEREAS, prior to commencement of services under the Master Agreement, all work and services to be provided to City by Consultant shall be outlined in a Task Order for each project and shall be approved by the City in accordance with City’s policies regarding contracting authority,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Master Professional Services Agreement for Consultant Services between the City of Modesto and Harris and Associates for the preparation of Facilities Master Plans, Infrastructure Finance Plans, and for formation of Community Facilities Districts is hereby approved.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, by Councilmember O'Bryant, 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

ATTEST: Jean Morris

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
A RESOLUTION APPROVING TASK ORDER NO. 1 TO THE MASTER PROFESSIONAL SERVICES AGREEMENT FOR CONSULTANT SERVICES WITH HARRIS AND ASSOCIATES FOR THE PREPARATION OF A FACILITIES MASTER PLAN, INFRASTRUCTURE FINANCE PLAN, AND FOR FORMATION OF A COMMUNITY FACILITIES DISTRICT FOR THE KIERNAN BUSINESS PARK EAST SPECIFIC PLAN AREA

WHEREAS, the City Council is desirous of creating a Facilities Master Plan ("FMP") and Infrastructure Finance Plan ("IFP") for the Kiernan Business Park East Specific Plan Area ("Project"), and

WHEREAS, Chopra Development Enterprises ("Applicant") has a legal interest in real property located within a portion of the Kiernan Business Park East Specific Plan Area, shown in Exhibit "A", and is interested in pursuing development of properties in the Specific Plan Area, and

WHEREAS, on September 26, 2006, the Council of the City of Modesto approved a Master Professional Services Agreement for Consultant Services with Harris and Associates for the preparation of FMPs, IFPs, technical studies and related on-call services as assigned by City, and

WHEREAS, Harris and Associates ("Consultant") has prepared Task Order No. 1 ("Task Order") for the Project, attached as Exhibit "B", and

WHEREAS, Applicant has advanced a deposit in the amount of two hundred and sixty-three thousand dollars ($263,000) to the City to fund a portion of Task Order No. 1 and to pay staff and consultant expenses expected to be incurred in connection with the Project, and
WHEREAS, additional deposits will be provided by Applicant, as required by the City and as necessary to fund the Task Order, and

WHEREAS, the City will issue Notices to Proceed to the City’s Consultant only for those subtasks for which the Applicant has deposited funds,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that Task Order No. 1, attached as Exhibit “B” hereto are hereby approved.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26 day of September, 2006, Councilmember O’Bryant, 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
EXHIBIT A
City of Modesto
Kiernan Business Park
Specific Planning Area

- Modesto Sphere of Influence
- Kiernan Business Park SP
- Kiernan Business Park East
- Kiernan Business Park South
- Kiernan Business Park West
- Bank of Stockton
- Mana/Wagner Bridges (Mallik)
- Kaiser Hospital
- Leaping Lizards

November 30, 2005
City of Modesto
TASK ORDER NO. 1
for
Harris & Associates’
Master Professional Services Agreement

Kiernan Business Park East

This Task Order No. 1 is made and entered into by and between the City of Modesto, a municipal corporation (hereinafter “CITY”), and Harris & Associates, Inc., a California Corporation (hereinafter “CONSULTANT”) and is effective as of ________________.

REcitals

A. CONSULTANT has entered into a Master Professional Services Agreement, (hereinafter “Agreement”), dated ________________ (“AGREEMENT”) with the CITY, by which the CONSULTANT has agreed to provide professional engineering and financial engineering services for various development projects, which is incorporated herein by reference.

B. At the request of CITY and in compliance with the terms of the AGREEMENT, CONSULTANT has prepared the Task Order No. 1, a copy of which is attached hereto as Exhibit A.

C. CITY and CONSULTANT desire that CONSULTANT perform the services as identified in the attached Scope of Work.

Now Therefore, the Parties mutually agree as follows:

1. Incorporation of Master Professional Services Agreement. This Task Order hereby incorporates by reference all terms and conditions set forth in the Master Professional Services Agreement, unless expressly modified by this Task Order. The AGREEMENT and this Task Order shall, to the fullest extent possible, be read and considered as fully integrated documents and shall be interpreted so as to avoid inconsistencies, comply with all applicable laws and ensure that the objectives of the parties will be fully realized.

Nothing in this Task Order is intended to supersede, terminate, modify or otherwise affect any provision of the AGREEMENT, except to the extent that a provision of this AGREEMENT is in direct and irreconcilable conflict with a provision of the AGREEMENT. Then, and only in that event, the provisions of the AGREEMENT shall prevail over the contradictory provision of the Task Order.

2. Scope of Services. CONSULTANT shall perform the services described in Exhibit “A” attached hereto and incorporated herein by reference. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT use any subcontractors or subconsultants not listed in this Task Order, without the prior written consent of CITY.
3. **TIME OF PERFORMANCE.** CONSULTANT shall commence performance within five (5) working days after receipt of a Notice to Proceed from City, and shall complete all required services no later than the dates set forth in Exhibit “A”.

4. **COMPENSATION.** For services performed by CONSULTANT in accordance with this Task Order, CONSULTANT agrees to accept a sum not to exceed **$524,421.00**. CONSULTANT shall be paid at the times and in the manner set forth in Paragraph 3 of the Master Professional Services Agreement, unless expressly provided otherwise in the attached Scope of Work.

5. **SIGNATURES.** The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the CONSULTANT and CITY. This Task Order shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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. 2006-______, adopted by the Council of the City of Modesto on the ____ day of ____________ 2006, and has caused this Agreement to be duly executed in duplicate as of the Effective Date set forth above.

CITY OF MODESTO,
a municipal corporation

By __________________________
GEORGE W. BRITTON,
City Manager

CONSULTANT,
a California corporation*

By __________________________
Guy A. Erickson, President

APPROVED AS TO FORM:
SUSANA ALCALA WOOD, City Attorney

By __________________________
ALISON A. BARRATT-GREEN,
Senior Deputy City Attorney

Consultant’s Federal ID # 9442385238

* Corporations - signature of two (2) officers required or one (1) officer plus corporate seal.

Partnership - signature of a partner required

ATTEST:

By __________________________
JEAN MORRIS, City Clerk
EXHIBIT A

Harris & Associates
Scope of Work
For Task Order No. 1
Kiernan Business Park East
Preparation of the Capacity Studies, Infrastructure Finance Plan,
Facilities Master Plan and Community Facilities District
September 11, 2006

The following Scope of Work is for preparation of the capacity studies for the support of the Kiernan Business Park East Draft EIR. In addition, following identification of necessary mitigation measures, this scope details the preliminary scope for preparation of a Benefit and Burden Analysis, Infrastructure Finance Plan, Facilities Master Plan and Community Facilities District. The Harris Team includes five sub consultants on this project: West Yost and Associates for Water, Carollo Engineers for Wastewater, Omni Means for Traffic, Stantec for Storm Drainage and Goodwin Consulting Group. The work will be performed on a time and materials basis. The cost estimate for Harris’ hours and the sub-consultants are summarized in Exhibit B including hourly rate schedule. The following provides Harris and Associates’ (Harris) approach and level of effort for this scope of work.

Task 1.1 – Project Coordination and Preparation of Capacity Studies

Harris will coordinate with all parties and will peer review the capacity studies prepared by each of the subconsultants, listed below, for the Draft Environmental Impact Report (EIR) to be prepared by Turnstone Consulting. Harris will attend up to eight (8) meetings with City staff during the preparation of the Draft EIR and Final EIR. The City and EIR Consultant will provide the Harris team with a complete “Project Description” which details proposed layout, traffic circulation and land use with anticipated densities included.

Water Capacity Study - West Yost Associates (WYA)
Based on the provided information regarding land use, roadway alignments, etc. WYA will calculate the water demands for Phase 1, Phase 2 and the total project. WYA will modify the existing water system hydraulic model to be representative of the new demands of the proposed project. WYA will then use this modified hydraulic model to evaluate the potential hydraulic impacts of the increased water demands and various fire flow analyses from Phase 1 of the Project. If the City’s existing water system cannot meet the City’s minimum water system design criteria with the increased demands, then WYA will make recommendations for whatever new water supply sources and/or water system infrastructure facilities will be required to mitigate the hydraulic impacts of the Project. WYA will prepare an estimate of the probable construction cost for the infrastructure required to provide adequate supply. In addition, the report will contain a section which will include an evaluation of water supply availability in response to SB610.

Wastewater – Carollo Engineers
Using development layout and land use data provided by the City, Carollo will update the hydraulic model to reflect changes in planning assumptions created by the Project since they prepared the Draft Wastewater Master Plan for the City in 2005. Carollo will revise the sewer improvements to reflect changes in planning assumptions. The Collection system and WWTP improvements will be revised as necessary to accommodate growth based on revisions to the hydraulic model and updates to the
The WWTP Master Plan is currently being prepared by Carollo. Carollo will develop probable construction cost estimates to reflect changes in the Capacity Study and a cost allocation associated with proposed recommended improvements.

**Storm Drain - Stantec**
Using previously prepared studies and additional project information, Stantec will use a combination of empirical calculations and hydrologic modeling to determine 10-year and 100-year peak discharges and 100-year 24-hour storm runoff volumes that will be generated by the Project. The storm drainage infrastructure plan proposed to serve Watershed D as represented in the Draft Storm Drainage Master Plan will be modified to accommodate project development requirements. The Consultant will attend a meeting with the City and MID staff to determine if MID is likely to be willing to accept discharges from a detention/retention basin that will serve the project into their Lateral No. 6 that extends adjacent to the project along the alignment of Bangs Road. Initial MID requirements pertaining to such a discharge will also be determined at the meeting.

**Level of Effort and Costs for Task 1.1:**

<table>
<thead>
<tr>
<th>Firm</th>
<th>Hours</th>
<th>Costs</th>
<th>Meetings in Scope</th>
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<tr>
<td>Harris – PM</td>
<td>168</td>
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<tr>
<td>West Yost – Water</td>
<td>420</td>
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<td>Carollo – Wastewater</td>
<td>161</td>
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<td>Stantec – Drainage</td>
<td>192</td>
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<td><strong>Totals</strong></td>
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**Deliverables for Task 1.1**

**Water:** 10 to 15 page Technical Memorandum (TM) of both Draft and Final TMs, as five (5) hard copies and a PDF file of each submittal.

**Wastewater:** Draft, Final Draft and Final Report of the Wastewater Capacity Study as five (5) hard copies and a PDF file of each submittal.

**Storm Drain:** Technical Report of the drainage infrastructure plan for the project. The Technical Report will be submitted at Initial Draft, Final Draft, and Final stages of completion as five (5) hard copies and a PDF file of each submittal.

**Task 1.2 – Engineering Support during the EIR process**

Harris & Associates will coordinate all consultants and issues regarding the technical studies and issues between consultants.

WYA will provide up to 40 hours engineering support to the Project EIR Consultant during the preparation of the Draft and Final EIR by answering questions and/or requests for further information.
Carollo will provide up to 60 hours of engineering support to the Project EIR Consultant during the preparation of the Draft and Final EIR by answering questions and/or requests for further information.

Stantec will provide up to 40 hours engineering support to the Project EIR Consultant during the preparation of the Draft and Final EIR by answering questions and/or requests for further information.

**Level of Effort and Costs for Task 1.2:**

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**Deliverables for Task 1.2**

Written response to questions or requests for more information regarding sewer, water and storm drainage issues during the EIR preparation including peer review and coordination with other EIR consultants including traffic.

Upon completion of the identification of mitigation measures in the Draft and Final EIR, the following additional tasks have been identified for general scoping purposes. They include Task 1.3, Preparation of the project Benefit & Burden Analysis, Task 1.4, Preparation of Infrastructure Finance Plan (IFP), Task 1.5, Preparation of the Facilities Master Plan (FMP) and Task 1.6, Preparation of a Community Facilities District.

**Task 1.3 – Preparation of a Benefit and Burden Analysis**

Harris will assemble all of the technical studies prepared for the project, all recommended mitigation measures, and land use data in electronic format. The land use data will include the development layout, irrigation areas (potable water demand), land uses, acreage, dwelling units, square footage of non-residential building space, pavement areas, and planned layout of the arterial streets and internal street network which will be the responsibility of the project on and off-site infrastructure, as outlined for the project.

Based on the sub-consultants’ capacity studies, Harris will describe each type of capital facility that has been and will need to be constructed to serve the project. This data will be given to each of the sub-consultants so that they can prepare the necessary reports to support the development of the Infrastructure Finance Plan (IFP). The report will include conceptual layouts and cost estimates of the infrastructure needed to support build-out of the development.
Based on the existing technical studies for the EIR and the new studies to support the IFP, Harris will prepare a Benefit and Burden Analysis. The analysis will define the infrastructure and cost burden that each land use will receive from the infrastructure that will be included in the IFP and detailed in the Facilities Master Plan (FMP). It will also identify the cost burden that each acre of land will have towards public facility improvements, by land use, at build-out of the development area. The benefit and burden analysis will also identify those projects which will likely need to be funded up-front by the developer in order to allow the development to proceed regardless of how the developer chooses to phase the construction of the project. This analysis will not define how these costs will be paid for. The analysis will be prepared for the entire development at build out. As the project is further defined, if a phased Benefit and Burden Analysis is proposed, additional scope and consultant fees will be required.

Harris will participate in one (1) City Council presentation associated with this task, as well as three (3) meetings with staff and the developer. Harris will also set meetings related to each infrastructure analysis with the sub consultants and various City departments as necessary. The Benefit and Burden analysis will define water, sewer, traffic, park, storm drainage and public and government facilities impacts.

Harris will provide ten (10) copies of the Draft Benefit and Burden Analysis for review by the City staff. Once written comments have been received, at the City’s direction, a final draft will be prepared for review by the developers. At this point, Harris will try to reach consensus among the parties in order to proceed with a facility cost summary that all agree is appropriate. Twenty (20) final copies, including 1 electronic copy, will be provided to the City once all final comments have been received and incorporated.

Harris will assist the City in the preparation of the City Council staff report associated with the presentation of the Tivoli Development Benefit and Burden Analysis.

**Estimated Level of Effort and Costs for Task 1.3:**

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<td>474</td>
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**Deliverables for Task 1.3**

- 10 copies of the draft Benefit and Burden Analysis
- 10 copies of a final draft of the Benefit and Burden Analysis
- 20 copies of the final Benefit and Burden Analysis
- 1 electronic copy of the final Benefit and Burden Analysis.
Task 1.4 – Infrastructure Finance Plan

After the Benefit and Burden analysis is completed and prior to beginning the Infrastructure Finance Plan or Facilities Master Plan, Harris will meet with the developer and the City to determine how all of the infrastructure project costs will be paid for by the developer including: 1) “build and dedicate”, 2) condition of approval on the development mapping, 3) defined points within a development agreement, 4) part of a land secure financing district and/or 5) paid for by the development impact fees for the development.

Harris will work with the developer(s) to set project phasing. Harris, the sub-consultants and the City will build upon the Benefit and Burden analysis, and shall meet with and proceed with the coordination of all Finance Plan Consultants, including City CFD staff, the Appraiser, and Bond Counsel (assumed to have separate contracts with the City) regarding assumptions upon which the Project IFP shall be performed.

The purpose of the IFP will be to clearly describe what is expected to occur with regard to land uses, infrastructure costs and financing. This is an iterative process that will require consensus building among all of the stakeholders. Harris will play an integral role in generating this consensus.

The IFP will define the financing details related to water, sewer, storm drainage, traffic, public facilities and parks. For those portions of the infrastructure that are associated with impact fees, a cash flow analysis will be provided defining when each project is anticipated and can be funded.

Harris will prepare a Draft Infrastructure Finance Plan which will include, for each program improvement described in the Technical Analyses performed by the Sub-Consultants: a project detail sheet, the project description, the itemized project costs, the capital improvement program (CIP) numbers, a priority list of projects, and cash flow projections based upon estimated revenue from fees and debt financing.

Upon approval of the draft plan, Harris will assist City staff in two (2) City Council presentations for the IFP. The first presentation will be a public meeting to present the IFP and receive comments. The second presentation will adopt the IFP and associated Development Impact Fees.

Harris will assist the City in the preparation of all required City Council staff reports, resolutions and public notices associated with the adoption of the IFP.

Harris will provide ten (10) copies for City staff review. At the City’s direction, Harris will complete a final draft to be presented to stakeholders.

Level of Effort and costs for Task 1.4:

<table>
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<tr>
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<th>Hours</th>
<th>Costs</th>
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1.5 Deliverables for Task 1.4

10 copies of the draft Infrastructure Finance Plan
10 copies of a final draft of the Infrastructure Finance Plan
20 copies of the final Infrastructure Finance Plan
1 electronic copy of the final Infrastructure Finance Plan.

1.4 Task 1.5 – Facilities Master Plan

Harris will prepare the Facilities Master Plan, which includes the following:

- Introduction
- Sanitary Sewer System
- Storm Drainage System
- Construction Phasing
- Circulation System
- Potable Water System
- Parks (provided by City)

Harris will prepare the "Kiernan Business Park East Facilities Master Plan". It will incorporate all of the information provided by the sub consultants related to infrastructure requirements. This task assumes that no aerial or field surveying is required but will be available from the other work being completed by the developer. If survey information is not available, then an additional task to provide this service will be needed.

This scope of work assumes that twenty (20) sheets of drawings will be created during this process.

Harris assumes that the adoption of the FMP will occur as part of the IFP process discussed in Task 1.4. 1.5.

Ten (10) copies of the 30% design level drawings will be submitted to the City for review. The 30% submittal would be a submittal of all drawings anticipated to be submitted and would include alignments and planned locations of all facilities. Once the City has submitted written comments to Harris, 90% drawings will be completed. Ten (10) copies of the 90% drawings will be submitted to the City for final review. The 90% submittal would include all alignments for roads and pipes including face of curb, edge of pavement, existing right-of-way, future right-of-way, and existing buildings, profiles for all roads and pipes including slopes, and elevation call-outs, cross section of roads including lane widths, landscaping widths and side walk widths, intersection details including lengths of turn lanes, lane configurations, face of curb, edge of pavement, existing right of way, future right of way, and any existing buildings and location of any planned detention basins, parks, schools, and any other pertinent facilities. The 90% would also include all notes, all call-outs, any details that are to be incorporated such as curb and gutter, sidewalk, etc. or reference to the City's design standards.

Twenty (20) copies of the final drawings, including an electronic copy, will be provided to the City when all comments have been addressed.

1.4 Task 1.5 assumes 4 meetings with the City and/or developers to discuss the drawings.
1.4
Level of Effort and costs for Task 1.5:

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Deliverables for Task 1.5 1.4

10 copies of the 30% level drawings of the Facilities Master Plan
10 copies of a 90% level drawings of the Facilities Master Plan
20 copies of the final Facilities Master Plan
1 electronic copy of the final Facilities Master Plan

Task 1.6 – Community Facilities District

Harris will prepare the Community Facilities District, which includes the following:
Goodwin Consulting Group, Inc. (GCG) will serve as special tax consultant to assist the City of Modesto (City) in the formation of a Mello-Roos Community Facilities District (CFD) that will fund public improvements and public services required to serve the Kiernan East project. GCG will meet with City staff, property owners, the City’s financial advisor, bond counsel and other members of the financing team to compile data and to discuss the structure and components of the Mello-Roos cash flow analysis. This task will include (i) determining the initial boundaries of the CFD and future annexation areas both inside and outside existing City limits, (ii) identifying proposed land uses, public facilities to be financed, annual storm drain and landscape maintenance costs, anticipated absorption rates, and timing and number of bond issues, (iii) discussing assumptions to be used for the initial allocation of special taxes to land uses within the CFD and reviewing the advantages and disadvantages associated with various allocation methods, (iv) evaluating the potential for separate CFDs, improvement areas or tax zones based on the objectives of the City and developers, and (v) coordinating with the financial advisor regarding the anticipated bond structure, including special tax/debt service escalator, bond interest rate, short-term reinvestment rate, capitalized interest, reserve fund, and other features that may affect the size of bond issues and the corresponding annual debt service.

Mello-Roos Cash Flow Analysis GCG will use the information compiled to prepare an analysis of the annual cash flow of the CFD. The analysis will identify the maximum special tax that will be needed to maintain required debt service coverage on bonded indebtedness issued on behalf of the CFD. In addition, the cash flow will (i) estimate the special tax burden on undeveloped property based on a given absorption scenario, (ii) determine the size of the initial and subsequent bond sales taking into consideration minimum value-to-lien requirements set forth in state law and City policy, and (iii) evaluate the increased bonding capacity that is created from an escalating special tax and debt service or other unique bond structure.

GCG will present the cash flow analysis at a second meeting and discuss alternatives that the working group would like analyzed. Subsequent iterations of the analysis will be prepared based on feedback
from City staff, affected property owners, the financial advisor, bond counsel and other members of the working group. Ultimately, through review and discussion of each alternative, the team will select a special tax structure which GCG will incorporate in the Rate and Method of Apportionment of Special Tax outlined below.

**Rate and Method of Apportionment of Special Tax** Based on the special tax structure selected pursuant to Task B-2 above, GCG will prepare the Rate and Method of Apportionment of Special Tax (RMA), which will serve as the official special tax formula for the CFD. The RMA will provide detail and direction as to how the special tax should be levied in future years to ensure adequate revenues are available for timely repayment of debt service on bonded indebtedness issued by the CFD. The RMA will be included as an exhibit to the Resolution of Intention to Form the CFD, which will be adopted by the City Council as part of the first set of actions taken towards forming the CFD.

In addition to providing guidance relative to the annual levy of special taxes in the CFD, the RMA will provide some or all of the following items:

- Identification of the maximum special tax for each special tax category, including each category of developed and undeveloped property
- Provision for a back-up special tax or alternate mechanism to be used to maintain maximum special tax revenues in the event that land uses change in future years
- A detailed prepayment formula that will provide flexibility for a property owner to prepay all or a portion of the special tax obligation after some or all bonds have been issued for the CFD
- If additional property is expected to annex into the CFD, a description of the “catch-up tax” that will apply to annexing parcels to equalize the cumulative special tax burdens (if applicable)

**Contributions and Review of Other CFD Formation Documents** In coordination with the working group, GCG will review, prepare and contribute to other documents required in the CFD formation proceedings. Specifically, GCG will prepare the CFD Report required, pursuant to Section 53321.5 of the Government Code, to be filed with the City Clerk prior to the public hearing. GCG will also review all CFD formation documents and, based on results of the cash flow analysis, assist in calculating the maximum bond authorization and appropriations limit for the CFD. GCG will also ensure that the CFD boundary map is consistent with the areas expected to be included in the CFD when the maximum special tax and/or bonding capacity is calculated.

In preparation for the issuance of bonds, GCG will review the bond purchase agreement, fiscal agent agreement and/or bond indenture to assure that the flow of special tax revenues and interest earnings as set forth in these documents are consistent with assumptions used in the Mello-Roos cash flow analysis. In addition, GCG will review the preliminary official statement and, at the request of the financial advisor or underwriter, prepare one or more of the following:

- A table demonstrating special tax coverage based on the projected stream of revenues compared to annual debt service on the bonds
- If multiple landowners/developers are included within the CFD, a table showing diversification of special tax burdens among the major participants
- Incorporating information provided in the appraisal, a table identifying the value-to-lien ratios for each assessor parcel or major property owner
- A table summarizing a sample tax bill for individual residential units within each tax category to demonstrate compliance with City policy pertaining to the total effective tax rate
• Any other tables requested by the financial advisor and/or underwriter to assist in disclosure related to the special tax formula

Certification of Special Tax Revenues and Acceptance of Associated Liability  GCG will execute the Certificate of Special Tax Consultant, which commits to bond buyers that the minimum debt service coverage will be maintained by application of GCG’s tax formula regardless of land use changes that occur within the CFD in future years.

Task 1.6 assumes 4 meetings with the City and/or developers.

Level of Effort and costs for Task 1.6:

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Deliverables for Task 1.6

See Above
### Harris & Assoc Anticipated Schedule for Kiernan Business Park East

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<th>Tasks</th>
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<td>Task 1.1 - Project Coord &amp; Capacity Studies</td>
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<td>Task 1.3 - Benefit and Burden Analysis</td>
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<td>Draft Report</td>
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<td>Task 1.5 - Facilities Master Plan</td>
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<tr>
<td>Task 1.6 - Community Facilities District</td>
<td>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17</td>
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<td>Final Report</td>
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<td>Council Presentations</td>
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Note: The schedule for tasks 2, 4 and 5 are based on working concurrently on the benefit and burden analysis and IFP while the EIR is being prepared. This poses some risk to the developer due to the fact that if the EIR changes, the reports will have to be modified and this would require additional scope of work. The final reports would not be adopted until the adoption of the Final EIR. Should the EIR take longer than shown on this schedule, the IFP and FMP would not be completed as shown.
## Task 1.1 - Project Coordination & Capacity Studies

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<th>Jim Bissell</th>
<th>Dennis Anderson</th>
<th>Allison Boley</th>
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<th>West Yost &amp; Associates</th>
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|                         | Task 1.4 - Infrastructure Finance Plan | Assesses 20 drawings | Meetings and Coordination | Subtotal for Harris | West Yost & Associates | Carollo Engineers | Omnis-Means | Stantec | Subtotal Sub consultants | Sub Consultant Mark-up at 15% | **Task 1.4 Totals** | **32** | **114** | **16** | **38** | **144** | **21** | **517** | **$79,877** |
|-------------------------|--------------------------------------|---------------------|---------------------------|----------------------|---------------------|-------------------|-------------|---------|-------------------------|-----------------------------|--------------------------|---------|-------------|-----|-----|-----|-----|-----|-----|-----|-----|
|                         | 2 | 4 | 16 | 1 | 23 | $2,815 |
|                         | 2 | 6 | 4 | 16 | 2 | 34 | $4,860 |
|                         | 2 | 4 | 4 | 16 | 2 | 26 | $3,389 |
|                         | 2 | 4 | 2 | 4 | 16 | 28 | $3,749 |
|                         | 2 | 4 | 4 | 24 | 34 | $4,189 |
| Draft Report | 4 | 24 | 8 | 40 | 8 | 94 | $11,209 |
| Coord with developers and City staff | 8 | 40 | 4 | 8 | 0 | 4 | 64 | $11,429 |
| Final Financ Plan | 2 | 16 | 2 | 2 | 16 | 2 | 40 | $6,850 |
| City Council Presentations | 8 | 12 | 4 | 4 | 0 | 4 | 32 | $5,460 |
| Subtotal for Harris | 32 | 114 | 16 | 38 | 144 | 21 | 365 | $52,675 |
|                         | 24 | $4,860 |
|                         | 24 | $4,860 |
|                         | 80 | $11,000 |
|                         | 24 | $3,600 |
|                         | 152 | $23,480 |
|                         | **Task 1.5 Totals** | **24** | **80** | **9** | **160** | **504** | **44** | **972** | **$129,850** |

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<td><strong>18</strong></td>
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<td><strong>20</strong></td>
<td><strong>24</strong></td>
<td><strong>8</strong></td>
<td><strong>78</strong></td>
<td><strong>$39,830</strong></td>
<td></td>
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</tbody>
</table>

**Total All Tasks (1.1 thru 1.6)** | **$524,421**
RANGE OF HOURLY RATES: 
DESIGN AND PUBLIC WORKS SERVICE GROUPS 

Effective January 1 – December 31, 2006

<table>
<thead>
<tr>
<th>Engineering Design and Public Works Services Groups</th>
<th>Hourly Rate</th>
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<tr>
<td>Jim Bissell, P.E.</td>
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</tr>
<tr>
<td>Steve Roberts, P.E.</td>
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<tr>
<td>Dennis Anderson, P.E.</td>
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<tr>
<td>Alison Bouley, P.E.</td>
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<td>Project Directors</td>
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<td>Project Engineers</td>
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<tr>
<td>Construction Manager</td>
<td>$120-190</td>
</tr>
<tr>
<td>Administration</td>
<td>$50-90</td>
</tr>
</tbody>
</table>

Notes:

1. These individuals include professionals and support personnel who might work on Harris projects. Support personnel include technicians and administrative staff.
2. Rates are subject to adjustment due to promotions during the effective period of this schedule. A new rate schedule will become effective and apply to this contract on January 1, 2007.
3. Unless otherwise indicated in the agreement, hourly rates include most direct costs such as vehicle usage and mileage, equipment usage (including computer and telephone), and printing and copying (except large quantities such as construction documents for bidding purposes).
4. Billing rates for independent contractors and hourly employees are determined on a case-by-case basis.
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-601

A RESOLUTION AMENDING THE FISCAL YEAR 2006-2007 OPERATING BUDGET TO CREATE A MULTI-YEAR ACCOUNT (2900-020-0261) AND APPROPRIATING $263,000, FUNDED BY CHOPRA DEVELOPMENT ENTERPRISES, FOR THE PREPARATION OF A FACILITIES MASTER PLAN, INFRASTRUCTURE FINANCE PLAN, AND FOR FORMATION OF A COMMUNITY FACILITIES DISTRICT FOR THE KIERNAN BUSINESS PARK EAST SPECIFIC PLAN AREA

WHEREAS, the Kiernan Business Park East Specific Plan Area is in need of a Facilities Master Plan ("FMP"), and Infrastructure Finance Plan ("IFP") to plan for necessary facilities and associated costs for buildout of that specific plan area, and

WHEREAS, on September 26, 2006, the Council of the City of Modesto approved a Master Professional Services Agreement for Consultant Services ("Agreement") with Harris and Associates for the preparation of FMPs, IFPs, technical studies and related on-call services as assigned by City, and

WHEREAS, on September 26, 2006, the Council of the City of Modesto approved Task Order No. 1 to the Agreement for the preparation of a FMP, IFP, and for formation of a Community Facilities District ("CFD"), and

WHEREAS, an Advanced Funding Agreement between the City and Chopra Development Enterprises ("Applicant") has been approved by the City Council, and

WHEREAS, Applicant has deposited with the City the amount of two hundred and sixty-three thousand dollars ($263,000) to fund a portion of the costs for the Project and provide for reimbursement as appropriate, and

WHEREAS, additional deposits will be provided by Applicant, as required by the City and as necessary to fund Task Order No. 1, and
WHEREAS, the City will issue Notices to Proceed to the City’s Consultant only for those subtasks for which the Applicant has deposited funds,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Modesto that it hereby amends the Fiscal Year 2006-2007 operating budget to create a multi-year account for the preparation of the Kiernan Business Park East Specific Plan Area Facilities Master Plan and Infrastructure Finance Plan and appropriate $184,100 to (2900-020-0261-0235) for professional services and $78,900 to (2900-020-0261-0255) for city services.

BE IT FURTHER RESOLVED that the Finance Director, or 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 26th day of September, 2006, by Councilmember O’Bryant, 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. 2006-602

A RESOLUTION APPROVING TASK ORDER NO. 2 TO THE MASTER PROFESSIONAL SERVICES AGREEMENT FOR CONSULTANT SERVICES WITH HARRIS AND ASSOCIATES FOR THE PREPARATION OF A FACILITIES MASTER PLAN, INFRASTRUCTURE FINANCE PLAN, AND FOR FORMATION OF A COMMUNITY FACILITIES DISTRICT FOR THE KIERNAN BUSINESS PARK SOUTH SPECIFIC PLAN AREA

WHEREAS, the City Council is desirous of creating a Facilities Master Plan ("FMP") and Infrastructure Finance Plan ("IFP") for the Kiernan Business Park South Specific Plan Area ("Project"), and

WHEREAS, Mana Developments and Hans J. Wagner (collectively the "Applicant") has a legal interest in real property located within a portion of the Kiernan Business Park South Specific Plan Area, shown in Exhibit "A", and is interested in pursuing development of properties in the Specific Plan Area, and

WHEREAS, on September 26, 2006, the Council of the City of Modesto approved a Master Professional Services Agreement for Consultant Services with Harris and Associates for the preparation of FMPs, IFPs, technical studies and related on-call services assigned by City, and

WHEREAS, Harris and Associates ("Consultant") has prepared Task Order No. 2 for the Project ("Task Order"), attached as Exhibit "B", and

WHEREAS, Applicant has advanced a deposit to the City in the amount of two hundred fifty thousand dollars ($250,000) to fund a portion of Task Order No. 2 and to pay staff and consultant expenses expected to be incurred in connection with the Project, and
WHEREAS, additional deposits will be provided by Applicant, as required by the City and as necessary to fund the Task Order, and

WHEREAS, the City will issue Notices to Proceed to the City’s Consultant only for those subtasks for which the Applicant has deposited funds,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that Task Order No. 2, attached as Exhibit “B” hereto are hereby approved.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, Councilmember O’Bryant, 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
A RESOLUTION AMENDING THE FISCAL YEAR 2006-2007 OPERATING BUDGET TO CREATE A MULTI-YEAR ACCOUNT (2900-020-0262) AND Appropriating $250,000, FUNDED BY MANA DEVELOPMENTS AND HANS J. WAGNER, FOR THE PREPARATION OF A FACILITIES MASTER PLAN, INFRASTRUCTURE FINANCE PLAN, AND FOR FORMATION OF A COMMUNITY FACILITIES DISTRICT FOR THE KIERNAN BUSINESS PARK SOUTH SPECIFIC PLAN AREA

WHEREAS, the Kiernan Business Park South Specific Plan Area is in need of a Facilities Master Plan ("FMP"), and Infrastructure Finance Plan ("IFP") to plan for the necessary facilities and associated costs for buildout of that specific plan area, and

WHEREAS, on September 26, 2006, the Council of the City of Modesto approved a Master Professional Services Agreement for Consultant Services ("Agreement") with Harris and Associates for the preparation of FMPs, IFPs, technical studies and related on-call services as assigned by City, and

WHEREAS, On September 26, 2006, the Council of the City of Modesto approved Task Order No. 2 to the Agreement for the preparation of a FMP, IFP, and for formation of a Community Facilities District ("CFD"), and

WHEREAS, an Advanced Funding Agreement between the City and Mana Developments and Hans J. Wagner (collectively the "Applicant") has been approved by the City Council, and

WHEREAS, Applicant has deposited with the City the amount of two hundred and fifty thousand dollars ($250,000) to fund a portion of the costs for the Project and provide for reimbursement as appropriate, and

WHEREAS, additional deposits will be required by Applicant, as required by the City and as necessary to fund Task Order No. 2, and
WHEREAS, the City will issue Notices to Proceed to the City’s Consultant only for those subtasks for which the Applicant has deposited funds,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Modesto that it hereby amends the Fiscal Year 2006-2007 operating budget to create a multi-year account for the preparation of the Kiernan Business Park South Specific Plan Area and to appropriate $200,000 to 2900-020-0262-0235 for professional services and $50,000 to 2900-020-0262-0255 for city services.

BE IT FURTHER RESOLVED that the Finance Director, or 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 26th day of September, 2006, by Councilmember O’Bryant, 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
EXHIBIT B
This Task Order No. 2 is made and entered into by and between the City of Modesto, a municipal corporation (hereinafter “CITY”), and Harris & Associates, Inc., a California Corporation (hereinafter “CONSULTANT”) and is effective as of ________________.

RECITALS

A. CONSULTANT has entered into a Master Professional Services Agreement, (hereinafter “Agreement”), dated ________________ (“AGREEMENT”) with the CITY, by which the CONSULTANT has agreed to provide professional engineering and financial engineering services for various development projects, which is incorporated herein by reference.

B. At the request of CITY and in compliance with the terms of the AGREEMENT, CONSULTANT has prepared the Scope of Work, a copy of which is attached hereto as Exhibit A.

C. CITY and CONSULTANT desire that CONSULTANT perform the services as identified in the attached Scope of Work.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. INCORPORATION OF MASTER PROFESSIONAL SERVICES AGREEMENT. This Task Order hereby incorporates by reference all terms and conditions set forth in the Master Professional Services Agreement, unless expressly modified by this Task Order. The AGREEMENT and this Task Order shall, to the fullest extent possible, be read and considered as fully integrated documents and shall be interpreted so as to avoid inconsistencies, comply with all applicable laws and ensure that the objectives of the parties will be fully realized.

Nothing in this Task Order is intended to supersede, terminate, modify or otherwise affect any provision of the AGREEMENT, except to the extent that a provision of this AGREEMENT is in direct and irreconcilable conflict with a provision of the AGREEMENT. Then, and only in that event, the provisions of the AGREEMENT shall prevail over the contradictory provision of the Task Order.

2. SCOPE OF SERVICES. CONSULTANT shall perform the services described in Exhibit “A” attached hereto and incorporated herein by reference. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT use any subcontractors or subconsultants not listed in this Task Order, without the prior written consent of CITY.
3. **TIME OF PERFORMANCE.** CONSULTANT shall commence performance within five (5) working days after receipt of a Notice to Proceed from City, and shall complete all required services no later than the dates set forth in Exhibit “A”.

4. **COMPENSATION.** For services performed by CONSULTANT in accordance with this Task Order, CONSULTANT agrees to accept a sum not to exceed $281,390.00. CONSULTANT shall be paid at the times and in the manner set forth in Paragraph 3 of the Master Professional Services Agreement, unless expressly provided otherwise in the attached Scope of Work.

5. **SIGNATURES.** The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the CONSULTANT and CITY. This Task Order shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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. 2006-_______, adopted by the Council of the City of Modesto on the ____ day of __________, 2006, and has caused this Agreement to be duly executed in duplicate as of the Effective Date set forth above.

CITY OF MODESTO,
a municipal corporation

By __________________________
GEORGE W. BRITTON,
City Manager

CONSULTANT,
a California corporation*

By __________________________
Guy A. Erickson
President

APPROVED AS TO FORM:
SUSANA ALCALA WOOD, City Attorney

By __________________________
ALISON A. BARRATT-GREEN,
Senior Deputy City Attorney

Consultant’s Federal ID # 94.2386238

* Corporations - signature of two (2) officers required or one (1) officer plus corporate seal.

**Partnership - signature of a partner required**
EXHIBIT A

Harris & Associates
Scope of Work
For Task Order No. 2
Kiernan Business Park South
Preparation of the Capacity Studies, Infrastructure Finance Plan,
Facilities Master Plan and Community Facilities District
September 12, 2006

The following Scope of Work is for preparation of the capacity studies for the support of the Kiernan Business Park East Draft EIR. In addition, following identification of necessary mitigation measures, this scope details the preliminary scope for preparation of a Benefit and Burden Analysis, Infrastructure Finance Plan, Facilities Master Plan and Community Facilities District. The Harris Team includes six sub consultants on this project: West Yost and Associates for Water, Carollo Engineers for Wastewater, Fehr & Peers for Traffic, Omni Means for traffic finance planning, Stantec for Storm Drainage and Goodwin Consulting Group. The work will be performed on a time and materials basis. The cost estimate for Harris’ hours and the sub-consultants are summarized in Exhibit B including hourly rate schedule. The following provides Harris and Associates’ (Harris) approach and level of effort for this scope of work.

Task 2.1 - Project Coordination and Preparation of Capacity Studies

Harris will coordinate with all parties and will peer review the capacity studies prepared by each of the subconsultants, listed below, for the Kiernan South Project (and in conjunction with the Draft EIR to be prepared by Turnstone Consulting for the Kiernan East Project). Harris will attend up to six (6) meetings with City staff during the preparation of the capacity studies. The City and developer will provide the Harris team with a complete “Project Description” which details the proposed layout, traffic circulation and land use with anticipated densities included.

Water Capacity Study - West Yost Associates (WYA)
Based on the provided information regarding land use, roadway alignments, etc. WYA will calculate the water demands for the project. WYA will modify the existing water system hydraulic model to be representative of the new demands of the proposed project. WYA will then use this modified hydraulic model to evaluate the potential hydraulic impacts of the increased water demands and various fire flow analyses from the Project. If the City’s existing water system cannot meet the City’s minimum water system design criteria with the increased demands, then WYA will make recommendations for whatever new water supply sources and/or water system infrastructure facilities will be required to mitigate the hydraulic impacts of the Project. WYA will prepare an estimate of the probable construction cost for the infrastructure required to provide adequate supply. It is assumed that the Kiernan South project does not need an evaluation of water supply availability in response to SB610.

Wastewater – Carollo Engineers
Using development layout and land use data provided by the City, Carollo will update the hydraulic model to reflect changes in planning assumptions created by the Project since they prepared the Draft Wastewater Master Plan for the City in 2005. Carollo will revise the sewer improvements to reflect changes in planning assumptions. The Collection system and WWTP improvements will be revised as necessary to accommodate growth based on revisions to the hydraulic model and updates to the
WWTP Master Plan currently being prepared by Carollo. Carollo will develop probable construction cost estimates to reflect changes in the Capacity Study and a cost allocation associated with proposed recommended improvements.

**Storm Drain - Stantec**
Using previously prepared studies and additional project information, Stantec will use a combination of empirical calculations and hydrologic modeling to determine 10-year and 100-year peak discharges and 100-year 24-hour storm runoff volumes that will be generated by the Project. The storm drainage infrastructure plan proposed to serve Watershed D as represented in the Draft Storm Drainage Master Plan will be modified to accommodate project development requirements. The Consultant will attend a meeting with the City and MID staff to determine if MID is likely to be willing to accept discharges from a detention/retention basin that will serve the project into their Lateral No. 6 that extends adjacent to the project along the alignment of Bangs Road. Initial MID requirements pertaining to such a discharge will also be determined at the meeting.

**Traffic - Fehr & Peers**
In conjunction with their traffic analysis for the adjacent properties and developments, Fehr & Peers will be developing traffic projections for near-term conditions and for far-term (2025) conditions. The far-term forecasts will include development of Kiernan Business Park South according to its General Plan designation, as estimated by the City of Modesto's traffic model. They can be used to size the roadways adjacent to the site. In addition, F&P will develop near-term and 2025 traffic forecasts to determine the size of the internal streets (number of travel lanes) and to size the access locations (lane configurations at the intersections of the internal roadways with Bangs and Dale).

**Level of Effort and Costs for Task 2.1:**

<table>
<thead>
<tr>
<th>Firm</th>
<th>Hours</th>
<th>Costs</th>
<th>Meetings in Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harris – PM</td>
<td>168</td>
<td>$28,340</td>
<td>8</td>
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<tr>
<td>West Yost – Water</td>
<td>210</td>
<td>$32,667</td>
<td>2</td>
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<tr>
<td>Carollo – Wastewater</td>
<td>80</td>
<td>$12,333</td>
<td>2</td>
</tr>
<tr>
<td>Stantec – Drainage</td>
<td>96</td>
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<td>Fehr &amp; Peers – Traffic</td>
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<td>Mark-ups on Subs</td>
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<td>Totals</td>
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**Deliverables for Task 2.1**

Water: 10 to 15 page Technical Memorandum (TM) of both Draft and Final TMs, as five (5) hard copies and a PDF file of each submittal.

Wastewater: Draft, Final Draft and Final Report of the Wastewater Capacity Study as five (5) hard copies and a PDF file of each submittal.

Storm Drain: Technical Report of the drainage infrastructure plan for the project. The Technical Report will be submitted at Initial Draft, Final Draft, and Final stages of completion as five (5) hard copies and a PDF file of each submittal.

Traffic: Draft and Final Report of the Traffic Study as five (5) hard copies and a PDF file of each submittal.
Task 2.3 - Infrastructure Finance Plan

Prior to beginning the Infrastructure Finance Plan or Facilities Master Plan, Harris will meet with the developer and the City to determine how all of the infrastructure project costs will be paid for by the developer including: 1) "build and dedicate", 2) condition of approval on the development mapping, 3) defined points within a development agreement, 4) part of a land secure financing district and/or 5) paid for by the development impact fees for the development. In addition, Harris will work with the developer(s) to set project phasing. Harris and sub-consultants will meet with and/or coordinate with developer and developer’s engineer, City CFD staff, the Appraiser, and Bond Counsel (assumed to have separate contracts with the City) regarding assumptions upon which the Project IFP shall be performed.

The purpose of the IFP will be to clearly describe what is expected to occur with regard to land uses, infrastructure costs and financing. This is an iterative process that will require consensus building among all of the stakeholders. Harris will play an integral role in generating this consensus.

The IFP will define the financing details related to water, sewer, storm drainage, traffic, public facilities and parks. For those portions of the infrastructure that are associated with impact fees, a cash flow analysis will be provided defining when each project is anticipated and can be funded.

Harris will prepare a Draft Infrastructure Finance Plan which will include, for each program improvement described in the Technical Analyses performed by the Sub-Consultants: a project detail sheet, the project description, the itemized project costs, the capital improvement program (CIP) numbers, a priority list of projects, and cash flow projections based upon estimated revenue from fees and debt financing.

Upon approval of the draft plan, Harris will assist City staff in two (2) City Council presentations for the IFP. The first presentation will be a public meeting to present the IFP and receive comments. The second presentation will adopt the IFP and associated Development Impact Fees.

Harris will assist the City in the preparation of all required City Council staff reports, resolutions and public notices associated with the adoption of the IFP.

Harris will provide ten (10) copies for City staff review. At the City’s direction, Harris will complete a final draft to be presented to stakeholders.

Level of Effort and costs for Task 2.3:

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<th>Firm</th>
<th>Hours</th>
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<td>West Yost - Water</td>
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<td>$4,560</td>
<td>2 w/staff</td>
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<tr>
<td>Carollo - Wastewater</td>
<td>24</td>
<td>$4,320</td>
<td>2 w/staff</td>
</tr>
<tr>
<td>Stantec - Drainage</td>
<td>24</td>
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<td>Omni-Means - Traffic</td>
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<td>Subs Mark-ups</td>
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<tr>
<td>Totals</td>
<td>462</td>
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</table>
2.3 Deliverables for Task 2.2

10 copies of the draft Infrastructure Finance Plan
10 copies of a final draft of the Infrastructure Finance Plan
20 copies of the final Infrastructure Finance Plan
1 electronic copy of the final Infrastructure Finance Plan.

2.2 Task 2.3 – Facilities Master Plan

Harris will prepare the Facilities Master Plan, which includes the following:

- Introduction
- Sanitary Sewer System
- Storm Drainage System
- Circulation System
- Potable Water System
- Parks (provided by City)
- Construction Phasing

Harris will prepare the "Kiernan Business Park South Facilities Master Plan". It will incorporate all of the information provided by the sub consultants related to infrastructure requirements. This task assumes that no aerial or field surveying is required but will be available from the other work being completed by the developer. If survey information is not available, then an additional task to provide this service will be needed.

This scope of work assumes that ten (10) sheets of drawings will be created during this process.

Harris assumes that the adoption of the FMP will occur as part of the IFP process discussed in Task 2.1.2.3.

Ten (10) copies of the 30% design level drawings will be submitted to the City for review. The 30% submittal would be a submittal of all drawings anticipated to be submitted and would include alignments and planned locations of all facilities. Once the City has submitted written comments to Harris, 90% drawings will be completed. Ten (10) copies of the 90% drawings will be submitted to the City for final review. The 90% submittal would include all alignments for roads and pipes including face of curb, edge of pavement, existing right-of-way, future right-of-way, and existing buildings, profiles for all roads and pipes including slopes, and elevation call-outs, cross section of roads including lane widths, landscaping widths and side walk widths, intersection details including lengths of turn lanes, lane configurations, face of curb, edge of pavement, existing right of way, future right of way, and any existing buildings and location of any planned detention basins, parks, schools, and any other pertinent facilities. The 90% would also include all notes, all call-outs, any details that are to be incorporated such as curb and gutter, sidewalk, etc. or reference to the City's design standards.

Twenty (20) copies of the final drawings, including an electronic copy, will be provided to the City when all comments have been addressed.

Task 2.3 assumes 3 meetings with the City and/or developers to discuss the drawings.
Level of Effort and costs for Task 2.3:

<table>
<thead>
<tr>
<th>Firm</th>
<th>Hours</th>
<th>Costs</th>
<th>Meetings in Scope</th>
</tr>
</thead>
<tbody>
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<td>Harris - PM</td>
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<td>$44,540</td>
<td>3 w/staff</td>
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<tr>
<td>West Yost - Water</td>
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<td>Carollo - Wastewater</td>
<td>24</td>
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<td>Stantec - Drainage</td>
<td>24</td>
<td>$3,600</td>
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<td>Omni-Means - Traffic</td>
<td>24</td>
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<td>Subs Mark-ups</td>
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<tr>
<td>Totals</td>
<td>524</td>
<td>$63,032</td>
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</tbody>
</table>

Deliverables for Task 2.3:

10 copies of the 30% level drawings of the Facilities Master Plan
10 copies of a 90% level drawings of the Facilities Master Plan
20 copies of the final Facilities Master Plan
1 electronic copy of the final Facilities Master Plan

Task 2.4 - Community Facilities District

Harris will prepare the Community Facilities District, which includes the following:

Goodwin Consulting Group, Inc. (GCG) will serve as special tax consultant to assist the City of Modesto (City) in the formation of a Mello-Roos Community Facilities District (CFD) that will fund public improvements and public services required to serve the Kiernan South project. GCG will meet with City staff, property owners, the City’s financial advisor, bond counsel and other members of the financing team to compile data and to discuss the structure and components of the Mello-Roos cash flow analysis. This task will include (i) confirming land uses for the Bank of Stockton site and future property that will be designated as future annexation area for the CFD, (ii) identifying proposed land uses, public facilities to be financed, annual storm drain and landscape maintenance costs, anticipated absorption rates, and timing and number of bond issues, (iii) discussing assumptions to be used for the initial allocation of special taxes to land uses within the CFD and reviewing the advantages and disadvantages associated with various allocation methods, (iv) evaluating the potential for separate CFDs, improvement areas or tax zones based on the objectives of the City and developers, and (v) coordinating with the financial advisor regarding the anticipated bond structure, including special tax/debt service escalator, bond interest rate, short-term reinvestment rate, capitalized interest, reserve fund, and other features that may affect the size of bond issues and the corresponding annual debt service.

Mello-Roos Cash Flow Analysis  GCG will use the information compiled to prepare an analysis of the annual cash flow of the CFD. The analysis will identify the maximum special tax that will be needed to maintain required debt service coverage on bonded indebtedness issued on behalf of the CFD. In addition, the cash flow will (i) estimate the special tax burden on undeveloped property based on a given absorption scenario, (ii) determine the size of the initial and subsequent bond sales taking into consideration minimum value-to-lien requirements set forth in state law and City policy, and (iii) evaluate the increased bonding capacity that is created from an escalating special tax and debt service or other unique bond structure.
GCG will present the cash flow analysis at a second meeting and discuss alternatives that the working group would like analyzed. Subsequent iterations of the analysis will be prepared based on feedback from City staff, affected property owners, the financial advisor, bond counsel and other members of the working group. Ultimately, through review and discussion of each alternative, the team will select a special tax structure which GCG will incorporate in the Rate and Method of Apportionment of Special Tax outlined below.

Rate and Method of Apportionment of Special Tax. Based on the special tax structure selected pursuant to Task B-2 above, GCG will prepare the Rate and Method of Apportionment of Special Tax (RMA), which will serve as the official special tax formula for the CFD. The RMA will provide detail and direction as to how the special tax should be levied in future years to ensure adequate revenues are available for timely repayment of debt service on bonded indebtedness issued by the CFD. The RMA will be included as an exhibit to the Resolution of Intention to Form the CFD, which will be adopted by the City Council as part of the first set of actions taken towards forming the CFD.

In addition to providing guidance relative to the annual levy of special taxes in the CFD, the RMA will provide some or all of the following items:

- Identification of the maximum special tax for each special tax category, including each category of developed and undeveloped property
- Provision for a back-up special tax or alternate mechanism to be used to maintain maximum special tax revenues in the event that land uses change in future years
- A detailed prepayment formula that will provide flexibility for a property owner to prepay all or a portion of the special tax obligation after some or all bonds have been issued for the CFD
- If additional property is expected to annex into the CFD, a description of the “catch-up tax” that will apply to annexing parcels to equalize the cumulative special tax burdens (if applicable)

Contributions and Review of Other CFD Formation Documents. In coordination with the working group, GCG will review, prepare and contribute to other documents required in the CFD formation proceedings. Specifically, GCG will prepare the CFD Report required, pursuant to Section 53321.5 of the Government Code, to be filed with the City Clerk prior to the public hearing. GCG will also review all CFD formation documents and, based on results of the cash flow analysis, assist in calculating the maximum bond authorization and appropriations limit for the CFD. GCG will also ensure that the CFD boundary map is consistent with the areas expected to be included in the CFD when the maximum special tax and/or bonding capacity is calculated.

In preparation for the issuance of bonds, GCG will review the bond purchase agreement, fiscal agent agreement and/or bond indenture to assure that the flow of special tax revenues and interest earnings as set forth in these documents are consistent with assumptions used in the Mello-Roos cash flow analysis. In addition, GCG will review the preliminary official statement and, at the request of the financial advisor or underwriter, prepare one or more of the following:

- A table demonstrating special tax coverage based on the projected stream of revenues compared to annual debt service on the bonds
- If multiple landowners/developers are included within the CFD, a table showing diversification of special tax burdens among the major participants
- Incorporating information provided in the appraisal, a table identifying the value-to-lien ratios for each assessor parcel or major property owner
- A table summarizing a sample tax bill for individual residential units within each tax category to demonstrate compliance with City policy pertaining to the total effective tax rate
- Any other tables requested by the financial advisor and/or underwriter to assist in disclosure related to the special tax formula

Certification of Special Tax Revenues and Acceptance of Associated Liability  GCG will execute the Certificate of Special Tax Consultant, which commits to bond buyers that the minimum debt service coverage will be maintained by application of GCG’s tax formula regardless of land use changes that occur within the CFD in future years.

Task 2.4 assumes 4 meetings with the City and/or developers.

Level of Effort and costs for Task 2.4:

<table>
<thead>
<tr>
<th>Firm</th>
<th>Hours</th>
<th>Costs</th>
<th>Meetings in Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harris – PM</td>
<td>66</td>
<td>$ 9,800</td>
<td>4 w/staff</td>
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<tr>
<td>Goodwin Consult Grp</td>
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<td>$25,000</td>
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<td>Subs Mark-ups</td>
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<td>Totals</td>
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Deliverables for Task 2.4

See Above
### Harris & Assoc Anticipated Schedule for Kiernan Business Park South

<table>
<thead>
<tr>
<th>Tasks</th>
<th>Months</th>
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<tbody>
<tr>
<td></td>
<td>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17</td>
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<tr>
<td>Task 2.1 - Project Coord &amp; Capacity Studies</td>
<td></td>
</tr>
<tr>
<td>Task 2.2 - Infrastructure Finance Plan</td>
<td></td>
</tr>
<tr>
<td>2.3 Draft report</td>
<td></td>
</tr>
<tr>
<td>2.3 Final Finance Plan</td>
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</tr>
<tr>
<td>2.3 City Council Presentations</td>
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</tr>
<tr>
<td>Task 2.5 - Facilities Master Plan</td>
<td></td>
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<tr>
<td>2.5</td>
<td></td>
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<tr>
<td>Task 2.4 - Community Facilities District</td>
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<tr>
<td>2.4 Draft Report</td>
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<tr>
<td>2.4 Final Report</td>
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<tr>
<td>2.4 Council Presentations</td>
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</table>
Harris & Associates Estimation of Man-hours and Costs for Kleman Business Park South  
September 11, 2006

### Task 2.1 - Project Coordination & Capacity Studies
(assumes studies performed simultaneous with KBP East)

<table>
<thead>
<tr>
<th>Project Coordination, Review &amp; Meetings</th>
<th>Steve</th>
<th>Jim</th>
<th>Dennis</th>
<th>Alison</th>
<th>Project Roberts</th>
<th>Bissell</th>
<th>Anderson</th>
<th>Bouley</th>
<th>Engineer Admin Hours</th>
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<tr>
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<td></td>
<td>$160</td>
<td>$11,233</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>$100</td>
<td>$75</td>
</tr>
</tbody>
</table>

Subtotal Sub consultants: 486 $71,233

Sub Consultant Mark-up at 15%: $10,685

### Task 2.2 - Infrastructure Finance Plan

| Define Land Use                          | 1     | 2   | 4     | 12    | 1    | 29   | 2,485 |
| Review Available Funding Mechanisms     | 1     | 2   | 4     | 4     | 12   | 1    | 24    | 3,205 |
| Impact fee determination                 | 2     | 4   | 4     | 2     | 20   | 30   | 3,780 |
| Cash Flow Analysis                       | 2     | 4   | 2     | 4     | 20   | 32   | 4,140 |
| Capital Improvement Program              | 2     | 4   | 8     | 20    | 4    | 38   | 4,720 |
| Draft report                            | 4     | 12  | 16    | 40    | 8    | 80   | 10,200 |
| Coord/meet with developers and City staff | 8    | 24  | 4     | 8     | 0    | 2    | 46    | 8,230 |
| Final Finance Plan                       | 2     | 4   | 2     | 4     | 16   | 2    | 30    | 3,890 |
| City Council Presentations               | 6     | 8   | 4     | 8     | 4    | 30   | 5,000 |

Subtotal for Harris: 28 64 16 60 144 18 330 $45,710

Subtotal Sub consultants: 132 $20,730

Sub Consultant Mark-up at 15%: $3,110

### Task 2.3 - Facilities Master Plan

| Assumes 10 drawings                      | 4     | 24  | 60    | 160   | 24   | 272  | 32,720 |
| Meetings and Coordination                | 8     | 24  | 24    | 16    | 4    | 76   | 11,820 |
| Subtotal for Harris                      | 12    | 48  | 0     | 84    | 176  | 28   | 448   | 44,540 |

Subtotal Sub consultants: 96 $10,080

Sub Consultant Mark-up at 15%: $2,412

### Task 2.4 - Community Facilities District

| Boundary Map                            | 0     | 2   | 4     | 20    | 2    | 28   | 3,170 |
| Meetings and Coordination                | 8     | 16  | 12    | 0     | 2    | 38   | 6,630 |
| Subtotal for Harris                      | 8     | 18  | 0     | 16    | 20   | 4    | 66   | 9,800 |

Subtotal Sub consultants: $25,000

Sub Consultant Mark-up at 15%: $3,750

### Total All Tasks (2.1 thru 2.4)

| $154 | $171,132 | $281,390 |
EXHIBIT B-1

Harris & Associates

RANGE OF HOURLY RATES:
DESIGN AND PUBLIC WORKS SERVICE GROUPS

Effective January 1 – December 31, 2006

<table>
<thead>
<tr>
<th>ENGGINEERING DESIGN AND PUBLIC WORKS SERVICES GROUPS</th>
<th>HOURLY RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jim Bissell, P.E.</td>
<td>$190</td>
</tr>
<tr>
<td>Steve Roberts, P.E.</td>
<td>$190</td>
</tr>
<tr>
<td>Dennis Anderson, P.E.</td>
<td>$180</td>
</tr>
<tr>
<td>Alison Bouley, P.E.</td>
<td>$160</td>
</tr>
<tr>
<td>Project Directors</td>
<td>$170-240</td>
</tr>
<tr>
<td>Project Managers</td>
<td>$120-190</td>
</tr>
<tr>
<td>Project Engineers</td>
<td>$80-160</td>
</tr>
<tr>
<td>Construction Manager</td>
<td>$120-190</td>
</tr>
<tr>
<td>Administration</td>
<td>$50-90</td>
</tr>
</tbody>
</table>

Notes:

1. These individuals include professionals and support personnel who might work on Harris projects. Support personnel include technicians and administrative staff.
2. Rates are subject to adjustment due to promotions during the effective period of this schedule. A new rate schedule will become effective and apply to this contract on January 1, 2007.
3. Unless otherwise indicated in the agreement, hourly rates include most direct costs such as vehicle usage and mileage, equipment usage (including computer and telephone), and printing and copying (except large quantities such as construction documents for bidding purposes).
4. Billing rates for independent contractors and hourly employees are determined on a case-by-case basis.
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-604

A RESOLUTION APPROVING A CFF RIGHT OF WAY REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND PPC THOMAS TERRACE, LP, A CALIFORNIA LIMITED PARTNERSHIP, WITH A MAXIMUM REIMBURSEMENT AMOUNT OF $756,076 FOR RIGHT OF WAY LOCATED AT THE NORTHWEST CORNER OF BRIGGSMORE AVENUE AND CLAUS ROAD, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND FINDING THAT THE AGREEMENT IS WITHIN THE SCOPE OF THE PREVIOUSLY CERTIFIED VILLAGE ONE SPECIFIC PLAN PROGRAM EIR, AS AMENDED BY THE VILLAGE ONE SUPPLEMENTAL EIR AND THE ADDENDUM TO THE EIR (SCH No. 90020181)

WHEREAS, the City of Modesto’s General Plan calls for Claus Road to be constructed as a Class A expressway, and

WHEREAS, the future Claus Road will be developed as an expressway and additional right of way is necessary for the future realignment of Claus Road, and

WHEREAS, PPC Thomas Terrace, LP, A California Limited Partnership, ("Developer") has a legal interest in a certain tract of land located west of Claus Road in the Village One Specific Plan area of the City of Modesto, commonly known as the Thomas Terrace Subdivision ("Subdivision"), and

WHEREAS, as a condition of approval of the Subdivision, the Developer is required to dedicate 145,847 square feet of right of way for the future interchange for Claus Road and for the construction of the Claus Road bike trail (collectively “the Dedication”), and

WHEREAS, the Dedication will be made through the recordation of the final map for the Subdivision (“Final Map”) and the Dedication will be effective upon recordation of said Final Map, and
WHEREAS, a portion of the Dedication is reimbursable through the
City’s Capital Facilities Fees (“CFF”) program, and

WHEREAS, the City and the Developer are proposing to enter into a 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, said Agreement shall have a maximum reimbursement
amount of $756,076, of which $692,239 will be allocated from the Streets CFF fund, and
$63,737 will be allocated from the Air Quality CFF fund not later than fifteen (15) days
after recordation of the Final Map for the Subdivision or October 31, 2006, whichever
occurs later, and

WHEREAS, the City Council has received and considered the Written
Checklist, Environmental Assessment No. EA/C&ED 2004-58, 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 previously certified Village One Specific
Plan Program EIR, as amended by the Village One Supplemental EIR and the Addendum
to the EIR (SCH No. 90020181), 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 PPC Thomas Terrace, LP (“Project”) is
consistent with the Village One 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 Village One Program EIR, as amended by the 1994 Supplemental EIR and the 2003 Addendum to the EIR ("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 circumstances 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 2004-
   58, 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 PPC Thomas Terrace, LP is hereby
approved.

BE IT FURTHER RESOLVED that the City Manager, or designee, is 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 26th day of September, 2006, 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
JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-605

A RESOLUTION AMENDING THE FISCAL YEAR 2006-2007 CAPITAL IMPROVEMENT PROGRAM TO TRANSFER $63,448 FROM 1430-800-8000-8003, AIR QUALITY CFF RESERVE, TO 1430-020-H403-6030, AIR QUALITY CFF DEVELOPER IMPROVEMENTS AND RIGHT OF WAY ACQUISITION

WHEREAS, the City of Modesto’s General Plan calls for Claus Road to be constructed as a Class A expressway, and

WHEREAS, the future Claus Road will be developed as an expressway and additional right of way is necessary for the future realignment of Claus Road, and

WHEREAS, PPC Thomas Terrace, LP, A California Limited Partnership, (“Developer”) has a legal interest in a certain tract of land located west of Claus Road in the Village One Specific Plan are of the City of Modesto, commonly known as the Thomas Terrace Subdivision (“Subdivision”), and

WHEREAS, as a condition of approval of the Subdivision, the Developer is required to dedicate 145,847 square feet of right of way for the future interchange for Claus Road and for the construction of the Claus Road bike trail (collectively “the Dedication”), and

WHEREAS, Developer will make the Dedication through the recordation of the final map for the Subdivision (“Final Map”) and the Dedication will be effective upon recordation of said Final Map, and

WHEREAS, a portion of the Dedication is reimbursable through the City’s Capital Facilities Fees (“CFF”) program, and

WHEREAS, City and Developer have proposed to enter into a CFF Right of Way Reimbursement Agreement (“Agreement”), and
WHEREAS, said Agreement shall have a maximum reimbursement amount of $756,076, of which $692,239 will be allocated from the Streets CFF fund, and $63,737 will be allocated from the Air Quality CFF fund not later than fifteen (15) days after recordation of the Final Map for the Subdivision or October 31, 2006, whichever occurs later, and

WHEREAS, funding is available in 1430-800-8000-8003, the Air Quality Capital Facilities Fees Reserve Fund,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves amending the Fiscal Year 2006-2007 Capital Improvement Program to transfer $63,448 from 1430-800-8000-8003, Air Quality CFF Reserve, to 1430-020-H403-6030, Air Quality CFF Developer Improvements and Right of Way Acquisition.

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 26th day of September, 2006, 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
A RESOLUTION APPROVING AN ADVANCED FUNDING AGREEMENT FOR THE KIERNAN BUSINESS PARK WEST SPECIFIC PLAN AREA BETWEEN THE CITY OF MODESTO AND KAISER FOUNDATION HOSPITALS FOR FORMATION OF CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2006-1 (KIERNAN BUSINESS PARK WEST) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, Kaiser Foundation Hospitals, a California Non-Profit Public Benefit Corporation, (the “Developer”) has agreed to advance all funds necessary to form a community facilities district (“CFD”) for a portion of the Kiernan Business Park Specific Plan Area commonly known as Kiernan Business Park West (“KBP West”), and

WHEREAS, the parties agreed to enter into an Advanced Funding Agreement For The City of Modesto Community Facilities District No. 2006-1 (Kiernan Business Park West) by and between the City and the Developer relating to advances made and to be made by the Developer to the City, and providing for potential reimbursement to the Developer if and when certain funds from the community facilities district become available, a copy of which is attached as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Advanced Funding Agreement For The City of Modesto Community Facilities District No. 2006-1 (Kiernan Business Park West) between the City of Modesto and Kaiser Foundation Hospitals is hereby approved.

BE IT FURTHER RESOLVED that the City Manager, or 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 26th day of September, 2006, by Councilmember Marsh 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, 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
ADVANCED FUNDING AGREEMENT
FOR THE CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2006-1
(KIERNAN BUSINESS PARK WEST)

THIS ADVANCED FUNDING AGREEMENT FOR THE CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2006-1 (KIERNAN BUSINESS PARK WEST)
(this “Agreement”), dated as of __________, 2006, is entered into by and between the CITY OF
MODESTO, a Municipal Corporation (the “City”), and KASIER FOUNDATION HOSPITALS,
A CALIFORNIA NON-PROFIT PUBLIC BENEFIT CORPORATION (the “Developer”).

RECITALS:

A. The Developer has requested that the City form a community facilities district to
be known as “City of Modesto Community Facilities District No. 2006-1 (Kiernan Business Park
West)” (the “CFD”) for the principal purpose of financing and maintaining various public
facilities necessary or desirable in connection with the development of the Developer’s project in
the Kiernan Business Park Specific Plan Area.

B. In accordance with the City’s “Policies & Procedures for the Formation,
Annexation, and Administration of Community Facilities Districts Created Pursuant to the
Provisions of the Mello-Roos Community Facilities Act of 1982” (the “City’s CFD Policies and
Procedures”), the Developer has heretofore deposited with the City the sum of $64,500 in order
to provide the City with a source of funds with which to pay expenses expected to be incurred
in connection with the possible formation of the CFD.

C. 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 by the City in connection with
the 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.
D. The City and the Developer are desirous of entering into this Agreement in accordance with Government Code Section 53314.9 and the City’s CFD Policies and Procedures in order to provide a mechanism by which the Developer may make additional deposits if determined necessary pursuant to the City’s CFD Policies and Procedures and, when and if bonds are issued and proceeds are available, the CFD can reimburse the Developer for the amounts advanced by the Developer.

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 Formation of the CFD and Issuance of Bonds.**

   (a) Upon receipt by the City of a completed application for the formation of the CFD and all documents related thereto as described in the City’s CFD Policies and Procedures, the City will undertake to analyze the appropriateness of forming the CFD and the issuance of bonds by it. In connection therewith, the City has either retained or will retain, at the Developer’s expense, the consultants that the City determines necessary or convenient to assist it in studying the proposed formation of the CFD and, if the City determines to proceed with the formation of the CFD, to assist it in connection therewith and with the possible issuance of bonds.

   (b) Pursuant to the City’s CFD Policies and Procedures, the Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein. In the event the Developer does not deliver the requested amount to the City within such ten (10) day period, the City will have no obligation to proceed with any activity relating to the formation of the CFD and/or the issuance of bonds. The Developer may notify the City at any time, in writing, of its intention to abandon the formation of the CFD or the issuance of bonds. Upon receipt of such notice, the City shall instruct its consultants to cease work as soon as practicable. The Developer shall be responsible for all costs and expenses incurred by the City or any City consultant or advisor relating to the proposed formation of the CFD and/or bond issuance until work with respect to the proposed formation or bond issuance ceases following the receipt of the Developer’s notice of abandonment.

   (c) Developer agrees that, notwithstanding the Developer’s reimbursement obligations under this Agreement, the consultants selected by the City shall be the contractor exclusively of the City and not of the Developer. Except for those disclosures required by law including, without limitations, 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 Developer. The Developer 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 the City’s consultants. Developer understands that it will not be a third party beneficiary to City’s contracts with the consultants. The Developer agrees that the City may select other consultants to replace its current consultants and may do so without consulting with the Developer or obtaining the Developer’s approval.

3. **Developer to Cooperate with the City’s Consultants.** Developer agrees to cooperate in good faith with the City’s consultants. Developer 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 them by the City’s consultants; provided, however, that the foregoing shall not require the disclosure of any documents or information of the Developer which by law is privileged, proprietary, confidential, or exempt from disclosure under the Public Records Act.

4. **Reimbursement Procedure.** If the CFD is formed and bonds are issued, bond proceeds in excess of the amount determined by the City’s District Administrator to be required in order to satisfy the requirements of the City’s CFD Policies and Procedures with respect to capitalized interest and reserves and to pay for the Facilities and other Incidental Expenses may be used to reimburse the Developer for the amounts that the Developer has advanced to the City in connection with this Agreement, all as provided for in the City’s CFD Policies and Procedures. In the event that the CFD is not formed for any reason, or in the event that the CFD is formed and bonds are not issued for any reason, the City shall return any funds which have been advanced by the Developer pursuant to this Agreement and which have not been expended, obligated or otherwise committed for any authorized purpose, subject to the complete reimbursement to the City of all of its direct and indirect costs. If the amounts previously advanced by the Developer are insufficient to fully reimburse the City for all of its direct and indirect costs, the Developer shall pay to the City the amount of the deficiency within ten (10) days after receipt of a demand by City. The City shall be entitled to pay any refund 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 Developer, and the City shall not be required to pay interest on any amount required to be refunded pursuant to this Agreement.

5. **Abandonment of Proposed CFD.** The Developer understands that, subject to the satisfaction of all applicable legal requirements, the decision to form the CFD and the decision to issue bonds 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 form the CFD or to issue bonds. The City shall have no liability to Developer for a decision not to form the CFD or issue bonds.

6. **Indemnification and Hold Harmless.** The Developer hereby assumes the defense of, and indemnifies and saves 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 the Developer or any of the Developer’s officers, employees, contractors and agents in connection with the proposed formation of the CFD or any work-in-
kind provided by or on behalf of the Developer 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.

   **Developer:**  
   Kaiser Foundation Hospitals  
   1777 W. Yosemite Avenue  
   Manteca, CA 95337  
   Attention: Corwin N. Harper  
   Phone: (209) 825-3874  
   Facsimile: (209) 825-3524

   **City:**  
   City of Modesto  
   1010 Tenth Street, Suite 6100  
   Modesto, California 95354  
   Attention: IPF Administrative Officer  
   Phone: (209) 577-5211  
   Facsimile: (209) 571-5128

8. **Assignment.** The Developer may not assign its interest in this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld. Any assignment or attempt to assign this Agreement without the prior written consent of CITY 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 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.

11. **Amendments.** This Agreement may be amended or modified only by written instrument signed by all 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 Developer, 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.

15. **Termination.** This Agreement shall terminate and be of no further force and effect on the first anniversary of the date of this Agreement unless expressly amended by the parties; provided, however, that the Developer's obligations under Section 6 shall survive the termination and the City's obligation to provide reimbursement in accordance with Section 4 for expenses incurred prior to the termination date shall also survive termination.

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 any of 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 Owner or its agents, employees or contractors. Except as City may specify in writing, Owner shall have no authority to act as an agent of City or to bind City to any obligation.

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 Agreement's provisions.
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. 2006----, adopted by the Council of the City of Modesto on the____ day of __________, 2006, and KAISER FOUNDATION HOSPITALS, a California non-profit public benefit corporation, has caused this Agreement to be executed in duplicate, effective as of the date first written above.

CITY OF MODESTO, a Municipal Corporation

By: ________________________________
    GEORGE BRITTON, City Manager

KAISER FOUNDATION HOSPITALS, a California Non-profit Public Benefit Corporation

By: ________________________________
    Corwin M. Harper
    Name: Corwin M. Harper
    Title: Sr. V. P./Area Manager

ATTEST:

By: ________________________________
    JEAN MORRIS, City Clerk

By: ________________________________
    I Obeyo
    Name: I Obeyo
    Title: Counsel & Ass't Sec'y

APPROVED AS TO FORM:
SUSANA ALCALA WOOD, City Attorney

By: ________________________________
    ALISON A. BARRATT-GREEN
    Senior Deputy City Attorney

Signature Requirements

- **Corporation:**
  - Signature of two (2) officers
  - Signature of one (1) officer plus the corporate seal

- **Partnership:**
  - Signature of one partner

- **Sole Proprietorship:**
  - Signature of proprietor

7-21-06
Advanced Funding Agreement, KBF WEST (CJD 2006-1)
A RESOLUTION AUTHORIZING THE PURCHASING MANAGER TO SOLICIT FORMAL REQUEST FOR BIDS (RFB) FOR BRASS SERVICE FITTINGS FOR AN INITIAL TWO (2) YEAR PERIOD, WITH THREE (3) ONE-YEAR CONTRACT EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, FOR AN ESTIMATED ANNUAL COST OF $100,000, WITH FUNDING BUDGETED IN FY 2006/2007

WHEREAS, the Central Stores Division of the Finance Department inventories various materials for use by the Public Works Department and the Parks, Recreation and Neighborhoods Department for City projects, and

WHEREAS, said materials include brass service fittings used mainly by the Water Division, and

WHEREAS, these items are stocked at Central Stores and charged to the appropriate job/account number designed for such work, and

WHEREAS, the needs and specifications for these materials have been developed over time through collaboration between Central Stores staff and division personnel requesting the materials, and

WHEREAS, by soliciting bids, the City will achieve the best value for brass service fittings and meet Modesto Municipal Code requirements for formal bids, and

WHEREAS, the Modesto Municipal Code Section 8-3.203 requires all purchases which meet or exceed $50,000 for material and equipment or contractual services to be formally bid, and

WHEREAS, this Request for Bid (RFB) for the purchase of brass service fittings conforms to the Modesto Municipal Code, and
WHEREAS, the funds for inventory purchases have been appropriated in account number 7110-120-8311-0439,

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

SECTION 1. The City Clerk is hereby authorized to call for public formal bids for brass service fittings, for an initial two (2) year period, with three (3) one-year contract extension options at the sole discretion of City, to be opened in the office of the City Clerk, 1010 10th Street, in the City of Modesto. The City Clerk is hereby directed to give notice inviting such sealed bids in the time, form, and manner provided by law.

SECTION 2. After bids are opened, they shall be tabulated and analyzed and a report submitted to the Council.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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. 2006 - 608

A RESOLUTION APPROVING A POLICY FOR INVESTMENT OF PUBLIC FUNDS

WHEREAS, pursuant to Section 2-3.401 of the Modesto Municipal Code, it is the function of the City of Modesto ("City") Finance Department to deposit and invest funds in accordance with sound treasury management, and

WHEREAS, the City is also governed by Sections 53600 et seq. of the California Government Code, which requires that local agencies annually adopt an investment policy, and

WHEREAS, the City Council approved a contract on February 3, 2004 with Public Financial Management (PFM), an investment services advisor, to provide investment management, research and supervision of the City’s Managed Funds, and

WHEREAS, a revision has been made to the policy and a copy of the policy is marked Attachment “A”, attached hereto and incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto hereby approves the Policy for Investment of Public Funds.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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 Susan Alcala Wood, City Attorney
PURPOSE
The purpose of this document is to identify various policies and procedures that enhance opportunities for a prudent and systematic investment policy and to organize and formalize investment-related activities.

BACKGROUND
Under Section 2-3.401 of the Municipal Code, it is the function of the Finance Department to deposit and invest funds in accordance with sound treasury management. As a charter city, Modesto operates its pooled idle cash investment under the "prudent investor" rule which states that:

"When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency."

The City is also governed by Sections 53600 et seq. of the California Government Code. This affords the City a broad spectrum of investment opportunities, so long as the investment is deemed prudent and allowable under current legislation of the State of California and the charter of the City of Modesto.

On an annual basis, the Finance Director/Treasurer will render to the City Council the statement of investment policy. The report will be considered, with any changes, by the City Council at a public meeting.

INVESTMENT REPORT
The Finance Director/Treasurer shall provide the City Council with a monthly report of investment transactions. In addition, the Finance Director/Treasurer shall render a quarterly report to the City Council, City Manager and the internal auditor within 30 days following the end of the quarter. The report shall contain the following:

1. The type of investment, issuer, purchase date, date of maturity, credit rating, overall portfolio yield based on cost, total par and dollar amount invested on all securities, investments
and monies.

2. The weighted average maturity of the portfolio.

3. A description of any funds, investments or programs that are under management of contracted parties, including lending programs. Funds and investments held by contracted parties shall be reported at market value and the source of valuation shall be reported.

4. The market value as of the date of the report, and the source of the valuation.

5. A statement of compliance with the investment policy or manner in which the portfolio is not in compliance.

6. A statement denoting the City’s ability to meet its expenditure requirements for the next six months or provide an explanation as to why sufficient money shall, or may, not be available.

INVESTMENT CRITERIA
Public funds are invested in the following manner in order of priority:

1. Safety of Principal
   The duty of the Finance Director/Treasurer is to protect, preserve and maintain cash and investments on behalf of the citizens of the community. To guard against loss of principal, only prudent and safe investments will be considered.

2. Liquidity
   The receipt of revenues and maturities of investments should be scheduled so that adequate cash will be available to meet disbursements. An adequate portion of the portfolio should be maintained in liquid short-term instruments which can be readily converted to cash if necessary.

3. Yield
   Yield is the potential dollar earnings, or rate of return, an investment can provide. Yield becomes a consideration only after the basic requirements of safety and liquidity have been met.

SAFEKEEPING AND CUSTODY
All security transactions entered into by the City shall be conducted on a delivery-versus-payment basis. Securities will be held by third party custodian designated by the Finance Director/Treasurer and evidenced by safekeeping receipts.

The only exception to the foregoing are Local Agency Investment Pools, Certificates of Deposit, and money market funds since the purchased securities are not deliverable. In all cases, purchased securities shall be held in the City’s name.
PERFORMANCE STANDARDS
The investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow needs. The City will measure the portfolio's performance against a market benchmark that is commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio.

AUTHORIZED INVESTMENTS
Commencing with Section 53601 of Article 1, Chapter 4 of the Government Code of the State of California, surplus money may be invested in the following:

A. City of Modesto bonds. Bonds issued by the City.

B. U.S. Treasury securities. United States Treasury notes, bonds, bills or certificates of indebtedness or those for which the faith and credit of the United States are pledged for the principal and interest.

C. State of California securities. Registered State of California warrants, treasury notes or bonds, provided that the securities are rated AAA by a nationally recognized statistical rating agency.

D. California municipal securities. Bonds, notes, warrants or other evidence of indebtedness of any local agency within California, provided that the securities are rated AAA by a nationally recognized statistical rating agency.

E. Federal Agency securities. Obligations issued by a federal agency or United States government-sponsored enterprise.

F. Bankers' Acceptances. Bankers' Acceptances issued by domestic or foreign banks, which are eligible for purchase by the Federal Reserve System, the short-term paper of which is rated in the highest category by a nationally recognized statistical rating agency.

Purchases of Bankers' Acceptances may not exceed 180 days maturity or 40 percent of the City's surplus money. The maximum amount permitted to be invested in the Banker's Acceptances of any one commercial bank is the greater of 10 percent of the City's surplus funds or $1 million.

G. Commercial Paper. Commercial paper of "prime" quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical rating organization. The entity that, issues the commercial paper shall meet all of the following conditions in either paragraph (1) or paragraph (2):

(1) The entity meets the following criteria: (a) is organized and operating within the United States as a general corporation. (b) Has total assets in excess of $500 million. (c)
ATTACHMENT A

Has debt other than commercial paper, if any, that is rated "A" or higher by a nationally recognized statistical-rating organization (NRSRO).

(2) The entity meets the following criteria: (a) is organized within the United States as a special purpose corporation, trust, or limited liability company. (b) Has program wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond.

Investments in commercial paper are limited to a maximum of 25% of the portfolio. Purchases shall not exceed 10 percent of the outstanding paper of the issuing corporation. The maximum investment maturity is restricted to 270 days.

H. Certificates of Deposit. FDIC insured or fully collateralized time certificates of deposit in financial institutions located in California. Eligible investments are restricted to those issuing institutions that have been in business at least five years. The maximum term for deposits shall be one year. Investments in certificates of deposit are further limited to 20% of surplus funds. All time deposits must be collateralized in accordance with California Government Code section 53561. The City, at its discretion, may waive the collateralization requirements for any portion of the deposit that is covered by federal insurance.

I. Negotiable Certificates of Deposit. Negotiable certificates of deposit issued by a nationally- or state-chartered bank or a state or federal savings and loan association or by a state-licensed branch of a foreign bank; provided that the senior debt obligations of the issuing institution are rated "AA" or better by Moody's or Standard & Poor's. Investments in negotiable certificates of deposit are limited to 30 percent of the portfolio.

J. Repurchase Agreements. Repurchase Agreements used solely as short-term investments not to exceed 90 days.

The following collateral restrictions will be observed: Only U.S. Treasury securities or Federal Agency securities as described in 1 and 2 will be acceptable collateral. All securities underlying Repurchase Agreements must be delivered to the City's custodian bank versus payment or be handled under a tri-party repurchase agreement. The total of all collateral for each Repurchase Agreement must equal or exceed, on the basis of market value plus accrued interest, 102 percent of the total dollar value of the money invested by the City for the term of the investment. For any Repurchase Agreement with a term of more than one day, the value of the underlying securities must be reviewed on a regular basis.

Market value must be calculated each time there is a substitution of collateral.

The City or its trustee shall have a perfected first security interest under the Uniform Commercial Code in all securities subject to Repurchase Agreement.

The City may enter into Repurchase Agreements with (1) primary dealers in U.S. Government securities who are eligible to transact business with, and who report to, the
Federal Reserve Bank of New York, and (2) California and non-California banking institutions having assets in excess of $1 billion and in the highest short-term rating category as provided by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

The City will have specific written agreements with each firm with which it enters into Repurchase Agreements.

K. Reverse Repurchase Agreements. The City may invest in reverse repurchase agreements only with "primary dealers" with which the City has entered into a master repurchase agreement contract. The City may invest in reverse repurchase agreements with the following conditions: The City may only use reverse repurchase agreements to (1) cover a temporary cash shortage, or (2) augment earnings. Reverse repurchase agreements may not be used to leverage the portfolio.

In addition, if a reverse repurchase agreement is authorized, it may be utilized only if the security to be sold on reverse repurchase agreement has been owned and fully paid for by the City for a minimum of 30 days prior to the sale; the total of all reverse repurchase agreements on investments owned by the City does not exceed 20% of the portfolio; and the agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of the security using a reverse repurchase agreement and the final maturity date of the same security. The proceeds of the reverse repurchase agreement may not be invested in securities whose maturity exceeds the term of the Reverse Repurchase Agreement.

L. Medium-term corporate notes. Medium-term corporate notes defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the U.S. or any state and operating within the U.S. Medium-term notes shall be rated in a rating category "AA-" or its equivalent or better by a nationally recognized rating service. Purchase of medium-term corporate notes may not exceed 30 percent of the City's investment portfolio.

M. Money market funds. Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (money market funds).

N. State of California Local Agency Investment Fund (LAIF).

O. Mortgage and asset-backed securities. Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable-backed bond that has been issued by a Federal Agency and has a maximum of five years maturity.

MAXIMUM MATURITY
Investment maturities shall be based on a review of cash flow forecasts. Maturities will be
scheduled so as to permit the City to meet all projected obligations.

Maximum maturity of an authorized investment is limited to five years.

Proceeds of sales or funds set aside for the repayment of any notes (e.g., Tax and Revenue Anticipation Notes) shall not be invested for a term that exceeds the term of the notes.

**INELIGIBLE INVESTMENTS**

Any security type or structure not specifically approved by this policy is hereby specifically prohibited. Security types which are thereby prohibited include, but are not limited to,

- Investment in inverse floaters, range notes, or interest only strips that are derived from a pool of mortgages is prohibited.

- Investment in any security that could result in a zero interest accrual if held to maturity is prohibited.

**RESTRICTIONS SET BY THE FINANCE DIRECTOR/TREASURER**

A. Prior approval of the Finance Director/Treasurer is required for the following transactions:

- Sale of securities
- Swaps and trades
- Purchase of collateralized mortgage obligations (CMO)
- Purchase of mortgage-backed obligations
- Purchase of corporate notes
- Purchase transaction in excess of $3 million

B. The following investments are not deemed appropriate for the City and will not be utilized:

- Futures and options
- Small Business Administration notes

**AUTHORIZED INVESTMENT PERSONNEL**

Pursuant to the Government Code, the City Council delegates the authority to invest or to reinvest funds, or to sell or exchange securities so purchased, to the Finance Director/Treasurer for a one-year period. The Finance Director/Treasurer is charged with the responsibility for carrying out the policies of the City Council and shall assume full responsibility for investment transactions until the delegation of authority is revoked or expires.

Idle cash management and investment transactions are the responsibility of the Finance Department, which is under the control of the Finance Director/Treasurer. The Finance Director/Treasurer may designate an individual(s) ["Designee"] to be responsible for the daily management of the City’s portfolio of treasury investments. The Designee may also be directed
to monitor and forecast the City’s cash flows, and prepare periodic investment reports that are submitted to the City Council. The Accounting Division of the Finance Department monitors all treasury transactions and prepares accounting records of all investment transactions as to type of investment, amount, yield, and maturity. No other person has authority to make investment transactions without the written authority of the Finance Director/Treasurer. Pursuant to Government Code chapter 53600, all persons investing monies are trustees and therefore fiduciaries subject to the prudent investor standard. Financial market security transactions will be executed by delivery versus payment and the securities will be held by a third party custodian.

Subject to required procurement procedures, the City may engage the support services of outside professionals in regard to its financial program, so long as it can be demonstrated or anticipated that these services produce a net financial advantage or necessary financial protection of the City’s resources.

POLICY REVIEW
The investment policy shall be adopted by resolution of the City Council on, at minimum, an annual basis. This investment policy shall be reviewed at least annually to ensure its consistency with the overall objectives of preservation of principal, liquidity and yield, and its relevance to current law and financial and economic trends. Any amendments to the policy shall be forwarded to City Council for approval.

This policy and the internal controls related to the investment of City funds will be reviewed by the City’s independent external auditors as part of their annual audit of the City.
Bankers Acceptances (BAs)
Bankers Acceptance is a time bill of exchange drawn on and accepted by a commercial bank to finance the exchange of goods. When a bank “accepts” such a bill, the time draft becomes, in effect, a predated certified check payable to the bearer at some future specified date. Little risk is involved for the investor because the commercial bank assumes primary liability once the draft is accepted.

Certificates of Deposit (CDS)
A certificate of deposit is issued against funds deposited in a commercial bank for a definite period of time and earning a specified rate of return. They are issued in two forms, negotiable and non-negotiable:

A negotiable certificate of deposit may be sold by one holder to another prior to maturity. This is possible because the issuing bank agrees to pay the amount of the deposit, plus earned interest, to the Bearer of the certificate at maturity.

A non-negotiable certificate of deposit is collateralized and is not a money market instrument since it cannot be traded in the secondary market. It is issued on a fixed maturity basis and often pays a higher interest rate than is permissible on other savings or time deposit accounts.

Collateralized Mortgage Obligation (CMO)
A CMO is a pool of mortgages sold as a single investment with interest paid monthly, quarterly, or semi-annually. Mortgage securities pay a higher rate than U.S. Treasury securities due to risk of prepayment and default.

Commercial Paper (CP)
This is a short-term promissory note issued by a corporation to raise working capital. The interest rates tend to be higher than other investments of similar liquidity.

Derivatives
A financial instrument with a value derived from the value of one or more underlying assets or indexes of asset values. The term “derivative products” refers to instruments or features such as collateralized mortgage obligations (CMOs), interest-only (IOs) and principal-only (POs), forwards, futures, currency and interest rate swaps, options, floaters/inverse floaters, and caps/floors/collars.

Federal Agency Securities
Certain agencies created by Congress and sponsored by the federal government issue debt that is considered to be of prime quality and have a very high standing in the bond market. The major federal agencies are described as follows:

Federal National Mortgage Association (FNMA, “Fannie Mae”) provides funds to the mortgage market primarily by purchasing loans from local lenders.
Federal Home Loan Mortgage Corporation (FHLMC, “Freddie Mac”) purchases conventional mortgages and sells mortgage-backed securities.

Student Loan Marketing Association (SLMA, “Sallie Mae”) facilitates that flow of private capital into various federally-guaranteed student loan programs maintained through banks, S&Ls, educational institutions and other participating lenders.

Federal Farm Credit System (FFCB) sells securities to provide mortgage loans and short-term and intermediate-term credit to farmers, ranchers, and agricultural cooperatives.

Federal Home Loan Bank (FHLB) acts as a credit reserve system for the thrift industry to stabilize the flow of funds to member savings and loan and savings banks.

Futures
Exchange traded contracts specifying a future date of delivery or receipt of a specific product (physical commodity or financial instrument). Futures are used by business as a hedge against unfavorable price changes, and by speculators who hope to profit from such changes.

Local Agency Investment Fund (LAIF)
State of California LAIF is designed to provide a convenient and safe means of investing temporarily idle monies by the State Treasurer. LAJF provides high liquidity and generally pays higher yields than can be realized by individual local agencies (for similar maturities) due to economies of scale.

Medium-Term Notes
Issued by corporations (in the form of secured or unsecured debt) for the purpose of raising working capital and purchasing capital assets.

Options
A right to buy (call) or sell (put) a fixed amount of a given stock at a specified price within a limited period of time. The purchaser hopes that the stock’s price will go up (if he bought a call) or down (if he bought a put) by an amount sufficient to provide a profit when he sells the option. If the price is static or moves in the opposite direction, the price paid for the option is lost entirely.

Repurchase Agreement
As authorized in Government Code Section 5360i(1), these investment vehicles are (generally short-term) agreements between the local agency and seller for the purchase of Government securities to be resold at a specific date and for a specific amount.

Reverse Repurchase Agreement
This transaction is the opposite of a repurchase agreement. The dealer buys securities with a contractual agreement to sell them back at a prearranged date. The local agency pays the dealer’ interest for the use of the funds. The money “borrowed” on a “reverse repo” can be reinvested in higher yielding instruments.
U.S. Treasury Securities
The highest quality, most liquid debt investments available in the fixed income market-place; unconditionally backed by the "full faith and credit" of the U.S. Government. Treasury bills are short-term instruments (maturity of three months to one year); Treasury notes and bonds are currently issued with maturities of two to ten years.
A RESOLUTION APPROVING THE PURCHASE OF A FIRE DEPARTMENT HEAVY RESCUE VEHICLE IN THE AMOUNT OF $502,951.52 AND THE CREATION OF AN INTERFUND LOAN BETWEEN THE GENERAL FUND AND FUND 7200 (FLEET MANAGEMENT FUND)

WHEREAS, the Modesto Fire Department recommends the replacement of an existing fire rescue vehicle with the purchase of a new vehicle from Pierce Manufacturing, and

WHEREAS, at its April 3, 2006 meeting, the Safety and Communities Committee approved this recommendation, and

WHEREAS, on June 27, 2006 the City Council previously adopted Resolution No. 2006-416 which approved the use of Pierce Manufacturing as the sole provider of apparatus to the City of Modesto Fire Department, and

WHEREAS, the Fire Department anticipates savings of at least $120,000.00 per year in future fleet vehicle replacement charges, and

WHEREAS, Fund 7200 (Fleet Management Fund) has sufficient unappropriated fund balance reserves that can be used to provide an interfund loan to the General Fund for the purpose of financing the rescue vehicle purchase; and

WHEREAS, the City Council accepts staff's recommendation to finance the purchase of the heavy rescue vehicle through the use of an interfund loan between the General Fund and Fund 7200 (Fleet Management Fund); and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the purchase of a fire rescue vehicle in the amount of $502,951.52
BE IT FURTHER RESOLVED that the Finance Director is instructed to take all steps necessary to create an interfund loan between the General Fund and Fund 7200 (Fleet Management Fund) in order to finance the purchase of this vehicle, in accordance with the city's financial policies.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September 2006, 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, Assistant City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-610

A RESOLUTION ACCEPTING A $23,000 HABITAT CONSERVATION FUND GRANT FROM THE STATE OF CALIFORNIA RESOURCES AGENCY FOR THE TREES FOR TOTS TREE PLANTING PROGRAM IN THE GATEWAY PARCEL OF THE TUOLUMNE RIVER REGIONAL PARK AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE GRANT CONTRACT.

WHEREAS, staff has been notified by the State of California Resources Agency that the City has been awarded $23,000 in funding from the Habitat Conservation Fund under the California Wildlife Protection Act of 1990, and

WHEREAS, said funding will allow for the funding of the Trees for Tots tree planting program in the Gateway Parcel of the Tuolumne Regional River Park (TRRP), and

WHEREAS, the Habitat Conservation Grant funding requires a 50% match, and

WHEREAS, the match funding will come from the FY 06-07 apportionments from the City of Modesto, City of Ceres and Stanislaus County allocated to TRRP capital projects, and

WHEREAS, in order to accept the funding, the City Manager, or his designee, must be authorized to execute the Grant Contract,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby accepts $23,000 in grant funding from the Habitat Conservation Fund under the California Wildlife Protection Act of 1990.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Grant Contract.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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
A RESOLUTION APPROVING THE APPLICATION FOR $125,000 IN FUNDING FROM THE FEDERAL RECREATIONAL TRAILS PROGRAM, FOR THE RIVERWALK TRAIL IN THE GATEWAY PARCEL OF THE TUOLUMNE REGIONAL RIVER PARK AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE GRANT APPLICATION.

WHEREAS, the SAFETEA-LU Act provides federal funds to the State of California for grants to state, local and non-profit organizations for the acquisition, development and/or maintenance of motorized and non-motorized trails, and

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility for the administration of the program within the State, setting up necessary procedures governing project application under the program, and

WHEREAS, the City desires to apply for grant funds in the amount of $125,000 from the Recreational Trails Program for the Riverwalk Trail in the Gateway Parcel of the Tuolumne River Regional Park, and

WHEREAS, the procedures established by the State Department of Parks and Recreation require the applicant to certify by resolution the approval of the application before submission of said application to the State, and

WHEREAS, the Riverwalk trail in the Gateway Parcel of the Tuolumne River Regional Park is consistent with the Recreational Trails Program grant project criteria, and

WHEREAS, as the fiscal and administrative authority for the Tuolumne River Regional Park, the City of Modesto will enter into an agreement with the State of California for development of the project,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby:

1. Approves the filing of an application for the Recreational Trails Program;

2. Certifies that the Tuolumne River Regional Park Joint Powers Authority has or will have available, prior to commencement of any work on the project included in this application, sufficient funds to operate and maintain the project; and

3. Appoints the City Manager, or his designee, as agent of the City of Modesto to conduct all negotiations, execute and submit all documents, including but not limited to applications, agreements, amendments, payment requests and so on, which may be necessary for the completion of the aforementioned project, upon acceptance of said grant by the City Council.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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

10/4/2006/PR&N/Hatcher/item13 2 2006-611
MODESTO CITY COUNCIL  
RESOLUTION NO. 2006-612

A RESOLUTION APPROVING A FIVE (5) -YEAR LEASE AGREEMENT BETWEEN THE CITY OF MODESTO AND METRO PCS CALIFORNIA/FLORIDA, INC., A DELAWARE CORPORATION, D/B/A METRO PCS, FOR A CELLULAR TOWER SITE LOCATED ON A PORTION OF DOWNEY COMMUNITY PARK, WITH THREE (3) FIVE (5) -YEAR OPTIONS TO EXTEND THE LEASE, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE LEASE AGREEMENT.

WHEREAS, Metro PCS California/Florida, Inc., a Delaware corporation, d/b/a Metro PCS, desires to lease a cellular tower site located on a portion of Downey Community Park for a period of five (5) years, with three (3) five (5) -year options to extend the lease, for the installation of cellular telephone equipment, and

WHEREAS, the City of Modesto is willing to lease a portion of Davis Community Park to Metro PCS for said use for the sum of $1,900.00 per month with an annual rental increase of 3% and an adjustment equal to the Consumer Price Index for the San Francisco/Oakland/San Jose Metropolitan Statistical Area (MSA) at the beginning of each renewal period, and

WHEREAS, Metro PCS will replace an existing ball field light pole that will meet its structural requirements, and

WHEREAS, the new light pole installed by Metro PCS will become the property of the City of Modesto, and

WHEREAS, at its August 24, 2006, meeting, by Resolution No. 2006-18, the Board of Zoning Adjustment approved a conditional use permit, subject to the following conditions:

1. Prior to issuance of a building permit, the applicant shall submit a set of revised plot plans and structural elevations titles “Metro PCS – Modesto Scenic Drive, Site No. SAC-347-A”, located at 1200 Brighton Avenue, showing all changes required by the Board of Zoning. All development shall conform to this revised plan as amended in red, stamped approved by the Board of Zoning Adjustment on August 24, 2006.

2. Upon completion and City approval of the replacement light standard/cellular monopole, any subsequent modifications to the monopole will require City
approval, and Building and Development Services with the Community & Economic Development Department shall be notified of any changes and revised plans submitted for approval.

3. Prior to issuance of a building permit, the applicant shall coordinate installation work and submit a landscape and irrigation plan to the City of Modesto Parks, Recreation and Neighborhoods Department for review and approval.

4. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash and other debris.

5. The Capital Facilities Fees payable at the time of the issuance of a building permit for construction shall be based on the rates in effect at time of issuance of the building permit.

6. The Applicant shall record a “Notice of Conditions” in the Stanislaus County Recorder’s Office on a form available in the Community and Economic Development Department.

7. The property owner and developer shall, at their sole expense defend, and hold harmless the City of Modesto, its agents, officers, and employees from and against any and all claims, actions, damages, losses or expenses of every type and description, including, but not limited to payment of attorneys’ fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly notify the developer of any claim, action, or proceeding and shall cooperate fully in the defense.

8. Construction activities shall follow guidelines listed in the California Stormwater Quality Association (CASQA) Best Management Practice Handbook for Construction to prevent any drag out of soil or sediments onto the public roadway or into the City storm drain system.
9. Prior to placement of any stationary lead-acid battery systems or on-site generators, a permit shall be obtained from the Fire Department.

10. All improvement plans pursuant to construction shall be prepared by a California licensed civil engineer and in accordance with City of Modesto standards.

11. No operations conducted on the premises shall cause an unreasonable amount of noise, odor, dust, mud, smoke, vibration or electrical interference detectable off the premises. All machinery or equipment shall be soundproofed as required by the Parks, Recreation and Neighborhoods Director. The Noise Ordinance prohibits the loud and raucous operation or use of any tools or equipment before 7:00 a.m. or after 9:00 p.m. daily (except Saturday and Sunday and State and Federal holidays, when the prohibited time shall be before 9:00 a.m. and after 9:00 p.m.).

12. Prior to final inspection with the Building and Development Services Division, the applicant shall install signage approved by the Parks, Recreation and Neighborhoods Director or designee to be located on the entrance gate to the cellular communications facility indicating the cell tower provider and the hours permitted for operation and maintenance of the cellular communications facility, which shall be limited to the hours of operation for Downey Community Park and in accordance with City Municipal Code Noise Ordinance Section 4-9.101.

13. Prior to the issuance of a building permit, applicant shall provide the City’s Parks, Recreation and Neighborhoods Director or designee (“Parks Director”) with the name, address and telephone number of applicant’s contact person designated to receive notices, complaints, documents and other correspondence related to ownership, operation and maintenance of the cell tower facilities. Applicant and its successors in interest shall notify the Parks Director of any changes to the contact information within ten (10) working days after such a change is made. Applicant and its successors in interest shall provide the Parks Director with advance notice of any transfer or change of ownership of any facilities authorized by the conditional use permit, and,
WHEREAS, by Resolution 2006-18, the Board of Zoning Adjustment also adopted the findings of Initial Study, Environmental Assessment No. EA/C&ED 2006-54, “Wireless Antenna on Replacement Ball Field Light Pole in Downey Park”, which find and determine:

1. The proposed project is within the scope of the Modesto Urban Area General Plan Master Environmental Impact Report (SCH No. 1999082041).

2. Pursuant to Section 21157.1 of CEQA, no new environmental review is required.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Five (5) -Year Lease Agreement between the City of Modesto and Metro PCS California/Florida, Inc., a Delaware Corporation, d/b/a/ Metro PCS, for a cellular site located on a portion of Downey Community Park, with three, five-year options to extend the lease.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Lease Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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 [Signature]
SUSANA ALCALA WOOD
City Attorney

ATTEST:

By [Signature]
JEAN MORRIS
City Clerk
RESOLUTION NO. 2006-613

A RESOLUTION APPROVING A FIVE (5) -YEAR LEASE AGREEMENT BETWEEN THE CITY OF MODESTO AND OMNIPOINT COMMUNICATIONS, D/B/A T-MOBILE FOR A CELLULAR TOWER SITE LOCATED ON A PORTION OF CREEKSID MUNICIPAL GOLF COURSE, WITH THREE (3) FIVE (5) -YEAR OPTIONS TO EXTEND THE LEASE, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE LEASE AGREEMENT.

WHEREAS, Omnipoint Communications, d/b/a T-Mobile, desires to lease a cellular tower site located on a portion of Creekside Golf Course for a period of five (5) years, with three (3) five (5) -year options to extend the lease, for the installation of cellular telephone equipment, and

WHEREAS, the City of Modesto is willing to lease a portion of Creekside Municipal Golf Course to T-Mobile for said use for the sum of $1,800.00 per month with an annual rental increase of 3% and an adjustment equal to the Consumer Price Index for the San Francisco/Oakland/San Jose Metropolitan Statistical Area (MSA) at the beginning of each renewal term, and

WHEREAS, within thirty (30) days of execution of the agreement, T-Mobile will make a lump sum contribution to the City of Modesto’s golf program in the amount of $10,000, and

WHEREAS, T-Mobile will install a 75-foot high stealth cellular monopole on the northeast corner of the golf course adjacent to Dry Creek Regional Park and to place cellular equipment on the ground in the vicinity of the pole, and

WHEREAS, at its August 24, 2006, meeting, by Resolution No. 2006-19, the Board of Zoning Adjustment approved a conditional use permit, subject to the following conditions:

1. All development shall conform to the plot plan and elevation plans titled “T-Mobile – Modesto GC, Site No. SC13443A”, stamped approved by the Board of Zoning Adjustment on August 24, 2006.
2. Prior to issuance of a building permit, the applicant shall coordinate the design and installation work of the chain-link fence with the City of Modesto’s Parks, Recreation and Neighborhoods Department for review and approval before a permit is issued.

3. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash and other debris.

4. The Capital Facilities Fees payable at the time of the issuance of a building permit for construction shall be based on the rates in effect at time of issuance of the building permit.

5. The Applicant shall record a “Notice of Conditions” in the Stanislaus County Recorder’s Office on a form available in the Community and Economic Development Department.

6. The property owner and developer shall, at their sole expense defend, and hold harmless the City of Modesto, its agents, officers, and employees from and against any and all claims, actions, damages, losses or expenses of every type and description, including, but not limited to payment of attorneys’ fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly notify the developer of any claim, action, or proceeding and shall cooperate fully in the defense.

7. Construction activities shall follow guidelines listed in the California Stormwater Quality Association (CASQA) Best Management Practice Handbook for Construction to prevent any drag out of soil or sediments onto the public roadway or into the City storm drain system.

8. All improvement plans pursuant to construction shall be prepared by a California licensed civil engineer and in accordance with City of Modesto standards.
9. Prior to placement of any stationary lead-acid battery systems or on-site generators, a permit shall be obtained from the Fire Department.

10. All outdoor lighting shall be shielded from adjacent residential properties as required by the City Engineer or designee, and shall be at a height and of a type that is least intrusive to the adjacent neighborhood, as determined by the City Engineer or designee and the City of Modesto’s Parks, Recreation and Neighborhoods Department Director or designee.

11. No operations conducted on the premises shall cause an unreasonable amount of noise, odor, dust, mud, smoke, vibration or electrical interference detectable off the premises. All machinery or equipment shall be soundproofed as required by the Parks, Recreation and Neighborhoods Director. The Noise Ordinance prohibits the loud and raucous operation or use of any tools or equipment before 7:00 a.m. or after 9:00 p.m. daily (except Saturday and Sunday and State and Federal holidays, when the prohibited time shall be before 9:00 a.m. and after 9:00 p.m.).

12. Prior to final inspection with the Building and Development Services Division, the applicant shall install signage approved by the Parks, Recreation and Neighborhoods Director or designee to be located on the entrance gate to the cellular communications facility indicating the cell tower provider and the hours permitted for operation and maintenance of the cellular communications facility, which shall be limited to the hours of operation for Downey Community Park and in accordance with City Municipal Code Noise Ordinance Section 4-9.101.

13. Prior to the issuance of a building permit, applicant shall provide the City’s Parks, Recreation and Neighborhoods Director or designee ("Parks Director") with the name, address and telephone number of applicant’s contact person designated to receive notices, complaints, documents and other correspondence related to ownership, operation and maintenance of the cell tower facilities. Applicant and its successors in interest shall notify the Parks Director of any changes to the contact information within ten (10) working days after such a change is made. Applicant and its successors in
interest shall provide the Parks Director with advance notice of any transfer or change of ownership of any facilities authorized by the conditional use permit, and

WHEREAS, by Resolution 2006-19, the Board of Zoning Adjustment also adopted the findings of Initial Study, Environmental Assessment No. EA/C&ED 2006-55, “Conditional Use Permit to allow addition of a 75-Foot-High Monopole with Attached Cellular Antenna and Related Communication Equipment Facility”, which find and determine:

1. The proposed project is within the scope of the Modesto Urban Area General Plan Master Environmental Impact Report (SCH No. 1999082041).

2. Pursuant to Section 21157.1 of CEQA, no new environmental review is required.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Five (5) -Year Lease Agreement between the City of Modesto and T-Mobile California/Florida, Inc., a Delaware Corporation, d/b/a/ T-Mobile, for a cellular site located on a portion of Downey Community Park, with three (3), five (5) -year options to extend the lease.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Lease Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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:

By JEAN MORRIS
City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2006–614

A RESOLUTION ACCEPTING THE 2006 ANTI-DRUG ABUSE ENFORCEMENT PROGRAM GRANT FROM THE GOVERNOR’S OFFICE OF EMERGENCY SERVICES (OES), IN THE AMOUNT OF $253,754, FOR THE STANISLAUS ANTI-DRUG TASK FORCE TO COMBAT MAJOR DRUG TRAFFICKING AND MANUFACTURING, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE NECESSARY PROGRAM DOCUMENTS.

WHEREAS, in June 2006 the Modesto Police Department applied for funding from the Governor’s Office of Emergency Services (OES) for the Stanislaus Anti-Drug Task Force, and

WHEREAS, the Stanislaus Anti-Drug Task Force is part of the Stanislaus Drug Enforcement Agency (SDEA), and

WHEREAS, this program will integrate federal, state, and local law enforcement agencies, prosecutors, and probation officers for the purpose of enhancing interagency coordination and intelligence and facilitating multi-jurisdictional investigations to combat major drug trafficking and manufacturing, and

WHEREAS, SDEA has been a recipient of a Byrne grant award from the Office of Emergency Services (OES) for the past 16 years, and

WHEREAS, said grant is used to add additional personnel and needed equipment to the countywide Joint Powers Agreement unit, and

WHEREAS, the term of this Agreement is July 1, 2006, through June 30, 2007,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the 2006 Anti-Drug Abuse Enforcement Program grant
from the Governor's Office of Emergency Services (OES), in the amount of $253,754, for the Stanislaus Anti-Drug Task Force to combat major drug trafficking and manufacturing.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the necessary program grant documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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
JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006–615

A RESOLUTION AUTHORIZING THE PURCHASING MANAGER TO ISSUE A FORMAL REQUEST FOR BIDS FOR THE PURCHASE OF SPECIALIZED LABORATORY FURNITURE FOR THE WATER QUALITY CONTROL DIVISION LABORATORY AT AN ESTIMATED TOTAL COST OF $72,000.

WHEREAS, on October 25, 2005, Council, by Resolution 2005-537, approved the Capital Improvement Program (CIP) budget for FY 05-06, and

WHEREAS, a project to remodel the Water Quality Control (WQC) Lab (B584-WQC Lab Remodel) is included in this CIP, and

WHEREAS, the furniture purchased under this Request for Bids is specialized furniture designed to house the new laboratory equipment at an estimated total cost of $72,000, and

WHEREAS, Modesto Municipal Code Section 8-3.203 generally requires all purchases which meet or exceed $50,000 for materials, equipment, or contractual services to be formally bid, and

WHEREAS, staff has contacted ISEC Inc. regarding the purchase of this specialized laboratory furniture and was informed that the pricing was based on California Multiple Award Schedules (CMAS) program pricing, and

WHEREAS, after submitting a purchase order for the purchase of this furniture, it was determined that this CMAS pricing did not go through a competitive bidding process, and

WHEREAS, staff is requesting authorization for the Purchasing Manager to solicit formal Request for Bids for this specialized furniture,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Purchasing Manager is hereby authorized to solicit formal bids as follows:
SECTION 1. The City Clerk is hereby authorized to call for public competitive sealed bids, for the purchase of specialized furniture for the new water quality control laboratory equipment, to be opened in the office of the City Clerk, 1010 Tenth Street, in the City of Modesto. The City Clerk shall be directed to give notice inviting such sealed bids in the time, form, and manner provided by law.

SECTION 2. After the sealed bids are opened they shall be tabulated and analyzed by the Purchasing Division and the Water Quality Control Division and a report submitted to Council.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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 AUTHORIZING THE PURCHASING MANAGER TO ISSUE FORMAL REQUEST FOR BIDS (RFB) FOR THE PURCHASE OF FOUR (4) LIGHTED CROSSWALK UNITS FOR A TOTAL ESTIMATED COST OF $80,000

WHEREAS, the Public Works Department-Traffic Engineering & Operations organization requested the purchase of four (4) Lighted Crosswalk Units, and

WHEREAS, staff recommends installation of the lighted crosswalks at the following locations:

1. Lucern Avenue and Hunter Avenue
2. Sheldon Drive and Pembroke Drive
3. Evergreen Avenue and Dougfir Drive
4. 11th Street and the 10th Street Parking Garage, and

WHEREAS, staff’s recommendation to install lighted crosswalks at the above locations is based on the prioritization process approved by Council on March 19, 2002, and

WHEREAS, by issuing a formal RFB, the City will achieve the best value for the purchase of four (4) Lighted Crosswalk Units, and

WHEREAS, the Modesto Municipal Code MMC Section 8-3.203 generally requires all purchases, which meet or exceed $50,000 for material, equipment, or contractual services to be formally bid, and

WHEREAS, the issuance of a formal RFB for the purchase of four (4) Lighted Crosswalk Units conforms to this code,
WHEREAS, funding from an Office of Traffic Safety (OTS) grant in the amount of $80,000 has been awarded to the City to pay for the purchase of the lighted crosswalk equipment, and

WHEREAS, the lighted crosswalk installation costs are budgeted in Account No. 2370-160-E736, “Pedestrian and Bicyclist Safety Enhancement Program,” and

WHEREAS, the Economic Development Committee (EDC) at their August 8, 2005 meeting discussed the item and concurs with staff’s recommendation to install four (4) lighted crosswalk units,

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

SECTION 1. The City Clerk is hereby authorized to call for public competitive sealed bids for the purchase of four (4) lighted crosswalk units to be opened in the Office of the City Clerk, 1010 10th Street, in the City of Modesto. The City Clerk is hereby directed to give notice inviting such sealed bids in the time, form, and manner provided by law.

SECTION 2. After bids are opened, they shall be tabulated and analyzed by the Purchasing Division, and a report submitted to the Council.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, by Councilmember Marsh, 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, Keating, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

Attest: ____________________________
JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ________________________________
SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING AN AMENDMENT TO AGREEMENT WITH KLEINFELDER, INC., FOR CONTINUED WELL MONITORING AND REPORTING SERVICES FROM THE 3RD QUARTER 2006 THROUGH THE 2ND QUARTER 2007 OF THE PROJECT TITLED "9TH STREET STORM DRAINAGE BASIN AT KANSAS–9TH–NEEDHAM" IN THE AMOUNT OF $14,152, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT

WHEREAS, during excavation of the 9th Street Storm Drainage Basin, as part of the Kansas-Needham Overhead construction, petroleum products were discovered, and

WHEREAS, the site had been assessed for the potential of soil contamination from the former Bulk Plant constructed in the 1920s. No contamination was found during the previous 1990s study, and

WHEREAS, the Bulk Plant had above ground tanks, but may have had underground piping that leaked, and

WHEREAS, on April 22, 2005, the City entered into an Agreement with Kleinfelder, Inc., for a Sensitive Receptor Survey and Limited Soil Sampling and Analysis at the request of Stanislaus County Department of Environment Resources (SCDER). Additionally, Kleinfelder has written a Corrective Action Plan (CAP) for the cleanup of the site, and

WHEREAS, Kleinfelder has developed and implemented a site work plan that was reviewed and approved by SCDER and Regional Water Quality Control Board (RWQCB), and collected soil and groundwater samples, installed monitoring wells, laboratory analysis, and submitted reports, and

WHEREAS, Kleinfelder has completed the 2nd quarter 2006 Ground Water Sampling and Analysis report and SCDER has requested continued monitoring through the 2nd quarter 2007. It is hoped in the 3rd quarter annual monitoring will commence followed by site cleanup, and

WHEREAS, the Amendment to Agreement continues the ground water monitoring per SCDER and the RWQCB, and
WHEREAS, the original Agreement was for $30,513 and the additional work associated with this Amendment is $14,152, which will increase the total Agreement to an amount not-to-exceed $44,665, and

WHEREAS, the current budgeted amount of $14,152 for the Amendment to Agreement is available in the CIP Account 0700-430-F265-6001 “Kansas/Needham Overhead Project” to cover the cost for these additional services,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Amendment to Agreement between City of Modesto and Kleinfelder, Inc., for additional services related to the Groundwater Monitoring and Reporting at the former Kansas-Needham Overhead Storm Drainage Basin Site in the amount of $14,152.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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 ADOPTING A MITIGATED NEGATIVE DECLARATION AND A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE DISSOLVED AIR FLOTATION FACILITY PROJECT

WHEREAS, the City of Modesto operates and maintains a secondary treatment system and wastewater reclamation facility at 7007 Jennings Road, and

WHEREAS, during the late fall, winter, and early spring months, discharge of treated wastewater is allowed into the San Joaquin River if it is of adequate quality, and

WHEREAS, at times during the allowed river discharge period, especially in the fall months, discharge is not possible due to the high concentration of algae in the stored effluent, and

WHEREAS, installation of the Dissolved Air Flotation facility will improve the quality of the effluent discharge and allow the City to discharge to the San Joaquin River, and

WHEREAS, Section 15070 of the CEQA Guidelines relating to Initial Study/Mitigated Negative Declarations (EA/PW No. 2006-11) provides for a lead agency to prepare an Initial Study on any proposed Project to analyze whether the Project may cause any significant effect on the environment, and

WHEREAS, the City of Modesto Department of Public Works has prepared an Initial Study/Mitigated Negative Declaration as provided for by CEQA, and

WHEREAS, a 30-day public review period for the proposed Initial Study/Mitigated Negative Declaration began on August 3, 2006 and ended on September 5, 2006, and
WHEREAS, the City received public comments on the draft Initial Study/Mitigated Negative Declaration and no changes to the document were necessary as a result, and

WHEREAS, the Mitigation Monitoring Plan (MMP) is included and described within the Initial Study/Mitigated Negative Declaration,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council has reviewed and considered the Initial Study/Mitigated Negative Declaration (EA/PW No. 2006-11) and Mitigation Monitoring Plan prepared for the Dissolved Air Flotation Facility Project, and based on the substantial evidence provided in said Initial Study/Mitigated Negative Declaration makes the following findings:

1. The recitals set forth above are true and correct.

2. The Initial Study/Mitigated Negative Declaration prepared for the proposed project has identified potentially significant environmental effects.

3. Before the Initial Study/Mitigated Negative Declaration was released for public review, feasible mitigation measures were made by or agreed to by the City, which will avoid or mitigate the effects to a point where clearly no significant effect will occur.

4. There is no substantial evidence, in light of the whole record before the public agency, that the project, as revised, may have a significant effect on the environment (Public Resources Code Section 21064.5(2)).

5. The Initial Study/Mitigated Negative Declaration reflects the independent judgment of the lead agency.

6. As required by Public Resources Code Section 21081.6 et seq., the Mitigation Monitoring and Reporting Program is hereby adopted, a copy of which is included in the Mitigated Negative Declaration, which is on file with the City Clerk.

7. The Initial Study/Mitigated Negative Declaration, Environmental Assessment (EA/PW 2006-11) provides the substantial evidence to support findings 1 through 6, above.
BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby adopts the Initial Study/Mitigated Negative Declaration EA/PW 2006-11, a copy of which is on file with the City Clerk and incorporated herein by reference.

BE IT FURTHER RESOLVED that the City of Modesto Public Works Department, Capital Improvement Services, is the custodian of the documents and other materials, which constitute the record of proceedings upon which its decision is based. The records are located at the office of the City of Modesto Public Works Deputy Director, 1010 Tenth Street, Fourth Floor, Modesto, CA 95354.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Public Works Director is hereby authorized and directed to file a Notice of Determination within five (5) business days with the Stanislaus County Clerk pursuant to Section 21152 of the Public Resources Code.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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. 2006-619

A RESOLUTION APPROVING AN AGREEMENT FOR THE ACQUISITION OF A PORTION OF A PARCEL OF LAND CURRENTLY ENCUMBERED BY A WILLIAMSON ACT CONTRACT ALONG PELANDALE AVENUE AT MCHENRY AVENUE OWNED BY BURCHELL NURSERY, INC. - APN: 046-008-016, PARCELS A AND PARCEL B, INCLUDING TEMPORARY CONSTRUCTION EASEMENT; AND A PORTION OF A PARCEL APN 046-008-024, OWNED BY BURCHELL NURSERY, INC.; INCLUDING TEMPORARY CONSTRUCTION EASEMENT FROM DETROIT LANE TO APPROXIMATELY 383 FT EAST OF DETROIT LANE TO THE CITY OF MODESTO FOR THE PELANDALE EXPRESSWAY 6-LANE WIDENING PROJECT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT

WHEREAS, Council Resolution No. 2004-451 adopted the 2004/2005 Capital Improvement Program, and

WHEREAS, the 2004/2005 Capital Improvement Program included a project to widen Pelandale Avenue to full 6-Lane Expressway status from Dale Road to McHenry Avenue, project titled, “CIP H461: Pelandale Expressway 6-Lane Widening - Dale Road to McHenry Avenue”, and

WHEREAS, the 6-lane widening of Pelandale Avenue from Dale Road to McHenry is scheduled to commence in fiscal year 2006, and

WHEREAS, the project scope of work requires (1) acquisition of additional permanent right-of-way along the south and north roadsides, and (2) temporary construction easements outside the permanent right-of-way limits on both sides of the roadway, and

WHEREAS, the City has evaluated the cost and time benefit of acquiring the additional right-of-way, and
WHEREAS, by Resolution No. 2005-118, adopted on February 22, 2005, the City Council previously resolved to proceed with the widening of Pelandale Avenue to full 6-lane status, and as part of this widening, to acquire necessary right-of-way to construct the additional lanes, and

WHEREAS, the roadway widening at Pelandale Avenue between Detroit Land and McHenry Avenue requires a permanent right-of-way take of approximately 9,146 sq ft (0.21 acres) with a 6,244 sq ft Temporary Construction Easement (TCE) at the Burchell Nursery, Inc., property, APN: 046-008-016; and 12,371 sq ft (0.284 acres) with a 5,662 sq ft TCE at the Burchell Nursery, Inc., property, APN: 046-008-0024, and

WHEREAS, the City Council of the City of Modesto directed staff to enter into negotiations with Burchell Nursery, Inc., to purchase the portion of their real property as described herein above (hereafter the "subject property") for the Pelandale Expressway 6-Lane Widening Project, and

WHEREAS, a purchase agreement has been completed between the City and Burchell Nursery, Inc., and

WHEREAS, by Resolution No. 2006-456, adopted July 11, 2006, the City Council previously resolved that the public interest and necessity require the acquisition of these certain property interests, being portions of APN 046-008-016 and APN 046-008-024 including temporary construction easements, and directed the filing of eminent domain proceedings for the Pelandale Avenue Capitol Improvement Project. Council also made findings in compliance with Government Code Section 51292 related to acquisition of real property encumbered by the Williamson Act relating to APN 046-008-016,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Agreement for Purchase of Real Property between the City of Modesto and Burchell Nursery, Inc., (APN 046-008-016 and APN 046-008-024) to purchase the necessary real property for the Pelandale Expressway 6-Lane Widening Project in the amount of $106,000.00.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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 Ridernour

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. 2006-620

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN ACCEPTANCE FORMS FOR THE GRANT DEEDS FOR THE ACQUISITION OF A PORTION OF TWO PARCELS OF LAND ALONG PELANDALE AVENUE AT MCHENRY AVENUE AND ALONG PELANDALE AVENUE EAST OF DETROIT LANE OWNED BY BURCHELL NURSERY, INC. (APN: 046-008-016 AND 046-008-024), AND TEMPORARY CONSTRUCTION EASEMENTS TO THE CITY OF MODESTO FOR THE PELANDALE EXPRESSWAY 6-LANE WIDENING PROJECT

WHEREAS, Section 27281 of the Government Code requires a public agency to accept real property prior to the recordation of a deed or adopt a resolution accepting real property, and

WHEREAS, the City of Modesto desires to acquire a portion of two parcels (APN: 046-008-016 and APN: 046-008-024) for the Pelandale Expressway 6-Lane Widening Project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the City Manager, or his designee, is hereby authorized to sign an acceptance form on behalf of the City of Modesto for two (2) Grant Deeds for the acquisition of a portion of two properties owned by Burchell Nursery, Inc., (APN: 046-008-016 and 046-008-024) and two (2) Temporary Construction Easements (APN: 046-008-016 and 046-008-024) for the Pelandale Expressway 6-Lane Widening Project.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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:

Jean Morris

JEAN MORRIS, City Clerk

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-621

A RESOLUTION APPROVING AN AGREEMENT WITH WEST YOST ASSOCIATES, INC., FOR THE SOUTH MODESTO INTERIM WATER SUPPLY STUDY IN THE NOT-TO-EXCEED AMOUNT OF $130,000, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the existing water system in the South Modesto area has several deficiencies, including but not limited to supply, storage, transmission, and distribution facilities, and

WHEREAS, these system deficiencies impact the City’s ability to deliver adequate system pressure and provide sufficient supply/storage during high water demand periods to existing City customers, and

WHEREAS additional future demands are placed on the system due to new development and in-fill projects, particularly over the next 5-year period, and

WHEREAS an Interim Water Supply Study needs to be developed for the South Modesto Area to provide both interim and long-term solutions to address these existing and future issues and recommend solutions for the near-term, the next 5-years, and

WHEREAS, the Public Works Department – Capital Improvement Services (CIS) Division performs a number of tasks requiring water engineering and related services. However, the City’s engineering staff lacks the specific ability to accomplish a large-scale study such as the South Modesto Interim Water Supply Study in a timely manner, and

WHEREAS, the Public Works Department – Capital Improvement Services Division has utilized the services of specialized consulting engineers to perform targeted water system engineering services in the past, and
WHEREAS, West Yost Associates is familiar with the City’s existing infrastructure, having provided prior services in conjunction with the City’s overall utilities master planning efforts, and have demonstrated satisfactory services to the City on past projects, and

WHEREAS, the firm of West Yost Associates is deemed the most qualified to provide the requested Interim Water Supply Study in a timely and cost effective manner. As an example, West Yost Associates recently completed the City’s Water System Hydraulic Model Update, a difficult and detailed computer modeling study of the City’s existing system for which the firm was selected based on competitive basis, and

WHEREAS, West Yost Associates has an intimate knowledge of the shortcomings and opportunities of the City’s utility networks; therefore, staff recommends the consulting firm of West Yost Associates be awarded a contract for the South Modesto Interim Water Supply Study,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement between City of Modesto and West Yost Associates, Inc., for the South Modesto Water Interim Water Supply Study in the not-to-exceed amount of $130,000.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

SUSANA'ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2006-622  

A RESOLUTION APPROVING AN AGREEMENT WITH THE CALIFORNIA ENERGY COMMISSION FOR THE CITY OF MODESTO TO ENTER INTO AN ENERGY PARTNERSHIP PROGRAM, AND AUTHORIZING THE PUBLIC WORKS DIRECTOR, OR HIS DESIGNEE, TO EXECUTE ALL RELATED DOCUMENTS.

WHEREAS, digester gas is a byproduct of the wastewater treatment process, and

WHEREAS, the Primary Wastewater Treatment Facility does not fully use the digester gas generated from the treatment plant’s digesters, and

WHEREAS, installation of a cogeneration unit at the Primary Wastewater Treatment Facility would allow digester gas to be used to provide energy, including heat, for the Treatment Plant, and

WHEREAS, On June 13, 2006, staff returned to Council with the revised scope and costs from Carollo Engineers as directed by Economic Development Committee (EDC), and

WHEREAS, Council directed staff to return to EDC with more information regarding funding of a feasibility study by the California Energy Commission (CEC) and a listing of all grants, incentives and low interest loans available for this project, and

WHEREAS, staff has worked with CEC in identifying a Scope of Work for the Cogeneration project that will be performed through an Energy Partnership Program by a CEC selected and funded consultant, and

WHEREAS, the Economic Development Committee considered this item at its September 11, 2006 meeting and recommended its approval and consideration by the full Council, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with the California Energy Commission for the City of Modesto to enter into an Energy Partnership Program and
BE IT FURTHER RESOLVED that the Public Works Director, or his designee, is hereby authorized to execute all the related documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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

JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: Susana Alcala Wood, City Attorney
A RESOLUTION APPROVING AN AGREEMENT WITH CAROLLO ENGINEERS IN AN AMOUNT NOT TO EXCEED $116,343 FOR CONSULTANT SERVICES ASSISTANCE IN THE PREPARATION OF A PRELIMINARY DESIGN REPORT AND DEVELOPMENT OF A REQUEST FOR PROPOSALS (RFP) FOR A DIGESTER GAS FIRED COGENERATION SYSTEM AT THE PRIMARY WASTEWATER TREATMENT PLANT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT.

WHEREAS, digester gas is a byproduct of the wastewater treatment process, and

WHEREAS, the Primary Wastewater Treatment Facility does not fully use the digester gas generated from the treatment plant’s digesters, and

WHEREAS, installation of a cogeneration unit at the Primary Wastewater Treatment Facility would allow digester gas to be used to provide energy, including heat, for the Treatment Plant, and

WHEREAS, staff expects increased revenue from the sale of electrical power and a decrease in natural gas expenses, and

WHEREAS, due to the nature of the project, its complexity and the need for a collaborative relationship with energy providers, the services of a consultant with significant experience in developing specifications and contracts for cogeneration projects is necessary, and

WHEREAS, the consultant will evaluate other sources of digester fuel such as oil and grease, food wastes, and industrial by-products, and

WHEREAS, the consultant will also help with the evaluation of several types of cogeneration facilities (such as internal combustion engines, gas turbines, microturbines, etc), preparing and RFP and evaluating vendor responses to the RFP and assisting in the selection process, and

WHEREAS, staff solicited proposals to 43 firms, formally advertised the RFP, and received nine (9) proposals, and
WHEREAS, these proposals were evaluated using criteria established in the RFP by a committee of four (4) City staff, and

WHEREAS, five (5) firms were formally interviewed, and

WHEREAS, Carollo Engineers was determined to be the most-qualified firm based on the total RFP evaluation score and interview results, and

WHEREAS, the Economic Development Committee (EDC) considered this item at its April 5, 2006 meeting, and

WHEREAS, EDC made the following recommendations:

1. The contract for consultant services include and evaluate the design and/or building and/or ownership and/or operation of a digester gas fired cogeneration unit at the Primary Wastewater Treatment Plant and send the amended scope of work to Council for consideration.

2. Staff negotiate the revised scope including cost with Carollo Engineers prior to Council consideration,

3. Return to EDC prior to any formal Council action,

, and

WHEREAS, On June 13, 2006, staff returned to Council with the revised scope and costs from Carollo Engineers as directed by EDC, and

WHEREAS, staff has revised the scope for Carollo Engineers at a cost of $116,343, and

WHEREAS, funds are budgeted in 6210-48-5213-0235,

WHEREAS, the Economic Development Committee considered this item at its September 11, 2006 meeting and recommended its approval and consideration by the full Council, and
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with the Carollo Engineers in an amount not to exceed $116,343 for consultant services assistance in the preparation of a Preliminary Design Report and development of a Request for Proposals (RFP) for a digester gas fired cogeneration system at the Primary Wastewater Treatment Plant.

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 26th day of September, 2006, 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

JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: Susana Alcala Wood, City Attorney
A RESOLUTION APPROVING A PUBLIC WORKS DEPARTMENT POLICY REGARDING PROCEDURES TO DEFINE PROJECT SCOPE ON MAJOR CAPITAL IMPROVEMENT PROGRAM PROJECTS

WHEREAS, the City’s adopted Capital Improvement Program (CIP) often contains projects for which the project scope has not been fully developed, and

WHEREAS, this leads to the risk of a project scope changing significantly between the time it is initially approved by Council and the time Council is asked to award a construction contract for the project, and

WHEREAS, these changes in scope may involve significant changes in the project budget and schedule as well, and

WHEREAS, Council directed staff to develop a project scope policy that will apply to major projects, and

WHEREAS, for the purposes of this policy, a major project has been defined as a project for which the budget exceeds $1,000,000, and

WHEREAS, said Major Project Scope Policy is attached hereto as Exhibit “A”, and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Major Project Scope Policy to be applied to all major capital improvement projects in excess of $1,000,000,
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, 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
MAJOR PROJECT SCOPE POLICY

Public Works Department
Policy #_________

Background:
During the development of a major Capital Improvement Program (CIP) project there is the potential that the scope of the project may change to the extent it significantly exceeds the original scope of work approved by Council. This may result in significant budget and schedule overruns. Most often scope changes are legitimate, justifiable changes that are needed to address issues that become apparent during the development of the project. However, it may create a situation where Council is asked to significantly increase the project's budget after a major investment has been made in the project design in terms of both funds and time, thereby reducing the options available to the policy makers. The purpose of this policy is to provide policy direction to reduce the occurrence of this situation without unduly burdening the development of CIP projects.

For the purpose of this policy a major project is defined as a project with an approved CIP budget of more than $1 million. If a project is budgeted at less than $1 million during the CIP process but through normal inflation the ultimate project cost exceeds $1 million this policy does not apply provided that the scope did not change during the development of the project.

Policy:
All major CIP projects shall conform to one of the two procedures outlined below. The Public Works Director, or his/her designee, shall approve which procedure will be applied to the appropriate projects.

Procedure “A”
1. Following approved procedures, a firm shall be selected to provide preliminary design services for the project. A contract for these preliminary design services shall be presented to Council for approval.
2. The purpose of the preliminary design services shall be to clearly define the scope of work of the project to the greatest extent possible and produce a Preliminary Design Report (PDR). The PDR shall define the issues related to the project including environmental, utility, right of way, and technical issues. The report shall include an opinion of probable cost for the project including appropriate contingencies based on the identified issues.
3. Staff shall present the PDR to Council for approval of the project scope and budget prior to proceeding with final design.
4. Following approved procedures, a firm shall be selected to provide final design services for the project based on the PDR.
5. Staff may recommend, and with Council approval, use of the same firm for the PDR and final design phases of the project based on the initial selection process for the design services.
6. Staff shall present a contract for Council approval for final design services in accordance with approved procedures.
7. If during the course of final design the scope of the project changes significantly for previously unforeseen reasons, a report of the scope change shall be presented to Council as soon as practical once the extent of the scope change is known.

Procedure “B”
1. Following approved procedures, a firm shall be selected to provide all applicable professional services required to implement the project. A contract for these professional services shall be presented to Council for approval.

Exhibit “A”
2. The scope of services shall include clearly defining the scope of work for the project to the greatest extent possible and producing a Preliminary Design Report (PDR). The PDR shall define the issues related to the project including environmental, utility, right of way, and technical issues. The report shall include an opinion of probable cost for the project including appropriate contingencies based on the identified issues.

3. If the PDR indicates that the project will exceed the project budget by more than 10%, staff will present the report to Council along with any alternatives to reduce the project budget for approval prior to proceeding to final design. Staff may also at this time present any adjustments to the consultant’s contract that may be appropriate based on the results of the PDR.

4. If the Council approves the PDR or if the PDR indicates that the project is within 10% of the approved budget, staff will authorize the consultant to proceed with final design.

5. If during the course of final design the scope of the project changes significantly, for previously unforeseen reasons, a report of the scope change shall be presented to Council as soon as practical once the extent of the scope change is known.

Nothing in this policy is intended to restrict what work staff can perform. Any of the above work may be performed by City staff if appropriate.

Nicholas Pinhey, Public Works Director

Date

Attachments:

Exhibit "A"

WHEREAS, the City of Modesto receives several Federal grants from the U.S. Department of Housing and Urban Development (HUD), and

WHEREAS, the Consolidated Annual Performance and Evaluation Report (CAPER) reflects the activities of the City and its sub-recipients for the period of July 1, 2005, through June 30, 2006, and

WHEREAS, each year the City must review and report on the performance of activities funded under the Community Development Block Grant (CDBG), HOME Investment Partnership Grant, and Emergency Shelter Grant (ESG) funds, and

WHEREAS, the CAPER must be made available for public review and comment for a minimum 15-day period, and

WHEREAS, the CAPER was made available for public review and comment from September 9, 2006, through September 26, 2006, and

WHEREAS, all public comments, and staff responses to these comments, must be presented to the City Council for review and approval, and

WHEREAS, the Citizens Housing and Community Development Committee (CH&CDC) met on September 8, 2006, and reviewed and recommended the CAPER, and

WHEREAS, a duly noticed public hearing was held by the Council on September 26, 2006, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, to consider approval of the CAPER,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto as follows:

1. That the Consolidated Annual Performance and Evaluation Report for Fiscal Year 2005-2006 is hereby approved, and a copy of said report is on file in the office of the City Clerk.

2. That the City Manager, or his authorized designee, is hereby authorized, after having made any necessary correction, to submit said report to the U.S. Department of Housing and Urban Development (HUD).

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, by Councilmember Olsen, who moved its adoption, which motion being duly seconded by Councilmember Marsh, 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. 2006-626

A RESOLUTION GRANTING THE APPEAL OF BRETT MENEZES AND REVERSING PLANNING COMMISSION DECISION APPROVING AN AMENDMENT TO PLANNED DEVELOPMENT ZONE, P-D(339)

WHEREAS, an application for an amendment to Planned Development Zone, P-D(339), to allow a 75-foot-high cell antenna monopole and related communication equipment facility, property located at 2612 Woodland Avenue, was filed on February 21, 2006, by Baran Telecom, and

WHEREAS, a public hearing was held by the Planning Commission on August 7, 2006, and continued to August 21, 2006, in the Tenth Street Place Chambers, located at 1010 Tenth Street, Modesto, California at which hearing it was found and determined by the Planning Commission, by its Resolution No. 2006-55, that amendment of Planned Development Zone, P-D(339), as proposed, is required by public necessity, convenience and general welfare for the following reason:

1. The seventy-foot-high monopole with six encapsulated cellular antenna with radome enclosure surrounded by a six-foot-high chain-link fence, is consistent with the General Plan and other similar facilities previously approved by the City of Modesto.

WHEREAS, on August 31, 2006, an appeal to the Planning Commission decision was filed in the office of the City Clerk by Brett Menezes, 2624 Woodland Avenue, which appeal cited among other things, unsightliness, possible health effects, decline in home values, and the location in the middle of a residential neighborhood, and

WHEREAS, said appeal was set for a duly noticed public hearing before the City Council to be held on September 26, 2006, in the Tenth Street Place Chambers, located at 1010 Tenth Street, Modesto, California at which hearing evidence both oral and documentary was received and considered, and
WHEREAS, after said public hearing the Council of the City of Modesto found and determined that the appeal to the decision of the Planning Commission should be granted and the decision of the Planning Commission should be reversed for the reasons set forth as follows:

1. The proposed location of the 75-foot-high monopole antennae and related communication equipment would contribute an unwarranted visual intrusion into a residential area.

2. The applicant has failed to adequately demonstrate the actual need for the facility at this precise location and has not demonstrated that he has exhausted all alternate site locations to properly serve the surrounding area.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the appeal of Brett Menezes to the decision of the Planning Commission approving an amendment to Planned Development, P-D(339) to allow a 75-foot-high monopole antenna and related communication equipment at 2612 Woodland Avenue is hereby granted for the reasons set forth above and the amendment to P-D(339) is denied.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September 2006, by Councilmember Olsen, 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, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: Keating

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
A RESOLUTION ACCEPTING THE PELANDALE-CLARATINA AVENUE/MCHENRY AVENUE INTERCHANGE EVALUATION REPORT, PREPARED BY RAJAPPAN AND MEYER, CONSULTING ENGINEERS, INC., DATED JUNE 2006

WHEREAS, the Modesto Urban Area General Plan designates Pelandale-Claratina Avenue as a 6-lane expressway and McHenry Avenue as a 6-lane principal arterial, and

WHEREAS, the General Plan designates an interchange at the intersections of these roadways, and

WHEREAS, City staff retained the services of Rajappan and Meyer, Consulting Engineers to prepare a report evaluating alternative designs for this intersection, and

WHEREAS, the report evaluated three types of intersections including:

1. Widened at-grade intersection
2. Compact diamond interchange
3. Single point interchange, and

WHEREAS, for each alternative, the report evaluated the effectiveness at an interim 2013 condition and at 2025 condition, the right-of-way necessary, and cost estimates of construction, and

WHEREAS, the report determined that, Alternate 3, the Single Point Interchange, is the preferred alternative,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council has reviewed and accepts the Pelandale-Claratina Avenue/McHenry

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of September, 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Marsh, 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. 2006-628

A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF
THOMAS STONE FROM THE CULTURE COMMISSION

WHISEAS, THOMAS STONE was appointed a member of the CULTURE
COMMISSION on August 3, 1999, and
WHISEAS, THOMAS STONE has tendered his resignation from the CULTURE
COMMISSION, and
WHISEAS, THOMAS STONE 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 THOMAS STONE from
the CULTURE COMMISSION be, and 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
THOMAS STONE 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 3rd day of October, 2006, 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, 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

1003/06/CMO/epuckett/item03

2006-628
MODESTO CITY COUNCIL  
RESOLUTION NO. 2006-629  

A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF CAROLE STARK FROM THE COMMUNITY QUALITIES FORUM  

WHEREAS, CAROLE STARK was appointed a member of the Community Qualities Forum on March 22, 2005, and  

WHEREAS, CAROLE STARK has tendered her resignation from the Community Qualities Forum, and  

WHEREAS, CAROLE STARK 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 CAROLE STARK from the Community Qualities Forum be, and 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 CAROLE STARK 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 3rd day of October, 2006, 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, 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  

100306/CMO/epuckett/item03  1  2006-629
A RESOLUTION APPROVING AN ADVANCED FUNDING AGREEMENT FOR THE KIERNAN BUSINESS PARK SOUTH SPECIFIC PLAN AREA BETWEEN THE CITY OF MODESTO AND MINER JOAQUIN BUILDING CORPORATION, A CALIFORNIA CORPORATION, FOR FORMATION OF CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2006-2 (KIERNAN BUSINESS PARK SOUTH) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, Miner Joaquin Building Corporation, a California Corporation, (the "Developer") has agreed to advance all funds necessary to form a community facilities district ("CFD") for a portion of the Kiernan Business Park Specific Plan Area commonly known as Kiernan Business Park South ("KBP West"), and

WHEREAS, the parties agreed to enter into an Advanced Funding Agreement For The City of Modesto Community Facilities District No. 2006-1 (Kiernan Business Park West) ("Agreement") by and between the City and the Developer relating to advances made and to be made by the Developer to the City, and providing for potential reimbursement to the Developer if and when certain funds from the community facilities district become available, copy of which is attached as Exhibit A,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Advanced Funding Agreement For The City of Modesto Community Facilities District No. 2006-1 (Kiernan Business Park West) between the City of Modesto and Miner Joaquin Building Corporation is hereby approved.

BE IT FURTHER RESOLVED that the City Manager, or 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 3rd day of October, 2006, 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, 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
ADVANCED FUNDING AGREEMENT
FOR THE CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2006-2
(KIERNAN BUSINESS PARK SOUTH)

THIS ADVANCED FUNDING AGREEMENT FOR THE CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2006-2 (KIERNAN BUSINESS PARK SOUTH) (this
“Agreement”), dated as of __________, 2006, is entered into by and between the CITY OF
MODESTO, a municipal corporation (the “City”), and MINER JOAQUIN BUILDING
CORPORATION, a California Corporation (the “Developer”).

RECITALS:

A. The Developer has requested that the City form a community facilities district to be
known as “City of Modesto Community Facilities District No. 2006-2 (Kiernan Business Park
South)” (the “CFD”) for the principal purpose of financing and maintaining various public facilities
necessary or desirable in connection with the development of the Developer’s project in the Kiernan
Business Park Specific Plan Area.

B. In accordance with the City’s “Policies & Procedures for the Formation, Annexation,
and Administration of Community Facilities Districts Created Pursuant to the Provisions of the
Mello-Roos Community Facilities Act of 1982” (the “City’s CFD Policies and Procedures”), the
Developer has heretofore deposited with the City the sum of $64,500 in order to provide the City
with a source of funds with which to pay expenses expected to be incurred in connection with the
possible formation of the CFD.

C. 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 by the City in connection with the 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.

Advanced Funding Agreement, KBF SOUTH (CFD 2006-2)
D. The City and the Developer are desirous of entering into this Agreement in accordance with Government Code Section 53314.9 and the City’s CFD Policies and Procedures in order to provide a mechanism by which the Developer may make additional deposits if determined necessary pursuant to the City’s CFD Policies and Procedures and, when and if bonds are issued and proceeds are available, the CFD can reimburse the Developer for the amounts advanced by the Developer.

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.


   (a) Upon receipt by the City of a completed application for the formation of the CFD and all documents related thereto as described in the City’s CFD Policies and Procedures, the City will undertake to analyze the appropriateness of forming the CFD and the issuance of bonds by it. In connection therewith, the City has either retained or will retain, at the Developer’s expense, the consultants that the City determines necessary or convenient to assist it in studying the proposed formation of the CFD and, if the City determines to proceed with the formation of the CFD, to assist it in connection therewith and with the possible issuance of bonds.

   (b) Pursuant to the City’s CFD Policies and Procedures, the Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein. In the event the Developer does not deliver the requested amount to the City within such ten (10) day period, the City will have no obligation to proceed with any activity relating to the formation of the CFD and/or the issuance of bonds. The Developer may notify the City at any time, in writing, of its intention to abandon the formation of the CFD or the issuance of bonds. Upon receipt of such notice, the City shall instruct its consultants to cease work as soon as practicable. The Developer shall be responsible for all costs and expenses incurred by the City or any City consultant or advisor relating to the proposed formation of the CFD and/or bond issuance until work with respect to the proposed formation or bond issuance ceases following the receipt of the Developer’s notice of abandonment.

   (c) Developer agrees that, notwithstanding the Developer’s reimbursement obligations under this Agreement, the consultants selected by the City shall be the contractor exclusively of the City and not of the Developer. Except for those disclosures required by law including, without limitations, the Public Records Act, all conversations, notes, memoranda, correspondence, and other forms of communication by and between the City and it’s consultants shall be, to the extent permissible by law, privileged and confidential and not subject to disclosure to the Developer. The Developer 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 the City’s consultants. Developer understands that it will not be a third party beneficiary to City’s contracts with the consultants. The Developer agrees that the City may
select other consultants to replace its current consultants and may do so without consulting with the Developer or obtaining the Developer’s approval.

3. **Developer to Cooperate with the City’s Consultants.** Developer agrees to cooperate in good faith with the City’s consultants. Developer 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 them by the City’s consultants; provided, however, that the foregoing shall not require the disclosure of any documents or information of the Developer which by law is privileged, proprietary, confidential, or exempt from disclosure under the Public Records Act.

4. **Reimbursement Procedure.** If the CFD is formed and bonds are issued, bond proceeds in excess of the amount determined by the City’s District Administrator to be required in order to satisfy the requirements of the City’s CFD Policies and Procedures with respect to capitalized interest and reserves and to pay for the Facilities and other Incidental Expenses may be used to reimburse the Developer for the amounts that the Developer has advanced to the City in connection with this Agreement, all as provided for in the City's CFD Policies and Procedures. In the event that the CFD is not formed for any reason, or in the event that the CFD is formed and bonds are not issued for any reason, the City shall return any funds which have been advanced by the Developer pursuant to this Agreement and which have not been expended, obligated or otherwise committed for any authorized purpose, subject to the complete reimbursement to the City of all of its direct and indirect costs. If the amounts previously advanced by the Developer are insufficient to fully reimburse the City for all of its direct and indirect costs, the Developer shall pay to the City the amount of the deficiency within ten (10) days after receipt of a demand by City. The City shall be entitled to pay any refund 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 Developer, and the City shall not be required to pay interest on any amount required to be refunded pursuant to this Agreement.

5. **Abandonment of Proposed CFD.** The Developer understands that, subject to the satisfaction of all applicable legal requirements, the decision to form the CFD and the decision to issue bonds 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 form the CFD or to issue bonds. The City shall have no liability to Developer for a decision not to form the CFD or issue bonds.

6. **Indemnification and Hold Harmless.** The Developer hereby assumes the defense of, and indemnifies and saves 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 the Developer or any of the Developer’s officers, employees, contractors and agents in connection with the proposed formation of the CFD or any work-in-kind provided by or on behalf of the Developer 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.

Developer: Miner Joaquin Building Corporation
P.O. Box 1110
Stockton, CA 95201
Attn: John Dentoni
Phone: (209) 929-1433
Facsimile: (209) 465-5483

City: City of Modesto
1010 Tenth Street, Suite 6100
Modesto, California 95354
Attention: IFP Administrative Officer
Phone: (209) 577-5211
Facsimile: (209) 571-5128

8. **Assignment.** The Developer may not assign its interest in this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld. Any assignment or attempt to assign this Agreement without the prior written consent of CITY 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 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.

11. **Amendments.** This Agreement may be amended or modified only by written instrument signed by all 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 Developer, 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.

15. **Termination.** This Agreement shall terminate and be of no further force and effect on the first anniversary of the date of this Agreement unless expressly amended by the parties; provided, however, that the Developer’s obligations under Section 6 shall survive the termination and the City’s obligation to provide reimbursement in accordance with Section 4 for expenses incurred prior to the termination date shall also survive termination.

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 any of 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 Owner or its agents, employees or contractors. Except as City may specify in writing, Owner shall have no authority to act as an agent of City or to bind City to any obligation.

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 Agreement’s provisions.
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. 2006---, adopted by the Council of the City of Modesto on the ___ day of ___________, 2006, and Miner Joaquin Building Corporation, has caused this Agreement to be executed in duplicate, effective as of the date first written above.

CITY OF MODESTO, a Municipal Corporation

By: _____________________________
GEORGE BRITTON, City Manager

ATTEST:

By: _____________________________
JEAN MORRIS, City Clerk

MINER JOAQUIN BUILDING CORPORATION, a California Corporation

By: _____________________________
Name: Thomas R. Shaffer
Title: Director and President

APPROVED AS TO FORM:

SUSANA ALCALA WOOD, City Attorney

By: _____________________________
ALISON A. BARRATT-GREEN
Senior Deputy City Attorney

Signature Requirements

- Corporation:
  - Signature of two (2) officers
  - Signature of one (1) officer plus the corporate seal

- Partnership: Signature of one partner

- Sole Proprietorship: Signature of proprietor
A RESOLUTION DECLARING THE CITY OF MODESTO'S INTENTION TO REIMBURSE THE CITY FOR CERTAIN EXPENDITURES MADE AND/OR TO BE MADE IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN CAPITAL IMPROVEMENTS FROM THE PROCEEDS OF ONE OR MORE TAX-EXEMPT FINANCINGS

WHEREAS, the City of Modesto (the "City") is a political subdivision organized and existing under the laws of the State of California, and

WHEREAS, the City has paid, beginning no earlier than 60 days prior to the date hereof, and will pay, on and after the date hereof, certain expenditures (the "Expenditures") in connection with the acquisition, construction and/or equipping of certain capital improvements for the City's wastewater system (the "Project"), as more fully described in Exhibit A attached hereto, and

WHEREAS, the City Council of the City (the "City Council") has determined that those moneys previously advanced no more than 60 days prior to the date hereof and to be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period, and it is necessary to reimburse the City for the Expenditures from the proceeds of one or more issues of tax-exempt bonds (the "Bonds"),

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby declares the City’s intention to reimburse the City with the proceeds of said Bonds for the Expenditures with respect to the Project made prior to the issuance of the Bonds, but no more than 60 days prior to the date hereof. The City reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of said Bonds. Each Expenditure was and will be either: (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), (b) a cost of issuance with respect to the Bonds, or (c) a nonrecurring item that is not customarily payable from current revenues.
The maximum principal amount of the Bonds expected to be issued for the Project is $30 million. The City will make a reimbursement allocation, which is a written allocation by the City that evidences the City’s use of proceeds of the Bonds to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The City recognizes that exceptions are available for certain “preliminary expenditures,” costs of issuance, certain de minimis amounts, expenditures by “small issuers” (based on the year of issuance and not the year of expenditure) and expenditures for construction projects of at least 5 years.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately upon its passage.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of October, 2006, 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, 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
EXHIBIT A

DESCRIPTION OF PROJECT

The project includes various improvements to the City’s wastewater system identified in the City’s Domestic Wastewater Near Term Capacity Study dated March 2006. The improvements include, but are not limited to, design, acquisition, construction and installation of facilities necessary to implement dissolved air flotation treatment for effluent discharge into the San Joaquin River and the initial phases of tertiary treatment processes and facilities and related facilities.
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-632

A RESOLUTION APPOINTING TEN (10) MODESTO AREA HIGH SCHOOL STUDENTS TO THE CITY OF MODESTO YOUTH COMMISSION.

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

WHEREAS, as authorized by Resolution No. 89-443, principals from the High Schools within the City Limits of the City of Modesto have recommended students to serve as Modesto Youth Commissioners,

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

SECTION 1. Three (3) Modesto area high school students are hereby appointed to the City of Modesto Youth Commission, with a one-year term limit, as follows:

Central Catholic High School
Leslie Hermann

Downey High School
Jessica Ramirez

SECTION 2. Seven (7) Modesto area high school students are hereby appointed to the City of Modesto Youth Commission, with a two-year term limit, as follows:

Beyer High School
Eric Farrar

Big Valley Grace High School
Eugene Tiscornia

Central Catholic High School
David Misslbeck

Downey High School
Chelsea Miller

Modesto Christian High School
Kelsey Meyer

Valley Charter High School
Garrett Wilson

Modesto High School
Julie Bernardo
SECTION 3. The City Clerk is hereby directed to transmit a copy of this resolution to the newly appointed members of the City of Modesto Youth Commission, and the Secretary thereof.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of October, 2006, 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, 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. 2006-633

A RESOLUTION AMENDING THE AGREEMENT WITH CALLANDER ASSOCIATES LANDSCAPE ARCHITECTURE, INC. TO PROVIDE ADDITIONAL SERVICES RELATED TO REVISING THE PLANS AND SPECIFICATIONS DUE TO ADDITIONAL SUBMITTAL REQUIREMENTS FROM CALTRANS AND A CHANGE IN THE SCOPE OF THE PROJECT DUE TO FUNDING AVAILABILITY, FOR AN ADDITIONAL AMOUNT NOT TO EXCEED $31,665.00, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT TO THE AGREEMENT.

WHEREAS, at the March 13, 2001, City Council Meeting, by Resolution No. 2001-115, the Council authorized the City Manager to submit an application and negotiate an agreement for the use of Transportation Enhancement Activities (TEA) funds for a landscape beautification project within and near the Briggsmore / State Route 99 Interchange, and

WHEREAS, on March 13, 2001, the City Council also committed matching funds of up to $75,000 for this project from the General Fund, and

WHEREAS, in late March of 2001, the City Manager submitted an application for $1,000,000 in State TEA funds for this project, and the City was notified in the Fall of 2002 that funding had been identified for this project and Amendment #34 to the Federal Transportation Improvement Program (FTIP) was approved, and

WHEREAS, Amendment #34 identified $1,000,000 of State TEA funds, $200,000 of Regional TEA funds and $100,000 of Caltrans Minor Program funds for the Highway 99 Briggsmore Expressway Landscape Improvements Project, and

WHEREAS, in the Fall of 2002, City staff began working with Caltrans District 10 to prepare a cooperative agreement for the funding of the construction of landscape enhancements within and near the Briggsmore / State Route 99 Interchange, and
WHEREAS, the project area included landscape enhancements to the Briggsmore Interchange and along State Route 99 for 0.5 miles to the south and 0.8 miles to the north of the Briggsmore Expressway along the northbound and southbound lanes, and

WHEREAS, on May 3, 2004, the Safety and Communities Committee endorsed approval of the cooperative agreement, and

WHEREAS, on May 25, 2004, the Modesto City Council approved the cooperative agreement and authorized the City Manager to execute said agreement, and

WHEREAS on September 28, 2004, the City Council awarded the design contract for this project to Callander Associates Landscape Architecture, Inc. at a cost not to exceed $133,500.00, and

WHEREAS, Callander Associates and City staff have been coordinating with Caltrans staff for the past two years to develop a conceptual design and construction documentation for the project, and

WHEREAS, Parks Planning and Development staff has held many stakeholders meetings during this process to ensure Caltrans review of the design, and

WHEREAS, in addition, a public comment period beginning on February 7, 2005, and ending on March 2, 2005, was conducted to obtain public input on the project design, and

WHEREAS, throughout the above described process, Caltrans has required many documents and design elements that were not revealed in the original contract agreement, including but not limited to a “Project Report”, a Storm Water Data Report, additional design and engineering for slope and gore paving, Structural Engineering, and Geotechnical reports, and

WHEREAS, some of these items were paid for with the additional services portion of the existing contract, but the changes and requirements have become so extensive that they can no longer be funded in the current additional services portion of the existing contract, and
WHEREAS, at this time, requirements from Caltrans necessitate an amendment to the agreement in an amount not to exceed $31,665.00, to complete the construction documentation, and

WHEREAS, funds are budgeted in Capital Improvement Project 1350-310-A080, Briggsmore-99,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves an Amendment to the Agreement with Callander Associates Landscape Architecture, Inc. to provide additional services related to revising the plans and specifications due to additional submittal requirements from Caltrans and a change in the scope of the project due to funding availability, for an additional amount not to exceed $31,665.00.

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 3rd day of October 2006, 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, 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. 2006-634

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH O’DELL ENGINEERING, INC. TO DESIGN THE FLOYD AVENUE ROAD IMPROVEMENTS BETWEEN ROSELLE AVENUE AND FINE AVENUE IN THE NOT-TO-EXCEED AMOUNT OF $160,735, AND AUTHORIZING THE COMMUNITY FACILITIES DISTRICT ADMINISTRATOR, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, following a Request for Qualifications which was sent to all local engineering firms, eight firms were asked to provide a proposal for the Floyd Avenue design, and

WHEREAS, a selection team interviewed eight consulting firms, and

WHEREAS, the Selection Committee determined that O’Dell Engineering, Inc., rated highest for the design of the Floyd Avenue Road Improvement Project, in accordance with Administrative Directive 3.1, and

WHEREAS, the District Engineer has recommended that O’Dell Engineering, Inc., be accepted as the most qualified engineering consulting firm for engineering design services for the “Floyd Avenue Road Improvement project from Roselle Avenue to Fine Avenue”, and

WHEREAS, the District Engineer has recommended accepting the proposal of O’Dell Engineering, Inc., in an amount not-to-exceed $160,735,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement between City of Modesto Community Facilities District and O’Dell Engineering, Inc. for engineering design services for the project titled “Floyd Avenue Road Improvement Project From Roselle Avenue to Fine Avenue” in the not-to-exceed amount of $160,735.
BE IT FURTHER RESOLVED that the District Administrator, or his designee, is hereby authorized to execute said Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of October, 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

By: susana alcala wood, City Attorney
A RESOLUTION AUTHORIZING STAFF TO SOLICIT COMPETITIVE PROPOSALS FOR A NEW MODESTO AREA EXPRESS (MAX) CONTRACT

WHEREAS, on May 28, 2002 the City entered into an agreement with MV Transportation to operate the Modesto Area Express (MAX) bus service, and

WHEREAS, said agreement is due to expire on May 31, 2007, and

WHEREAS, concurrent with this request to solicit competitive proposals for MAX bus service, a contract amendment will extend the current MV Transportation contract through June 29, 2007, and

WHEREAS, a new contract is necessary to replace the contract amendment that will expire on June 29, 2007, and

WHEREAS, solicitation of proposals through the use of a request for proposals (RFP) process is the best method of selecting a new contractor, and

WHEREAS, by an agenda report to the City Council dated September 18, 2006, from the Public Works Director, City staff recommended to the Council that an RFP process, as described in said agenda report, be utilized to solicit proposals for a new contract to replace the contract extension with MV Transportation that will expire June 29, 2007, and

WHEREAS, the Council Economic Development Committee at its September 11, 2006 meeting recommended approval of this item,

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Modesto that City staff is hereby directed to solicit proposals for a new MAX operating contract through the RFP process described in said agenda report.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of October, 2006, 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, 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 THE EXISTING CONTRACT WITH MV TRANSPORTATION, INC. TO EXTEND THE CONTRACT’S EXPIRATION DATE TO JUNE 29, 2007.

WHEREAS, on May 28, 2002 the City entered into an agreement with MV Transportation, Inc. to operate the Modesto Area Express (MAX) bus service, and

WHEREAS, said agreement is due to expire on May 31, 2007, and

WHEREAS, City wishes to extend said agreement through June 29, 2007, to provide for the best transition possible between MV Transportation, Inc. and any successor contractor that might be selected through the request for proposals (RFP) process being considered concurrently with this item at the October 3, 2006 Council meeting, and

WHEREAS, MV Transportation has agreed to said contract extension, and

WHEREAS, by an agenda report to the City Council dated September 18, 2006, from the Public Works Director, City staff recommended to the Council that the existing contract with MV Transportation be extended through June 29, 2007.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Amendment to the existing contract with MV Transportation to extend the expiration date of the current contract through June 29, 2007.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Amendment.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of October, 2006, 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, 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 Afcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-637


WHEREAS, a financial analysis has been completed and it has been determined that certain adjustments are required to the Capital Improvement Budget of the City of Modesto for the Fiscal Year 2006-2007, and

WHEREAS, specific projects have unspent budgets as of July 1, 2006 which need to be reallocated into FY 2006-2007, and

WHEREAS, additional revenues for fiscal year 2006-2007 have been identified, and

WHEREAS, the Planning Commission at their regular meeting of September 21, 2006 approved for conformance with the City’s General Plan the amended Capital Improvement Program budget, and

WHEREAS, at a special Finance Committee meeting of September 21, 2006 the committee recommended approval of the Capital Improvement Program budget, and

WHEREAS, at the City Council meeting of October 3, 2006 the City Council held a Public Hearing regarding the Capital Improvement Program budget,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that existing projects and new projects which are referenced in the Amended 2006-2007 Capital Improvement Program under the CIP Budget by Fund section of the budget documents hereby be re-appropriated into the BY 2006-2007 budget.

BE IT FURTHER RESOLVED that additional revenues, which are referenced in the Amended 2006-2007 Capital Improvement Program under the Revenues by Source section of the budget document, hereby be recognized.

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 3rd day of October, 2006, 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, 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