A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN ACCEPTANCE FORM FOR THE GRANT DEEDS FOR THE ACQUISITION OF A PORTION OF A PARCEL ALONG MID LATERAL NO. 4, SOUTH OF ELM AVENUE AND WEST OF ROSEMORNE AVENUE OWNED BY ALAN MANGINI (APN: 007-038-015) TO THE CITY OF MODESTO FOR THE WATER DOWNSTREAM IMPROVEMENTS: TIER TWO WEST TANK PROJECT, INCLUDING AN ACCESS UTILITY EASEMENT

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 a parcel for the Water Downstream Improvements: Tier Two West Tank Project owned by Alan Mangini (APN: 007-038-015),

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the City Manager is hereby authorized to sign an acceptance form on behalf of the City of Modesto for one (1) Grant Deed for the acquisition of a portion of a property owned by Alan Mangini (APN: 007-038-015) for the Water Downstream Improvements: Tier Two West Tank Project.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 2nd day of August 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, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

APPROVED AS TO FORM:

By:

SUSANA ALCALA WOOD, City Attorney

ATTEST: Jean Morris

JEAN MORRIS, City Clerk

08/02/06/PW/D Phillips/Item 17 2 2006-478
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-479

A RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE
WELL #63 DEVELOPMENT AT MILDRED PERKINS PARK PROJECT,
ACCEPTING THE BID AND APPROVING A $256,845 CONTRACT WITH
CALWATER DRILLING COMPANY, INC., FOR THE PROJECT TITLED,
“WELL #63 DEVELOPMENT AT MILDRED PERKINS PARK,” AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the “Well #63
Development at Mildred Perkins Park” and City staff recommends approval to the City
Council, and

WHEREAS, the bids received for “Well #63 Development at Mildred Perkins
Park” were opened at 11:00 a.m. on June 20, 2006, and later tabulated by the Public
Works Director for the consideration of the Council, and

WHEREAS, the Public Works Director has recommended that the bid of
$256,845 received from Calwater Drilling Company, Inc., Turlock, California be
accepted as the lowest responsible bid and the contract be awarded to Calwater Drilling
Company, Inc.,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves the plans and specifications for said project, and accepts the bid of
Calwater Drilling Company, Inc., in the amount $256,845, and hereby awards Calwater
Drilling Company, Inc., the contract titled “Well #63 Development at Mildred Perkins
Park.”

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby
authorized to execute the contract.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 2nd day of August 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, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-480

A RESOLUTION ACCEPTING THE WORK BY MCM CONSTRUCTION, INC., FOR THE PROJECT TITLED "9TH STREET BRIDGE REPLACEMENT PROJECT" AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION, AND AUTHORIZING PAYMENT OF AMOUNTS DUE TOTALING $20,297,749.77

WHEREAS, a report has been filed by the Public Works Director that the project titled "9th Street Bridge Replacement Project" has been completed by MCM Construction, Inc., in accordance with the contract agreement dated October 14, 2003,

NOW, THEREFORE, BE IT RESOLVED by the Council that the "9th Street Bridge Replacement Project" is hereby accepted as complete from said contractor, MCM Construction, Inc., that the Notice of Completion be filed with the Recorder of Stanislaus County and that payment of amounts due totaling $20,297,749.77, as provided in the contract, be authorized.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 2nd day of August, 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, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

By  
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-481

A RESOLUTION ACCEPTING PUBLIC IMPROVEMENTS IN THE
BRIDGEWOOD TOWNHOUSE SUBDIVISION, AND AUTHORIZING THE CITY
CLERK TO RECORD A NOTICE OF COMPLETION AND AUTHORIZING
RELEASE OF BONDS

WHEREAS, GRANITE BAY HOLDINGS, a Limited Liability Corporation, is
the subdivider of Bridgewood Townhouse (“SUBDIVISION”), and

WHEREAS, GRANITE BAY HOLDINGS, a Limited Liability Corporation, has
filed irrevocable subdivision bonds to secure faithful performance and payment for labor
and materials in the amounts of $202,300.56 and $101,150.28, respectively, and

WHEREAS, GRANITE BAY HOLDINGS, a Limited Liability Corporation, has
filed a warranty bond in the amount of $20,230.06 to guarantee public improvements in
the BRIDGEWOOD TOWNHOUSE Subdivision, and

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

WHEREAS, the City Engineer has indicated that it would be in order for the City
Council to accept the public improvements in said subdivision as complete, and authorize
the City Clerk to record a Notice of Completion and release the bonds upon expiration of
the statutory periods,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that:
1. The public improvements in the BRIDGEWOOD TOWNHOUSE Subdivision are hereby accepted and the City Clerk is hereby authorized to record a Notice of Completion for the public improvements.

2. The City Clerk is hereby authorized to release the subdivision bond for faithful performance in the amount of $202,300.56 upon recordation of the Notice of Completion.

3. The City Clerk is hereby authorized to release the subdivision bond for labor and materials in the amount of $101,150.28 sixty (60) days after the recordation of the Notice of Completion, provided no claim is made thereon.

4. The City Clerk is hereby authorized to release the warranty bond to guarantee public improvements in the amount of $20,230.06 one year and one day after the effective date of this resolution, provided no claim is made thereon.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 2nd day of August 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, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

ATTEST: JEAN MORRIS, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-482

A RESOLUTION ORDERING THE LEVY AND COLLECTION OF CHARGES WITHIN LANDSCAPE ASSESSMENT DISTRICT NO. 1 FOR DRY CREEK MEADOWS SUBDIVISIONS NOS. 1-6

WHEREAS, the City of Modesto has by Resolution No. 2006-349 adopted on June 6, 2006, declared its intent to levy charges or assessments for the purpose of administering the maintenance of landscaping in the public right-of-way within the street medians and adjacent to the access control walls in Dry Creek Meadows Subdivisions Nos. 1-6 under the provisions of the "Landscaping and Lighting Act of 1972", and

WHEREAS, the cost for Fiscal Year 2006-07 is $26.00 annual assessment per lot, and

WHEREAS, the charges against the real property are not levied with regard to property values but rather by allocated cost reports prepared by City Engineering, and

WHEREAS, the City of Modesto has determined and certifies that the charges are either exempt from or in compliance with all the provisions of Proposition 218, which was passed by the voters in November 1996, and

WHEREAS, the City of Modesto has further determined the charges are in compliance with all laws pertaining to the levy of such charges,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto hereby orders the levy and collection of $26.00 annual assessment per lot within Landscape Maintenance Assessment District No. 1 for Dry Creek Meadows Subdivisions Nos. 1-6 for the 2006-07 Fiscal Year, and that a certified copy of this resolution shall be
delivered to the Auditor-Controller of the County of Stanislaus for placement of such charges on the 2006-07 County Tax Roll.

BE IT FURTHER RESOLVED that the diagram of said assessment district and amount of levy thereon is hereby confirmed.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 2nd day of August 2006, by Councilmember Marsh, 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, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-483

A RESOLUTION ORDERING THE LEVY AND COLLECTION OF CHARGES WITHIN LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NO. 2 FOR DRY CREEK MEADOWS SUBDIVISIONS NOS. 7-10, CREEKWOOD MEADOWS SUBDIVISION, AND YOSEMITE MEADOWS SUBDIVISION UNITS 1 & 2

WHEREAS, the City of Modesto has by Resolution No. 2006-350, adopted on June 6, 2006, declared its intent to levy charges or assessments for the purpose of administering the maintenance of landscaping in the public right-of-way within the street medians and adjacent to the access control walls in Dry Creek Meadows Subdivisions Nos. 7-10, Creekwood Meadows Subdivision and Yosemite Meadows Subdivision Units No. 1 & 2, under the provisions of the "Landscaping and Lighting Act of 1972", and

WHEREAS, the cost for Fiscal Year 2006-07 is $114.90 per acre for commercial property and $22.62 for each residential property, and

WHEREAS, the charges against the real property are not levied with regard to property values but rather by allocated cost reports prepared by City Engineering, and

WHEREAS, the City of Modesto has determined and certifies that the charges are either exempt from or in compliance with all the provisions of Proposition 218, which was passed by the voters in November 1996, and

WHEREAS the City of Modesto has further determined that the charges are in compliance with all laws pertaining to the levy of such charges.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto hereby orders the levy and collection of $114.90 per acre for commercial property and $22.62 for each residential property within Landscape Maintenance Assessment District No. 2 for Dry Creek Meadows Subdivisions Nos. 7-10, Creekwood
Meadows Subdivision and Yosemite Meadows Subdivision Units 1 & 2 for the 2006-07 fiscal year, and that a certified copy of this resolution shall be delivered to the Auditor–Controller of the County of Stanislaus for placement of such charges on the 2006-07 County Tax Roll.

BE IT FURTHER RESOLVED that the diagram of said assessment district and amount of levy thereon is hereby confirmed.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 2nd day of August 2006, by Councilmember Marsh, 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, Marsh, O’Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: Jean Morris

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
A RESOLUTION APPROVING AN AGREEMENT TO PROVIDE CERTAIN LESS THAN COUNTY-WIDE FIRE SERVICES BETWEEN THE STANISLAUS COUNTY REGIONAL FIRE AUTHORITY AND THE CITY OF MODESTO, FOR COUNTYWIDE FIRE INVESTIGATION SERVICES IN THE AMOUNT OF $469,546, AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT

WHEREAS, the Modesto Fire Department presented a proposal to the Stanislaus County Regional Fire Authority for consolidation of fire investigation services to include the portion of Stanislaus County currently served through the less than county-wide fire investigation contract and the City of Modesto, and

WHEREAS, the Stanislaus County Regional Fire Authority voted to accept the proposal on June 22, 2006, and

WHEREAS, the proposal in the amount of $469,546, covers staffing (salary, benefits, incentives, overtime and training), equipment (phone, radio, tools), a vehicle, vehicle maintenance and fuel, and

WHEREAS, the contract amount of $469,546 will be paid from Less than County-wide Fire Service Fees, and

WHEREAS, the Safety and Communities Committee approved this request on July 31, 2006 for recommendation to the full Council,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a 5-Year Agreement To Provide Certain Less Than County-Wide Fire Services between the Stanislaus County Regional Fire Authority and the City of Modesto for fire investigation services in the amount of $469,546.
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 special meeting of the Council of the City of Modesto held on the 2\textsuperscript{nd} day of August 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: Keating

ATTEST: \underline{Jean Morris}

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: \underline{SUSANA ALCALA WOOD}, City Attorney
A RESOLUTION AUTHORIZING THE PERSONNEL DIRECTOR TO
ESTABLISH AN ELIGIBILITY LIST FOR FIRE CAPTAIN FROM
INTERESTED AND QUALIFIED CANDIDATES CURRENTLY SERVING AS
FIRE INVESTIGATORS WITH THE STANISLAUS CONSOLIDATED FIRE
PROTECTION DISTRICT

WHEREAS, the Modesto Fire Department presented a proposal to the Stanislaus County Regional Fire Authority for consolidation of fire investigation services to include the portion of Stanislaus County currently served through the less than county-wide fire investigation contract and the City of Modesto, and

WHEREAS, the Stanislaus County Regional Fire Authority voted to accept the proposal on June 22, 2006, and

WHEREAS, the proposal included the consideration of current Fire Investigators from Stanislaus Consolidated Fire Protection District to fill the three (3) additional Fire Investigator positions created by the contract based on the proposal, and

WHEREAS, the Personnel Director is responsible for the preparation of eligibility lists consisting of the names of persons qualifying for appointment to designated classifications, and

WHEREAS, the City desires to establish an eligibility list for Fire Captain comprised solely of qualified applicants currently employed by Stanislaus Consolidated Fire Protection District,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the Personnel Director to establish an eligibility list for Fire Captain from interested and qualified candidates currently serving as Fire Investigators with Stanislaus Consolidated Fire Protection District.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 2nd day of August 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

APPROVED AS TO FORM:

ATTEST:  
JEAN MORRIS, City Clerk

By:  
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-486

A RESOLUTION AUTHORIZING THE PURCHASE OF A FULL SIZE, HALF TON, EXTENDED CAB PICKUP TO BE UTILIZED BY FIRE INVESTIGATORS PURSUANT TO AGREEMENT BETWEEN THE STANISLAUS COUNTY REGIONAL FIRE AUTHORITY AND THE CITY OF MODESTO TO PROVIDE CERTAIN LESS THAN COUNTY-WIDE FIRE SERVICES

WHEREAS, BY Resolution No. 2006-484, adopted on August 2, 2006, the Council of the City of Modesto approved an Agreement To Provide Certain Less Than County-wide Fire Services, and

WHEREAS, pursuant to the terms of the said agreement, thirty thousand dollars ($30,000), amortized over three (3) years, is budgeted for a vehicle, and City staff wishes to purchase a half ton, extended cab pickup, for the use of Fire Investigators, and

WHEREAS, the Safety and Communities Committee approved this request on July 31, 2006 for recommendation to the full Council,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the purchase of a half ton extended cab pickup to be utilized by the Fire Investigators.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 2nd day of August 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
A RESOLUTION ADOPTING THE DEBT MANAGEMENT POLICY AND THE INTEREST RATE SWAP POLICY

WHEREAS, pursuant to the City of Modesto Water Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the “Bond Law”), the City of Modesto, California (the “City”) is authorized to issue revenue bonds to provide funds to finance the costs of the acquisition, construction and equipping of improvements to the water system of the City (the “Enterprise”) or for the purpose of refunding bonds issued for such purposes, and

WHEREAS, staff has identified the need to restructure water debt, issue water revenue bonds and prepare for the Modesto Irrigation District to issue bonds which will be considered as parity debt for the City of Modesto, and

WHEREAS, the City desires adopting the Debt Management Policy and the Interest Rate Swap Policy,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, that it hereby adopts the Debt Management Policy and the Interest Rate Swap Policy, for future consideration by this City Council,

BE IT FURTHER RESOLVED that City staff is hereby authorized and directed to proceed with any and all actions deemed necessary or advisable, following the adopted policy guidelines pursuant to this Resolution, in connection with the future issuances of the City Debt, for future consideration by this City Council
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 2nd day of August 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the Resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-488

A RESOLUTION APPOINTING A WASTEWATER BOND FINANCING TEAM CONSISTING OF SIDLEY AUSTIN, LLP, BOND COUNSEL; STRADLING YOCCA CARLSON & RAUTH, DISCLOSURE COUNSEL; PUBLIC FINANCIAL MANAGEMENT INC., FINANCIAL ADVISOR; CITIGROUP GLOBAL MARKETS INC, UNDERWRITER, AND CITY STAFF WITH RESPECT TO THE PROPOSED ISSUANCE OF CERTAIN WASTEWATER REVENUE BONDS FOR FUTURE CONSIDERATION OF COUNCIL, AND AUTHORIZING SAID WASTEWATER BOND FINANCING TEAM TO PROCEED WITH ACTIONS NECESSARY FOR BOND DOCUMENT DEVELOPMENT

WHEREAS, pursuant to the City of Modesto Water Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the “Bond Law”), the City of Modesto, California (the “City”) is authorized to issue revenue bonds to provide funds to finance the costs of the acquisition, construction and equipping of improvements to the water system of the City (the “Enterprise”) or for the purpose of refunding bonds issued for such purposes, and

WHEREAS, staff has identified the need to restructure wastewater debt, issue wastewater revenue bonds, and

WHEREAS, the City desires to appoint certain professionals to assist the City in connection with such proposed issuance, and to authorize such professionals and City staff to take all actions necessary, including the preparation of documents to effect such issuance, for future consideration by this City Council,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, that it hereby appoints Sidley Austin, LLP, San Francisco, California, as Bond Counsel (“Bond Counsel”); Stradling Yocca Carlson & Rauth, A Professional Corporation of Newport Beach, California, as the Disclosure Counsel to the City in connection with the
issuance of water revenue bonds of the City; Public Financial Management Inc., San Francisco, California, as Financial Advisor ("Financial Advisor"), and CitiGroup Global Markets Inc as the Underwriter.

BE IT FURTHER RESOLVED that City staff is hereby authorized and directed to proceed with any and all actions deemed necessary or advisable, including directing the finance professionals appointed pursuant to this Resolution, to begin preparation of documents in connection with the proposed issuance of the City’s wastewater revenue bonds, for future consideration by the City Council.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 2nd day of August 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, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

ATTEST: JEAN MORRIS, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-489

A RESOLUTION (1) DIRECTING STAFF TO RETURN TO CITY COUNCIL WITH A VARIABLE RATE FINANCING FOR THE 2006 WATER REVENUE BONDS WITH SWAP DOCUMENTATION AND (2) APPROVE STAFF’S RECOMMENDATION OF THE TIME LINE FOR THE FINANCING

WHEREAS, pursuant to the City of Modesto Water Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the “Bond Law”), the City of Modesto, California (the “City”) is authorized to issue revenue bonds to provide funds to finance the costs of the acquisition, construction and equipping of improvements to the water system of the City (the “Enterprise”) or for the purpose of refunding bonds issued for such purposes, and

WHEREAS, staff has identified the need to restructure water debt, issue water revenue bonds and prepare for the Modesto Irrigation District to issue bonds which will be considered as parity debt for the City of Modesto, and

WHEREAS, the City desires to (1) Direct staff to return to City Council with a variable rate financing for the 2006 Water Revenue Bonds with Swap documentation and (2) Approve staff’s recommendation of the time line for the financing to effect such issuance, for future consideration by this City Council,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, that it hereby Directs staff to return to City Council with a variable rate financing for the 2006 Water Revenue Bonds with Swap documentation and Approves staff’s recommendation of the time line for the financing to effect such issuance, for future consideration by this City Council,
BE IT FURTHER RESOLVED that City staff is hereby authorized and directed to proceed with any and all actions deemed necessary or advisable, including preparing documentation and pricing swaps pursuant to this Resolution, in connection with the proposed issuance of the City’s water revenue bonds, for future consideration by this City Council.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 2nd day of August 2006, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and the Resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: ____________________________

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: ________________________________

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-490

A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF KEN WILLIAMS FROM THE BOARD OF BUILDING APPEALS

WHEREAS, was appointed a member of the Board of Building Appeals on March 5, 1996, and

WHEREAS, KEN WILLIAMS has tendered his resignation from the aforementioned committee, and

WHEREAS, KEN WILLIAMS 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 KEN WILLIAMS from the Board of Building Appeals 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 KEN WILLIAMS 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 8th day of August 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

080806/CMO/E Puckett/Item 2

2006-490
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-491

A RESOLUTION APPROVING AN AMENDMENT TO THE STANDARD AGREEMENT FOR CONSULTANT SERVICES BETWEEN THE CITY OF MODESTO AND CITYGATE ASSOCIATES, LLC, FOR PLANNING MANAGER SERVICES, AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE AMENDMENT FOR AN ADDITIONAL SUM NOT EXCEED $80,000.00 (EIGHTY THOUSAND AND NO/100 DOLLARS), FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED $100,000.00 (ONE HUNDRED THOUSAND AND NO/100 DOLLARS)

WHEREAS, the City’s Community & Economic Development Department Planning Manager position plays an essential role in guiding the ongoing and future growth and development of the community, and

WHEREAS, the Planning Division Manager position is currently vacant and the CITY is actively recruiting to fill the vacant position, and

WHEREAS, the CITY has determined that it needs to appoint an Interim Planning Manager to provide leadership services for the Planning Division during the recruitment period, and

WHEREAS, Citygate Associates, LLC, has entered into a Standard Agreement for Consultant Services with the City to provide such services in an amount not to exceed $20,000.00, and

WHEREAS, the City desires to amend Consultant’s contract for an additional amount not to exceed $80,000.00 for services as set forth in Exhibit “A” attached hereto,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Amendment to Agreement for Planning Manager services with Citygate Associates, LLC, for an additional sum not to exceed $80,000.00 and for a total contract amount not to exceed $100,000.00.
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 8th day of August 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
EXHIBIT “A”

SCOPE OF WORK

The consultant shall fulfill the obligations and duties of the Planning Manager for the City of Modesto on an interim part-time basis during the City’s recruitment to fill the position on a permanent basis. Such duties will include:

- Leading, managing, supervising and administering the Planning Division;
- Directing and organizing the Planning Division activities in the areas of urban growth management, specific plans, land use entitlements, annexation, environmental review, and the City’s General Plan;
- Coordinating staff reports and facilitate Planning Division teams relating to current planning, annexations, environmental reviews and analysis;
- Advising the Planning Commission and City Council on matters relating to the Planning Division;
- Administering the Planning Division’s budget;
- Directing, overseeing and participating in the development and implementation of the Planning Division work plan, assigning work activities, projects and programs;
- Monitoring workflow;
- Implementing policies and procedures;
- Coordinating Planning Division activities with those of other City departments and outside agencies and organizations.
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-492

A RESOLUTION APPROVING THE PURCHASE OF ONE (1) PIERCE QUANTUM FIRE ENGINE FROM GOLDEN STATE FIRE APPARATUS, MODESTO, CA FOR A TOTAL COST OF $418,540.39

WHEREAS, the Modesto Fire Department uses sixteen engine companies and three truck companies in its current fire/life safety delivery system, and

WHEREAS, front line apparatus consists of twelve engine companies and three truck companies, and

WHEREAS four reserve engines are utilized when front line apparatus are out-of-service for repairs and/or when additional apparatus is needed to maintain our system delivery, and

WHEREAS, in 1989 the Modesto Fire Department established an apparatus committee consisting of our Senior Fire Mechanic and representation from all suppression ranks, and

WHEREAS, their charge was to develop apparatus specifications and to review the capabilities of fire apparatus manufacturing facilities, and

WHEREAS, Pierce Manufacturing was the successful manufacturer during this process, and

WHEREAS, the City has since purchased twelve engines and three trucks from Pierce Manufacturing, and

WHEREAS, product quality, reliability, and technical support realized from Pierce Manufacturing over the past twelve years have contributed to the maintaining our operational costs and system reliability, and
WHEREAS, Pierce Manufacturing apparatus is sold in Northern California exclusively through Golden State Fire Apparatus a business located and operated in the City of Modesto, and

WHEREAS, on June 27, 2006, by Resolution No. 2006-416, Council adopted Pierce Manufacturing’s apparatus as the standard apparatus for the Modesto Fire Department,

WHEREAS, the Pierce purchase agreement ensures that the City will be paying the lowest cost commensurate with the desired quality by only allowing for price increases based on the Consumer Price Increase (CPI) OR 4%, which ever is lower, and by also allowing the City to access the terms (piggyback) of any recent Pierce bid awards throughout California. Therefore while acting within his discretion, the Purchasing Manager has invoked the exception.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the purchase of one (1) Pierce Quantum Fire Engine from Golden State Fire Apparatus for a total cost of $418,540.39.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 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: [Signature]
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: [Signature]
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-493

A RESOLUTION APPROVING A REQUEST FROM BIG VALLEY GRACE COMMUNITY CHURCH FOR USE OF AMPLIFIED MUSIC AT MANCINI BOWL FOR A CELEBRATE RECOVERY EVENT TO BE HELD ON SEPTEMBER 2, 2006 FROM 10:00 AM TO 5:00 PM

WHEREAS, staff from the Parks, Recreation and Neighborhoods Department has received a request from Big Valley Grace Community Church, requesting use of amplified music at Mancini Bowl on Saturday, September 2, 2006, from 10:00 a.m. to 5:00 p.m. for a Celebrate Recovery event, and

WHEREAS, City Council Policy No. 6-007 prohibits the use of amplified music in public without City Council approval,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a request from Big Valley Grace Community Church for the use of amplified music at Mancini Bowl for a Celebrate Recovery event on September 2, 2006, from 10:00 a.m. to 5:00 p.m.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 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: _______________________
SUSAN ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-494

A RESOLUTION APPROVING A LICENSE AGREEMENT WITH LOS ENCINOS MORAGA ASSOCIATES, LP, ALLOWING THE CITY ACCESS TO ROSEBURG LANE FOR THE PURPOSE OF ROAD RESURFACING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the Virginia Avenue Corridor Trail Project ("Project") consists of conversion of the abandoned, 4.2 mile Union Pacific Railroad corridor from City’s central business district at Needham Avenue to the northern City boundary at Bangs Avenue into a premier linear park with Class I bikeway and pedestrian trail, and

WHEREAS, the project will provide a key north-south component to the City’s non-motorized transportation system, and it will provide links to three of the City’s existing east-west Class I bike trails (the Dry Creek and Tuolumne River corridors and the Hetch-Hetchy Right-of-Way corridor) as well as numerous Class II bike lanes and Class III bike routes along roadways, and

WHEREAS, Modesto’s five Rotary Clubs have committed to combining resources with the City in providing funding, in-kind labor and materials for this project phase, to be known as the “Five Rotary Clubs of Modesto Centennial Junction” section of the Project, and

WHEREAS, on January 6, 2004, the City Council adopted the environmental document in the form of a Mitigated Negative Declaration /Finding of No Significant Impact, EA/PR&N 2003-07 (SCH# 20023102131) and approved the Specific Plan, and

WHEREAS, Roseburg Lane is an access roadway that leads to the Roseburg Square shopping center from Orangeburg Avenue, and
WHEREAS, Los Encinos Moraga Associates, LP owns an easement over a parcel of property that includes Roseburg Lane, and

WHEREAS, currently, the City of Modesto is in negotiations with Los Encinos Moraga Associates, LP to obtain their easement interest in this parcel, and

WHEREAS, the Roseburg Lane road surface is in very poor condition and in need of resurfacing and the resurfacing of Roseburg Lane is an improvement deemed necessary to provide a finished look and function to the Rotary project, with the expense of this resurfacing to be borne by the City, and

WHEREAS, in order to resurface Roseburg Lane, a License Agreement is required from Los Encinos Moraga Associates, LP, allowing access by the City to use the licensed area for the purpose of road resurfacing, and

WHEREAS, at its meeting on January 3, 2005, the Safety and Communities Committee supported the agreement between the City of Modesto and the five Rotary Clubs to combine resources and provide funding and in-kind labor and materials for constructing the “Rotary Clubs of Modesto Centennial Junction” section of the Virginia Corridor Trail,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a License Agreement between the City of Modesto and Los Encinos Moraga Associates, LP, allowing the City access to Roseburg Lane for the purpose of road resurfacing.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the License Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 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:

Attest: JEAN MORRIS, City Clerk

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-495

A RESOLUTION REVISING THE POSITION CLASSIFICATION PLAN FOR THE CITY OF MODESTO

WHEREAS, a Position Classification Plan for the City of Modesto was adopted by Modesto City Council Resolution No. 88-338 pursuant to Rule 2 of the Personnel Rules and Regulations of the City of Modesto, and

WHEREAS, the City Manager has recommended to the Council amendments to the Position Classification Plan, and

WHEREAS, Rule 2.2 of the City of Modesto Personnel Rules provides that revisions to the Classification Plan shall be effective upon adoption of resolution of the City Council,

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

SECTION I. CLASSIFICATIONS AMENDED. The Position Classification Plan of the City of Modesto is hereby amended to revise the job specifications for the following classifications:

1. Fire Equipment Mechanic
2. Operations and Maintenance Crewleader
3. Equipment Mechanic Crewleader

Said classifications are being amended to revise the job specifications to update the essential functions and certification requirements to more accurately reflect the job requirements of the various classifications. The job specifications for the classifications of Fire Equipment Mechanic, as shown on the attached Exhibit "A", Operations &
Maintenance Crewleader, as shown on the attached Exhibit "B", and Equipment Mechanic Crewleader, as shown on the attached Exhibit "C", which are hereby made a part of this resolution by reference, are hereby approved and made part of the Position Classification Plan of the City of Modesto.

SECTION 2. EFFECTIVE DATE. This resolution shall become effective on and after August 8, 2006.

The foregoing resolution was introduced in a regular meeting of the Council of the City of Modesto held on the 8th day of August 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:

Attest: Rebecca Resin
JEAN MORRIS, City Clerk

SUSANA ALCALA WOOD, City Attorney
Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

DEFINITION

To make minor and major mechanical repairs to fire suppression equipment including fire engines, water pumps and related equipment.

SUPERVISION RECEIVED AND EXERCISED

Receives general supervision from the Operations Commander.

ESSENTIAL AND MARGINAL FUNCTION STATEMENTS – Essential and other important responsibilities and duties may include, but are not limited to, the following:

Essential Functions:

Inspect, diagnose, and locate mechanical difficulties on city fire suppression equipment.

Weld, fabricate and assemble parts and equipment for city fire suppression equipment; weld, braze, cut shape and fasten metal parts; fabricate and weld hydraulic lines; vehicle frames, chassis, and exhaust systems.

Use welding equipment, drill presses, metal brakes, metal shears, lathes, grinders and a large assortment of other power and hand tools and measurement instruments required for journey level fabrication work.

Overhaul, repair, and adjust engines, transmissions, differentials, clutches; fire engine pumps and valves and hydraulic systems.

Tune up engines, replacing electrical and electronic parts and cleaning and adjusting carburetors; chain saws, portable power units and generators.

Replace or repair faulty parts including wheel bearings, clutches, or oil seals, shock absorbers, exhaust systems, steering mechanisms, and related parts and equipment.

Install, repair and replace two-way communication emergency lighting and siren equipment.

Exhibit "A"
Essential Functions: (Continued)

Prepare and replace such components as generators, distributors, relays, lights and switches.

Diagnose and repair computerized control systems, ignition systems, power steering and cooling systems.

Repair, adjust and replace brake systems including disc, hydraulic and air brakes.

Assist in the purchasing of equipment maintenance parts and materials.

Maintain computer based work, time, and material records.

Perform smog certification on City owned vehicles.

Participate in the development of bid specifications.

Marginal Functions:

Perform related duties as assigned.

QUALIFICATIONS

Knowledge of:

Operating and repair characteristics of a wide variety of City fire suppression equipment.

Operation and care of internal combustion engines and hydraulic equipment.

Methods, materials, equipment and tools used in routine welding and fabrication work.

Tools, equipment, and procedures used in the overhaul, repair, and adjustment of gas and diesel powered equipment.

Safe work practices.

Computers and electronics in vehicle applications.
Ability to:

Perform journey level equipment mechanical work including the trouble shooting of equipment for both major and minor repairs work.

Work independently in the absence of supervision.

Accurately determine mechanical repair needs and estimate the cost and time of repairs.

Use a variety of tools and equipment with skill.

Maintain a variety of shop and repair records.

Troubleshoot and repair electronic and computer controlled systems.

Follow and understand wiring diagrams.

Understand and follow oral and written directions.

Establish and maintain cooperative-working relationships with those contacted in the course of work.

Perform heavy manual labor, including, but not limited to, lifting and carrying up to 100 lbs. of weight.

Experience and Training Guidelines
Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Three years of responsible equipment maintenance and repair experience including practical experience in the maintenance of both diesel and gas powered equipment. Experience in the repair and maintenance of fire apparatus is desirable.

Training:

Formal or informal education or training which ensures the ability to read and write at a level necessary for successful job performance including specialized training in maintenance and repair of gas and diesel powered equipment.
License or Certificate

Possession of a valid Class B California Driver’s License with appropriate endorsements is required within 45 days of appointment. Failure to obtain the license within this period shall be grounds for release from probation.

Possession of, or ability to obtain, an appropriate, valid Vehicle Inspection Pollution Controls license:

Possession of a valid certificate in air conditioning repair under Section 609 of the Federal Clean Air Act is required by time of appointment.

Special Requirement

Possession of a complete set of mechanic hand tools through 1-1/2 inch and tool box.

WORKING CONDITIONS

Environmental Conditions:

Field environment, travel from site to site, exposure to hot and cold temperatures, inclement weather, hazards of confined spaces and other hazardous materials.

Physical Conditions:

Essential and marginal functions may require maintaining physical condition necessary for heavy lifting up to 100 pounds, walking, standing, bending, stooping and crawling for prolonged periods of time; operating motorized equipment and vehicles.
OPERATIONS AND MAINTENANCE CREWLEADER

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

DEFINITION

Crewleaders assign work, train, and provide field supervision of crews engaged in a variety of water, storm/wastewater, streets, and urban forestry operations, maintenance, repair and/or construction work; and to provide lead worker assistance to supervisory and/or management staff.

SUPERVISION RECEIVED AND EXERCISED

Receives supervision from supervisory and management staff.

Exercises direct field supervision over crews engaged in maintenance and repair activities.

ESSENTIAL AND MARGINAL FUNCTION STATEMENTS

Essential and other important responsibilities may include, but are not limited to, the following:

**Essential Functions:**

Provide field supervision to crews involved in a variety of water, storm/wastewater, streets, sidewalks, and urban forestry operations, maintenance, repair and/or construction work.

Assist in the design, planning, prioritizing, assignment, and inspection of various maintenance, repair, and construction projects.

Provide feedback to supervisory staff regarding field performance of crews for the purpose of evaluating employee performance.

Assist in developing and monitoring of the Division budget.

Participate in the selection of staff; provide or coordinate staff training; work with employees to correct deficiencies through coaching.

Exhibit "B"
Essential Functions: (Continued)

Answer questions and provide information to the public; investigate complaints and recommend corrective action as necessary to resolve complaints.

Participate and encourage work unit participation in team building activities including self-directed work teams.

Operate and oversee the operation of a full range of heavy and light equipment as needed such as backhoes, loaders, dump trucks, rollers, tractors, vactor trucks, aerial towers and various trucks.

May operate a mobile crane.

Maintain time, material and equipment use records; prepare various reports related to work activities including technical reports in response to regulatory activities.

Prepare project cost estimates; requisition supplies and materials.

When assigned to utility divisions, may assist in activities that ensure adherence to environmental quality standards.

Perform standby duty as assigned.

Marginal Functions:

Perform related duties as assigned.

Additional duties when assigned to Water Operations:

Operate portable sample pump.

Pack, lubricate, clean and paint pumping equipment and motors.

Flush distribution system to maintain water quality.

Maintain and operate chemical feed systems and perform dosage computations.

Install, maintain, and calibrate water meters, hypo chlorinators and on-line analyzers.

Exhibit "B"
**Additional duties when assigned to Water Operations:** (Continued)

Monitor and maintain Granular Activated Carbon (GAC) filters; assist in removal and replacement of carbon, backwashes as required.

Monitor and maintain wellhead water treatment units and storage reservoirs. Perform minor adjustments as required.

Perform the function of shift operator as defined by the California Department of Health Services regulations.

Perform concrete repair including sawing, pouring, finishing and jack hammering.

**QUALIFICATIONS**

**Knowledge of:**

Materials, methods, practices, equipment and elements of construction technology as they relate to the assigned operations, construction, maintenance and repair activities.

Types and level of maintenance and repair activities generally performed in streets, water, storm/wastewater collection, fleet, park or urban forestry program.

Principles of personnel supervision and training.

Safe work practices; regulatory safety programs and procedures.

Pertinent sections of health, safety and labor codes.

Word processing and spreadsheet applications and Internet usage necessary for job performance.

English composition and technical report writing.

Cost accounting.

**Ability to:**

Plan, estimate, direct, coordinate, schedule and review the work of others.

Operate and maintain equipment and tools used in the field.

Exhibit "B"
Ability to: (Continued)

Identify and implement effective courses of action to complete assigned work; use lead by example methodology.

Keep records and make reports.

Lead by example and train assigned staff.

Communicate clearly and concisely, both orally and in writing.

Establish and maintain cooperative-working relationships with those contacted in the course of work.

Coordinate work assignments with other divisions, departments, and agencies and volunteer groups.

Perform medium-heavy manual labor, including but not limited to lifting and carrying up to seventy-five (75) pounds of weight, climbing, bending, stooping, etc.

Experience and Training Guidelines:

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Three years of increasingly responsible experience performing utility operations, construction and maintenance work in the assigned area of responsibility (such as utility infrastructure, sidewalks, parks, or urban forestry).

Training:

Formal or informal education that ensures the ability to read, write, and communicate at a level necessary for successful job performance.

License or Certificate:

Possession of an appropriate, valid Class A or Class B Commercial California Driver's license with appropriate endorsements, as assigned, within 45 days of appointment. Failure to obtain the required license may result in release from probation or termination.

Exhibit "B"
License or Certificate: (Continued)

When assigned, possession of a valid crane operator certificate, issued by the National Commission of Crane Operators, is required within six months of assignment.

When Assigned to Streets and Traffic Operations:

Any employees hired, transferred, or promoted into this position shall possess a work zone safety certificate from International Municipal Signal Association (IMSA), Traffic Control Supervisor Association (TCSA), International Transportation Engineers (ITE), American Public Works Association (APWA), or the American Traffic Safety Services Association (ATSSA) at time of final filing.

When Assigned to Water Distribution:

Possession of a Grade III water distribution operator certificate issued by the State of California at time of final filing.

Possession of a certificate issued by the American Water Works Association (AWWA) for backflow device testing and/or Grade I Water Conservation Practitioner is highly desirable.

When Assigned to Water Division – Pumps:

Possession of a Grade III water distribution operator certificate issued by the State of California at time of final filing.

Possession of a Grade II water treatment certificate issued by the State of California at time of final filing.

When Assigned to Urban Forestry:

Possession of a Pesticide Applicator's Certificate within one year of appointment.

When Assigned to Wastewater Collections:

Any employees hired, transferred, or promoted into this position shall possess a Grade II Certificate Wastewater Collection System Maintenance Technologist issued by the California Water Environment Association (CWEA) at time of final filing.

Exhibit "B"
WORKING CONDITIONS

Environmental Conditions:
Field environment; travel from site to site; hot and cold temperatures; inclement weather.

Physical Conditions:
Essential and marginal functions may require maintaining physical condition necessary for walking or standing for prolonged periods of time; operating motorized equipment and vehicles.

Work Assignments:
Depending on assignment may be subject to overtime and standby work assignments.
EQUIPMENT MECHANIC CREWLEADER

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

DEFINITION

To lead skilled and semi-skilled mechanics in the most difficult and complex vehicle and equipment maintenance and repair work; and to personally make the most complex mechanical repairs to automotive, diesel, public safety and other power driven equipment.

SUPERVISION RECEIVED AND EXERCISED

Receives general supervision from higher-level equipment maintenance staff.

Exercises functional and technical supervision over lower level equipment maintenance staff.

ESSENTIAL AND MARGINAL FUNCTION STATEMENTS-

Essential and other important responsibilities may include, but are not limited to, the following:

Essential Functions:

Lead, train and assist journey level and semi-skilled mechanics; assign work to mechanics; assist the Fleet Maintenance Supervisor in the day-to-day supervision activities.

Inspect, diagnose, and locate mechanical difficulties on City automobiles, trucks, and a variety of diesel and gasoline powered maintenance and heavy construction equipment.

Weld, fabricate and assemble parts and equipment for City automotive and heavy equipment; weld, braze, cut shape and fasten metal parts; fabricate and weld, vehicle frames, chassis and exhaust systems.

Use welding equipment, drill presses, lathes, grinders and large assortment of other power and hand tools and measurement instruments required for journey level fabrications work.

Exhibit "C"
Essential Functions: (Continued)

Overhaul, repair, and adjust engines, transmissions, differentials, clutches, fire engine pumps and valves and heavy construction equipment hydraulic systems.

Tune up engines, replacing electrical and electronic parts and cleaning and adjusting carburetors and fuel injection systems.

Replace or repair faulty parts including wheel bearings, clutches or oil seals, shock absorbers, exhaust systems, steering mechanisms, and related parts and equipment.

Repair or replace such components as generators, alternators, distributors, relays, lights and switches, computerized control systems, ignition systems, air conditioning systems, power steering and cooling systems.

Assist in the purchasing of equipment maintenance parts and materials.

Maintain work, time and material records.

Perform smog certification on City-owned vehicles.

Marginal Functions:

Perform related duties as assigned.

QUALIFICATIONS

Knowledge of:

Tools, equipment, and procedures used in the overhaul, repair, and adjustment of gas and diesel powered equipment.

Operation and care of internal combustion engines, fire suppression pumping systems, hydraulic equipment.

Methods, materials equipment and tools used in welding and fabrications work.

Operating and repair characteristics of a wide variety of City owned equipment.

Safe work practices.

Principles of personnel supervision and training.

Basic computer skills.

Exhibit "C"
Ability to:

Lead and train skilled and semi-skilled mechanics.

Perform skilled welding and fabrication work.

Perform minor and major mechanical work on mechanical equipment.

Use a variety of tools and equipment with skill.

Maintain a variety of shop and repair records.

Understand and carry out oral and written directions.

Understand and operate a computerized Fleet Management System.

Perform journey level equipment mechanical work including the trouble-shooting of equipment for both major and minor repair work.

Work independently in the absence of supervision.

Accurately determine mechanical repair needs and estimate the cost and time of repairs.

Establish and maintain cooperative working relationships with those contacted in the course of work.

Experience and Training Guidelines

Any combination of experience and training what would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Four years of increasingly responsible experience performing automotive and equipment maintenance and repair duties comparable to those of an Equipment Mechanic.

Training:

Equivalent to completion of the twelfth grade and specialized training in the maintenance and repair of gas and diesel powered equipment.
License or Certificate

Possession of, or ability to obtain, an appropriate, valid class California driver's license.

Possession of a valid Class A or B Commercial California Driver's License with appropriate endorsements, as assigned, is required within 45 days of appointment. Failure to obtain the required license within this period may result in release from probation.

Possession of, or ability to obtain, an appropriate, valid Vehicle Inspections Pollution Controls license.

In compliance with Environmental Protection Agency (EPA) regulations, possession of an appropriate Motor Vehicle Air Conditioning Certification is required within one year of appointment. Failure to obtain this certification within this period shall be grounds for release from probation.

Possession of Certification from the National Institute for Automotive Service Excellence in at least five (5) areas heavy-duty class is required within one year of appointment. Failure to obtain this certification within this period shall be grounds for release from probation.

Special Requirements

Possession of a complete set of mechanic hand tools through 1-1/2" and toolbox.

WORKING CONDITIONS

Environmental Conditions:

Office and field environment; travel from site to site. Hot and cold temperatures; inclement weather.

Physical Conditions:

Essential and marginal functions may require maintaining physical condition necessary for walking or standing for prolonged periods of time; lifting up to 100 lbs. and operating motorized equipment and vehicles.
MODesto City Council
Resolution No. 2006-496

A Resolution Approving an Agreement Between City of Modesto and Save Mart Supermarkets, A Corporation, To Operate as a Bus Pass Outlet for Modesto Area Express at the Save Mart Located at 801 Oakdale Road, Modesto, CA 95355, and Authorizing the City Manager, or His Designee, to Execute the Agreement

Whereas, in October 1989, Council approved the plan to establish outlets to sell monthly bus passes, and

Whereas, there are currently nine (9) outlets strategically located around Modesto, and

Whereas, Save Mart Supermarkets has a store located at 801 Oakdale Road, and

Whereas, approving an agreement between the City of Modesto and Save Mart Supermarkets to operate a bus pass outlet will maintain the program’s geographic coverage of Modesto,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto hereby approves an agreement between the City of Modesto and Save Mart Supermarkets, to operate a bus pass outlet for Modesto Area Express at the Save Mart located at 801 Oakdale Road.

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 8th day of August 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:

ATTEST: 

JEAN MORRIS, City Clerk

By: 

SUSANA ALCALA WOOD, City Attorney
RESOLUTION NO. 2006-497

A RESOLUTION ACCEPTING THE RANCHO ENCANTADO BIKE TRAIL IN THE FAIRVIEW VILLAGE SPECIFIC PLAN AREA AND AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION

WHEREAS, Del Valle Homes, a California Corporation ("DEVELOPER"), is the developer of the Galas Subdivision, also known as the Rancho Encantado Subdivision ("DEVELOPMENT"), and

WHEREAS, a condition of DEVELOPMENT was to construct a Class 1 bike trail ("IMPROVEMENTS") along an existing City of Modesto sewer easement located within the DEVELOPMENT, and

WHEREAS, the City Engineer, in a memorandum to staff, indicates that the IMPROVEMENTS, which is only one of several facilities included in the Acquisition and Shortfall Agreement ("AGREEMENT") between the City of Modesto Community Facilities District No. 2003-1 (Fairview Village), a District created pursuant to the provision of the California Government Code Section 53311.5 et. seq. ("DISTRICT") and the Developer, has been completed to the satisfaction of the Public Works Department, and,

WHEREAS, DEVELOPER filed with the City and/or DISTRICT adequate improvement securities to secure faithful performance of this Agreement and to secure payment for labor and materials, and

WHEREAS, DEVELOPER has filed several warranty bonds to guarantee the IMPROVEMENTS in the DEVELOPMENT, and
WHEREAS, the City Engineer has indicated that it would be in order for the City Council to accept the IMPROVEMENTS in said development as complete, and authorize the City Clerk to record a Notice of Completion,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the IMPROVEMENTS, which include a meandering walkway, landscaping & irrigation, lighting and signage per the AGREEMENT, are hereby accepted and the City Clerk is hereby authorized to record a Notice of Completion for the improvements.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 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. 2006-498

A RESOLUTION APPROVING AN AGREEMENT FOR THE ACQUISITION OF A PORTION OF A PARCEL OF LAND ALONG PELANDALE AVENUE AT TULLY ROAD OWNED BY BIG VALLEY GRACE COMMUNITY CHURCH, INC. (APN: 046-003-006), INCLUDING A TEMPORARY CONSTRUCTION EASEMENT 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, a 265 sq ft partial right-of-way take was identified for permanent acquisition and a 6,273 sq ft Temporary Construction Easement was identified for a limited duration on a parcel at Pelandale Avenue at Tully Road owned by Big Valley Grace Community Church, Inc., (APN: 046-003-006), and

WHEREAS, the City Council of the City of Modesto directed staff to enter into negotiations with Big Valley Grace Community Church, Inc., to purchase the portion of its 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 Big Valley Grace Community Church,

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 Big Valley Grace Community Church to purchase the necessary real property for the Pelandale Expressway 6-Lane Widening Project in the amount of $9,200.00.

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 8th day of August, 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. 2006-499

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN ACCEPTANCE FORMS FOR THE GRANT DEED FOR THE ACQUISITION OF A PORTION OF THE PARCEL ALONG PELANDALE AVENUE AT TULLY ROAD OWNED BY BIG VALLEY GRACE COMMUNITY CHURCH, INC., (APN: 046-003-006), AND A TEMPORARY CONSTRUCTION EASEMENT 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 a parcel (APN: 046-003-006) for the 6-lane widening of Pelandale Avenue from Dale Road to McHenry Avenue,

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 one (1) Grant Deed for the acquisition of a portion of a property owned by Big Valley Grace Community Church, Inc., (APN: 046-003-006) and one (1) Temporary Construction Easement (APN: 046-003-006) for the 6-lane widening of Pelandale Avenue from Dale Road to McHenry Avenue.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 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: [Signature]

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-500

A RESOLUTION APPROVING AN AGREEMENT FOR THE ACQUISITION OF A PORTION OF A PARCEL OF LAND ALONG PELANDALE AVENUE AT AMERICAN AVENUE OWNED BY HANS J. AND DONALD E. WAGNER (APN: 078-018-021) INCLUDING A TEMPORARY CONSTRUCTION EASEMENT 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, a 1.078 acre partial right-of-way take was identified for permanent acquisition and a 7,085 sq ft Temporary Construction Easements was identified for a limited duration on a parcel at Pelandale Avenue at American Avenue owned by Hans J. Wagner and Donald E. Wagner (APN: 078-018-021), and

WHEREAS, the City Council of the City of Modesto directed staff to enter into negotiations with Hans J. Wagner and Donald E. Wagner 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 Hans J. Wagner and Donald E. Wagner,

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 Hans J. Wagner and Donald E. Wagner to purchase the necessary real property for the Pelandale Expressway 6-Lane Widening Project in the amount of $385,000.00.

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 8th day of August 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
A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN ACCEPTANCE FORMS FOR THE GRANT DEED FOR THE ACQUISITION OF A PORTION OF THE PARCEL ALONG PELANDALE AVENUE AT AMERICAN AVENUE OWNED BY HANS J. AND DONALD E. WAGNER (APN: 078-018-021) AND A TEMPORARY CONSTRUCTION EASEMENT 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 a parcel (APN: 078-018-021) for the 6-lane widening of Pelandale Avenue from Dale Road to McHenry Avenue,

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 one (1) Grant Deed for the acquisition of a portion of a property owned by Hans J. Wagner and Donald E. Wagner (APN: 078-018-021) and one (1) Temporary Construction Easement for the 6-lane widening of Pelandale Avenue from Dale Road to McHenry Avenue.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 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
A RESOLUTION APPROVING THE ACCEPTANCE OF AN AIRPORT IMPROVEMENT PROGRAM GRANT IN THE AMOUNT OF $550,000 FROM THE FEDERAL AVIATION ADMINISTRATION TO FUND A PROJECT TO REHABILITATE HANGAR TAXILANES AND INSTALL AIRFIELD GUIDANCE SIGNS AND MARKINGS AT THE MODESTO CITY-COUNTY AIRPORT AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE ACCEPTANCE OF THE GRANT ON BEHALF OF THE CITY

WHEREAS, Modesto City-County Airport’s hangar taxilanes and guidance signs and markings have deteriorated over the years, and

WHEREAS, on March 28, 2006, the City Council authorized staff to submit a grant application to the Federal Aviation Administration (FAA), in the amount of $1 million for funding of Airport Capital Improvement Plan projects approved by the FAA, and

WHEREAS, the FAA notified the City that an Airport Improvement Plan (AIP) Grant Offer of $550,000 has been made for funding of a project consisting of the following: “rehabilitate hangar taxilanes; install airfield guidance signs and markings”, and

WHEREAS, this Grant Offer must be accepted on or before August 15, 2006, and

WHEREAS, acceptance of the grant will provide the City with funding to install new signage to replace old and sun bleached signs on and around the airfield, as well as install slot drains to resolve drainage problems around existing T-hangars, and to slurry seal the pavement adjacent to the aircraft storage hangars, and
WHEREAS, the Economic Development Committee approved submittal of the application for AIP Grant on March 13, 2006, and the Airport Advisory Committee also approved the application for the grant and endorses acceptance of the Grant,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the acceptance of an Airport Improvement Program grant in the amount of $550,000 from the Federal Aviation Administration to “rehabilitate hangar taxilanes; install airfield guidance signs and markings” at the Modesto City-County Airport.

BE IT FURTHER RESOLVED that the Council hereby authorizes the City Manager, or his designee, to execute the acceptance of the grant on behalf of the City of Modesto.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 2006 by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carrier and the resolution adopted by the following vote:

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

NOES: Councilmember: None

ABSENT: Councilmember: None

ATTEST: Rebecca Redin
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION AMENDING THE ADOPTED CAPITAL IMPROVEMENT PROGRAM BUDGET FOR FISCAL YEAR 2005-06 AND APPROPRIATING $550,000 IN FEDERAL AVIATION ADMINISTRATION GRANT FUNDING TO ESTABLISH A CAPITAL IMPROVEMENT PROJECT TITLED “SIGNAGE/TAXILANES” (6320-430-A804)

WHEREAS, Modesto City-County Airport’s hangar taxilanes and guidance signs and markings have deteriorated over the years, and

WHEREAS, on March 28, 2006, the City Council authorized staff to submit a grant application to the Federal Aviation Administration (FAA), in the amount of $1 million for funding of Airport Capital Improvement Plan projects approved by the FAA, and

WHEREAS, the FAA notified the City that an Airport Improvement Plan (AIP) Grant Offer of $550,000 has been made for funding of a project consisting of the following: “rehabilitate hangar taxilanes; install airfield guidance signs and markings”,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Modesto, that an amendment to the Capital Improvement Program Budget for fiscal year 2005-06 is hereby approved to establish a capital improvement project dedicated titled “Signage/Taxilanes”.

BE IT FURTHER RESOLVED that City staff is hereby authorized to make the necessary amendments to the budget in coordination with the Finance Department to appropriate funding in the amount of $550,000 from Federal Aviation Administration grant funds to Account No. 6320-440-A804.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 8th day of August 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:

By: Susana ALCALA WOOD, City Attorney
A RESOLUTION APPROVING THE PLANS & SPECIFICATIONS, ACCEPTING THE BID AND APPROVING A $548,631.25 CONTRACT WITH PERMA GREEN HYDROSEEDING, INC., FOR THE PROJECT TITLED, “TUOLUMNE RIVER REGIONAL PARK GATEWAY PARCEL PHASE 1.1,” AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT

WHEREAS, City staff has recommended approval of the plans and specifications for the “Tuolumne River Regional Park Gateway Parcel Phase 1.1” project, and

WHEREAS, the bid received for “Tuolumne River Regional Park Gateway Parcel Phase 1.1” project was opened at 11:00 a.m. on July 25, 2006, and later tabulated by the Public Works Director for the consideration of the Council, and

WHEREAS, the Public Works Director has recommended that the bid of $548,631.25 received from Perma Green Hydroseeding, Inc., be accepted as the lowest responsible bid and the contract be awarded to Perma Green Hydroseeding, Inc.,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for said project, and accepts the bid of Perma Green Hydroseeding, Inc., in the amount of $548,631.25, and hereby awards Perma Green Hydroseeding, Inc., the contract titled “Tuolumne River Regional Park Gateway Parcel Phase 1.1”.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 8th day of August 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-505

A RESOLUTION APPROVING A REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND NATIONAL RAILROAD PASSENGER CORPORATION IN AN AMOUNT NOT-TO-EXCEED $59,886.02 FOR PLATFORM CONSTRUCTION REPAIR COSTS AT THE MODESTO CALIFORNIA AMTRAK STATION, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the lease agreement between the City and National Railroad Passenger Corporation (Amtrak) states: “LESSOR (the City), at its sole cost and expense, will maintain in good repair and safe condition the platform in accordance with all laws and regulations”, and

WHEREAS, the truncated dome tiles on the platform of the Modesto Amtrak Station are in need of serious repair, and

WHEREAS, National Railroad Passenger Corporation has significant experience in repairing platforms,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Reimbursement Agreement between the City of Modesto and National Railroad Passenger Corporation in an amount not-to-exceed $59,886.02 for the platform construction repair costs at the Modesto California Amtrak Station.

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 8th day of August 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: [Signature]

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-506

A RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR SANDERS NEIGHBORHOOD PARK PROJECT, ACCEPTING THE BID AND APPROVING A $2,449,356.60 CONTRACT WITH GOODLAND LANDSCAPE CONSTRUCTION, INC., FOR THE PROJECT TITLED “SANDERS NEIGHBORHOOD PARK”, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the “Sanders Neighborhood Park” and City staff recommends approval to the City Council, and

WHEREAS, the bids received for “Sanders Neighborhood Park” were opened at 11:00 a.m. on July 11, 2006, and later tabulated by the Public Works Director for the consideration of the Council, and

WHEREAS, the Public Works Director has recommended that the bid of $2,449,356.60 received from Goodland Landscape Construction, Inc., be accepted as the lowest responsible bid and the contract be awarded to Goodland Landscape Construction, Inc.,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for said project, and accepts the bid of Goodland Landscape Construction, Inc., in the amount of $2,449,356.60, and hereby awards Goodland Landscape Construction, Inc., the contract titled “Sanders Neighborhood Park.”

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 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: Rebecca Riden

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-507

A RESOLUTION AMENDING THE CAPITAL IMPROVEMENT PROGRAM TO
A) TAKE THE NECESSARY STEPS TO MOVE $705,800 FROM THE VILLAGE
ONE #2 FUND CLAUS PARK STREET IMPROVEMENTS PROJECT
(ACCOUNT #2691-020-X531) AND SANDERS PARK (CLAUS PARK)
CONSTRUCTION PHASE 1 & 2 (ACCOUNT #2691-020-X537) TO THE
SANDERS NEIGHBORHOOD PARK PROJECT (ACCOUNT #1350-310-P402) IN
THE PARKS CFF FUND; AND B) APPROPRIATE $799,200 FROM ACCOUNT
#1350-800-8000-8003, THE PARKS CFF FUND RESERVE, TO THE SANDERS
NEIGHBORHOOD PARK ACCOUNT #1350-310-P402, FOR A TOTAL OF
$1,505,000 IN ADDITIONAL FUNDING

WHEREAS, in October 2004, the Parks, Recreation and Neighborhoods
Department began a project to build a 7-acre neighborhood park located on the corner of
Kodiak Drive and Litt Road, and

WHEREAS, construction bids were opened on July 11, 2006, and Goodland
Landscape Construction, Inc., was the low bidder, and

WHEREAS, the Engineer’s estimate and the bids are considered reasonable
whenever any of the bids are within 10% of the Engineer’s estimate, and

WHEREAS, the low bidder was within 24.51% of the Engineer’s estimate but
still considered competitive, and

WHEREAS, staff does not feel that another bid would result in any lower cost for
the work, and

WHEREAS, in order to fully fund construction of the project, the Capital
Improvement Program needs to be amended, and

WHEREAS, $330,000 is available from the Claus Park Street Improvements
Project Account # 2691-020-X531, and
WHEREAS, $375,800 is available from the Sanders Park (Claus Park) Construction Phase 1 & 2 Project Account #2691-020-X537, and

WHEREAS, $799,200 is available from the Parks CFF Fund Reserve, account #1350-800-8000-8003, and

WHEREAS, expenditures for Sanders Neighborhood Park will be increased to reflect the full costs of the project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves amending the Capital Improvement Program to reduce Claus Park Street Improvements project account #2691-020-X531 by $330,000 and increase Village One #2 Reserve account #2691-800-8000-8208 by $330,000.

BE IT FURTHER RESOLVED that the Council hereby approves amending the Capital Improvement Program to reduce Sanders Park (Claus Park) Construction Phase 1& 2 project account #2691-020-X537 by $375,800 and increase Village One #2 Reserve account #2691-800-8000-8208 by $375,800.

BE IT FURTHER RESOLVED that the Council hereby approves amending the Capital Improvement Program to reduce the Village One #2 Reserve account #2691-800-8000-8208 by $705,800 and increase the Parks CFF Fund Reserve account #1350-800-8000-8003 by $705,800.

BE IT FURTHER RESOLVED that the Council hereby approves amending the Capital Improvement Program to appropriate $1,505,000 from account #1350-800-8000-8003, the Parks CFF Fund Reserve, to the Sanders Neighborhood Park account #1350-310-P402.
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 8th day of August 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: [Signature]

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006–508

A RESOLUTION APPROVING THE POLICY TITLED “WATER AND SEWER SERVICE POLICY REGARDING AFFORDABLE HOUSING DEVELOPMENT PURSUANT TO SECTION 65589.7 OF THE GOVERNMENT CODE” FOR IMPLEMENTATION OF SENATE BILL 1087 (SB 1087) REQUIREMENTS FOR WATER AND SEWER SERVICE

WHEREAS, California Government Code Section 65589.7 was amended in October 2005 by Senate Bill 1087 (SB 1087) to require each public agency or private entity providing water and sewer services to grant a priority for the provision of these services to proposed developments that include housing units affordable to lower income households, and

WHEREAS, public agencies or private entities providing water and sewer services must adopt written policies and procedures no later than July 1, 2006, and at least every five years thereafter, to implement the provisions of Section 65589.7, and

WHEREAS, Public Works staff prepared a draft policy for compliance with the requirements of Section 65589.7, and

WHEREAS, at its June 12, 2006, meeting, the Council Economic Development Committee reviewed the draft policy and directed staff to follow up on four areas of the draft policy, and

WHEREAS, staff followed up on the four areas addressed at the Committee meeting and revised the policy, and

WHEREAS, the revised policy attached hereto as Exhibit “A” outlines the steps necessary for implementation of SB 1087 Code requirements,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Policy titled “Water And Sewer Service Policy Regarding Affordable Housing Development Pursuant To Section 65589.7 Of The Government Code” attached hereto as Exhibit “A” and incorporated herein by reference, for the Implementation of Senate Bill 1087 Requirements for Water and Sewer Service.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 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: [Signature]

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: [Signature]

SUSANA ALCALA WOOD, City Attorney
WATER AND SEWER SERVICE POLICY REGARDING
AFFORDABLE HOUSING DEVELOPMENT PURSUANT
TO SECTION 65589.7 OF THE GOVERNMENT CODE

PURPOSE: In order to clarify its position regarding the provision of water and sewer service to proposed developments within all of the City of Modesto's water and sewer service areas that include housing units affordable to lower income households within the City's water and sewer service areas, Council has adopted a policy statement in accordance with Section 65589.7 of the Government Code.

BACKGROUND: Section 65589.7 of the Government Code was amended in October 2005 to require that each public agency or private entity providing water and sewer services grant a priority for the provision of these services to proposed developments that include housing units affordable to lower income households. Furthermore, public agencies or private entities providing water and sewer services must adopt written policies and procedures no later than July 1, 2006, and at least every five years thereafter, to implement the provisions of Section 65589.7.

Within the City of Modesto's water and sewer service areas a proposed development can be defined as including affordable housing by providing any of the following information:

1) Projects with housing that will be sold or rented to households with less than 80 percent of median income.
2) Affordability covenants that are recorded with the property.
3) Market rate apartments built at a minimum density of 15 units per net acre.
4) Other specific types of housing that, by their nature, are considered to satisfy affordable housing, such as emergency shelters, homes used for transitional housing, second units, mobile homes, boarding houses, farm labor housing, single-room occupancy units, or density bonus units.
5) Housing units that qualify for the City of Modesto's Capital Facility Fee waivers.

For proposed developments within the City of Modesto's water and sewer service areas (but outside the City limits), the City may review and consider the requirements set forth in the adopted housing elements of those jurisdictions to determine whether the project may be entitled to a priority consistent with this policy.

POLICY: It is the policy of the City of Modesto that proposed development within all of the City's water and sewer service areas shall be granted a priority for water and sewer service provided that at least ten percent of the total housing units in the proposed development are affordable to lower income households, that their affordability will be determined by HUD standards of affordability, that covenants be recorded over the property to ensure affordability, and that the findings are made per the implementation procedures outlined in the "Implementation" section. The proposed developments shall be within the current limits of a city or county areas that are served by the City of Modesto (defined service areas).

IMPLEMENTATION FINDINGS: Proposed development within the City's water and sewer service areas that include housing units affordable to lower income households shall be granted a priority for water and sewer service provided that the following specific written findings are made:
Water Service:

1) That the City of Modesto’s water supply system is not experiencing a water shortage emergency, or under the water shortage restrictions pursuant to Chapter 3 (commencing with Section 350) of Division 1 of the Water Code relating to water emergencies.

2) That the City of Modesto’s water supply system is not subject to a compliance order issued by the State Department of Health Services that prohibits new water service connections.

3) That sufficient water supplies are available to serve the proposed development as identified in the City of Modesto’s most recently adopted Urban Water Management Plan.

4) That the City of Modesto’s water supply system has sufficient water treatment, transmission, and distribution capacity to serve the needs of the proposed development as demonstrated by a written engineering analysis and report.

Sewer Service:

5) That the City of Modesto has sufficient wastewater collection and treatment system capacity to serve the needs of the proposed development as demonstrated by a written engineering analysis and report.

6) That the City of Modesto is not under an order by the Central Valley Regional Water Quality Control Board that prohibits new sewer service connections.

In addition to the above requirements, the following items are specific conditions on the proposed developments:

7) That, based on the size and location of the project, the applicant agrees to finance any additional water and sewer capacity studies determined necessary by the City of Modesto.

8) That the project applicant has agreed to comply with all reasonable terms, conditions, and standards of the City of Modesto relating to the provision of water and sewer services applicable to development projects, as identified in the written analysis reports.

9) That the project applicant has agreed to comply with all local, state, and federal laws and regulations relating to the provision of water and sewer services applicable to development projects.

10) That the project applicant has agreed to pay all fees and charges relating to the provision of water and sewer services for development projects.

Findings for sewer service do not apply to areas outside the City of Modesto where the City of Modesto only provides water service. Similarly, findings for water service do not apply to areas outside the City of Modesto where only sewer service is provided.

IMPLEMENTATION: The City Public Works and Community and Economic Development Departments shall institute an implementation program wherein projects with housing affordable to lower income households per HUD standards are given processing priority over projects not containing such affordable housing.
A RESOLUTION ACCEPTING THE WORK BY GROVER LANDSCAPE SERVICES, INC., FOR THE PROJECT TITLED “COMMUNITY GATEWAY” AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION, AND AUTHORIZING PAYMENT OF AMOUNTS DUE TOTALING $388,609.85

WHEREAS, a report has been filed by the Public Works Director that the project titled “Community Gateway” has been completed by Grover Landscape Services, Inc., in accordance with the contract agreement dated May 24, 2005,

NOW, THEREFORE, BE IT RESOLVED by the Council that the “Community Gateway” project is hereby accepted as complete from said contractor, Grover Landscape Services, Inc., that the Notice of Completion be filed with the Recorder of Stanislaus County and that payment of amounts due totaling $388,609.85, as provided in the contract, be authorized.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 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 ÁLCALA WOOD, City Attorney

ATTEST:

JEAN MORRIS, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-510

A RESOLUTION ACCEPTING THE WORK BY RICHARD TOWNSEND CONSTRUCTION, INC., FOR THE PROJECT TITLED "CONSTRUCT FLUSH LINE FOR WELL 63 AT MILDRED PERKINS PARK" AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION, AND AUTHORIZING PAYMENT OF AMOUNTS DUE TOTALING $118,032.65

WHEREAS, a report has been filed by the Public Works Director that the project titled “Construct Flush Line for Well 63 at Mildred Perkins Park” has been completed by Richard Townsend Construction, Inc., in accordance with the contract agreement dated March 28, 2006,

NOW, THEREFORE, BE IT RESOLVED by the Council that the project titled “Construct Flush Line for Well 63 at Mildred Perkins Park” is hereby accepted as complete from said contractor, Richard Townsend Construction, Inc., that the Notice of Completion be filed with the Recorder of Stanislaus County and that payment of amounts due totaling $118,032.65, as provided in the contract, be authorized.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 8th day of August 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:
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-511

A RESOLUTION ACCEPTING THE WORK BY ALLEN A. WAGGONER CONSTRUCTION, INC., FOR THE PROJECT TITLED “EMERALD AVENUE SEWER EMERGENCY REPAIRS” AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION, AND AUTHORIZING PAYMENT OF AMOUNTS DUE TOTALING $418,835

WHEREAS, a report has been filed by the Public Works Director that the project titled “Emerald Avenue Sewer Emergency Repairs” has been completed by Allen A. Waggoner Construction, Inc., in accordance with the contract agreement dated May 23, 2006,

NOW, THEREFORE, BE IT RESOLVED by the Council that the “Emerald Avenue Sewer Emergency Repairs” is hereby accepted as complete from said contractor, Allen A. Waggoner Construction, Inc., that the Notice of Completion be filed with the Recorder of Stanislaus County and that payment of amounts due totaling $418,835, as provided in the contract, be authorized.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 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

08/08/06/PW/K Ohlson/Item 19 1 2006-511
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-512

A RESOLUTION RETURNING FUNDS IN THE AMOUNT OF $81,027 TO WASTEWATER RESERVES ACCOUNT 6210-800-8000-8003 FROM EMERGENCY REPAIR EMERALD ACCOUNT 6210-480-B628

WHEREAS, the work by Allen A. Waggoner Construction, Inc., for the project titled “Emerald Avenue Sewer Emergency Repairs” is complete, and

WHEREAS, the cost to complete the project remained within the $500,000 budget, and

WHEREAS, the remaining contingency funds are no longer required,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the transfer of funds in the amount of $81,027 to Wastewater Reserves account 6210-800-8000-8003 from Emergency Repair Emerald account 6210-480-B628.

BE IT FURTHER RESOLVED that City staff is hereby authorized to make the necessary budget adjustments in coordination with the Finance Department.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 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: \\

APPROVED AS TO FORM:

By

SUSANA ALCALÁ WOOD, City Attorney

08/08/06/PW/K.Ohlon/Item 19 1 2006-512
A RESOLUTION ACCEPTING PUBLIC IMPROVEMENTS IN THE LAGOS SUBDIVISION, IN THE VILLAGE ONE SPECIFIC PLAN AREA, AND AUTHORIZING THE CITY CLERK TO RECORD A NOTICE OF COMPLETION AND AUTHORIZING RELEASE OF BONDS

WHEREAS, JOHN LAGOS and MARIE T. LAGOS, husband and wife, as community property, are the subdividers of LAGOS SUDIVISION ("SUBDIVISION"), and

WHEREAS, JOHN LAGOS and MARIE T. LAGOS, husband and wife, as community property, have filed irrevocable subdivision bonds to secure faithful performance and payment for labor and materials in the amounts of $1,142,316.00 and $571,158.00, respectively, and

WHEREAS, JOHN LAGOS and MARIE T. LAGOS, husband and wife, as community property, have filed a warranty bond in the amount of $114,231.60 to guarantee improvements in the SUBDIVISION, and

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

WHEREAS, the City Engineer has indicated that it would be in order for the City Council to accept the improvements in said SUBDIVISION as complete, and authorize the City Clerk to record a Notice of Completion and release the bonds upon expiration of the statutory periods,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that:
1. The public improvements in the SUBDIVISION are hereby accepted and the City Clerk is hereby authorized to record a Notice of Completion for the SUBDIVISION improvements.

2. The City Clerk is hereby authorized to release the subdivision bond for faithful performance in the amount of $1,142,316.00 upon recordation of the Notice of Completion.

3. The City Clerk is hereby authorized to release the subdivision bond for labor and materials in the amount of $571,158.00 sixty (60) days after the recordation of the Notice of Completion, provided no claim is made thereon.

4. The City Clerk is hereby authorized to release the warranty bond to guarantee the SUBDIVISION improvements in the amount of $14,231.60 one year and one day after the effective date of this resolution, provided no claim is made thereon.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By [Signature]

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-514

A RESOLUTION AUTHORIZING CITY STAFF CITY STAFF TO ISSUE A REQUEST FOR PROPOSALS FOR PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENT (PA&ED) FOR PELANDALE/SR99 AVENUE INTERCHANGE UPGRADE, AND AUTHORIZE THE MAYOR TO APPOINT ONE COUNCIL MEMBER TO THE PROJECT DEVELOPMENT TEAM AND SELECTION COMMITTEE

WHEREAS, the SR99/Pelandale Avenue interchange is located in the northwest quadrant of the City of Modesto and provides access to commercial and residential properties in this region, and

WHEREAS, the northwest portion of the City is undergoing rapid commercial and residential development, which has generated considerable traffic at this interchange. During peak traffic flow periods, exiting traffic is frequently backed up down the off ramps and blocks the rightmost travel lanes of SR99, and

WHEREAS, the City Council approved $1.3M for Project Approval and Environmental Document (PA&ED) and issue a Request for Proposals for said work, and approved staff’s request to explore City taking the lead on the State Route 99/Pelandale Avenue Interchange Improvements and

WHEREAS, Following Council’s approval, staff made a formal request to StanCOG to apply for lead agency status on the Pelandale Interchange Improvement Project, and

WHEREAS, on May 4, 2006, staff received a letter from Caltrans to StanCOG concurring with the City’s request to take lead agency status.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves City staff to issue a Request for Proposals Project Approval and Environmental Document (PA&ED) for Pelandale/SR99 Avenue Interchange Upgrade, and

BE IT FURTHER RESOLVED that the City Council hereby authorizes City staff to issue a Request for Proposals for said work.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 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. 2006-514A

A RESOLUTION AMENDING RESOLUTION NO. 96-625 TITLED “A RESOLUTION ESTABLISHING A VEHICLE IMPOUND FEE FOR SUSPENDED, REVOKED OR UNLICENSED DRIVERS” TO INCREASE THE FEE FOR VEHICLE IMPOUNDS AND DESIGNATING THE EXISTING TRAFFIC OFFENDER FUND ESTABLISHED BY MODESTO MUNICIPAL CODE SECTION 8-1.1001, ET SEQ. AS THE TRAFFIC OFFENDER FUND FOR THE PURPOSES OF ACCEPTING A GRANT FROM THE STATE OF CALIFORNIA OFFICE OF TRAFFIC AND SAFETY FOR VEHICLE IMPOUND/DUI/SELECTIVE TRAFFIC ENFORCEMENT

WHEREAS, the State of California Office of Traffic and Safety has tentatively approved funding the City of Modesto a $1,000,000 grant for Vehicle Impound/DUI/Selective Traffic Enforcement Program (the “Grant”), and

WHEREAS, a Traffic Offender Fund (the “Fund”) must be established for the Vehicle Impound Program, and

WHEREAS, the City of Modesto currently has a Traffic Offender Fund which states the “fund shall be made exclusively for the purposes of traffic safety programs within the City of Modesto”, as set forth in Section 8-1.1001 et seq. of the Modesto Municipal Code (MMC).

WHEREAS, City staff requests the existing Traffic Offender Fund established by Modesto Municipal Code Section 8-1.001, et seq. also be designated as the Traffic Offender Fund as required by the Grant, and

WHEREAS the existing Traffic Offender Fund is funded by vehicle impound fee which was adopted by the City Council on November 19, 1996 by Resolution No. 96-625, which established the fee at $80.00 per vehicle; and,

WHEREAS, one of the requirements of the Grant is that the City of Modesto must be able to sustain the enforcement program by creating a self-sustaining Vehicle...
Impound Program which will continue after the Grant monies are expended, to satisfy the National Highway Traffic Safety program income requirements, and

WHEREAS, pursuant to the terms of the Grant, as well as the National Highway Traffic Safety program, the City’s Vehicle Impound Program must be established by December 31, 2006, and self-sustaining by the end of the Grant period, and

WHEREAS, the Police Department currently charges an $80.00 vehicle impound fee, and

WHEREAS, based on a 2004 study, the calculated rate of our cost, per tow, is $187.62, and with inflation, MOU changes of rates for personnel, based on 2006 study costs today are calculated at $251.31 per towed vehicle, and

WHEREAS, Command staff feels that increasing the vehicle impound fee from $80.00 to $160.00 would be too substantial and that a gradual increase over two years would be to the best interest of the community, and should be increased from $80.00 to $160.00 in FY 06-07, and

WHEREAS, in order to meet Grant requirements, a public hearing is recommended to increase the vehicle impound fee, and it is recommended said fees be increased from $80.00 to $160.00 in FY 06-07, and

WHEREAS, City Staff will return to Council when the requested fee study is completed, and

WHEREAS, all collected fees will be placed in the Traffic Offender Fund, and pursuant to the agreement with the State of California Office of Traffic Safety, each fiscal year $210,000 of the Vehicle Impound Fees collected will be transferred to the General Fund, and
WHEREAS, any and all additional fees collected above and beyond the $210,000 will remain in the Traffic Offender Fund to be used solely for traffic safety programs within the City of Modesto, as administered by the Modesto Police Department, and

WHEREAS, the monies in the Traffic Offender Fund will cover the administrative costs incurred by the City relating to the removal, impoundment, storage, and release of vehicles allowed by the authority of Section 22850.5 of the California Vehicle Code, and

WHEREAS, the Traffic Offender Fund will be subject to a financial audit by the State of California Office of Traffic Safety, and

WHEREAS, the Vehicle Impound Fee will receive a “Sunset” review by the City Council in FY 2013-2014, to determine if the program should be terminated, modified, or remain in place, and

WHEREAS, at its meeting of July 24, 2006, the Finance Committee recommended (1) increasing the vehicle impound fee to $187.62 based on the 2004 study or (2) increasing the vehicle impound fee to $250.00 based on a current study, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m. on August 8, 2006, in the Tenth Street Place Chambers, located at 1010 Tenth Street, Modesto, California, and

WHEREAS, a duly noticed public hearing was held at said time and place, at which time evidence, both oral and documentary, was received and considered,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto as follows:
1. The City Council hereby designates the current Traffic Offender Fund established by MMC Section 8-1.1001 et seq. as the Traffic Offender Fund required to be established pursuant to the terms of the Grant.

2. The City Council hereby authorizes an increase in the Vehicle Impound Fee from $80.00 to $250.00 for reimbursement of costs incurred in the enforcement of, education for, and prosecution of drivers with a suspended or revoked license and unlicensed drivers to meet the California Office of Traffic Safety requirements to accept the Vehicle Impound/DUI/Selective Traffic Enforcement Program (STEP) Grant for $1,000,000.

3. Resolution No. 96-625 is hereby amended effective August 8, 2006, and all other provision of Resolution No. 96-625 not in conflict with this resolution shall remain in full force and effect.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 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

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2006-515  

A RESOLUTION AMENDING THE FY 06-07 OPERATING BUDGET TO RECOGNIZE REVENUE AND APPROPRIATE FUNDS OF $315,000 INTO THE “TRAFFIC OFFENDER FUND”

WHEREAS, the State of California Office of Traffic and Safety has tentatively approved grant funding to the City of Modesto in the amount of $1,000,000 for Vehicle Impound/DUI/Selective Traffic Enforcement Program (the “Grant”), and

WHEREAS, one of the requirements of the Grant is that the City shall be able to sustain the enforcement program by creating a self-sustaining Vehicle Impound Program which will continue after the Grant monies are expended, and

WHEREAS, the Police Department currently charges an $80.00 vehicle impound fee, and

WHEREAS, in order to meet Grant requirements, a public hearing was held on August 8, 2006 and Resolution No. 2006-514A was adopted by the City Council to increase the vehicle impound fee from $80.00 to $160.00 in FY 06-07, and

WHEREAS, City Staff will return to Council when the requested fee study is completed, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the 2006/07 Operating Budget is hereby amended to recognize revenue and appropriate funds of $315,000 into Account No. 0100-190-1961-4028.

BE IT FURTHER RESOLVED that Resolution No. 2006-514A is hereby adopted upon the effective date of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 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

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

ATTEST: REBECCA RODI

JEAN MORRIS, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-516

A RESOLUTION APPROVING STAFF’S PROPOSED RESPONSE TO THE FINDINGS AND RECOMMENDATION OF THE STANISLAUS COUNTY 2005-2006 CIVIL GRAND JURY REPORT RELATING TO CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 1997-1 (NORTH BEYER PARK) AND AUTHORIZING THE CITY MANAGER TO SUBMIT SAID RESPONSE

WHEREAS, the City received a report from the Stanislaus County 2005-2006 Civil Grand Jury ("Grand Jury Report") dated June 26, 2006, relating to the City of Modesto Community Facilities District No. 1997-1 (North Beyer Park) ("CFD 1997-1"), and

WHEREAS, City staff has prepared a response ("City’s Response") to the Grand Jury Report, and

WHEREAS, the City Council has considered the City’s Response,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that City staff’s proposed response to the Findings and Recommendation of the Stanislaus County 2005-2006 Civil Grand Jury Report related to City of Modesto Community Facilities District No. 1997-1 (North Beyer Park) is hereby approved.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to submit the City of Modesto’s response to the Findings and Recommendation of the Stanislaus County 2005-2006 Civil Grand Jury Report related to City of Modesto Community Facilities District No. 1997-1 (North Beyer Park) to the attention Presiding Judge Marie Sovey Silveira, Stanislaus County Superior Court.

BE IT FURTHER RESOLVED that a copy of the City of Modesto’s response to the Findings and Recommendation of the Stanislaus County 2005-2006 Civil Grand Jury

08/08/06/CMT Rocha/Item 27  1  2006-516
Report related to City of Modesto Community Facilities District No. 1997-1 (North Beyer Park) shall be placed on file with the City Clerk’s Office.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-517

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO
AUTHORIZING ENTRY INTO AN INTEREST RATE SWAP TRANSACTION
AND CERTAIN ACTIONS RELATING THERETO

WHEREAS, the City of Modesto (the “City”) is a municipal corporation and a
chartered city of the State of California (the “State”), organized and existing under its
Charter, the Constitution and the laws of the State; and

WHEREAS, pursuant to its Charter, the City has the power to exercise any rights,
powers and privileges granted or prescribed by the general laws of the State; and

WHEREAS, the City has previously entered into a Master Installment Purchase
Contract, dated as of November 1, 1997 (the “Master Installment Purchase Contract”),
with the Modesto Public Financing Authority (the “Authority”) in order to provide for the
financing and refinancing from time to time of the costs of acquisition and construction
of various additions, betterments, extensions and improvements to the City’s municipal
water system; and

WHEREAS, the City has previously executed and delivered certificates of
participation evidencing and representing interests in certain installment payments to be
made by the City to the Authority pursuant to the Master Installment Purchase Contract,
as heretofore supplemented; and

WHEREAS, the Master Installment Purchase Agreement provides that the City
may incur additional obligations payable on a parity thereunder, including by execution
of a supplemental installment purchase contract; and
WHEREAS, the City anticipates entering into a supplemental installment purchase contract (the “2006 Supplemental Installment Purchase Contract”) to the Master Installment Purchase Contract and executing and delivering additional certificates of participation (the “2006 Certificates”) evidencing and representing interests in the installment payments to be made under the 2006 Supplemental Installment Purchase Contract (the “2006 Payments”) for the purpose, *inter alia*, of financing the costs of various additional improvements to the water system; and

WHEREAS, the 2006 Certificates are expected to be executed and delivered as auction rate certificates, the interest on which will be adjusted periodically as provided in the trust agreement pursuant to which such 2006 Certificates will be delivered; and

WHEREAS, Section 5922 of the California Government Code provides that in connection with, or incidental to, the issuance or carrying of bonds (defined to include installment purchase agreements and certificates of participation therein) any public entity may enter into any contracts which the public entity determines to be necessary or appropriate to place the obligations represented by the bonds, in whole or in part, on the interest rate, currency, cash flow or other basis desired by the public entity, including without limitation contracts commonly known as interest rate swap agreements or contracts providing for payments based on levels of, or changes in, interest rates or stock or other indices, or contracts to exchange cash flows or a series of payments, in each case to hedge payment, rate, spread or similar exposure; and

WHEREAS, the City desires to authorize certain officers of the City to enter into an interest rate swap transaction with Bank of America, N.A. as authorized by Section
5922 of the California Government Code in connection with its obligation to pay the 2006 Payments relating to the auction rate 2006 Certificates with a view to economically provide for fixed payments in connection with the related portion of the interest component of the 2006 Payments and to achieve savings by paying a lower fixed swap amount compared to using a fixed rate interest component for such 2006 Payments; and

WHEREAS, the terms and conditions of such interest rate swap transaction shall be as set forth in the ISDA Master Agreement, as amended and supplemented by the U.S. Municipal Counterparty Schedule to the Master Agreement and the Credit Support Annex to such Schedule, each in the form submitted to this meeting (such ISDA Master Agreement, as so amended and supplemented, as the same may be modified and completed in accordance with this Resolution being referred to as the “Swap Agreement”); and

WHEREAS, the interest rate swap transaction authorized hereby shall constitute a Transaction under the Swap Agreement (a “Transaction”), the specific terms of which shall be contained in a Confirmation (a “Confirmation”) to be delivered on or about the date such Transaction is agreed upon by the parties;

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

Section 1. The form of Swap Agreement presented to this meeting, and on file with the City Clerk, is hereby approved. Each of the City Manager and the Finance Director, acting singly, is hereby authorized and directed for, on behalf of, and in the name of the City, to execute and deliver the Swap Agreement in substantially said form,
with such changes, insertions and deletions to the Swap Agreement (including such changes, insertions and deletions as may be undertaken in connection with arranging for the regularly scheduled swap payments to be made by the City thereunder to be insured through a municipal bond insurance company, if, upon the advice of the City’s financial advisors, such insurance shall be beneficial to the City) as may be consistent with this Resolution and the determinations made pursuant hereto and as may be approved by the officer executing the Swap Agreement, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. Each of the City Manager and the Finance Director, acting singly, is hereby authorized to enter into a Transaction in connection with the 2006 Certificates and the 2006 Payments evidenced and represented thereby to accept and execute the Confirmation describing the Transaction; provided, however, that the following limitations shall be applicable to the Confirmation and Transaction: (i) the term of the Transaction shall not extend beyond the final maturity of the 2006 Certificates; (ii) the initial notional amount of the Transaction shall not exceed the par amount of the 2006 Certificates, and after the 2006 Certificates are executed and delivered shall not at any time exceed the unpaid amount of the principal component of the 2006 Payments; (iii) the variable rate to be received under the Transaction shall not be less than 60% of the one-month London Interbank Offering Rate (LIBOR); (iv) the expected net debt service on the 2006 Certificates calculated using the fixed swap rate to be paid by the City to the Bank of America, N.A., as counterparty, will be at least 5.0% less on a net present value basis than the net debt service on the 2006 Certificates if such 2006 Certificates were issued on a traditional fixed interest rate basis; and (v) the City shall have procured an
insurance policy securing its obligations to make regularly scheduled payments due in
respect of such Transaction as provided in Section 3 of this Resolution.

Section 3. The securing of the City’s obligations under the Transaction through
the use of an insurance policy and the execution and delivery of the Credit Support
Annex, concurrent with the execution of the other agreements authorized by this
Resolution at any time hereafter prior to or concurrent with the delivery of the 2006
Certificates, is hereby authorized and approved. Each of the City Manager and the
Finance Director, acting singly, is hereby authorized to take such actions as may be
necessary to procure such insurance policy and to execute the Credit Support Annex to
secure the City’s obligations under the Transaction.

Section 4. The City Council of the City hereby finds and determines that the
Transaction authorized hereby is designed to reduce the amount of rate risk and result in
a lower cost of borrowing when used in combination with the execution and delivery of
the 2006 Certificates.

Section 5. The City Manager, the Finance Director, the City Clerk and the other
appropriate officers of the City are hereby authorized and directed, acting singly, to do
any and all things and to execute and deliver any and all documents which they may
deem necessary or advisable in order to consummate the transactions contemplated by
this Resolution and otherwise to carry out, give effect to and comply with the terms and
intent of this Resolution, the Swap Agreement and the Confirmation. Any actions
heretofore taken by such officers in connection therewith are hereby ratified, confirmed
and approved.
Section 6. The City Clerk is hereby authorized and directed to attest the signature of the City Manager, the Finance Director or such other City officers as may be required or appropriate in connection with the execution and delivery of the Swap Agreement, the Confirmation or any related document or instrument.

Section 7. This Resolution shall take effect immediately upon its adoption.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August 2006, by Councilmember Hawn, 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

AYES: Councilmembers: None

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

ATTEST: JEAN MORRIS, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-518

A RESOLUTION APPOINTING BEN PARROTT TO THE DISABLED ACCESS APPEALS BOARD

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

WHEREAS, the Economic Development Committee met on August 7, 2006, and recommended appointment of BEN PARROTT to the Disabled Access Appeals Board.

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

SECTION 1. BEN PARROTT is hereby appointed to the Disabled Access Appeals Board with a term expiration of January 1, 2010.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of September, 2006, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM: ATTEST: REN MORRIS, City Clerk

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-519

A RESOLUTION APPOINTING DAVID LOPEZ TO THE GOLF COURSES ADVISORY COMMITTEE

WHEREAS, Section 1102 of the Charter of the City of Modesto authorizes the City Council to appoint members to various Boards and Commissions, and
WHEREAS, the Economic Development Committee met on September 5, 2006, and recommended appointment of DAVID LOPEZ to the Golf Courses Advisory Committee.
NOW, THEREFORE, BE IT HEREBY RESOLVED by the Council of the City of Modesto as follows:

SECTION 1. DAVID LOPEZ is hereby appointed to the Golf Courses Advisory Committee with a term expiration of January 1, 2008.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the newly appointed member of the Golf Courses Advisory Committee, and the Secretary thereof. The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of September, 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: Hawn, Keating, Marsh, O'Bryant, Olsen,
Mayor Ridenour

NOES: Councilmembers: Dunbar

ABSENT: Councilmembers: None

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-520

A RESOLUTION APPOINTING DAVID C. TANNER TO THE GOLF COURSES ADVISORY COMMITTEE

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

WHEREAS, the Economic Development Committee met on September 5, 2006, and recommended appointment of DAVID C. TANNER, to the Golf Courses Advisory Committee.

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

SECTION 1. DAVID C. TANNER is hereby appointed to the Golf Courses Advisory Committee with a term expiration of January 1, 2010.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the newly appointed member of the Golf Courses Advisory Committee, and the Secretary thereof.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th 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:

______________________________
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-521

A RESOLUTION APPOINTING PATRICIA GILLUM TO THE PLANNING COMMISSION

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

WHEREAS, the Economic Development Committee met on August 7, 2006, and recommended appointment of PATRICIA GILLUM to the Planning Commission.

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

SECTION 1. PATRICIA GILLUM, is hereby appointed to the Planning Commission with a term expiration of January 1, 2007.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of September, 2006, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM: ATTEST: Jean Morris, City Clerk

SUSAN ALCALA WOOD, City Attorney
A RESOLUTION APPOINTING JEAN-PIERRE BATMALE AND JIM PATTON TO THE SOLID WASTE ADVISORY COMMITTEE

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

WHEREAS, the Economic Development Committee met on August 7, 2006, and recommended appointment of JEAN-PIERRE BATMALE and JIM PATTON to the Solid Waste Advisory Committee.

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

SECTION 1. JEAN-PIERRE BATMALE, with a term expiration of January 1, 2008, and JIM PATTON, with a term expiration of January 1, 2009, are hereby appointed to the Solid Waste Advisory Committee.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the appointed members of the Solid Waste Advisory Committee, and the Secretary thereof.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th 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: ATTEST: Jean Morris
SUSAN ALCALA WOOD, City Attorney JEAN MORRIS, City Clerk

2006-522
A RESOLUTION APPROVING A SIXTH AMENDMENT TO AGREEMENT FOR AUDITOR SERVICES WITH MAZE & ASSOCIATES, AN ACCOUNTANCY CORPORATION, TO PROVIDE FOR AUDITS OF THE STANISLAUS DRUG ENFORCEMENT AGENCY (SDEA), TO BE PAID BY SDEA, AT A COST NOT TO EXCEED $6,145 FOR THE FISCAL YEAR 2006 AUDITS AND $6,300 FOR FISCAL YEAR 2007 AUDITS, AND, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT TO AGREEMENT.

WHEREAS, the City of Modesto entered into a contract with Maze & Associates ("Auditor") on April 1, 2003, to perform its annual financial statement audits, and

WHEREAS, several Stanislaus County cities and agencies previously formed a Joint Powers Agency named the Stanislaus Drug Enforcement Agency (SDEA), and

WHEREAS, City of Modesto is providing accounting services for SDEA, and

WHEREAS, the SDEA governing Board desires that its financial operations be audited in conjunction with the City of Modesto financial audits, and

WHEREAS, the SDEA governing Board, at its August 16, 2006, meeting agreed to pay to costs for such audits, and

WHEREAS, Auditor has made a proposal to City to conduct these audits for Fiscal Year 2006 at a cost not to exceed $6,145, and for Fiscal Year 2007 at a cost not to exceed $6,300, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Sixth Amendment to Agreement for Auditor Services with Maze & Associates to provide audits of the SDEA financial operations for Fiscal Year 2006 at a cost not to exceed $6,145, and for Fiscal Year 2007 at a cost not to exceed $6,300.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Amendment to Agreement for Auditor Services.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of September, 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 
JEAN MORRIS, City Clerk & Auditor

APPROVED AS TO FORM:

BY: 
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-524

A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATIONS OF NORALYNN GOOLD AND GEORGE SHOEMAKER FROM THE COMMUNITY QUALITIES FORUM

WHEREAS, NORALYNN GOOLD was appointed a member of the Community Qualities Forum on April 6, 2004, and
WHEREAS, GEORGE SHOEMAKER was appointed a member of the Community Qualities Forum on May 15, 2001, and
WHEREAS, NORALYNN GOOLD and GEORGE SHOEMAKER have tendered their resignation from the Community Qualities Forum, and
WHEREAS, NORALYNN GOOLD and GEORGE SHOEMAKER have been devoted and sincere public servants and have contributed greatly to our civic progress.

NOW, THEREFORE, BE IT RESOLVED that the resignations of NORALYNN GOOLD and GEORGE SHOEMAKER from the Community Qualities Forum be, and hereby are 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 NORALYNN GOOLD and GEORGE SHOEMAKER for their 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 5th day of September, 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

Susana Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-525

A RESOLUTION APPROVING A TWO (2) YEAR AGREEMENT FOR STATE LOBBYING SERVICES WITH AARON READ & ASSOCIATES (ARA) IN AN AMOUNT NOT TO EXCEED $74,340 THE FIRST YEAR AND $79,344 THE SECOND YEAR AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT.

WHEREAS, the City of Modesto has determined it is desirable to retain a consultant to represent the City’s interests at the state level, and

WHEREAS, in 2002, the City entered into a two-year agreement with ARA in the annual amount of $69,300, and

WHEREAS, in 2004, the City entered into another two-year agreement in the annual amount of $69,300, and

WHEREAS, during the last two years ARA has been able to assist the City in the acquisition of over $2.7 million in funding/reimbursements and has been a tremendous advocate for the City of Modesto on several assembly and senate bills,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a two (2) year Agreement for Consultant Services with Aaron Read & Associates for lobbying efforts at the State level in an amount not to exceed $74,340 the first year and $79,344 the second year, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference.

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 5th day of September, 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

By Susana Alcala Wood, City Attorney
STANDARD AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, made and entered into in the City of Modesto, State of California, this 15th day of July, 2006, by and between the CITY OF MODESTO, a municipal corporation of the State of California, hereinafter referred to as "City", and AARON READ & ASSOCIATES a California corporation, hereinafter referred to as "Consultant".

This Agreement is made with regard to the following recitals:

A. The City has determined that it is appropriate to retain a consultant to represent the City's interests in Sacramento, California.

B. Consultant represents that it is qualified, willing and able to provide such services.

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

1. SCOPE OF SERVICES.

Consultant shall monitor actions of the Governor, state agencies and the state legislature as they affect transportation and other issues of interest to the City of Modesto. Consultant will provide legislative advocacy services when directed to do so by City. The Consultant shall perform said services as described in a manner compatible with the standards of its profession.

2. TERM OF AGREEMENT.

This Agreement is effective as of July 1, 2006, and will continue in effect until June 30, 2008, unless terminated earlier in accordance with the provisions of the termination clause in this Agreement.
3. COMPENSATION.

Consultant agrees to perform the services set forth in Paragraph 1 for a flat fee of six thousand one hundred ninety-five dollars ($6,195.00) per month for the first year from July 1, 2006 to June 30, 2007 and for a flat fee of six thousand six hundred eleven dollars ($6,612.00) per month for the second year from July 1, 2007 to June 30, 2008. City shall reimburse ARA for travel expenses, but only if such expenses are pre-approved by City in writing. City shall have no obligation to reimburse ARA for telephone and electronic communication, utilities, postage, express mail, photocopying, printing and materials, and other miscellaneous expenses.

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

On or before the fifteenth (15th) day of each month, Consultant shall submit to the City a report for monthly payment for the work performed during the previous month.

4. OBLIGATIONS OF Consultant.

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

Consultant has represented to City that Terry McHale and Robyn Black, will be the persons primarily responsible for the performance of the services referred to in this Agreement. City has entered into this Agreement in reliance on that representation by Consultant. Consultant shall not change this personnel assignment without the written consent of City’s Project Manager, which shall not be unreasonably withheld.

6. **OWNERSHIP OF DOCUMENTS/TITLE TO DATA.**

**Ownership of Documents**

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

**Title to Data**

If, as a part of the Agreement, Consultant is required to produce data such as, but not limited to, drawings, plans, specifications, calculations, models, flow diagrams, visual aids and other related materials, the originals of all such data generated under this Agreement will be delivered to City upon the completion or termination of services under the contract.

All materials, documents, data or information obtained from the City data files or any City medium furnished to Consultant in the performance of this Agreement will at all times remain the property of the City. Such data or information may not be used or copied for direct or indirect use by Consultant after termination of this Agreement without written consent of the City.
7. **NEWS AND INFORMATION RELEASE.**
Consultant agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from City through the City Manager.

8. **AVOIDANCE OF POTENTIAL CONFLICTS.**
Whenever the state legislative objectives of existing or potential clients could conflict with those of the City, the Consultant and City shall take necessary steps to resolve such possible conflict. The Consultant shall not advocate or promote any state legislative objectives on behalf of existing or potential clients that are determined by the City to be in conflict with the City’s state transportation objectives.

9. **AMENDMENTS.**
Both parties to this Agreement understand that it may become desirable or necessary during the execution of this Agreement, for City or Consultant to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with City and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work.

Until a change order is so executed, City will not be responsible to pay any charges Consultant may incur in performing such additional services, and Consultant shall not be required to perform any such additional services.

10. **INDEPENDENT CONTRACTOR.**
All acts of Consultant, its agents, officers, and employees and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed...
as independent contractors and not as agents, officers, or employees of City. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of City. Consultant has no authority or responsibility to exercise any rights or power vested in the City. No agent, officer, or employee of the City is to be considered an employee of Consultant. It is understood by both Consultant and City that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture.

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

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

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

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

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

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

11. ASSIGNMENT.

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

12. PATENT/COPYRIGHT MATERIALS.

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

13. NOTICES.

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

FOR Consultant:

<table>
<thead>
<tr>
<th>Name:</th>
<th>Aaron Read &amp; Associates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>1415 L Street, Suite 1100</td>
</tr>
<tr>
<td></td>
<td>Sacramento, CA 95819-9003 95714</td>
</tr>
<tr>
<td>Attention:</td>
<td>Terry McHale</td>
</tr>
<tr>
<td>Phone:</td>
<td>(916) 448-3444</td>
</tr>
</tbody>
</table>

FOR CITY:

<table>
<thead>
<tr>
<th>Name:</th>
<th>City of Modesto</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>PO Box 642</td>
</tr>
<tr>
<td></td>
<td>Modesto, CA 95353</td>
</tr>
<tr>
<td>Attention:</td>
<td>George W. Britton</td>
</tr>
<tr>
<td>Phone:</td>
<td>(209) 577-5224</td>
</tr>
</tbody>
</table>

14. INSURANCE REQUIREMENTS.

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

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

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

(c) **Automobile Liability** insurance with a minimum limit of liability
per occurrence of $1,000,000 for bodily injury and $100,000 for property damage or $1,000,000
combined single limit. This insurance shall cover any automobile for bodily injury and property
damage.

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

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

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

For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.

15. TERMINATION OF AGREEMENT.

Termination on Occurrence of Stated Events

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

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

Termination by Consultant for Default of City

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

Termination by City for Lack of Budgeted Funds

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

Termination for Failure to Make Agreed-Upon Payments

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

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

Voluntary Termination

The parties may terminate this contract upon mutual written Agreement.

In the Event of Termination

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

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

The City Project Manager shall be the City Manager or such other person as shall be designated in writing by the City Manager.

The Project Manager is authorized to approve work and billings hereunder, to give notices referred to herein, to terminate this Agreement as provided herein, and to carry out any other actions referred to herein.

17. INDEMNITY.

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

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

18. ENTIRE AGREEMENT.

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

19. **PARTIAL INVALIDITY.**

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

20. **WAIVER.**

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

21. **AUDIT.**

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

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

22. **GOVERNING LAW.**

This Agreement shall be governed according to the laws of the State of California.
23. **HEADINGS NOT CONTROLLING.**

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

24. **COMPLIANCE WITH LAWS.**

Consultant shall insure compliance with all safety and hourly requirements for employees, in accordance with federal, state, and county safety and health regulations and laws. Consultant shall fully comply with all applicable federal, state, and local laws, ordinances, regulations and permits.

25. **CITY BUSINESS LICENSE.**

Consultant will have a City of Modesto business license.
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. _______, adopted by the Council of the City of Modesto on the eighth day of August, 2006 __, and CONSULTANT has caused this Agreement to be duly executed.

CITY OF MODESTO, a municipal corporation

By ________________________________
GEORGE BRITTON, City Manager

CONSULTANT, a California corporation

By ____________________________
(Aaron L. Read)

ATTEST:

By ________________________________
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By ________________________________
SUSANA ALCALA WOOD, City Attorney

Consultant’s Federal ID # 27-0035856

APPROVED AS TO RISK MANAGEMENT:

By ________________________________
DAVID RAWE, Assistant Risk Manager

_Corporations - signature of two (2) officers required or one (1) officer plus corporate seal._
_Partnerhip - signature of a partner required_
_Sole Proprietorship - signature of proprietor required_
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-526

A RESOLUTION AMENDING THE FISCAL YEAR 2006-2007 ANNUAL OPERATING BUDGET TO TRANSFER $5,000 FROM GENERAL FUND RESERVE ACCOUNT 0100-800-8000-8003 TO CITY MANAGERS OPERATING ACCOUNT 0100-020-0201-0235 TO FULLY FUND AN AGREEMENT FOR CONSULTANT SERVICES WITH AARON READ AND ASSOCIATES, (ARA).

WHEREAS, the City of Modesto has determined it is desirable to retain a consultant to represent the City’s interests at the state level, and

WHEREAS, in 2002, the City entered into a two-year agreement with ARA in the annual amount of $69,300, and

WHEREAS, in 2004, the City entered into another two-year agreement in the annual amount of $69,300, and

WHEREAS, during the last two years ARA has been able to assist the City in the acquisition of over $2.7 million in funding/reimbursements and has been a tremendous advocate for the City of Modesto on several assembly and senate bills,

WHEREAS, the terms of said agreement exceed the amount budgeted for state legislative lobbying services for Fiscal Year 2006 by $5,000.00,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the Fiscal Year 2006-2007 Annual Operating Budget to fund the Agreement for Consulting Services with Aaron Read and Associates to perform State Legislative Lobbying Services as indicated below:

<table>
<thead>
<tr>
<th>Account</th>
<th>Adjustment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0100-800-8000-8003</td>
<td>($5,000.00)</td>
<td>General Fund Reserve</td>
</tr>
<tr>
<td>0100-020-0201-0235</td>
<td>$5,000.00</td>
<td>City Manager’s Office Professional Services</td>
</tr>
</tbody>
</table>
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 5th day of September, 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By Susana Alcala Wood, City Attorney

APPROVED AS TO SUFFICIENCY:

By Greg Baird, Deputy Director of Finance
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-527

A RESOLUTION APPROVING AN ADVANCED FUNDING AGREEMENT FOR THE KIERNAN BUSINESS PARK SOUTH SPECIFIC PLAN AREA BETWEEN THE CITY OF MODESTO AND MANA DEVELOPMENTS AND HANS J. WAGNER FOR THE PREPARATION OF A FACILITIES MASTER PLAN, AND INFRASTRUCTURE FINANCE PLAN AND FOR FORMATION OF A CFD FOR A PORTION OF THE KIERNAN BUSINESS PARK SPECIFIC PLAN AREA COMMONLY KNOWN AS KIERNAN BUSINESS PARK SOUTH, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, Mana Developments and Hans J. Wagner (collectively the “Applicant”) have agreed to advance all funds necessary to prepare a Facilities Master Plan and Infrastructure Finance Plan (“FMP/IIFP”) and for formation of a CFD for a portion of the Kiernan Business Park Specific Plan Area commonly known as Kiernan Business Park South (“KBP South”), and

WHEREAS, the parties agreed to enter into an Advanced Funding Agreement For The Kiernan Business Park Specific South Specific Plan Area by and between the City and the Applicant relating to advances made and to be made by the Applicant to the City, and providing for potential reimbursement to the Applicant if and when certain funds from the KBP South 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 Kiernan Business Park Specific South Specific Plan Area between the City of Modesto and Mana Developments and Hans J. Wagner 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 5th day of September, 2006, by Councilmember Dunbar, who
moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll
call carried and the resolution adopted by the following vote:

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

Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
ADVANCED FUNDING AGREEMENT
FOR THE KIERNAN BUSINESS PARK SOUTH SPECIFIC PLAN AREA

THIS ADVANCED FUNDING AGREEMENT FOR THE KIERNAN BUSINESS PARK SOUTH AREA (this “Agreement”), dated as of ____________, 2006, is entered into by and between the CITY OF MODESTO, CITY OF MODESTO, a municipal corporation of the State of California (the “City”) and MANA DEVELOPMENTS and HANS J. WAGNER (collectively the “Applicant”).

RECITALS:

A. Applicant has a legal interest in real property located within a portion of the Kiernan Business Park South Specific Plan Area (“Specific Plan”), shown in Exhibit A attached hereto and incorporated herein by this reference, and is interested in pursuing development of properties in the Specific Plan.

B. Applicant has requested that the City prepare a Facilities Master Plan and Infrastructure Finance Plan (“FMP/IFP”), and create an appropriate financing mechanism, such as a community facilities district (“CFD”) for the principal purpose of master planning and financing the various public facilities and services which are necessary to serve or desirable for the development of the Specific Plan (collectively the “Project”).

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

D. The scope of work for the Project (“Scope”), including the estimated costs for completing the Project (“Estimated Costs”), is attached as Exhibit B.

E. Applicant is prepared to deposit with the City the amount needed to fund the Scope plus 30% for staff time and expenses in order to provide the City with an initial source of funds with which to pay expenses expected to be incurred in connection with the Project. Additional deposits will be provided by Applicant, as required by the City.

F. The City and Applicant are desirous of entering into this Agreement in order to provide monies for the City’s costs for preparing the Project on a time and materials basis, to provide mechanisms by which the funds deposited under this Agreement shall be applied and by which Applicant may make additional deposits, and to reimburse Applicant for monies advanced for the benefit of other landowners in the Project.

G. Pursuant to California Government Code Section 53314.9 and the City’s CFD Policies and Procedures, the City Council of the City is authorized to accept advances of funds or work-in-kind from any source, including, but not limited to, private persons or private entities, and may provide, by resolution, for the use of those funds or work-in-kind for any authorized purpose, including, but not limited to, paying any costs incurred in connection with the planning and formation of a community facilities district. The City Council of the City is also authorized to enter into an agreement, by resolution, with the person or entity advancing the funds or work-in-kind to repay all or a portion of the funds advanced or to reimburse the person or entity for the cost or value of the work-in-kind provided that certain conditions are met. The conditions to be satisfied with
respect to funds advanced require that (1) the proposal to repay the funds or to pay the cost or value of the work-in-kind must be included in the resolution of intention for the proposed community facilities district and in the resolution of formation for the proposed community facilities district, (2) any proposed special tax is approved by the qualified electors of the community facilities district and, if a proposed special tax is not approved, any funds advanced which have not been committed for any authorized purpose by the time of the election must be returned to the person or entity advancing funds and (3) any work-in-kind accepted shall have been performed or constructed as if the work had been performed or constructed under the direction and supervision, or under the authority, of the local agency.

H. The City and the Applicant 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 Applicant 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 Applicant for the amounts advanced by the Applicant.

**AGREEMENT**

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

1. **Recitals.** Each of the above recitals is incorporated herein and is true and correct.

2. **Proposed Preparation of the Facilities Master Plan and Infrastructure Financing Plan.**
   
a. Applicant agrees to pay all costs of preparing, processing and approving the FMP/IPF.

b. Within ten (10) calendar days after the City Council approves this Agreement, Applicant shall deposit with the City the sum of TWO HUNDRED FIFTY THOUSAND AND 0/100 ($250,000.00) DOLLARS ("Initial Deposit") to fund the Scope of work for the Project. The Initial Deposit will be held in trust by the City and used solely for the purposes set forth in this Agreement. Upon receipt by the City of the Initial Deposit and all documents deemed necessary by the City to proceed with the Project, the City will commence work on the Project on a time and materials basis and will provide a Notice to Proceed to its Consultant to proceed with the Project. In connection therewith, the City has either retained, or will retain, the consultants that the City determines necessary or convenient to assist it with the Project and, if the City determines to proceed with the formation of the CFD, to assist it in connection therewith and with the possible issuance of bonds.

c. After the Initial Deposit has been expended on the Project, Applicant shall make additional advances to the City as provided by subparagraph (d), below, until the Project has been completed or terminated, and all costs associated with the Project have been fully paid. City will commence work on subsequent Tasks as identified in the Scope on a time and materials basis and will provide a Notice to Proceed to Consultant for each such Task within ten (10) calendar days after it
has received an additional deposit sufficient to cover the estimated costs for said Task plus 30% for staff time and expenses associated with said Task. The consultants shall submit invoices to the City for payments based on work completed; such invoices will be promptly sent by the City to the Applicant, which will have five (5) business days to challenge the work performed, and the City will in good faith consider the position of the Applicant prior to approving payment. Applicant understands and agrees that City shall have the right, in its sole discretion, to approve and pay all such consultant invoices, and may do so without obtaining Applicant’s approval.

d. Applicant shall make additional advances to the City within ten (10) business days following receipt from the City of a request for an additional advance to the cover the costs referred to herein. In the event that Applicant does not deliver the requested amount to the City within such ten (10) business day period, the City will have no obligation to proceed with any activity relating to the Project. The Applicant may notify the City at any time, in writing, of its intention to abandon the Project. Immediately upon City’s receipt of such notice, but in no case later than two (2) business days, the City shall instruct in writing its consultants to cease work immediately. The Applicant shall be responsible for all costs and expenses incurred by the City or any City consultant or advisors relating to the Project until City issues this cease work notice. Within 60 calendar days after issuance of a cease work notice, City agrees to return to Applicant all unexpended amounts of the Initial Deposit (and any subsequent deposits) which exceed all costs and expenses incurred by City relating to the Project.

e. Applicant agrees that, notwithstanding the Applicant’s funding and reimbursement obligation under this Agreement, the consultants selected by the City shall be the contractors exclusively of the City and not of the Applicant. Except for those disclosures required by law including, without limitation the Public Records Act, all conversations, notes, memoranda, correspondence, and other forms of communication by and between the City and its consultants shall be, to the extent permissible by law, privileged and confidential and not subject to disclosure to the Applicant. Applicant agrees that it shall have no claim to, nor shall it assert any right in any reports, correspondence, plans, maps, drawings, news releases or any and all other documents or work project produced by City’s consultants. Applicant understands that it will not be a third party beneficiary to City’s contracts with the consultant. City will consult with Applicant prior to replacing its current consultants; however, Applicant agrees that City may select other consultants to replace its current consultants and may do so without obtaining Applicant’s approval.

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

   a. Applicant agrees to pay all costs of preparing, processing and forming a CFD for the Specific Plan area.

   b. Upon receipt by the City of a completed application for the formation of the CFD, the formation deposit for 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 Applicant'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.

   c. Pursuant to the City's CFD Policies and Procedures, the Applicant 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 Applicant 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 Applicant 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 Applicant 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 Applicant's notice of abandonment. Within 60 calendar days after receipt of the Applicant's notice of abandonment, City agrees to return to Applicant all unexpended amounts of the Initial Deposit (and any subsequent deposits) which exceed all costs and expenses incurred by City relating to the Project.

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 Applicant for the amounts that the Applicant 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 Applicant 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 Applicant are insufficient to fully reimburse the City for all of its direct and indirect costs, the Applicant shall promptly pay to the City the amount of the deficiency. 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 Applicant, and the City shall not be required to pay interest on any amount required to be refunded pursuant to this Agreement.
5. **Abandonment of the Project.** The Applicant understands that, subject to the satisfaction of all applicable legal requirements, the decision to review, process, prepare or approve the proposed Project, shall be each in the sole discretion of the City. No provision of this Agreement shall be construed as a promise, warranty or agreement by the City to review, process, prepare or approve the proposed Project. The City shall have no liability to Applicant for a decision not to review, process, prepare or approve the proposed Project.

6. **Abandonment of Proposed CFD.** The Applicant 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. Should the proceedings to form the CFD be abandoned for any reason, the City shall provide written notification of such abandonment to the Applicant and shall return to the Applicant all unexpended amounts of the Initial Deposit (and any subsequent deposits) which exceed all costs and expenses incurred by the City relating to formation of the CFD. Said monies shall be returned within 60 days of the issuance of the written notice of abandonment. Except for such reimbursement, the City shall have no liability to Applicant for a decision not to form the CFD or issue bonds.

7. **Indemnification and Hold Harmless.** The Applicant hereby assumes the defense of, and indemnifies and saves harmless, the City and each of its officers, directors 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 Applicant or any of the Applicant’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 Applicant or its consultants, except for any action, damages, claims, losses or expenses arising out of the sole negligence or willful misconduct of the City, its officers, directors, employees or agents.

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

**Applicant:** Mana Developments  
Attn: Reza Vossoughi, Manager  
305 Northwood Drive  
Modesto, California 95350-3139

Phone: 209-521-3037  
Facsimile: 209-521-3037

**Applicant:** Hans J. Wagner  
3311 Maze Boulevard  
Modesto, California 95358

Phone: (209) 523-5709  
Facsimile: N/A
Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party.

9. **Assignment.** The Applicant 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.

10. **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.

11. **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 agreements of this Agreement shall be considered valid unless specifically agreed to in writing by all the parties.

12. **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.

13. **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.

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

15. **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.

16. **Termination.** This Agreement shall terminate and be of no further force and effect on the third (3rd) anniversary of the date of this Agreement unless expressly amended by the parties; provided, however, that the Applicant’s obligations under Section 7 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.
17. **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.

18. **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.

19. **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.

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

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

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

23. **Discretion of the City.** City’s execution of this Agreement in no way limits the discretion of City in the permit and approval process in connection with any entitlements within City’s jurisdiction, including those related to the Project, or with the design, construction or funding of any onsite or offsite infrastructure improvements within the City’s jurisdiction.
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 executed in duplicate, effective as of the date first written above.

CITY OF MODESTO, a municipal corporation

By: __________________________
GEORGE W. BRITTON, City Manager

MANA DEVELOPMENTS

By: __________________________
Name: Reza Vossoughi
Title: Manager

HANS J. WAGNER

By: __________________________
Name: Hans J. Wagner

ATTEST:

By: __________________________
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:
SUSANA ALCALA WOOD, City Attorney

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

Signature Requirements

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

Partnership: Signature of one partner

Sole Proprietorship: Signature of proprietor