A RESOLUTION AMENDING POLICIES AND PROCEDURES FOR THE USE
OF MELLO-ROOS COMMUNITY FACILITIES DISTRICTS

WHEREAS, on September 3, 1996, by Resolution No. 96-501, the City Council
adopted “Policies and Procedures” for the creation and administration of Mello-Roos
Community Facilities Districts, and

WHEREAS, by Resolution No. 96-545, adopted on October 8, 1996, the City
Council made certain amendments to its “Policies and Procedures” for the creation and
administration of Mello-Roos Community Facilities Districts, and

WHEREAS, by Resolution No. 98-164, adopted on March 24, 1998, the City
Council made certain amendments to its “Policies and Procedures” for the creation and
administration of Mello-Roos Community Facilities Districts, and

WHEREAS, by Resolution No. 98-186, adopted on April 7, 1998, the City
Council made certain amendments to its “Policies and Procedures” for the creation and
administration of Mello-Roos Community Facilities Districts, and

WHEREAS, by Resolution No. 98-483, adopted on September 8, 1998, the City
Council made certain amendments to its “Policies and Procedures” for the creation and
administration of Mello-Roos Community Facilities Districts, and

WHEREAS, by Resolution No. 99-405, adopted August 10, 1999, the City
Council made certain amendments to its “Policies and Procedures” for the creation and
administration of Mello-Roos Community Facilities Districts, and
WHEREAS, by Resolution No. 99-500, adopted October 5, 1999, the City Council made certain amendments to its “Policies and Procedures” for the creation and administration of Mello-Roos Community Facilities Districts, and

WHEREAS, by Resolution No. 2002-39 the City Council transferred the CFD administration function from the City Clerk and the City Attorney to the City Manager, and by the same Resolution the City Council made certain amendments to its Policies and Procedures for the creation and administration of Mello-Roos Community Facilities Districts, and

WHEREAS, The City Council desires to further amend the City’s Policies and Procedures for formation and administration of Mello-Roos Community Facilities Districts.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Modesto that its “Policies and Procedures” relating to the application for, creation of and administration of Mello-Roos Community Facilities Districts, formerly adopted and amended by this Council, be further amended as set forth below:

1. That Section 3.g. of the Policies and Procedures read as follows:

   Agreements Required. Applicant will be required to enter into all necessary agreements incident to CFD proceedings in a form provided by the City and consistent with these Policies and Procedures. These agreements may include, but not be limited to:

   (1) Acquisition and Shortfall Agreement
   (2) Advanced Funding Agreement
   (3) Land Dedication Agreement (where required)
   (4) Acquisition and Disclosure Agreement
   (5) Disposition and Development Agreement (where required)
   (6) Development Agreement
   (7) Other agreements (as required)
2. That Section 3.k. of the Policies and Procedures read as follows:

In retaining construction contractors for work which is reimbursable by a City of Modesto Community Facilities District ("CFD"), the developer shall abide by the following bid process:

1. Using a bid package approved by the City, the developer shall advertise for bids in the appropriate newspapers and periodicals, including but not limited to the local Builders Exchange and the Modesto Bee. Bid opening shall be no sooner than 7 days after the initial publication.

2. The bid package shall include, and be based upon, improvement plans as stamped approved by the City Engineer or his or her designee ("City Engineer"), and the Community Facilities District Engineer or his or her designee ("District Engineer"). The bid package may not contain any alterations, deviations or exceptions to the improvement plans, unless the alteration, deviation or exception is approved in writing by the District Engineer and is advertised for a reasonable period prior to the bid opening.

3. The developer shall only accept bids using a bid proposal form approved by the City. The developer shall ensure that copies of the form are made available to prospective bidders at a local business office located within Stanislaus County during reasonable business hours throughout the bid advertising period. Contractors interested in submitting sealed bids for the project will be directed to do so on the approved form and at a specific date and time (e.g., at 9 a.m. on February 1, 2004, at the developer’s place of business). At this specified time, the District Engineer may be in attendance to receive the bid packages.

4. The bid packages will be opened immediately after the close of the specified time period. The bid opening shall be open to the public and may be in the presence of the District Engineer. All bids will be publicly announced at the bid opening. The developer will then begin the process of executing a contract with the lowest responsible bidder.

If the developer desires to award to a contractor other than the low bidder, a written request must be submitted to the District Engineer. The District Engineer may allow this if the developer can provide adequate justification.
5. The developer shall insure that all contractors and subcontractors are licensed in accordance with sections 7000 through 7145 inclusive, of the California Business and Professions Code and maintain adequate insurance for any work or services performed.

6. In accordance with California Labor Code section 1770, developer shall require the payment of prevailing wages based on the rates determined by the California Director of Industrial Relations. Unless otherwise directed by the District Engineer, Developer’s construction schedule shall provide adequate time for completion of the work such that no holiday or overtime labor shall be required. The CFD shall not reimburse developer for any labor costs which exceed the normal and customary straight time rates as described in the City of Modesto General Provisions, Section 4.19, for the work performed unless the District Engineer authorizes the use of overtime or legal holiday time, in advance and in writing.

7. The District Engineer shall retain the right to be in attendance to receive the bid package, or to inspect all bids and change orders. Any extra work or charges during construction for which reimbursement is sought shall be justified and documented. Except in the case of an emergency, any such charges shall be approved by the District Engineer in advance and in writing. In the case of an emergency, any such charges may be authorized by the District Engineer if the developer provides adequate justification that an emergency existed and that the extra work or charges incurred were reasonable. Said justification shall be provided within a reasonable time after the emergency ends and prior to reimbursement for any such charges.

8. No permits shall be issued and no work shall commence until the developer and the District Administrator have executed an Acquisition and Shortfall Agreement for the improvements to be constructed.

9. The developer shall maintain certified payroll records for all labor costs incurred on all CFD reimbursable work for a minimum period of four (4) years from the issuance of the Notice of Completion. Said payroll records shall be made available to the CFD or any state regulatory agency for review, audit, inspection or copying upon request.
10. Developer shall indemnify and hold the City and the CFD harmless for ensuring that the project is bid and constructed in accordance with City and CFD standards, and in compliance with all applicable local, state and federal laws. Developer shall also indemnify and hold the City and the CFD harmless for any damages, claims or actions arising out of said construction activities in a form approved by the City Attorney and the Risk Manager.

11. Developer may be reimbursed for design costs incurred prior to the execution of an Acquisition and Shortfall Agreement for completed and accepted, CFD-funded facilities as determined and approved by the CFD Administrator and the CFD Engineer.

3. That Section 3.u. of the Policies and Procedures read as follows:

Based on substantial evidence presented to the City Council, it is determined that advance deposits in the following sums must be received in all cases, whether reimbursable or not, prior to an applicant’s application for a CFD being deemed complete by the CFD Formation Group.

(1) A CFD is to be created at applicant’s request and where bonds are issued - $64,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.

(2) A CFD is to be created at applicant’s request and where bonds are not to be issued - $64,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.

(3) In the case of the creation of a “simple” annexation to an existing CFD, which does not require the preparation of a new public report, or the alteration of an existing Public Report or modification of any other CFD-related document for the existing CFD, and the annexation does not involve the sale of bonds - $9,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.
(4) In the case of the creation of a "complex" annexation to an existing CFD, which requires an amendment to or modification of a Public Report or other CFD-related document, and the annexation does not require the sale of bond - $20,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Byant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
Micheal Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-173

A RESOLUTION OF CONSIDERATION OF THE CITY COUNCIL OF THE CITY OF MODESTO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2003-1 (FAIRVIEW VILLAGE), TO AMEND THE EXISTING RATE AND METHOD OF APPORTIONMENT OF THE SPECIAL TAX

WHEREAS, the City Council of the City of Modesto (the “City Council”), acting as the legislative body of the City of Modesto Community Facilities District No. 2003-01 (Fairview Village) (the “District”), has determined that the rate and method of apportionment of the special tax (the “Existing Rate and Method”), currently described in Ordinance No. 2003-3339 adopted by the City Council on December 11, 2003 (“Ordinance No. 3339”) and approved by the qualified electors within the District at a special election held on December 11, 2003 pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the Government Code (the “Act”), should be changed and replaced by a new rate and method of apportionment as set forth in Appendix A hereto (the “Amended Rate and Method”); and

WHEREAS, the boundaries of the District are as depicted on the boundary map recorded with the County Recorder in the book of maps of assessment and community facilities districts in Book No. 3AM, at Page 83, as Instrument No. 03-0190347 (the “Map”); and

WHEREAS, the City Council has determined in accordance with the requirements of Section 53331 of the Act that the public convenience and necessity require the District to consider the Amended Rate and Method; and
WHEREAS, the City Council now deems it appropriate, in light of the foregoing, and intends, to take the initial steps necessary to consider the proposed Amended Rate and Method by adopting this resolution as required by Section 53334 of the Act;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto hereby finds and determines as follows:

SECTION 1. The above recitals are true and correct.

SECTION 2. The Existing Rate and Method is proposed to be replaced with the Amended Rate and Method attached hereto as Appendix A. If this change is approved, the Amended Rate and Method Amendment will replace the Existing Rate and Method.

SECTION 3. A public hearing (the "Hearing") on the Amended Rate and Method shall be held at 5:30 p.m., or as soon thereafter as practicable, on May 11, 2004, in the Modesto City Council Chamber, 1010 Tenth Street, Modesto, California 95353. Should the City Council determine to submit the Amended Rate and Method to the qualified electors of the District following the Hearing, a special election will be held to authorize the Amended Rate and Method. If the election is held, the proposed voting procedure at the election would be a landowner vote with each landowner who is the owner of record at the close of the Hearing, or authorized representative thereof, having one vote for each acre or portion of an acre of land that he or she owns within the District, or if at least twelve (12) persons, who need not necessarily be the same twelve (12) persons, have been registered to vote within the District for each of the 90 days preceding the close of the Hearing, then the vote shall be by the registered voters of the District, with each voter having one vote. Ballots for the special election may be distributed by mail or by personal service.
SECTION 4. At the time and place set forth above for the Hearing, the City Council, acting in its capacity as the legislative body of the District, shall receive testimony as to whether the Amended Rate and Method should be adopted. The officers of the City responsible for the operation of the District are hereby directed to prepare a report describing the Amended Rate and Method to be submitted to the City Council at the time of the Hearing.

SECTION 5. At the time and place set forth above for the Hearing, any interested person, including all persons owning lands or registered to vote within the District, may appear and be heard.

SECTION 6. The City Clerk is hereby directed to publish a notice (the “Notice”) of the Hearing pursuant to Section 6061 of the Government Code in a newspaper of general circulation published in the area of the District. The Notice shall contain the information required by Section 53335 of the Act, the time and place of the Hearing, a statement that the testimony of all interested persons or taxpayers will be heard, a description of the protest rights of the registered voters and landowners to the Amended Rate and Method and a description of the proposed voting procedure for the election required by the Act. Such publication shall be completed at least seven (7) days prior to the date of the Hearing.

SECTION 7. The City Clerk is hereby directed to send a copy of the Notice of the Hearing by first-class mail, postage prepaid, to each landowner within the District as shown on the last equalized assessment roll, or otherwise known to the City Clerk to be a current owner of land within the District. Said mailing shall be completed not less than fifteen (15) days prior to the date of the Hearing.
SECTION 8. This Resolution shall be effective on its adoption.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Byant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr
JEN ZAHR, City Clerk

APPROVED AS TO FORM:

By
MICHAEL D. MILICH, City Attorney
APPENDIX A

PROPOSED AMENDED AND RESTATED RATE AND METHOD OF APPORTIONMENT FOR THE CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2003-1 (FAIRVIEW VILLAGE)
APPENDIX C

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2003-1
(FAIRVIEW VILLAGE)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

Special Taxes applicable to each Assessor's Parcel in Community Facilities District No. 2003-1 (Fairview Village) [herein “CFD No. 2003-1” or “the CFD”] shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2003-1, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2003-1 unless a separate Rate and Method of Apportionment is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre" or "Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other Development Plan.

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

"Administrative Expenses" means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City carrying out its duties with respect to CFD No. 2003-1 and the Bonds, including, but not limited to, levying and collecting the Special Taxes, the fees and expenses of legal counsel, charges levied by the County Auditor's Office, Tax Collector's Office, and/or Treasurer's Office, costs related to annexing property into the CFD, costs related to property owner inquiries regarding the Special Taxes, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Taxes, and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

"Administrator" means the person or firm designated by the City to administer the Special Taxes according to this Rate and Method of Apportionment of Special Tax.
“Annual Maintenance Special Tax” means a special tax levied in any Fiscal Year to pay the Maintenance Special Tax Requirement, as defined below.

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

“Annual Facilities Special Tax Requirement” means the amount necessary in any Fiscal Year (i) to pay principal and interest on Bonds, (ii) to create or replenish reserve funds, (iii) to cure any delinquencies in the payment of principal or interest on indebtedness of CFD No. 2003-1 which have occurred in the prior Fiscal Year or (based on delinquencies in the payment of the Annual Facilities Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected, and (iv) to pay construction expenses to be funded directly from Annual Facility Special Tax proceeds. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by: (i) interest earnings on or surplus balances in funds and accounts for the Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to a Bond indenture, Bond resolution, or other legal document that sets forth these terms; (ii) proceeds received by CFD No. 2003-1 from the collection of penalties associated with delinquent Annual Facilities Special Taxes; and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

“Assessor’s Parcel” or “Parcel” means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

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

“Bonds” means bonds or other debt (as defined in the Act), whether in one or more series, issued, insured or assumed by CFD No. 2003-1 related to public infrastructure and/or improvements that are authorized to be funded by CFD No. 2003-1.

“Capitalized Interest” means funds in any capitalized interest account available to pay debt service on Bonds.

“CFD Formation” means the date on which the Resolution of Formation to form CFD No. 2003-1 was adopted by the City Council.

“City” means the City of Modesto.

“City Council” means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2003-1.

“County” means the County of Stanislaus.
"Developed Property" means, in any Fiscal Year, the following:

For purposes of levying the Annual Maintenance Special Tax, "Developed Property" means:

- for Single Family Detached Property, all Parcels for which a Final Map was recorded prior to June 30 of the preceding Fiscal Year
- for Single Family Attached Property, all Parcels for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year.
- for Other Property, all parcels for which a building permit for new construction of a building structure was issued prior to June 30 of the preceding Fiscal Year.

For purposes of levying the Annual Facilities Special Tax, "Developed Property" means:

- for Single Family Detached Property, all Parcels for which a building permit for new construction of a Unit was issued prior to June 30 of the preceding Fiscal Year
- for Single Family Attached Property, all Parcels for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year.
- for Other Property, all parcels for which a building permit for new construction of a building structure was issued prior to June 30 of the preceding Fiscal Year.

"Development Plan" means a condominium plan, apartment plan, site plan or other development plan that identifies such information as the type of structure, the acreage, the square footage, and/or the number of Units that will be developed on Single Family Attached Property or Other Property.

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

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

"Maintenance Special Tax Requirement" means that amount necessary in any Fiscal Year to (i) pay for authorized maintenance expenses, (ii) pay administrative expenses of CFD No. 2003-1, and (iii) cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Maintenance Special Taxes which have already taken place) are expected to occur in the current Fiscal Year.
"Maximum One-Time Facilities Special Tax" means the greatest amount of One-Time Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

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

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

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

"One-Time Facilities Special Tax" means a special tax, levied on Taxable Property to pay the One-Time Facilities Special Tax Requirement and collected by the City prior to a structural building permit being issued for new construction on Taxable Property.

"One-Time Facilities Special Tax Requirement" means the amount determined by the City and identified in Attachment 2 of this Rate and Method of Apportionment that is needed to pay facility costs authorized to be funded by CFD No. 2003-1, which will not be paid by the Bonds or Annual Facilities Special Tax.

"Original Parcel" means an Assessor’s Parcel in CFD No. 2003-1 at the time of CFD Formation, as identified in Attachment 2. A Successor Parcel that is being further subdivided shall also be considered an Original Parcel for purposes of determining the Maximum Special Taxes pursuant to Section C.

"Other Property" means all Taxable Property that is Developed Property but is not Single Family Attached Property or Single Family Detached Property.

"Proportionately" means, for Developed Property, that the ratio of the actual Annual Facilities Special Tax and Annual Maintenance Special Tax levied in any Fiscal Year to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax authorized to be levied in that Fiscal Year is equal for all Assessor’s Parcels of Developed Property, respectively. In addition, for Undeveloped Property, “Proportionately” means that the ratio of the actual Annual Facilities Special Tax and actual Annual Maintenance Facilities Special Tax to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax is equal for all Assessor’s Parcels of Undeveloped Property, respectively.

"Public Property" means any property within the boundaries of CFD No. 2003-1 that is owned by the federal government, State of California, County, City, or other public agency.
“Single Family Attached Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of a residential structure consisting of two or more Units that share common walls and are offered as for-sale Units, including such residential structures that meet the statutory definition of a condominium contained in Civil Code Section 1351.

“Single Family Detached Lot” means an individual numbered lot, which is in its final configuration and for which a building permit may be issued for a single family detached Unit.

“Single Family Detached Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued or will be issued for construction of a Unit that does not share a common wall with another Unit.

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

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

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

“Taxable Property” means all of the Assessor’s Parcels within the boundaries of CFD No. 2003-1 which are not exempt from the Special Tax pursuant to law or Section G below.

“Taxable Public Property” means, in any Fiscal Year, all Parcels of Public Property within CFD No. 2003-1 that, (i) based on a tentative map or other Development Plan, were expected to be Taxable Property and, (ii) based on this expectation, Maximum Special Taxes were assigned to the Parcels in prior Fiscal Years.

“Tax Zone” means a mutually exclusive geographic area, within which particular Special Tax rates may be levied pursuant to this Rate and Method of Apportionment of Special Tax. Attachment 1 identifies the Tax Zone in CFD No. 2003-1 at CFD Formation; additional Tax Zones may be created when property is annexed into the CFD.

“Tax Zone #1” means the geographic area that was identified in Fiscal Year 2003-04 by Assessor’s Parcel number 56-27-02 and is designated in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Tax Zone #1.

“Undeveloped Property” means, in any Fiscal Year, all Parcels of Taxable Property within CFD No. 2003-1 that are not Developed Property.

“Unit” means (i) for Single Family Detached Property, an individual single-family detached unit, and (ii) for Single Family Attached Property, an individual residential unit within a duplex, triplex,
fourplex, townhome, or condominium structure.

B. DATA FOR ANNUAL ADMINISTRATION

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Parcels of Taxable Property. The Administrator shall also determine: (i) the Tax Zone within which each Parcel of Taxable Property is located, (ii) whether each Assessor’s Parcel of Taxable Property is Developed Property or Undeveloped Property, (iii) for Developed Property, which Parcels are Single Family Detached Property, Single Family Attached Property, and Other Property, (iv) for Parcels of Single Family Attached Property, the number of Units on each Parcel, (v) for Other Property, the Acreage of each Parcel, and (vi) the One-Time Facilities Special Tax Requirement, the Annual Facilities Special Tax Requirement, and the Maintenance Special Tax Requirement.

For Single Family Attached Property, the number of Units shall be determined by referencing the relevant Development Plan. If, in any Fiscal Year, an Assessor’s Parcel includes both Developed Property and Undeveloped Property, the Administrator shall determine the acreage associated with the Developed Property, subtract this acreage from the total Acreage of the Assessor’s Parcel, and use the remaining acreage to calculate the Special Tax that will apply to Undeveloped Property within the Assessor’s Parcel. The Special Tax shall then be calculated for the Developed Property on the Parcel, and the total Special Tax levied on the Assessor’s Parcel shall be the sum of the Special Taxes determined separately for the Undeveloped Property and Developed Property on the Parcel.

C. CALCULATING THE MAXIMUM SPECIAL TAXES

The Administrator shall use the procedures set forth below to calculate the Maximum Special Taxes for each Parcel in CFD No. 2003-1 in each Fiscal Year, including the Maximum One-Time Facilities Special Tax, Annual Facilities Special Tax, and Annual Maintenance Special Tax.

1. Original Parcels

The Maximum Special Taxes for each Original Parcel in CFD No. 2003-1 as of CFD Formation are identified in Attachment 2. Attachment 2 will be updated by the Administrator as needed to reflect Original Parcels added to the CFD due to annexations.

2. Successor Parcels
   a. All Successor Parcels are Single Family Detached Lots

If the Parcels created by a recorded Subdivision Map are all Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels created by the subdivision:
Step 1: Identify the Maximum Special Taxes assigned to the Original Parcel;

Step 2: Divide the Maximum Special Taxes from Step 1 by the number of Single Family Detached Lots created by the Subdivision Map to determine the Maximum Special Taxes for each Single Family Detached Lot.

b. **No Successor Parcels are Single Family Detached Lots**

If none of the Successor Parcels created by recordation of a Subdivision Map are Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels:

Step 1: Identify the Maximum Special Taxes assigned to the Original Parcel;

Step 2: Determine the total Acreage of Taxable Property created by subdivision of the Original Parcel;

Step 3: Divide the Maximum Special Taxes from Step 1 by the Acreage from Step 2 to calculate Maximum Special Taxes per acre;

Step 4: Multiply the per-acre Maximum Special Taxes from Step 3 by the Acreage in each Successor Parcel to calculate the Maximum Special Taxes for each Successor Parcel.

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

c. **Some, But Not All, Successor Parcels are Single Family Detached Lots**

If a Subdivision Map divides an Original Parcel into Successor Parcels, of which some are Single Family Detached Lots and some are not, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels:

Step 1: Identify the Maximum Special Taxes assigned to the Original Parcel;

Step 2: Determine the total Acreage of Taxable Property created by subdivision of the Original Parcel;
Step 3: Determine the total Acreage of Single Family Detached Property created by the subdivision by taking the sum of the Acreage in the individual Single Family Detached Lots;

Step 4: Divide the Maximum Special Taxes from Step 1 by the Acreage calculated in Step 2 to calculate Maximum Special Taxes per acre;

Step 5: Multiply the per-acre Maximum Special Taxes calculated in Step 4 by the Acreage of Single Family Detached Property calculated in Step 3 to determine the total Maximum Special Taxes to be assigned to the Single Family Detached Property created by the subdivision;

Step 6: Divide the amount calculated in Step 5 by the number of Single Family Detached Lots created by the subdivision to determine the Maximum Special Taxes for each Single Family Detached Lot;

Step 7: Multiply the per-acre Maximum Special Taxes calculated in Step 4 by the Acreage of each Successor Parcel that is not Single Family Detached Property to calculate the Maximum Special Taxes for such Parcels.

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

After each reallocation of the Maximum Special Taxes upon subdivision or reconfiguration of Original Parcels, the sum of the Maximum Special Taxes assigned to Successor Parcels shall never be less than the Maximum Special Taxes assigned to the Original Parcels prior to such reallocation.

D. ESCALATION OF MAXIMUM SPECIAL TAXES

1. One-Time Facilities Special Tax

Beginning in January 2005 and each January thereafter, the Maximum One-Time Facilities Special Tax assigned to each Parcel shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum One-Time Facilities Special Tax shall become effective on the subsequent July 1.
2. Annual Facilities Special Tax

Beginning with Fiscal Year 2005-06, and each Fiscal Year thereafter, the Maximum Annual Facilities Special Tax assigned to each Parcel shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.

3. Annual Maintenance Special Tax

Beginning in January 2005 and each January thereafter, the Maximum Annual Maintenance Special Tax shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

E. METHOD OF LEVY OF THE SPECIAL TAX

1. One-Time Facilities Special Tax

The Maximum One-Time Facilities Special Tax determined pursuant to Sections C and D above shall be levied on all Taxable Property in CFD No. 2003-1 and shall be collected as set forth in Section F below.

2. Annual Facilities Special Tax

Commencing with Fiscal Year 2004-05 and for each following Fiscal Year, the Administrator shall determine the Annual Facilities Special Tax Requirement for that Fiscal Year. The Annual Facilities Special Tax shall then be levied on all Parcels of Taxable Property as follows:

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

Step 2: If additional revenue is needed after Step 1, and after applying Capitalized Interest to the Annual Facilities Special Tax Requirement, the Annual Facilities Special Tax shall be levied Proportionately on each Assessor’s Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Facilities Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;
Step 3: If additional revenue is needed after applying the first two steps, the Annual Facilities Special Tax shall be levied proportionately on each Assessor’s Parcel of Taxable Public Property, up to 100% of the Maximum Annual Facilities Special Tax assigned to each Parcel of Taxable Public Property.

3. Annual Maintenance Special Tax

Commencing with Fiscal Year 2004-05 and for each following Fiscal Year, the Administrator shall determine the Maintenance Special Tax Requirement for that Fiscal Year. The Annual Maintenance Special Tax shall then be levied on all Parcels of Taxable Property as follows:

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

Step 2: If additional revenue is needed after Step 1, the Annual Maintenance Special Tax shall be levied proportionately on each Assessor's Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;

Step 3: If additional revenue is needed after applying the first two steps, the Annual Maintenance Special Tax shall be levied proportionately on each Assessor’s Parcel of Taxable Public Property, up to 100% of the Maximum Annual Maintenance Special Tax assigned to each Parcel of Taxable Public Property.

F. COLLECTION OF SPECIAL TAX

The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of any residential or non-residential structure on Taxable Property within CFD No. 2003-1, and shall be immediately delinquent if not so paid.

The Annual Facilities Special Tax and Annual Maintenance Special Tax for CFD No. 2003-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that prepayments are permitted as set forth in Section H below and provided further that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual Facilities Special Taxes and Annual Maintenance Special Taxes through foreclosure or other available methods.

The Annual Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring authorized facilities from Annual Facilities
Special Tax proceeds have been paid, and all administrative expenses have been reimbursed. However, in no event shall an Annual Facilities Special Tax be levied after Fiscal Year 2050-2051. The Annual Maintenance Special Tax will continue to be levied and collected unless and until the City determines that Annual Maintenance Special Tax revenues are no longer needed to pay authorized services of the CFD.

G. **EXEMPTIONS**

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

H. **PREPAYMENT OF SPECIAL TAX**

The following definitions apply to this Section H:

“**Outstanding Bonds**” means all Previously Issued Bonds which remain outstanding, with the following exception: if an Annual Facilities Special Tax has been levied against, or already paid by, an Assessor’s Parcel making a prepayment, and a portion of the Annual Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

“**Previously Issued Bonds**” means all Bonds that have been issued on behalf of the CFD prior to the date of prepayment.

“**Public Facilities Requirements**” means either $3,800,000 in 2004 dollars, which shall increase on January 1, 2005, and on each January 1 thereafter by the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or such lower number as shall be determined by the City as sufficient to fund improvements that are authorized to be funded by the CFD. The Public Facilities Requirements shown above may be adjusted or a separate Public Facilities Requirements identified each time property annexes into CFD No. 2003-1; at no time shall the added Public Facilities Requirement for that annexation area exceed the amount of public improvement costs that are expected to be supportable by the Maximum Annual Facilities Special Tax revenues generated within that annexation area.

“**Remaining Facilities Costs**” means the Public Facilities Requirements (as defined above), minus public facility costs funded by Outstanding Bonds (as defined above), developer equity, and/or any other source of funding.
The Annual Facilities Special Tax obligation applicable to an Assessor's Parcel in the CFD may be prepaid and the obligation of the Assessor's Parcel to pay the Annual Facilities Special Tax permanently satisfied as described herein, provided that a prepayment may be made only if there are no delinquent Annual Facilities Special Taxes with respect to such Assessor's Parcel at the time of prepayment. The Annual Maintenance Special Tax may not be prepaid. An owner of an Assessor's Parcel intending to prepay the Annual Facilities Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Assessor's Parcel. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Annual Facilities Special Taxes. The Prepayment Amount shall be calculated as follows: (capitalized terms as defined below):

\[
\text{Prepayment Amount} = \text{Bond Redemption Amount} + \text{Remaining Facilities Amount} + \text{Redemption Premium} + \text{Defeasance Requirement} + \text{Administrative Fees and Expenses} - \text{Reserve Fund Credit}
\]

As of the proposed date of prepayment, the Prepayment Amount shall be determined by application of the following steps:

**Step 1.** Compute the total Maximum Annual Facilities Special Tax that could be collected from the Assessor's Parcel prepaying the Annual Facilities Special Tax in the Fiscal Year in which prepayment would be received by the City.

**Step 2.** Divide the Maximum Annual Facilities Special Tax from Step 1 by the total amount that could be collected if the Maximum Annual Facilities Special Tax was levied on all Parcels of Taxable Property in the CFD.

**Step 3.** Multiply the quotient computed pursuant to Step 2 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (the "Bond Redemption Amount").

**Step 4.** Compute the current Remaining Facilities Costs (if any).

**Step 5.** Multiply the quotient computed pursuant to Step 2 by the amount determined pursuant to Step 4 to compute the amount of Remaining Facilities Costs to be prepaid (the "Remaining Facilities Amount").

**Step 6.** Multiply the Bond Redemption Amount computed pursuant to Step 3 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (the "Redemption Premium").
Step 7. Compute the amount needed to pay interest on the Bond Redemption Amount starting with the first Bond interest payment date after which the prepayment has been received until the earliest redemption date for the Outstanding Bonds, which, depending on the Bond offering document, may be as early as the next interest payment date.

Step 8: Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.

Step 9: Take the amount computed pursuant to Step 7 and subtract the amount computed pursuant to Step 8 (the "Defeasance Requirement").

Step 10. Determine the costs of computing the prepayment amount, the costs of redeeming Bonds, and the costs of recording any notices to evidence the prepayment and the redemption (the "Administrative Fees and Expenses").

Step 11. If and to the extent so provided in the indenture pursuant to which the Outstanding Bonds to be redeemed were issued, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the "Reserve Fund Credit").

Step 12. The Annual Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 3, 5, 6, 9, and 10, less the amount computed pursuant to Step 11 (the "Prepayment Amount").

I. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that does not materially affect the rate and method of apportioning the Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment of Special Tax.
ATTACHMENT 1

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2003-1
(FAIRVIEW VILLAGE)

IDENTIFICATION OF TAX ZONES

Ultimate Boundary of Fairview Village

Tax Zone #1

056-027-002
ATTACHMENT 2

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2003-1
(FAIRVIEW VILLAGE)

MAXIMUM SPECIAL TAXES ASSIGNED TO EACH ORIGINAL PARCEL WITHIN EACH TAX ZONE

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>56-27-02</td>
<td>$0</td>
<td>$326,517</td>
<td>$108,585</td>
</tr>
</tbody>
</table>

1. Beginning in January 2005 and each January thereafter, the Maximum One-Time Facilities Special Tax shall be adjusted by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum One-Time Facilities Special Tax shall become effective on the subsequent July 1.

2. Beginning in Fiscal Year 2005-06 and each Fiscal Year thereafter, the Maximum Annual Facilities Special Tax shall escalate by 2.0% of the amount in effect in the prior Fiscal Year.

3. Beginning in January 2005 and each January thereafter, the Maximum Annual Maintenance Special Tax shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-174

A RESOLUTION APPROVING AGREEMENTS BETWEEN THE CITY OF MODESTO AND SHELDON GROVER (APN: 005-3707 – PORTION), MATTHEW AND ANNE LONG (APN: 005-3708 – PORTION) AND ROBERT AND LYNNA CAMPANA (APN: 005-3709 – PORTION) FOR THE ACQUISITION OF PROPERTIES ALONG RUMBLE ROAD FOR THE RUMBLE ROAD WIDENING PROJECT AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENTS.

WHEREAS, the City Council of the City of Modesto approved the Rumble Road Widening Project – Rumble/Conant Improvements ("Project") to extend the sidewalk improvements along Rumble Road as part of the City's Capital Improvement Program projects, and

WHEREAS, certain real property needs to be acquired for said Project which properties are identified as portions of Assessor's Parcel Nos: 005-3707; 005-3708; 005-3709, and which properties are owned by Sheldon Grover, Matthew and Anne Long and Robert and Lynna Campana, respectively, and

WHEREAS, an agreement is needed for the acquisition of the needed real property.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Agreements between City of Modesto and Sheldon Grover, Matthew and Anne Long and Robert and Lynna Campana for the Rumble Road Widening Project are hereby approved.

BE IT FURTHER RESOLVED THAT the execution of said Agreements by the City Manager or his designee on behalf of the City of Modesto is hereby authorized.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

Approved as to Form:

Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-175

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN ACCEPTANCE FORM FOR A GRANT DEED FOR THE ACQUISITION OF PROPERTY OWNED BY SHELDON GROVER (APN: 005-3707 – PORTION), MATTHEW AND ANNE LONG (APN: 005-3708 – PORTION) AND ROBERT AND LYNNA CAMPANA (APN: 005-3709 – PORTION) TO THE CITY OF MODESTO FOR PROPERTY ALONG RUMBLE ROAD FOR THE RUMBLE ROAD 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 real property from Sheldon Grover (APN: 005-3707 – portion), Matthew and Anne Long (APN: 005-3708 – portion) and Robert and Lynna Campana (APN: 005-3709 – portion) for property along Rumble Road for the Rumble Road Widening Project

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the City Manager or his designee is hereby authorized to sign a Certificate of Acceptance on behalf of the City of Modesto for the Grant Deed for the acquisition of property for the Rumble Road Widening Project.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City Manager or his designee is hereby authorized and directed to sign any and all documents related to the purchase of real property on behalf of the City of Modesto as it is required for the acquisition of the property for the Rumble Road Widening Project.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: JEAN ZAHN, City Clerk

Approved as to Form:

MICHAEL D. MILICH, City Attorney
A RESOLUTION ACCEPTING THE PURCHASE AGREEMENT IN THE AMOUNT OF $929,000 FROM SYLVAN UNION SCHOOL DISTRICT FOR THE SALE OF A PORTION OF A PARCEL (FUTURE SITE OF FREEDOM PARK) LOCATED ALONG SHARON AVENUE (APN: 085-0721) WITHIN THE CITY OF MODESTO AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL REQUIRED DOCUMENTS TO COMPLETE SAID SALE ON BEHALF OF THE CITY OF MODESTO

WHEREAS, the City Council has determined that a portion of the parcel of land ("Portion") owned by the City of Modesto and located along Sharon Avenue within the City of Modesto (Assessors Parcel Number 085-0721) is excess to the City’s future park needs, and

WHEREAS, said Portion consists of 4.22 acres and is a part of a larger parkland parcel consisting of 12.6 acres. Said Portion is more particularly described in “Exhibit A”, which is attached hereto and made a part hereof by this reference, and

WHEREAS, on October 28, 2003, the Council declared said Portion of said parkland excess to the City’s needs and directed staff to offer said Portion for sale and in accordance with Government Code §54222, staff offered said Portion to the Sylvan Union School District who expressed interest in acquiring said Portion, and

WHEREAS, the City negotiated with Sylvan Union School District representatives which action has resulted in an offer in the amount of Nine Hundred, Twenty-Nine Thousand Dollars and No Cents ($929,000) from Sylvan Union School District. Said Purchase Agreement ("Exhibit B") is attached hereto and made a part hereof by this reference, and

WHEREAS, City has determined that said offer is reasonable.
NOW, THEREFORE BE IT RESOLVED by the Council of the City of Modesto that said Purchase Agreement and offer from Sylvan Union School District is hereby accepted for the sale of a portion of Assessors Parcel Number 085-0721, as set forth in “Exhibit A”.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City Manager is hereby authorized to execute the grant deed and any property-related documents in order to sell said property 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 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Byant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: JEAN ZAHR, City Clerk

APPROVED AS TO FORM: MICHAEL D. MILICH, City Attorney
EXHIBIT “A”

LEGAL DESCRIPTION
(PARCEL TO BE GRANTED)

ALL THAT CERTAIN REAL PROPERTY SITuate IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA, BEING A PORTION OF LOTS 10 AND 11, AS SAID LOTS ARE SHOWN ON THAT CERTAIN MAP ENTITLED, “ADAM’S COLONY” FILED FOR RECORD ON OCTOBER 21, 1908 IN BOOK 4 OF MAPS AT PAGE 5, STANISLAUS COUNTY RECORDS, STATE OF CALIFORNIA, AND BEING A PORTION OF THE LANDS CONVEYED TO THE CITY OF MODESTO AS SAID LANDS ARE DESCRIBED IN THE GRANT DEED RECORDED ON MARCH 3, 1992 IN DOCUMENT NO. 018683 OF THE OFFICIAL RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 11, AT THE SOUTHWEST CORNER OF SAID LANDS OF THE CITY OF MODESTO; THENCE ALONG THE WEST LINE OF SAID LOTS 10 AND 11 AND ALONG THE WEST LINE OF SAID LANDS OF THE CITY OF MODESTO, NORTH 0°58'30" WEST, A DISTANCE OF 266.53 FEET; THENCE LEAVING SAID WEST LINE AND ALONG A LINE THAT IS PARALLEL WITH THE NORTH LINE OF SAID LANDS OF THE CITY OF MODESTO, NORTH 89°19'33" EAST, A DISTANCE OF 688.87 FEET TO A POINT ON THE EAST LINE OF SAID LANDS OF THE CITY OF MODESTO; THENCE ALONG SAID EAST LINE, SOUTH 0°55'00" EAST, A DISTANCE OF 266.53 FEET TO THE SOUTHEAST CORNER OF SAID LANDS OF THE CITY OF MODESTO; THENCE ALONG THE SOUTH LINE OF SAID LANDS OF THE CITY OF MODESTO, SOUTH 89°19'33" WEST, A DISTANCE OF 688.60 FEET TO THE POINT OF BEGINNING.

(CONTAINING 4.214 ACRES MORE OR LESS.)
EXHIBIT_B

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
AND JOINT ESCROW INSTRUCTIONS OF BUYER AND SELLER

THIS AGREEMENT is made this _______ day of April, 2004, by and between City of Modesto, a municipal corporation, an individual (hereinafter "Seller"), and the Sylvan School District ("Buyer").

RECITALS

WHEREAS, Seller is the owner of a 4.22 acre parcel of property, hereinafter described, which is located in the City of Modesto, County of Stanislaus, State of California; and

WHEREAS, Buyer desires to acquire said property and Seller desires to sell said property on and subject to the terms and conditions contained herein.

OPERATIVE PROVISIONS

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, Seller and Buyer agree as follows:

ARTICLE 1

ASSETS PURCHASED

Seller hereby agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following:

1.1 The Real Property described in Exhibit A and shown on Exhibit B, including all mineral and subsurface rights, if any, and all improvements located thereon;

1.2 All rights, privileges and easements appurtenant to the Real Property, (all of which are collectively referred to as the "Appurtenances").

1.3 The Real Property, the Appurtenances, Easements and Improvements are hereinafter collectively referred to as the "Property."
ARTICLE 2

TERMS

2.1 The Purchase Price. The purchase price for the Property shall be nine hundred twenty-nine thousand dollars ($929,000) ("Purchase Price").

2.2 Terms. The Purchase Price shall be paid as follows:

a. Deposit. Within five (5) days of execution of this Agreement, Buyer shall deposit the sum of fifty thousand dollars ($50,000) (the "Deposit") in escrow with Fidelity National Title Company, 3425 Coffee Road, Suite C, Modesto CA 95355 (the "Escrow Holder"). The Deposit shall be held in an interest bearing account and the interest accruing thereon shall be held for the account of Buyer.

b. Balance of Purchase Price. Within three (3) days prior to close of escrow Buyer shall deposit with the Escrow Holder, for delivery to Seller at the close of escrow, the balance of the Purchase Price in immediately available funds.

c. Payment of Balance Upon Closing. At the close of escrow ("Closing"), the Deposit and the balance of the Purchase Price, less any amount owed to Buyer in accordance with the terms of this Agreement, shall be paid by Escrow Holder to or at the direction of Seller on account of the Purchase Price.

d. Closing Costs. At least three (3) days prior to the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder, in cash or a certified, bank cashier's or treasury check made payable to Escrow Holder or a confirmed wire transfer of funds, the amount of Escrow Holder's estimate of Buyer's share of closing costs, prorations and charges payable pursuant to this Agreement.
e. **Grant Deed.** Seller shall deposit the Grant Deed described herein into escrow prior to the close of escrow.

f. **Preliminary Title Report.** Within fifteen (15) days after the opening of escrow, Escrow Holder shall deliver to Buyer a Preliminary Title Report for the Property accompanied by legible copies of all documents referred to in the Report along with plotted easements.

2.3 **Conveyance of Title.** At the Closing, Seller shall convey to Buyer title to the Property in fee simple by recordation of the Grant Deed as defined herein, clear of all title defects, liens, assessments, encumbrances, easements, deeds of trust and mortgages except the lien for real property taxes, if any, for the current fiscal year not yet due, any assessments for which the Buyer will remain liable as a public agency, if any, for the current fiscal year not yet due, and such exceptions to title as Buyer shall approve pursuant to Section 3.1.

2.4 **Issuance of Title Insurance.** Evidence of title to the Property shall be the issuance at Closing by Fidelity National Title Company, 3425 Coffee Road, Suite C, Modesto, CA 95355 (the "Title Company") of an ALTA owner's policy of title insurance in the full amount of the Purchase Price, insuring fee simple title to the Property in the condition required by Section 2.3 and containing such endorsements as Buyer shall require. Indemnification of the Title Company to induce it to insure any otherwise unpermitted exception to title shall not be allowed except with the prior consent of Buyer after full disclosure to Buyer of the nature and substance of such exception and indemnity.
ARTICLE 3

CONDITIONS TO CLOSE

3.1 Conditions to Buyer's Obligation. Buyer's obligation to purchase the Property under this Agreement is subject to the fulfillment of each of the following conditions, each of which is for the benefit of Buyer and any or all of which may be waived by Buyer in writing at its option:

a. Delivery of Title. Delivery of title to the Property in the condition required by Section 2.3.

b. Issuance of an ALTA Policy of Title Insurance. Issuance of an ALTA owner's policy of title insurance in the full amount of the Purchase Price for the Property with only those exceptions which are acceptable to Buyer, accompanied by legible copies of all documents referred to in the report.

c. Survey. Seller shall provide a survey of the Property to be paid for by Seller prepared by a licensed surveyor or civil engineer in sufficient detail to provide for the policy of title insurance described and required in Section 2.4 above, certified to Buyer and the Title Company in form satisfactory to Buyer without boundary, encroachment, or survey expectations which shall show the location of all easements and improvements. A copy of the survey shall be provided to Buyer and Title Company when complete.

d. State and Local Regulatory Agencies' Approval. Unconditional acceptance and approval of Buyer's purchase of the Property by appropriate state and local regulatory agencies, including, but not limited to, the California Department of Toxic Substances Control, the California Department of Education, California Department of Conservation, the State Allocation Board, and the Office of Public School Construction.
e. **Board of Trustees Acceptance of Purchase.** Final acceptance and approval of any final inspections, reports, or analyses prepared by any of the regulatory agencies referred to in Section 3.1(d) or any other regulatory agency with any jurisdiction over the property and its future development as a school site, including approval of requirements imposed by such agencies that Buyer remediate or remove hazardous substances on the Property prior to its use as a school site.

f. **Environmental Compliance by Buyer.** Determination by Buyer that the Property complies with all federal, state and local environmental requirements applicable for use of the Property as a school site including without limitation, the California Environmental Quality Act, permits, mitigation and monitoring plans, geological and soil engineering investigations, hazardous waste and hazardous air emissions, and completion of any applicable environmental site assessments in compliance with Education Code sections 17213.1, et seq. Any environmental assessment of the Property shall be performed at the expense of Buyer. If the Property is not acceptable to Buyer because of the results of any environmental assessment required by the aforementioned statutes, the provisions of section 3.6 (a) shall apply. Seller shall have no obligation to perform any work of remediation in connection with or resulting from information obtained through any assessments performed.

g. **Approval of Condition of Property.** Final approval of the Condition of Property by Buyer.

1. **Feasibility Review.** Buyer shall analyze the feasibility of development of the Property by Buyer. Buyer shall be solely responsible for any and all costs incurred by Buyer in connection with its review and/or investigations of the Property.
2. **Delivery of Project Documents.** Unless Seller is not in possession of the following, which shall be evidenced by Seller’s written notice to Buyer of the same, Seller shall, within fifteen (15) days of the execution of this Agreement, deliver to Buyer any and all documents and information related to the Property which is in the possession of Seller or Seller’s agents, including any: (1) environmental documents on the Property or any adjacent property owned or controlled by Seller; (2) copies of all documents evidencing interests not shown on the Title Report, if any; (3) development agreements, tract map conditions of approval, grading and engineering studies and plans, soils reports, environmental studies, impact reports or negative declarations, traffic, noise, and drainage studies, subdivision maps, improvements plans, improvement agreements and bonds, if any; (4) permission for Buyer to discuss the Property with Seller’s consultants; and (5) any existing leases and amendments relating to the Property. Buyer shall review and analyze the Project Documents to determine their individual and collective impact on the Property and its development by Buyer.

3. **Studies and Investigations.** Buyer shall conduct such independent investigations, studies and tests as it deems necessary or appropriate concerning Buyer’s proposed use and/or the suitability of the Property for Buyer’s intended purposes, including studies related to requirements or limitations imposed on the use of the Property.

4. **Approval or Disapproval of Feasibility Studies.** Buyer’s obligation to consummate the purchase of the Property is conditioned upon delivery of the written approval of the Property to the Escrow Holder by Buyer prior to the Closing.

3.2 a. **Seller’s Obligations.** Seller shall have timely performed all of the obligations required by the terms of this Agreement to be performed by Seller.
b. **Seller's Representations.** To the best of Seller's knowledge, all representations and warranties made by Seller to Buyer in this Agreement shall be true and correct as of the Closing.

3.3 **Condition of Property.** Seller represents and warrants that it is not aware of the existence of any defect or condition which would prevent the use of the Property, including, but not limited to, the condition of the soil, the existence of geologic hazards or groundwater contamination on the Property, the existence of ecological or environmental impediments to the intended use of the Property, the transfer of any water rights which are appurtenant to the Property and the existence of any hazardous or toxic materials on, beneath the surface, or in the vicinity of the Property at levels requiring remediation or removal under existing applicable laws. Buyer shall pay for removal of hazardous or toxic materials on the Property, including residual pesticides, herbicides, underground storage tanks and any other substances required to be removed as a condition of acquisition of the Property by any state or local agency with jurisdiction over the Property, and the remediation costs of such removal shall be deducted from the Purchase Price. Remediation costs to be deducted from the Purchase Price shall include the cost of all appropriate or requisite licenses, permits, inspections, clearances, and air monitoring.

3.4 **Warranties of Title.** Seller warrants and represents that:

a. **No Pending Litigation.** To Seller's actual knowledge, there are no actions, suits or proceedings pending or threatened against or affecting the Property in any court at law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality relating to the Property.

b. **Contracts Concerning the Property.** That Seller has received no notice of any contracts, licenses, commitments, or undertakings respecting the Property or the
performance of services on the Property, or the use of the Property or any part of it by which Buyer would become obligated or liable to any person.

c. **Violations.** That Seller has not received any notice of any violation of any statute, ordinance, regulation or administrative or judicial order or holding, whether or not appearing in public records, with respect to the Property or any improvements on the Property.

d. **Material Defects.** Seller has not received any notice that any material defect in the Property exists at present or as of the Closing.

e. **Easements Not of Record.** Seller has no knowledge, actual or constructive, and has not received any notice of the title to be conveyed to Buyer being encumbered by any easements, licenses, or other rights not disclosed by the public record.

f. **Status of Title.** As a covenant that will survive the Closing, Seller warrants that it is the sole owner of the Property, free and clear of all liens, claims, encumbrances and/or easements, encroachments on the Property from adjacent properties, encroachments by improvements or vegetation of the Property onto adjacent property, or rights of way of any nature. Any and all financial or monetary liens, claims and/or encumbrances shall be satisfied by Seller to the extent required by Section 5.3.

g. **Hazardous Material.** As a covenant that will survive the Closing, Seller warrants that Seller has no personal knowledge of, either actual or constructive, and has not received any notice, actual or constructive, from any local, state or federal agency of any hazardous material of any type or nature, solid, liquid or gaseous, which exists or has existed above, on, or beneath the Property prior to the date of Closing, including but not limited to, residual pesticides, herbicides and underground storage tanks, damages consequent to their existence on the Property and attorneys fees and costs of litigation arising from any such claims.
Seller shall indemnify and hold Buyer harmless from any and all claims, including third party claims, resulting from the presence of hazardous material above, on or beneath the Property, which was deposited prior to the date of Closing, including but not limited to the cost of removal of all hazardous materials from the Property, residual pesticides, herbicides and underground storage tanks, damages consequent to their existence on the Property and attorneys fees and costs of litigation arising from any such claims. Seller agrees to provide and disclose to Buyer within fifteen (15) days of execution of the Agreement any and all documents in Seller's possession regarding the existence, use, application or removal of hazardous substances on or from the Property including any and all disclosures by current and former tenants of Seller of the use or presence of hazardous materials on or in the vicinity of the Property.

3.5 a. Conditions to Benefit Buyer. The conditions contained in Sections 3.1, through 3.4 are intended solely for the benefit of Buyer. If the Seller is unable to deliver title to the Property, and the Property as required herein, or the conditions described in Sections 3.1 through 3.4 are not satisfied, Buyer shall have the right at its sole election, either to proceed with the purchase of the Property in accordance with the terms hereof, or, in the alternative, to terminate this Agreement and obtain a refund of the deposit plus all interest accrued thereon. In the event Buyer elects to terminate this Agreement for the reasons provided herein, Buyer shall pay any title and escrow charges, and neither party shall have any further rights or obligations under this Agreement.

b. Conditions to Benefit Seller. Seller's Conditions to Close contained in paragraph 3.6 are for the benefit of Seller, and should Buyer fail to timely comply with the Seller's Conditions to Close, Seller may, in its sole discretion, terminate this Agreement and retain the Liquidated Damages as provided in Section 7. In the event Seller elects to terminate
this Agreement for failure of Buyer to satisfy Seller's conditions to close as provided herein, Buyer shall pay any title and escrow charges.

3.6 **Conditions to Seller's Obligation.** For the benefit of Seller, the Closing shall be conditioned upon the occurrence and/or satisfaction of each of the following conditions (or Seller's written waiver thereof, it being agreed that Seller may waive any or all of such conditions):

a. **Buyer's Obligations.** Buyer shall have performed by the Closing, all of the obligations required by the terms of this Agreement to be performed by Buyer.

b. **Buyer's Representations.** All representations and warranties made by Buyer to Seller in this Agreement shall be true and correct as of the Closing.

**ARTICLE 4**

**ESTABLISHMENT OF ESCROW**

4.1 **Time to Open Escrow.** Promptly after the execution of this Agreement, an escrow shall be opened to consummate the sale of the Property pursuant to this Agreement in accordance with further escrow instructions of Buyer and of Seller (the “Escrow Instructions”), which instructions shall be consistent with the terms of this Agreement.

4.2 **Delivery of Agreement.** Seller and Buyer shall open the escrow by delivering an executed counterpart of this Agreement to the Escrow Holder.

**ARTICLE 5**

**CLOSING**

5.1 **Closing Date.** The Closing hereunder shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of the Title
Company on or after a date not later than six months from the date of execution of this Agreement (the "Closing Date") or such other date as Buyer and Seller may agree to in writing or as established by Buyer and Seller pursuant to Section 5.2.

5.2 Extension of Closing Date. The Closing Date may be extended, at Buyer's option by written notice to Seller, for a reasonable period of time if required to allow satisfaction of all necessary conditions, such period not to exceed an additional six (6) months, subject to Buyer's further rights to terminate this Agreement upon the expiration of the period of any such extension if all such conditions have not then been satisfied.

If, at the conclusion of the extension period, the necessary conditions have not been satisfied, this Agreement shall either terminate, or at Buyer's option, may be extended after renegotiation of the Purchase Price for the Property. Upon termination of the Agreement pursuant to this Section, the Deposit, plus all interest accrued thereon, shall be returned to Buyer.

5.3 Encumbrances. Except as specified in Section 2.3, the Seller shall pay in full any bonds, liens, claims, or mortgages encumbering the Property, if applicable.

5.4 Recording Fees. Buyer shall pay the fees, if any, for recording the Grant Deed.

5.5 Other Fees and Costs. The cost of an ALTA title policy shall be paid by Buyer. Seller shall pay all costs and expenses of clearing title to achieve the condition required by Section 2.3. Seller shall pay all documentary transfer taxes payable in connection with the recordation of the Grant Deed. Buyer shall pay for any endorsements to the title insurance policy requested by that party. Buyer and Seller shall share equally the Escrow Holder's fees and other customary charges for document drafting, recording, and miscellaneous charges. If, as a result of no fault of Buyer or Seller, Escrow fails to close, Buyer and Seller shall share equally all of Escrow Holder's fees and charges. In the event this escrow fails to close through the fault
of Seller, Seller shall pay any and all escrow costs and expenses in connection therewith, and Buyer shall be at no expense with respect to the same. In the event this escrow fails to close through the fault of Buyer, Buyer shall pay any and all escrow costs and expenses in connection therewith and Seller shall be at no expense with respect to the same.

**Delivery of Property.** On Closing, Seller shall deliver the Property to Buyer in substantially the same condition, reasonable wear and tear excepted, as on the date of this Agreement.

**ARTICLE 6**

**REPRESENTATIONS AND WARRANTIES**

6.1 **Buyer Representations and Warranties.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations and warranties, each of which is material and is being relied upon by Seller (the continued truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder):

a. **Buyer Authority to Execute Agreement.** Buyer is a public school district duly formed under the laws of the State of California, and this Agreement and the execution and delivery thereof by the persons designated below have been specifically authorized by Buyer. Buyer has the legal right, power and authority to enter into this Agreement, to consummate the transactions contemplated hereby.

b. **Authority of Executing Officer.** Each individual executing this Agreement on behalf of Buyer represents, for the benefit of Seller, that he or she is duly authorized to execute and deliver this Agreement on behalf of Buyer.
c. **Validity of Buyer's Representations and Warranties at Closing.** The representations and warranties of Buyer set forth in this Agreement shall be true on and as of the Closing as if those representations and warranties were made on and as of such time.

6.2 **Seller Representations and Warranties.** In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property from Seller, Seller makes the following representations and warranties, each of which is material and is being relied upon by Buyer (the continued truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder):

a. **Seller Authority to Execute Agreement.** Seller warrants that the persons executing this Agreement are legally authorized to execute this Agreement and constitute all persons or entities with a legal interest in the Property necessary to convey clear title to a fee simple interest in the Property; that Seller has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby; the execution, delivery and performance of this Agreement have been duly authorized, and no other action by Seller is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

b. **Validity of Seller's Representations and Warranties at Closing.** The representations and warranties of the Seller set forth in this Agreement shall be true on and as of the Closing as if those representations and warranties were made on and as of such time.

c. **Foreign Person.** Seller warrants and represents that Seller is not, and will not be at the Closing, a "foreign person", within the meaning of section 1445 of the Internal Revenue Code of 1986, as amended. If required, Seller will deposit in Escrow concurrent with
the deposit of the Grant Deed, Seller’s notarized, completed affidavit to such effect, including a California Form 590.

d. **No Leases Or Options.** Seller represents and warrants that there are no leases or options affecting the Property and that after execution of this Agreement, Seller will not enter into any leases or options with respect to the Property.

e. **No Contracts.** Seller warrants that at the Closing, there will be no contracts, licenses, commitments, or undertakings respecting maintenance of the Property or equipment on the Property, or the performance of services on the Property, or the use of the Property or any part of it by which Buyer would become obligated or liable to anyone.

6.3 **Mutual Indemnification.** Seller shall indemnify Buyer and hold Buyer harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including, without limitation, reasonable attorneys' fees, resulting from any misrepresentations or breach of warranty or breach of covenant made by Seller in this Agreement or in any document, certificate, or exhibit given or delivered to Buyer pursuant to or in connection with this Agreement. The indemnification provisions of this Section 6.3 shall survive the delivery of the Grant Deed and transfer of title or, if title is not transferred pursuant to this Agreement, any termination of this Agreement.

Buyer shall indemnify Seller and hold Seller harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including, without limitation, reasonable attorneys' fees, resulting from any misrepresentations or breach of warranty or breach of covenant made by Buyer in this Agreement or in any document, certificate, or exhibit given or delivered to Seller pursuant to or in connection with this Agreement. The indemnification provisions of this Section 6.3 shall survive the delivery of the
ARTICLE 7

TERMINATION

7.1 Buyer Termination. In addition to the termination rights described in Section 5.2 hereof, this Agreement may be terminated by Buyer without further liability in the event of a breach by Seller of any term, condition, or covenant contained herein. Upon election by Buyer to terminate this Agreement pursuant to this Section 7.1, the Deposit, plus all interest accrued thereon, shall immediately be returned to Buyer.

7.2 Seller Termination. If Buyer defaults in any obligations hereunder, Seller's sole remedy shall be to rescind this Agreement and retain or receive payment of fifty thousand dollars ($50,000) as liquidated damages for such default (“Liquidated Damages”). If the Deposit has been paid to the Seller at the time of Buyer’s default, the balance of the Deposit in excess of the Liquidated Damages shall be refunded by Seller to Buyer.

7.3 Specific Performance. Notwithstanding the above, Buyer does not waive the right to specific performance if permitted by law.

7.4 LIQUIDATED DAMAGES. THE LIQUIDATED DAMAGES REFERRED TO IN 7.2 ABOVE SHALL BE DEEMED TO BE SELLER'S SOLE AND EXCLUSIVE REMEDY IN DAMAGES. THE PARTIES AGREE THAT THIS IS A REASONABLE SUM CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO SELLER THAT REASONABLY COULD BE ANTICIPATED, AND THE ANTICIPATION THAT PROVING ACTUAL DAMAGES WOULD BE COSTLY, IMPRACTICAL AND EXTREMELY DIFFICULT. IN PLACING THEIR INITIALS AT THE AGREEMENT FOR PURCHASE/SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS OF BUYER AND SELLER.
PLACES PROVIDED BELOW, EACH PARTY AGREES TO THE LIQUIDATED DAMAGES PROVISIONS CONTAINED HEREIN, AND CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS MADE. IN CONSIDERATION OF THE PAYMENT OF SUCH LIQUIDATED DAMAGES, SELLER SHALL BE DEEMED TO HAVE WAIVED ALL OTHER CLAIMS FOR DAMAGES OR RELIEF AT LAW OR IN EQUITY (INCLUDING ANY RIGHTS SELLER MAY HAVE PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 3389 AND 1680).

BUYER
Initials: ____________

SELLER
Initials: ____________

ARTICLE 8
ASSIGNABILITY

Assignment. Seller shall not, voluntarily or by operation of law, assign or otherwise transfer any of its rights or obligations under this Agreement, including, without limitation, transferring ownership of the Property to another party, without obtaining the prior written consent of Buyer. Such consent may only be withheld based upon objective factors which relate to the discharge of obligations set forth herein and in no event shall such consent be unreasonably withheld.

ARTICLE 9
GENERAL PROVISIONS
9.1 Time of Essence. Time is of the essence of each provision of this Agreement in which time is an element.

9.2 Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

SELLER
Jack R. Crist
City Manager
City of Modesto
1010 10th Street, 6th Floor
Modesto, CA 95354

BUYER
Sylvan School District
605 Sylvan Avenue
Modesto, CA 95350
Attn: Superintendent

With copy to:
Steve Long, Consultant
Overland, Pacific & Cutler, Inc.
8950 Cal Center Drive, Suite 102
Sacramento, CA 95826

With copy to:
Kenneth S. Levy
Miller Brown & Dannis
71 Stevenson St. 19th Floor
San Francisco, CA 94105

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

9.3 Broker. Seller and Buyer each hereby acknowledge that Overland Pacific and Cutler, Inc., Sacramento, California has been retained by Seller to represent Seller, and Seller’s broker acts as Seller’s agent with respect to this transaction. Seller’s broker is authorized to present this Agreement to Seller.
9.4 **Entire Agreement of Parties.** This Agreement constitutes the entire Agreement between the parties and supercedes all prior discussions, negotiations and Agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by the Seller and Buyer.

9.5 **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California.

9.6 **Attorneys' Fees.** If either party files any action or brings any proceedings against the other arising out of this Agreement, or is made a party to any action or proceeding brought by the title company, then, as between Buyer and Seller, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.

9.7 **Waiver.** No waiver by any party of any provision of this Agreement shall be considered a waiver of any other provision or of any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided in this Agreement or at law shall not prevent the exercise by that party of any other remedy provided in this Agreement or at law or in equity.

9.8 **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.
9.9 **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

9.10 **Captions.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the parties hereto.

9.11 **Disputes.** Any actions or proceedings arising under, growing out of, or in any way related to this Agreement shall be instituted and prosecuted only in courts located in the County of Stanislaus, State of California, and each party hereto expressly waives its right, under part II, title IV of the California Code of Civil Procedure, to cause any such actions or proceedings to be instituted or prosecuted elsewhere.

9.12 **Time.** All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

9.13 **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions hereof unenforceable, invalid or illegal.

9.14 **Review of Form of Agreement.** Submission of this instrument for examination or signature by Seller does not constitute an agreement to purchase all, or any portion of, the Property and it is not effective as an Agreement, or otherwise, until execution and delivery by both Buyer and Seller.
9.15 **Survival of Warranties, Covenants and Obligations.** The warranties, covenants and obligations of each of the parties under the provisions of this Agreement to the extent the same have not been fully performed, and excepting those covenants and obligations which have been extinguished by the expiration of a specified period of time, shall survive the close of the escrow through which the purchase is consummated.

9.16 **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

9.17 **Cooperation: Further Documents.** Buyer and Seller acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the acquisition of the Property. Both Buyer and Seller hereby agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the intent of the parties as evidenced in this Agreement.

9.18 **In Lieu of Eminent Domain.** Seller's conveyance of fee simple title to the Property is being done voluntarily in lieu of eminent domain proceedings.

**ARTICLE 10**

**RIGHT TO ENTER PROPERTY**

10.1 **Access to Property.** Commencing with execution of this Agreement, Buyer or Buyer's representatives shall have the right of access to the Property prior to the Closing, at all reasonable times for the purpose of obtaining data and making surveys, tests, inspections and other studies at Buyer's sole expense, necessary to carry out this Agreement or as required by local and California state regulatory agencies.
10.2 **Restoration of Property.** Buyer shall, upon completion of data gathering, and making surveys, tests, inspections and other studies, restore the Property to the extent reasonably possible to its condition prior to such data gathering, surveys, tests, inspections and other studies.

10.3 **Indemnification Resulting From Access.** Buyer shall indemnify and hold harmless Seller of and from any and all mechanic's liens, claims, liabilities, costs, expenses, including attorneys' fees, and damages arising out of or in any way related to any such use of the Property by Buyer or by any other person or entity on behalf of, or at the request of, Buyer, excluding any losses or damages, including but not limited to a reduction in the value of the Property, resulting from any finding or results of any surveys, tests, inspections or other studies, whether or not negligent.

10.4 **Seller / Buyer Disclosure.** Pursuant to Section 3.1(g)(2) of this Agreement, Seller will deliver to Buyer copies of all surveys, soil tests, engineering studies, reports and any other test results or reports in Seller's possession or under Seller's control concerning the Property. If so requested by Buyer, Seller will instruct those who prepared any such reports as well as Seller's agents and employees, to divulge any other information they may have about the Property to Buyer, provided that Buyer pays any additional costs incurred. Buyer acknowledges that Seller has delivered to Buyer copies of all leases, permits, licenses, notices of violation of law, releases, settlement and correspondence with enforcement agencies, as well as the names and last known addresses of present and former tenants to the extent actually known by Sellers. Buyer shall deliver to Seller at no cost to Seller copies of all written materials prepared by or for Buyer in connection with its investigations, inspections, tests, surveys or studies of the Property, including but not limited to topography maps, aerial photographs, surveys, drainage studies, maps, soils and environmental tests and reports.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

BUYER:

SYLVAN SCHOOL DISTRICT

By: ____________________________
    ____________________________, President of the Board of Trustees

Dated: __________________________

SELLER:

CITY OF MODESTO

By: ____________________________
    Jack R. Crist, City Manager

Dated: __________________________
EXHIBIT “A”

LEGAL DESCRIPTION
(PARCEL TO BE GRANTED)

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA, BEING A PORTION OF LOTS 10 AND 11, AS SAID LOTS ARE SHOWN ON THAT CERTAIN MAP ENTITLED, “ADAM’S COLONY” FILED FOR RECORD ON OCTOBER 21, 1908 IN BOOK 4 OF MAPS AT PAGE 5, STANISLAUS COUNTY RECORDS, STATE OF CALIFORNIA, AND BEING A PORTION OF THE LANDS CONVEYED TO THE CITY OF MODESTO AS SAID LANDS ARE DESCRIBED IN THE GRANT DEED RECORDED ON MARCH 3, 1992 IN DOCUMENT NO. 018683 OF THE OFFICIAL RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 11, AT THE SOUTHWEST CORNER OF SAID LANDS OF THE CITY OF MODESTO; THENCE ALONG THE WEST LINE OF SAID LOTS 10 AND 11 AND ALONG THE WEST LINE OF SAID LANDS OF THE CITY OF MODESTO, NORTH 0°58'30" WEST, A DISTANCE OF 266.53 FEET; THENCE LEAVING SAID WEST LINE AND ALONG A LINE THAT IS PARALLEL WITH THE NORTH LINE OF SAID LANDS OF THE CITY OF MODESTO, NORTH 89°19'33" EAST, A DISTANCE OF 688.87 FEET TO A POINT ON THE EAST LINE OF SAID LANDS OF THE CITY OF MODESTO; THENCE ALONG SAID EAST LINE, SOUTH 0°55'00" EAST, A DISTANCE OF 266.53 FEET TO THE SOUTHEAST CORNER OF SAID LANDS OF THE CITY OF MODESTO; THENCE ALONG THE SOUTH LINE OF SAID LANDS OF THE CITY OF MODESTO, SOUTH 89°19'33" WEST, A DISTANCE OF 688.60 FEET TO THE POINT OF BEGINNING.

(CONTAINING 4.214 ACRES MORE OR LESS.)

THE PROPERTY DESCRIBED HEREON IS SHOWN ON THE ATTACHED PLAT (EXHIBIT “B”) AND BY REFERENCE MADE A PART HEREOF.

JIM C. KOO
LICENSED LAND SURVEYOR

No. K.S. 7829
Expires: Dec 31, 2004
STATE OF CALIFORNIA
A RESOLUTION APPROVING THE AWARD OF A $449,000 CONTRACT TO WEST YOST AND ASSOCIATES FOR PROFESSIONAL SERVICES RELATED TO DEVELOPING A PRELIMINARY DESIGN REPORT FOR THE MODESTO REGIONAL WATER TREATMENT PLANT PHASE TWO EXPANSION - DOWNSTREAM IMPROVEMENTS, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto and the Modesto Irrigation District (MID) have begun work planning to expand the Modesto Regional Water Treatment Plant (MRWTP) from its existing capacity of 30 million gallons per day (mgd) to 60 mgd, and

WHEREAS, downstream improvements consisting of water storage tanks, booster pumping stations, pressure and/or flow control valves, and pipelines are needed to fully integrate the Phase Two expansion of the MRWTP with the City’s water system, and

WHEREAS, an initial evaluation of the water distribution system, using the City’s recently developed computer model, has confirmed the need for these improvements and has provided a general project description of the improvements, and

WHEREAS, the preliminary design for the downstream improvements needs to be completed by the fall of 2004 to remain on schedule with the Phase Two project’s scheduled operation in the year 2007, and

WHEREAS, a Request for Proposals was sent to approximately 27 engineering firms, of which three responded, and

WHEREAS, the Proposals and Interviews of consulting firms qualified to prepare the Preliminary Design of the downstream improvements were rated by the selection team, and later tabulated by the Engineering and Transportation Director for the consideration of the Council, and
WHEREAS, the Acting Engineering and Transportation Director has recommended that West Yost and Associates, be accepted as the most qualified engineering consulting firm, and

WHEREAS, the Acting Engineering and Transportation Director has recommended accepting the proposed contract with West Yost and Associates in an amount not to exceed $449,000, and

WHEREAS, the Economic Development Committee reviewed this item at its meeting on March 8, 2004, and recommended its approval,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the agreement with West Yost and Associates, for preparation of the preliminary design of the downstream improvements for the City of Modesto’s water system in an amount not to exceed $449,000.

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 6th day of April 2004, 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, Jackman, Keating, Marsh, O’Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-177

A RESOLUTION ACCEPTING IMPROVEMENTS IN THE FERNWOOD PHASE ONE SUBDIVISION, IN THE VILLAGE ONE SPECIFIC PLAN AREA, AUTHORIZING THE CITY CLERK TO RECORD A NOTICE OF COMPLETION AND AUTHORIZING RELEASE OF BONDS

WHEREAS, KB HOME CENTRAL VALLEY, INC., a California Corporation, is the subdivider of the Fernwood Phase One Subdivision, and

WHEREAS, KB HOME CENTRAL VALLEY, INC., a California Corporation, has filed irrevocable subdivision bonds to secure faithful performance and payment for labor and materials in the amounts of $407,000.00 and $203,500.00, respectively, and

WHEREAS, KB HOME CENTRAL VALLEY, INC., a California Corporation, has filed a warranty bond in the amount of $40,700.00 to guarantee improvements in the Fernwood Phase One Subdivision, and

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

WHEREAS, the Engineering & Transportation Director 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 file 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 improvements in the Fernwood Phase One Subdivision are hereby accepted and the City Clerk is hereby authorized to file a Notice of Completion for the improvements.

2. The City Clerk is hereby authorized to release the subdivision bond for faithful performance in the amount of $407,000.00 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 $203,500.00 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 improvements in the amount of $40,700.00 one year and one day after the effective date of this resolution, provided no claim is made thereon.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-178

A RESOLUTION ACCEPTING THE WORK BY ON GRADE CONTRACTING
FOR THE "INSTALLATION OF A RIGHT-TURN LANE FROM DOWNEY
AVENUE ONTO MCHENRY AVENUE" PROJECT AS COMPLETE,
AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION,
AND AUTHORIZING PAYMENT OF AMOUNTS DUE TOTALING $93,325.69
PER THE CONTRACT

WHEREAS, a report has been filed by the Acting Engineering & Transportation
Director that the project titled "Installation of a Right-turn Lane from Downey Avenue onto
McHenry Avenue" has been completed by On Grade Contracting, in accordance with the
contract agreement dated May 6, 2003,

NOW, THEREFORE, BE IT RESOLVED that the "Installation of a Right-Turn
Lane from Downey Avenue onto McHenry Avenue" project be accepted from said
contractor, On Grade Contracting, that the notice of completion be filed with the
Recorder of Stanislaus County and that payment of amounts due totaling $93,325.69, 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 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
A RESOLUTION APPROVING AN AGREEMENT CONSENTING TO COMMON USE WITH MODESTO IRRIGATION DISTRICT (MID) AT RUMBLE ROAD AND CONANT AVENUE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto desires to construct improvements including sidewalk curb and gutter along the south side of Rumble Road west of Conant Avenue,

and

WHEREAS, the Modesto Irrigation District (MID) owns a portion of the property on which the improvements are to be constructed, and

WHEREAS, staff at MID has approved an Agreement Consenting to Common Use for this property,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Agreement Consenting to Common Use with Modesto Irrigation District for improvements at Rumble Road and Conant Avenue.

BE IT FURTHER RESOLVED that the City Manager 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 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-180

A RESOLUTION AMENDING THE FY03-04 CAPITAL IMPROVEMENT BUDGET TO APPROPRIATE $20,000 FROM THE STORM DRAIN RESERVES 6280-800-8000-8003 TO 6280-430-N686-6010.13 FOR THE PROJECT TITLED 9TH STREET STORM DRAINAGE

WHEREAS, the City of Modesto has entered into a contract with Boyle Engineering Corporation for the design of improvements to the Ninth Street Storm Drain, and

WHEREAS, an initial phase of this contract identified a great benefit to extending the scope of the project limits from Tuolumne Boulevard and Seventh Street to Ninth and O Streets, to the new limits of Tuolumne Boulevard and Seventh Street to Ninth Street and Needham Street, and

WHEREAS, Boyle Engineering Corporation has agreed to accomplish this change in scope for an amount of $29,505, and

WHEREAS, an additional $20,000 is available in the Storm Drain Reserves 6280-800-8000-8003 to fully fund the change in scope,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the FY03-04 Capital Improvement Budget to appropriate $20,000 from 6280-800-8000-8003 to 6280-430-N686-6010.13.

BE IT FURTHER RESOLVED that the Finance Director, or her designee, is hereby authorized to take the necessary action to amend the FY 03-04 Capital Improvement Budget.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ____________________________
          JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By ____________________________
          MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-181

A RESOLUTION APPROVING A $29,505 AMENDMENT TO THE $430,509
BOYLE ENGINEERING CONSULTANT CONTRACT FOR THE DESIGN OF
THE 9TH STREET STORM DRAIN, AND AUTHORIZING THE CITY
MANAGER TO EXECUTE THE AGREEMENT, INCREASING THE TOTAL
ESTIMATED COST OF THE SERVICES TO $460,014

WHEREAS, the City of Modesto has entered into a contract with Boyle
Engineering Corporation for the design of improvements to the Ninth Street Storm
Drain, and

WHEREAS, an initial phase of this contract identified a great benefit to extending
the scope of the project limits from Tuolumne Boulevard and Seventh Street to Ninth and
O Streets, to the new limits of Tuolumne Boulevard and Seventh Street to Ninth Street
and Needham Street, and

WHEREAS, Boyle Engineering Corporation has agreed to accomplish this
change in scope for an amount of $29,505,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves the agreement with Boyle Engineering Corporation amending the
scope of the contract for an amount not to exceed $29,505.

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 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-182

A RESOLUTION AUTHORIZING THE PURCHASING SUPERVISOR TO
FORMALLY SOLICIT REQUEST FOR BIDS FOR THE FURNISHING OF
BULK FUEL RED DYED #2 DIESEL, FOR A THREE (3) YEAR AGREEMENT,
FOR AN ESTIMATED ANNUAL COST OF $44,721

WHEREAS, red dyed #2 diesel fuel is used by the Operations and Maintenance
Department, Waste Water Division and the Operations and Maintenance Department,
Water Division to fuel non-public roadway diesel powered equipment and standby diesel
powered generators that supply backup power to operate municipal drinking water wells,
and

WHEREAS, currently, these departments purchase red dyed #2 diesel fuel in bulk
by soliciting request for quotations on an as needed basis, and

WHEREAS, although, City departments have obtained competitive pricing, it is a
strain on staff time and resources to solicit quotations each time fuel is needed, and

WHEREAS, by soliciting formal request for bids for bulk fuel red dyed #2 diesel,
the City will recognize a savings by combining department volume and freeing staff
resources, and

WHEREAS, by authorizing the Purchasing Supervisor to solicit formal request
for bids for bulk fuel red dyed #2 diesel, the City will be meeting the legal requirements
for purchases that exceed $50,000, and

WHEREAS, the Purchasing Division is requesting a three (3) year agreement,
which if approved by Council, would expire on the same time line as the current bulk
unleaded fuel agreement, which expires on December 3, 2007, and
WHEREAS, going forward, both of these commodities would then be bid together to obtain a greater volume discount for the City, and

WHEREAS, Modesto Municipal Code (MMC) Section 8-3.203 generally requires all purchases, which meet or exceed $50,000.00 for material, equipment or contractual services to be formally bid, and

WHEREAS, by soliciting competitive bids for bulk fuel red dyed #2 diesel the Finance Department, Purchasing Division will comply with MMC Section 8-3.203 regarding formal bid procedures,

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

SECTION 1. The City Clerk is hereby authorized to call for public competitive sealed bids for the furnishing of bulk fuel red dyed #2 diesel for the Operations and Maintenance Department, Waste Water Division and the Operations and Maintenance Department, Water Division, for a three (3) year agreement, at an estimated annual cost of $44,721, to be opened in the office of the City Clerk, 1010 Tenth Street, in the City of Modesto. The City Clerk shall be directed to give notice inviting such sealed bids in the time, form, and manner provided by law.

SECTION 2. After the sealed bids are opened, they shall be tabulated and analyzed and a report submitted to Council.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jeann Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-183

A RESOLUTION AMENDING THE FISCAL YEAR 2003-2004 ANNUAL BUDGET

WHEREAS, a monthly financial analysis has been completed and it has been determined that certain adjustments are required to the Annual Budget of the City of Modesto for the Fiscal Year 2003-2004,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that appropriations, revenues, and transfers for the 2003-2004 budget have been adjusted as shown in Schedule A.

BE IT FURTHER RESOLVED that the Finance Director 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 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

(seal)

APPROVED AS TO FORM:
By: MIKE MILICH, City Attorney
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Tracie Madison
Telephone No.: 1-5855
Department: Finance
Fund Title: GF

Council Action Date: ____________________________
Resolution Number: ______________________________

FY: 03-04
Transfer No. ____________________________

<table>
<thead>
<tr>
<th>Fund-Agency-Organ-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/Decrease</th>
<th>Revised Budget</th>
<th>Description of Object</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**DEPARTMENTAL REVENUES**

**FROM**

**TO**

**APPROPRIATIONS**

**FROM**

04-0100-020-0219-0235 0219C $289,547 ($17,498) $272,049 Professional Services

**TO**

04-0100-800-8000-8003 0100R ($2,603,680) $17,498 ($2,586,182) gF Conting Reserves

**COMMENTS/JUSTIFICATION**

This adjustment will adjust the amount of carryover for Cable Technology org 0219 from what was calculated in July to the actuals when the books closed in FY02-03.

**AUTHORIZATION** (check if required)

<table>
<thead>
<tr>
<th>DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT (Allocation of Dept Appr to Line-Item Level)</th>
<th>SIGNATURE</th>
<th>DATE</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>FINANCE DIRECTOR (Transfers to/from Internal Service Charges) (All items requiring City Manager's Approval)</th>
<th>SIGNATURE</th>
<th>DATE</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>CITY MANAGER (Transfers between Budgeted Activities of Departments within Funds) (Appropriation of Unbudgeted Dept Revenues) (Salary lines movement in or out)</th>
<th>SIGNATURE</th>
<th>DATE</th>
</tr>
</thead>
</table>
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Tracie Madison  Council Action Date: __________________________
Telephone No.: 1-5855  Resolution Number: __________________________
Department: Airport  FY: 03-04
Fund Title: Airport  Transfer No. __________________________

Mar 04 Monthly Adj

Airport CIP Clean-Up

<table>
<thead>
<tr>
<th>Fund-Agency-Obj-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/ (Decrease)</th>
<th>Revised Budget</th>
<th>Description of Object</th>
</tr>
</thead>
</table>

DEPARTMENTAL REVENUES

FROM

TO
MY-6320-440-N020-3613  $1,750,000 $500,000 $2,250,000 FAA Grant AIP-27,28
MY-6320-800-N020-8999  $83,333 $83,333 Airport Reserves

APPROPRIATIONS

FROM

04-6310-800-8000-8003  6310R ($59,048) ($250,000) ($309,048) Operating Reserve Contingency

TO
MY-6320-440-N020-6040  N020 $1,538,333 $666,667 $2,205,000 Increase construction
04-6320-800-8000-8003  6320R $2,051,741 $83,333 $2,135,074 Airport CIP Conting Reserve

TRANSFERS BETWEEN FUNDS

FROM

MY-6310-700-N020-7632  6310R $250,000 $250,000 Transfer to N020

TO

MY-6320-700-N020-9631  $250,000 $250,000 Reserves Transferred

COMMENTS/JUSTIFICATION

This budget adjustment is to increase the budget received by the grant by another $500,000. The bluesheet from Sept 2, 2003 shows a grant increase of $1,000,000 the project should have been increased by $1,500,000. The grant for the Runway Pavement Evaluation covers only 90% a 10% match is required by the City. Since, the Passenger Fees are committed at this time on other projects the City did not want to pass on the opportunity to receive 2.5 million in a grant. So remaining one time aircraft tax and reserves will fund the match. The $83,333 portion is to complete transfer from 6310 to 6320 that was never completed but budgets were increased.

AUTHORIZED (check if required)  SIGNATURE  DATE

DEPARTMENT DIRECTOR or  
AUTHORIZED ASSISTANT  
(Allocation of Dept Appr to Line-Item Level)

FINANCE DIRECTOR  
(Transfers to/from Internal Service Charges)  
(All items requiring City Manager's Approval)

CITY MANAGER  
(Transfers between Budgeted Activities of Departments within Funds)  
(Appropriation of Unbudgeted Dept Revenues)  
(Transfers into Personnel Services)
MONTHLY FY 02-03 ADJUSTMENTS - WORKSHEET

### Budget Adjustments for the Month of March

<table>
<thead>
<tr>
<th>1) Appropriation transfer</th>
<th>From: Parking Fund Reserve</th>
<th>6000 480 0800 8000</th>
<th>$43,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>To: Repair &amp; Maintenance - Outside Forces</td>
<td>6000 480 4684 0223</td>
<td>$31,633.00</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>Repair &amp; Maintenance - Outside Forces</td>
<td>6000 480 4685 0223</td>
<td>$11,200.00</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>Tools, Shop &amp; Field Supplies</td>
<td>6000 480 4683 0308</td>
<td>$1,500.00</td>
<td>$12,000.00</td>
</tr>
<tr>
<td>Services, Professional &amp; Other</td>
<td>6000 480 4683 0235</td>
<td>$28,174.00</td>
<td>$11,000.00</td>
</tr>
</tbody>
</table>

### Justification

Appropriation transfer from Parking Fund reserve to pay for unanticipated expenses related to repair of 6 ticket spitters and increased cost of parking stubs. Also, will fund the cost of computer software for better garage control at the Ninth Street Garage. This cost will be reimbursed to the Parking Fund later this year.

### Department: Operations & Maintenance

Department Head: [Signature]

Date: February 17, 2004
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Lisa Forester
Telephone No.: 76480
Department: Centre Plaza
Fund Title: General Fund

Council Action Date: __________________
Resolution Number: __________________
FY: 03-04
Transfer No.: __________________

<table>
<thead>
<tr>
<th>Fund-Agcy-Org-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/ (Decrease)</th>
<th>Revised Budget</th>
<th>Description of Object</th>
</tr>
</thead>
<tbody>
<tr>
<td>DEPARTMENTAL REVENUES</td>
<td>FROM</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| APPROPRIATIONS | FROM | Current Budget | Increase/ (Decrease) | Revised Budget | Description of Object |
|                | 0100-800-8000-8003 | ($2,517,132) | ($76,272) | ($2,593,404) | Reserve |

| TO | 0100-340-3415-5900 | $50,000 | $15,211 | $65,211 | John Thurman Electrical Upgrade |
|    | 0100-360-3614-0235 | $46,564 | $61,061 | $107,625 | McClure Country Place |

<table>
<thead>
<tr>
<th>COMMENTS/JUSTIFICATION</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget FY03 Carryovers for John Thurman Field - Electrical Upgrade and McClure Country Place (see attached).</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>AUTHORIZATION (check if required)</th>
<th>SIGNATURE</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>DEPARTMENT DIRECTOR or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>AUTHORIZED ASSISTANT</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FINANCE DIRECTOR</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Budget Office Form (Oct 2001) gh
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Lisa Forester
Telephone No.: 76480
Department: Centre Plaza P.R.E.N
Fund Title: Centre Plaza

Council Action Date: 
Resolution Number: 
FY: 03-04
Transfer No.

 ---------------------------------------
Fund-Agency-Organization-Object Appr Unit Current Budget Increase/ Decrease Revised Budget Description of Object

DEPARTMENTAL REVENUES
FROM

TO

M A R - 3 2 0 0 4

---------------------------------------

APPROPRIATIONS
FROM 6700-800-8000-8003  $2,278 Reserves
6710-800-8000-8003 ($28,644) Reserves
6700-340-3412-1027 $7,500 $2,278 $9,778 Celebration of Lights
6710-340-3420-5900 $75,924 $28,644 $104,568 Centre Plaza FF & E

---------------------------------------

COMMENTS/JUSTIFICATION
Budget FY03 Carryovers for Celebration of Lights and Centre Plaza FF & E (see attached).

---------------------------------------

AUTHORIZED (check if required)  SIGNATURE  DATE
DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT  
FINANCE DIRECTOR  

3/3/04

Budget Office Form (Oct 2001) gh
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Lisa Forester
Telephone No.: 76480
Department: Parks, Recreation & Neighborhoods
Fund Title: Modesto Centre Plaza

Council Action Date: __________
Resolution Number: ______

Fund-Agency-Organization-Object | Appr. Unit | Current Budget | Increase/Decrease | Revised Budget | Description of Object
--- | --- | --- | --- | --- | ---
**DEPARTMENTAL REVENUES**
FROM
TO

**APPROPRIATIONS**
FROM
0100-800-8000-8003 | ($1,396,160) | ($154,806) | ($1,550,966) | General Fund Reserves
TO
6700-800-8000-8003 | $154,806 | $154,806 | Centre Plaza Reserves

**TRANSFERS BETWEEN FUNDS**
FROM
0100-700-7000-6700 | $515,000 | $154,806 | $669,806 | Transfer Out-Centre Plaza Subsidy
TO
6700-700-7000-9010 | $515,000 | $154,806 | $669,806 | Transfer In-Centre Plaza Subsidy

**COMMENTS/JUSTIFICATION**
Correct budgeted transfer for Centre Plaza subsidy. See Attached.

**AUTHORIZATION (check if required)**
SIGNATURE DATE
DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT (Allocation of Dept Appr to Line-Item Level) ____________________________ 1-28-04
FINANCE DIRECTOR (Transfers to/from Internal Service Charges) (All items requiring City Manager's Approval)
CITY MANAGER (Transfers between Budgeted Activities of Departments within Funds) (Appropriation of Unbudgeted Dept Revenues) (Transfers into Personnel Services)
**REQUEST FOR BUDGET ADJUSTMENT**

**Contact Person:** Polly Findlen  
**Telephone No.:** x29518  
**Department:** Police  
**Fund Title:** Operating Grants  

**DEPARTMENTAL REVENUES**

<table>
<thead>
<tr>
<th>Fund-Agency-Obj-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/Decrease</th>
<th>Revised Budget</th>
<th>Description of Object</th>
</tr>
</thead>
<tbody>
<tr>
<td>0410-190-2998-3507</td>
<td></td>
<td></td>
<td></td>
<td>$44,545</td>
<td>Juvenile Impact Revenue</td>
</tr>
</tbody>
</table>

**APPROPRIATIONS**

<table>
<thead>
<tr>
<th>FROM</th>
<th>($2,517,132)</th>
<th>($4,949)</th>
<th>($2,522,081)</th>
<th>Reserve</th>
</tr>
</thead>
<tbody>
<tr>
<td>TO</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0410-190-2998-0207</td>
<td>$1,200</td>
<td>$1,200</td>
<td></td>
<td>Conference Expense</td>
</tr>
<tr>
<td>0410-190-2998-0208</td>
<td>$1,000</td>
<td>$1,000</td>
<td></td>
<td>Audit</td>
</tr>
<tr>
<td>0410-190-2998-0209</td>
<td>$1,500</td>
<td>$1,500</td>
<td></td>
<td>Training Expense</td>
</tr>
<tr>
<td>0410-190-2998-0235</td>
<td>$1,582</td>
<td>$1,582</td>
<td></td>
<td>Speaker Fees</td>
</tr>
<tr>
<td>0410-190-2998-0255</td>
<td>$43,912</td>
<td>$43,912</td>
<td></td>
<td>City Forces</td>
</tr>
<tr>
<td>0410-190-2998-0260</td>
<td>$300</td>
<td>$300</td>
<td></td>
<td>Graduation Costs</td>
</tr>
</tbody>
</table>

**TRANSFERS BETWEEN FUNDS**

<table>
<thead>
<tr>
<th>FROM</th>
<th>($4,949)</th>
<th>$4,949</th>
<th>General Fund Match</th>
</tr>
</thead>
<tbody>
<tr>
<td>TO</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0410-700-2998-7041</td>
<td></td>
<td></td>
<td>General Fund Match</td>
</tr>
</tbody>
</table>

**COMMENTS/JUSTIFICATION**

Enter budget for Juvenile Impact Program. Originally budgeted at the beginning of the year at $59,148 (estimate). State closed the OCJP office and now runs the program through the Board of Corrections. Actual budget is now $49,494 which includes $6,470 which was spent under the OCJP office. The original estimate was taken out of the budget when the office changed. This new budget includes the match that was not in the original budget estimate.

**AUTHORIZATION**

**SIGNATURE**

**DATE**

<table>
<thead>
<tr>
<th>DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT</th>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FINANCE DIRECTOR</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Fiscal Year:** 03-04
ADOPT A RESOLUTION AUTHORIZING THE PURCHASE OF ONE (1) NEW, HIGH PRODUCTION ROTARY MOWER FROM H. V. CARTER CO., INC OF SACRAMENTO, CALIFORNIA FOR AN ESTIMATED TOTAL COST OF $76,811.78

WHEREAS, the Operations and Maintenance Department-Fleet Services has requested the purchase of one (1) new, high production rotary mower, and

WHEREAS, recently the Parks Division converted to this type of high-production mower because it can do what previously was accomplished with two mowers, and

WHEREAS, this mower will replace a 1996 mower which has experienced significant maintenance problems and is currently out of service due to a major engine failure, and

WHEREAS, City Park crews have been without a high-production mower for six (6) weeks and consequently mowing capacity has decreased by twenty-five (25) percent, and

WHEREAS, this decrease in capacity has led to an increase in complaints from the public, and

WHEREAS, the purchase of a new, high production mower will allow staff to return to normal mowing capacities, and

WHEREAS, Resolution 2003-622 authorized the Purchasing Division to solicit formal bids for one (1) new, high production rotary mower, and

WHEREAS, on August 26, 2002 the Finance Committee recommended that Fleet Services identify critical equipment and vehicles for Council approval, and bring those requests forward on as needed basis, and
WHEREAS, on October 27, 2003 the Finance Committee gave authorization to take this piece of equipment to full Council for approval,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the purchase of one (1) new, high production rotary mower from H. V. Carter, Co., Inc. of Sacramento, California for an estimated total cost of $76,811.78.

BE IT FURTHER RESOLVED that the Purchasing Supervisor is hereby authorized to award the bid and contract for one (1) new, high production rotary mower to H.V. Carter, Co., Inc, of Sacramento, California for an estimated total cost of $76,811.78.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:
By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-185

ADOPT A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR TWELVE (12) NEW CURRENT YEAR/MODEL VEHICLES TO THE FOLLOWING VENDORS: AMERICAN CHEVROLET OF MODESTO, CA. FOR EIGHT (8) NEW CURRENT YEAR/MODEL VEHICLES IN THE APPROXIMATE AMOUNT OF $149,917, AND TO MAITA CHEVROLET OF ELK GROVE, CA. FOR FOUR (4) NEW CURRENT YEAR/MODEL VEHICLES IN THE APPROXIMATE AMOUNT OF $63,120. THE TOTAL APPROXIMATE PURCHASE AMOUNT FOR ALL TWELVE (12) NEW CURRENT YEAR MODEL VEHICLES IS $212,037.

WHEREAS, the Operations and Maintenance Department-Fleet Services has requested the purchase of twelve (12) new current year model year vehicles, and

WHEREAS, Resolution No. 2003-622 authorized the Purchasing Supervisor to solicit Request for Bid (RFB) for twelve (12) new current year/model vehicles, and

WHEREAS, the twelve (12) new current year model vehicles consist of four (4), ½ ton extended cab pickups; three (3), 6200 gross vehicle weight pickups; one (1), extended cab, 2wd pickup, two (2), pickup full size, 2wd pickup, and one (1), one ton crew cab pickup, and

WHEREAS, the four (4), ½ ton extended cab pickups will be used by the Police Department Community Service Officers, and

WHEREAS, the three (3), 6200 gross vehicle weight pickups will replace pickups used by Building Inspectors, and

WHEREAS, the one (1), full size, 4wd pickup will replace a pickup used by the Industrial Waste Division, and

WHEREAS, the two (2), full size, 2wd pickups are additional vehicles and will be used by the Community Forestry Division, and
WHEREAS, the one (1), 3/4 ton truck with utility body is a replacement for an existing truck in the Community Forestry Division, and

WHEREAS, the one (1), 1-ton crew cab pickup is an additional vehicle that will be used by the Police Department, Traffic Unit, and

WHEREAS, on August 26, 2002 the Finance Committee recommended that Fleet Services identify critical equipment and vehicles for Council approval, and bring those requests forward on an as needed basis, and

WHEREAS, on October 27, 2003 the Finance Committee recommended taking the Request for Bid for authorization to bid twelve (12) new current year model vehicles to full Council for approval, and

WHEREAS, American Chevrolet of Modesto, CA. is the lowest responsive and responsible bidder for eight (8) new current year model vehicles for a combined total approximate cost of $148,917, and

WHEREAS, Maita Chevrolet of Elk Grove, CA. is the lowest responsive and responsible bidder for four (4) new current year model vehicles for a combined approximate total cost of $63,120, and

WHEREAS, the combined approximate total cost of all twelve (12) new current year model vehicles is $212,037,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby awards the bid and contract for a total of twelve (12) new current year model vehicles to the following vendors:

American Chevrolet of Modesto CA., for eight (8) new current year model vehicles in the approximate amount of $148,917 and to Maita Chevrolet of Elk Grove, CA., for four (4)
new current year model vehicles in the approximate amount of $63,120. The approximate total purchase amount for the twelve (12) new current year model vehicles is $212,037.

BE IT FURTHER RESOLVED that the Purchasing Supervisor is hereby authorized to issue purchase orders for the twelve (12) new current year/model vehicles.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, 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, Jackman, Keating, Marsh, O’Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

BY: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-186

A RESOLUTION AWARDING THE BID AND APPROVING A $1,692,495 CONTRACT WITH MAGNUM ENTERPRISES, INC., FOR THE PROJECT TITLED “FIRE STATION NO. 11” AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the bids received for Fire Station No. 11 were opened at 11:00 a.m. on March 9, 2004, and

WHEREAS, both the Fire Chief and the Engineering and Transportation Director have recommended that the bid of $1,692,495 received from Magnum Enterprises, Inc., be accepted as the lowest responsible bid and the contract be awarded to Magnum Enterprises, Inc., and

Whereas, the Safety & Communities Committee reviewed the design of Fire Station No. 11 at its meeting on January 6, 2003, and are supportive of the project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the bid of $1,692,495, and hereby awards Magnum Enterprises, Inc., the contract titled “Fire Station No. 11.”

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 6th day of April, 2004, by Councilmember Jackman, 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, Jackman, Keating, Marsh, O’Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By

MICHAEL D. MILICH, City Attorney

ATTEST:

JEAN ZAHR, City Clerk

(SEAL)
A RESOLUTION TO APPROVE A LOAN OF $238,495 FROM CIP ACCOUNT 1300-0180-N412 TITLED "REHABILITATION OF FIRE STATION NO. 1" TO ACCOUNT 1320-0180-M174 FOR THE PROJECT TITLED "FIRE STATION NO. 11" AND SET UP PAYBACK FROM FUTURE FIRE CAPITAL FACILITIES FEES AMORTIZED OVER THE NEXT 5 YEARS.

WHEREAS, a bid has been received from Magnum Enterprises, Inc., in the amount of $1,692,495 for the construction of Fire Station No. 11, and

WHEREAS, both the Fire Chief and the Engineering and Transportation Director have recommended that the bid of $1,692,495 from Magnum Enterprises, Inc., be accepted as the lowest possible bid, and

WHEREAS, funds are budgeted for this project in the 2003-2004 Capital Improvement Program account number 1320-0180-M174, and

WHEREAS, said account is funded in part by General Fund Loans to be paid back from future Fire Capital Facilities Fees, and

WHEREAS, $1,626,000 is the amount already approved by previous Council action as General Fund Loans to be paid back from future Fire Capital Facilities Fees, and

WHEREAS, said account has been used to purchase the property and hire the architect, and

WHEREAS, a $238,495 loan from Account 1300-0180-N412 (Rehab. of Fire Station 1) is necessary to fully fund the project titled "Fire Station No. 11", and

WHEREAS, the $238,495 loan will be paid back to Account 1300-0180-N412 from future Fire Capital Facilities Fees amortized over the next 5 years,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the loan of $238,495 from Account 1300-0180-N412 to account number 1320-0180-M174 for the project titled “Fire Station No. 11” and that the loan will be paid back from future Fire Capital Facilities Fees amortized over the next 5 years.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, 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, Jackman, Keating, Marsh, O’Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-188

A RESOLUTION ADJUSTING THE BUDGET TO TRANSFER $49,865 FROM FUND 1410 (STREET CFF) TO ACCOUNT 1320-0180-M174 FOR THE PROJECT TITLED “FIRE STATION NO. 11”.

WHEREAS, a bid has been received from Magnum Enterprises, Inc., in the amount of $1,692,494.86 for the construction of Fire Station No. 11, and

WHEREAS, $49,865 is the portion of the bid for off site improvements along Pelendale Avenue, and

WHEREAS, the off site improvements are eligible for funding from Fund 1410 (Street CFF), and

WHEREAS, the “Fire Station No. 11” project is funded in the 2003-2004 Capital Improvement Program account number 1320-0180-M174, and

WHEREAS, a $49,865 transfer from Fund 1410 (Streets CFF) to Fund 1320-0180-M174 is necessary to fully fund the project titled “Fire Station No. 11”,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the transfer of $49,865 from Fund 1410 (Streets CFF) to account number 1320-0180-M174 for the project titled “Fire Station No. 11”.

04/06/04/Fire/D Grant/Item 27 1
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, 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, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

Attest: Jean Zahr, City Clerk

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-189

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR NATIONAL ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM FUNDS IN THE AMOUNT OF $359,000 AND TO EXECUTE THE NECESSARY GRANT APPLICATION DOCUMENTS.

WHEREAS, the Congress, under Public Law 107-73, has authorized the establishment of the Federal Fire Protection and Control Act and has appropriated $750 million dollars to carry out the Assistance to Firefighter’s Grant Program, and

WHEREAS, the Office for Domestic Preparedness is responsible for administration of the program, setting up necessary rules and procedures governing application by local agencies under the program, and

WHEREAS, said adopted procedures established by the Office for Domestic Preparedness require the applicant to provide 30% local matching funds, and

WHEREAS, the Fire Department has concluded that an application in the category of Fire Operations and Firefighter Safety Program is the most needed and the most likely to be successful, and

WHEREAS, the City of Modesto and Modesto Fire Department qualify to submit the grant application and

WHEREAS, this request was reviewed and supported by the Safety and Communities Committee at its April 5, 2004 meeting,

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

1. Authorizes the filing of an application for Assistance to Firefighter’s Grant Program funds in the amount of $359,000.
2. Certifies that said agency has matching funds from the following source: Fire Department Operating Budget, and can finance 100 percent of the project, 70% of which will be reimbursed.

3. Authorizes the City Manager, or his designee, as agent of the City to execute and submit the necessary grant application documents.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: __________________________
JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

By: __________________________
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-190

A RESOLUTION AMENDING THE POLICIES AND PROCEDURES FOR ACCESSMODESTO AND RESCINDING RESOLUTION NO. 2002-590

WHEREAS, on the 26th day of November, 2002, by Resolution No. 2002-590, the City Council established Policies and Procedures for the operation of AccessModesto, and

WHEREAS, the City Council now desires to amend said Policies and Procedures, and

WHEREAS, the City Council hereby finds and determines that it is in the public interest to amend the current Policies and Procedures and

WHEREAS, the Safety and Communities Committee has reviewed the amended Operating Policies and Procedures, dated March 2004, and recommended this item be submitted to full Council, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the amended AccessModesto Operating Policies and Procedures, a copy of which is attached hereto as Exhibit “A”, dated March 2004.

BE IT VURTHER RESOLVED that Resolution No. 2002-590 is hereby rescinded.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman,
who moved its adoption, which motion being duly seconded by Councilmember
O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By

MICHAEL D. MILICH, City Attorney

ATTEST:

JEAN ZAHR, City Clerk
Operating Policies and Procedures
Version 3.0 March 2004

Draft
### Table of Contents

**OUR PURPOSE**................................................................. 1

I. INTRODUCTION .................................................................................................................. 2
   A. PEG ................................................................................................................................. 2
   B. Public Access .................................................................................................................. 2
   C. Education & Government Access .................................................................................. 2
   D. Contact Information ....................................................................................................... 2
   E. Drop-off............................................................................................................................ 3

II. Producers' Responsibilities ................................................................................................. 3
   A. Application Forms .......................................................................................................... 3
   B. Program Copy ................................................................................................................. 3
   C. Conduct and Behavior ................................................................................................. 3

III. Services Provided .............................................................................................................. 4
   A. Public Service Announcement ....................................................................................... 4
   B. Duplications .................................................................................................................... 4

IV. Programming Guidelines .................................................................................................. 4
   A. Program Content Policy ............................................................................................... 4
   B. Copyright and other Clearances .................................................................................... 5
   C. Minors Submitting Programs ....................................................................................... 5
   D. Acknowledgements and Disclaimers .............................................................................. 5
   E. Viewer's Discretion ......................................................................................................... 5
   F. Ownership ...................................................................................................................... 5
   G. Distribution Rights ......................................................................................................... 5
   H. Underwriting and Sponsorship ...................................................................................... 6
   I. Underwriting - Financial Reporting .............................................................................. 6
   J. Company Sponsorship .................................................................................................... 7

V. Promote Programming ...................................................................................................... 7
   A. Program Schedule ......................................................................................................... 7
   B. Producer's Promotion ..................................................................................................... 7
   C. Cable Guide ..................................................................................................................... 7

VI. Program Scheduling Policies ............................................................................................ 7
   A. Public Access Scheduling ............................................................................................. 8
   B. Scheduling Conflicts ..................................................................................................... 8
   C. Scheduled Time Slots .................................................................................................. 8
   D. New Users and Time Dated Programs ......................................................................... 8
   E. Repeats .......................................................................................................................... 9
   F. Program Submission ...................................................................................................... 9
   G. Sensitive Programs ......................................................................................................... 9
   H. Re-submittal of regular programs and series programs ............................................... 9
   I. Failure to Submit Tape .................................................................................................. 9
   J. Cancellation, Pre-emption and Rescheduling ............................................................... 9
   K. Program Length ............................................................................................................ 9
   L. Exceeding Time Slot .................................................................................................... 10
   M. Political Programming ................................................................................................ 10

VII. Technical Issues ............................................................................................................. 10
   A. Media Formats .............................................................................................................. 10
   B. Technical Standards ..................................................................................................... 10
   C. Technical Information .................................................................................................. 11
   D. Label Information ......................................................................................................... 11

VIII. Infractions and Appeals Process .................................................................................... 11
   A. Violations ....................................................................................................................... 11
   B. Appeals Process ........................................................................................................... 12
AccessModesto TV

The City of Modesto regulates the local cable television franchise agreement, which allows the cable company to use public rights of way for their cables and wiring. Within this franchise agreement, provisions are made for Public Access - Education-Government (PEG) access channels.

AccessModesto programming is broadcast on Channels 7, 26 and 96 on the Comcast cable system; these channels are available to all Comcast cable residents in the City of Modesto as part of their basic cable television service. Channel 96, the government channel, can also be viewed throughout the rest of Stanislaus County on Channel 19, on the Charter cable system.

Our Purpose

Assisting residents and organizations to communicate ideas and exchange information through the medium of community access television.

To accomplish this, we will work toward the following goals:

- Advocate the use and benefits of community access television
- Encourage the cablecasting of non-commercial programs directly related to the community of Modesto and/or Stanislaus County
- Encourage the creation of programs aimed at preserving, developing, and enhancing the diversity of thought, culture, and heritage within Modesto and/or Stanislaus County
- Facilitate lifelong learning and community participation in the democratic process
- Serve as a local information exchange
- Develop cooperative partnerships with Education, and Government individuals and groups to help further the goals of community access
- Monitor and incorporate, to the extent funding is available, the use of emerging technologies that will benefit community access users
- Maintain those cable channels dedicated to public use in a manner that is free of censorship and control of program content, except as necessary to comply with State or Federal law
- Attempt to provide equitable access to community channels by developing and utilizing rules and policies
I. Introduction

These Operating Policies and Procedures set out the rules that govern the operation of the AccessModesto TV channels.

A. PEG

In the City of Modesto, Channels 7, 26 and 96 on the Comcast cable system and channel 19 on the Charter cable system have been set aside for use by members of the public, community organizations, educational institutions, and governmental agencies as the city’s community access channels. AccessModesto TV aims to be the nexus that provides the public with the facilities and equipment needed to produce television programs to be shown over these local community channels.

B. Public Access

Public Access means TV for you, by you, and about you. This is television made by you free of censorship (to the extent allowed by law) and free of commercials. Public Access allows for varying degrees of an individual’s participation. One can participate in Public Access easily by bringing in a previously taped show or by putting a message on the Video Bulletin Board.

C. Education & Government Access

These channels are used to deliver programming produced by educational institutions, as well as agencies of local and state government. The use of the education and government channels shall be reserved solely for what is deemed informational and educational for the citizens of City of Modesto and Stanislaus County. The fundamental purposes of the Education and Government Access Channels are as follows:

1. To promote the education of the City’s citizens concerning local government by cablecasting meetings consisting of the City Council, County Board of Supervisors and boards that are deemed appropriate and beneficial to the City’s & County citizens.
2. To inform the citizens at large about programs and public service provided by City and County departments.
3. To promote the education of citizens by presenting educational and cultural programs beneficial to City and County residents.
4. To explain opportunities for citizens to participate in programs and services.
5. To provide information on public health, safety and welfare issues.
6. Programs or events that are sponsored by City of Modesto or Stanislaus County.

D. Contact Information

The City of Modesto Information Technology Department manages the City’s AccessModesto TV programming with assistance from the city’s Local Cable Citizen Advisory Committee.

AccessModesto Contacts:

Information Technology Department:................................. (209) 571-5548
Master Control Room (Scheduling/Programming):................... (209) 525-5104
Master Control Room Fax (Video Bulletin Board Announcements): (209) 525-5113
Web Site:........................................................................... http://www.modesto.tv
Email:............................................................................. info@modesto.tv
E. Drop-off Location

Programs for airing on the AccessModesto Public Access may be submitted by:

1. Drop off at the City of Modesto, Customer Service Department, 1010 Tenth Street, Suite 2100, Modesto, California between the hours of Monday through Friday, 8 am – 5 pm.

2. Mailing to AccessModesto, P.O. Box 642, Suite 2100, Modesto, CA 95353

II. Producers' Responsibilities

A. Application Forms

Forms must be completed for each show that is produced for AccessModesto TV. The forms provide details about the production and serves as a working production tool for both the producer and AccessModesto TV.

Producers are fully responsible for signing and obtaining all necessary forms and releases involved in their production. This includes talent releases and music rights. The City of Modesto and AccessModesto have no legal liability for clearances that have not been obtained. The following forms must be filled out and submitted:

1. Statement of Compliance
2. Indemnification
3. Duplication Process Policy
4. Program Technical Requirements
5. AccessModesto TV Playback Request
6. Program Content Survey Form

B. Program Copy

AccessModesto recommends that producers keep possession of their edited master and submit good quality duplication on any AccessModesto accepted media for cablecasting, which may be kept. The AccessModesto is not responsible for damage to the air tape, under the Statement of Compliance form, which is completed for cablecasting.

C. Conduct and Behavior

It is expected of all individuals, during the process of participating in AccessModesto whether it is dropping off a tape or requesting information, will conduct themselves in a responsible manner at all times. In honoring the spirit of diversity, all participating individuals are asked to respect others within the work environment while on the City of Modesto premises. The following actions would be considered conduct which disturbs the work environment and could be subject to policy violation, which may include permanent forfeiture of privileges on AccessModesto.

1. Personal verbal attacks or harassment of individuals and or groups.
2. Yelling, loud or disruptive discussions or behavior.
3. Individuals who behave in a threatening manner or interfere with orderly conduct.
III. Services Provided

A. Public Service Announcement

A separate bulletin board appears on each of the Public Access-Education-Government channels in between taped or live programming. Eligible users may submit messages and announcements to the Video Bulletin Board. Eligible users include bona fide nonprofit agencies, educational, and governmental organizations.

Messages may be typed or printed on a Public Service Announcement Form. Public Service Announcement messages may be no longer than 35 words, however press releases will be accepted and edited. The information should be submitted 10 days in advance of requested airdate. Pick up a Public Service Announcement form in the City of Modesto Customer Service Office 1010 10th Street, or online at www.modesto.tv. This is a free service.

B. Duplications

Duplications of AccessModesto TV produced programming may be obtained for a fee of $10 for VHS or $15 for DVD. Duplication forms may be obtained in the City of Modesto 1010 10th Street, Customer Service Department in Suite 2100.

IV. Programming Guidelines

A. Program Content Policy

AccessModesto has designed its policies and facility to encourage the broadest possible usage of the cable television community channels, to celebrate the diversity of the community, and to strengthen the sense of community in the City of Modesto and Stanislaus County. Public Access is committed to being the vehicle for non-commercial programming made by individuals and groups in the City of Modesto. As such, it is the producer or presenter of the program who accepts responsibility for the content, not AccessModesto. AccessModesto will exercise no control over program content, except that legally, community access programming must not contain:

1. Obscene or indecent matter as defined by the First Amendment to the U.S. Constitution and any applicable case law in the 1992 FCC guidelines.
2. Materials that contain other speech not protected by the Constitution: i.e., speech, which directly results in violence, ‘fighting words,’ and incitement to riot.
3. The direct or indirect presentation of lottery or other information as prohibited by State Law.
4. Advertising material that promotes the sale of commercial products or services or motivate a viewer to contact guests or businesses for additional information. For example: A program with a guest from a business or organization cannot contain a slate that states, “For more information call or contact.
5. The direct solicitation of funds or donations for any and all purposes is prohibited. Bona fide nonprofit agencies may appeal for volunteers or publicize fundraising events.
6. Material which constitutes libel, slander, invasion of privacy, or publicity rights, unfair competition, violation of trademark or copyright, or which might violate any local, state, or federal law.
7. Material, which has a reasonable probability of creating an immediate danger of damage to property or injury to persons.
B. Copyright and other Clearances

Users presenting a program for cablecast must state in writing that they have made all appropriate arrangements to obtain all rights to materials to be cablecast. Users shall obtain in writing, the consent of all persons and parental permission for all minors appearing in programs submitted for cablecasting. Sample Talent Release Forms are available online at www.modesto.tv.

C. Minors Submitting Programs

A parent or legal guardian must sign the Program Content Survey for each program submitted by a minor. Staff may request copies of all clearances and releases before airing a program.

D. Acknowledgements and Disclaimers

The presenter of a program must be clearly identified on a slate appearing at the beginning and end of each program. The slate must include the presenter’s name and address. A phone number is optional. The slate provides the viewer with contact information in case of questions or concerns. (A presenter is a Modesto resident or organization that signs the Program Content Survey form and submits a show for airing. Presenters are legally responsible for the content of a show. The presenter may or may not be the producer of the program.)

E. Viewer’s Discretion

Presenters are required to indicate on their completed Program Content Survey whether or not any portion of their programming content may present cause for AccessModesto viewers to exercise viewer or parental discretion. Programs marked, as ‘Yes’ will be scheduled as follows:

- Obscene Material .......................... Prohibited by Federal Law, will not be scheduled or aired
- Matter Inappropriate for Children ........ Must be scheduled after 10:00 PM and before 4:00 AM
- Indecent Material ........................... Must be scheduled after 1:00 AM and before 4:00 AM
- Material of a Sensitive Nature .......... Must be scheduled after 10:00 PM and before 4:00 AM

An announcement must be included at the beginning of the programs disclosing if it is sensitive, indecent material or inappropriate for children, for example:

"The following program contains language or other program content that may be offensive to some viewers. Viewer and parental discretion are advised."

F. Ownership

The presenter of any program submitted for cablecasting on any of the AccessModesto TV channels retains copyright ownership of the program. AccessModesto reserves the right to retain a copy of the program for later cablecasting on the community channel or for other non-commercial, promotional purpose.

G. Distribution Rights

The producer/presenter retains the rights of distribution for all programs aired on AccessModesto channels.
H. Underwriting and Sponsorship Credits

Public Access producers are permitted to seek underwriting and/or sponsorship credits for their productions, as long as the support is in direct relation to the cost of program production. The producer may give on-air credit to the person or organization that has given financial or in-kind support for the production or promotion of a program using the following guidelines:

1. **Length:** A credit of up to 180 seconds is given per every 30 minutes of programming. For instance, a half hour show (30 minutes) would be allotted three minutes (180 seconds) for crediting sponsors and an hour show (60 minutes) would get six minutes (360 seconds) of time for sponsor acknowledgement.
   a. Total amount of underwriting and/or sponsorship credits may not exceed the length of original programming.
   b. Each underwriting and/or sponsorship credit cannot exceed 15 seconds in duration.
2. **Placement:** Credits may be placed at the beginning, middle, and/or end of a show. The credit may be split into any time increment.

**Sponsorship Guidelines:**
A credit may contain:

1. The Company/Person's Name
2. The Company Logo
3. The Company/Person’s Address and/or Phone Number
4. A web site address
5. A qualifying line – A 10 word description of the type of business. Example “This has been brought to you by company X, serving the valley since 1940.”

A credit **MAY NOT contain**

1. A video or photograph of any product the company sells.
2. A description of services or products the company provides.
3. A slogan – A slogan is defined by AccessModesto as a copyrighted catch phrase associated with a company that is used for marketing purposes and established to assist that business in making a profit.
4. A promotion of any form for the purchase or use of alcoholic or tobacco products
5. Comparative Descriptions*
6. Pricing Information*
7. Calls to action*
8. Inducements to buy, rent or lease*

*Please see attached document for Tips on Evaluating Underwriting and/or Sponsorship Credits.

1. **Underwriting - Financial Reporting**

Upon receiving a written request from AccessModesto, producers receiving underwriting sponsorship must explicitly inform of any payment or cash received by an individual or group for the purpose of programs using AccessModesto equipment or facility. Additionally, The Internal Revenue Service may periodically review the non-commercial status of AccessModesto.
J. Company Sponsorship

Companies can sponsor shows:

• Which cover local public community events.

Companies cannot sponsor shows:

• About themselves
• Showing their product or service exclusively

V. Promote Programming

A. Program Schedule

Specific requests for airtimes will be met when possible. Generally, program cablecast requests submitted to AccessModesto four (4) weeks prior to the requested airdate will be listed in the TV listings aired on the Public-Education-Government Bulletin Board. The schedule will also appear on the AccessModesto TV website (www.modesto.tv) which is updated weekly.

B. Producer’s Promotion

Presenters are encouraged to promote and otherwise encourage viewership of their programs. Presenters can submit program description to AccessModesto. Program Description may be submitted to info@modesto.tv

C. Cable Guide

The Cable Guide is aired daily on Channel 2. Programming on the AccessModesto TV channels will be submitted each week for this daily listing service. AccessModesto TV is not affiliated with the Cable Guide Channel.

VI. Program Scheduling Policies

AccessModesto scheduling policies are designed to:

• Provide equitable allocation of available channel time, as determined by our Operating Policies and Procedures
• Give residents, education institution and government agencies of the City of Modesto and Stanislaus County
• Priority in the allocation of airtime on the community access channels.
• Encourage viewership of the community channels
• Maximize opportunities for program promotion
A. Public Access Scheduling

The Public Access is divided into general categories to show a mix of different types of programming throughout the week. All program schedules are subject to review by AccessModesto and the Local Cable Programming Committee. No individual may reserve a specific time slot, except when a contract is entered into with AccessModesto. The programming schedule appears on the website at www.modesto.tv. To establish priority, the following will be considered.

Priority:

- Time dated programs
- Locally-produced programming
- Programs that have not been previously shown on the community channel
- Programs submitted by new producers

B. Scheduling Conflicts

It should be understood, that since this is a shared community resource, specific time requests cannot always be granted. The public access channel time requests will be scheduled on a first come, first served, non-discriminatory basis. In the case of scheduling conflicts, program times will be determined by a lottery system, which will be held for producers at least once per year.

C. Scheduled Time Slots

To allow for regularly produced programming aired at a consistent time on regular days of the week, or regular bi-weekly or monthly days and times, AccessModesto will enter into contracts for the public access channel with producers/providers for scheduled time slots within the constraints of the following guidelines.

1. To be eligible to enter into a contract or a scheduled time slot with AccessModesto a producer/providers of programming must have demonstrated the ability to produce programming of consistent quality and not in violation with AccessModesto Policy and Procedures.
2. Producer/providers must demonstrate the ability to deliver the programs in a regular, timely and consistent fashion.
3. Only pre-taped programs on technical approved media will be accepted.
4. AccessModesto reserves the right to pre-empt regularly scheduled programming in order to better serve the public interest such as in the event of an emergency broadcast or a special event.
5. In the event of a scheduling conflict, programming times will be determined by a lottery system that will be held for producers at least once per year.
6. Scheduled time slots may be reallocated every 12 months.
7. A time slot may be revoked or reassigned if the producer/provider assigned to that time slot does not meet the terms of his or her contract, including but not limited to failing to deliver programs in a regular, timely and consistent manner.

D. New Users and Time Dated Programs

Staff reserves several time slots each week to accommodate programs created by new eligible users and / or time dated programs.
E. Repeats

AccessModesto reserves the right to repeat the same show within each programming block period. The number of playback times is limited to two (2) per week for all programs, with a maximum playback of three (3) times per week if scheduling allows. This excludes any contractual agreements the City may have with presenters.

F. Program Submission

A presenter must submit a signed AccessModesto Playback Request prior to submitting any programming. A Program Content Survey form must be submitted with each program. Programs submitted without the Program Content Survey will not be aired. Since a tape must be entered into the AccessModesto TV tape database, labeled, and scheduled, an airdate cannot be given at the time of submission. Airdates will be available approximately three business days after a tape has been submitted. Producers submitting episodes of an approved series must deliver the tape and Program Content Survey to AccessModesto TV at least seven days prior to their time slot to allow for scheduling, unless other arrangements are agreed upon with the Programming Manager.

G. Sensitive Programs

Programs, which contain material that may be inappropriate for children or deal with issues of a particularly sensitive nature, will be cablecast in accordance with FCC guidelines. It is the program presenter's responsibility to notify AccessModesto staff in advance if their program is of a sensitive nature. A Program Content Survey must be completed for each submission. Presenters are required to indicate on their completed Program Content Survey whether or not any portion of their programming content may present cause for AccessModesto viewers to exercise viewer or parental discretion. An announcement must be included at the beginning of the program and will be scheduled after 10:00 pm; indecent material will be scheduled after 1:00 am.

H. Re-submitting of regular programs and series programs

AccessModesto will act according to the instructions provided by the presenter on the Program Content Survey form. Re-submissions will be considered on a case-by-case basis. Series programs can be resubmitted for up to two more airdates. These additional airdates will be at the discretion of AccessModesto and will be subordinate to regular submissions and first-time series programs.

I. Failure to Submit Tape

In the case of a scheduled program, producers who fail to submit tapes on schedule will risk the loss of their time slots. Staff reserves the right to cancel the program's time slot if the producer fails to provide a new show within the agreed upon time frame.

J. Cancellation, Pre-emption and Rescheduling

Staff reserves the right to pre-empt the regular schedule as necessary to accommodate date sensitive programs, technical difficulties, education and/or government related news conferences, or emergency announcements or programming. Staff shall make every effort to reschedule pre-empted programs at the earliest available time slot.

K. Program Length

The recommended length for programming on Access Modesto Cable TV is 28:30 minutes for a half hour show and 58:30 minutes for an hour show. These lengths allow time in-between programs for public service announcements (PSA's), stations identifications, and the interactive bulletin board. PSA and station ID's may be used for AccessModesto producers to tag onto their programs.
L. Exceeding Time Slot

The community channels run several hours in the evenings and weekend by computer automation with a limited amount of VCR’s for program playback. AccessModesto reserves the right to cut series programming which exceeds its scheduled time slot, unless prior arrangements are made. For example, a half-hour series program should not exceed 30:00 minutes, even by half a second. This could cause the program credits to be cut short, or the next program to start late. Series producers must submit a properly timed program in order to help maintain the schedule and create the best possible appearance of the community channels.

M. Political Programming

AccessModesto views political programming should be treated like any other programming. On the Public Access channel, programming concerning political issues and candidates for public office will afford the same privileges and will be subject to the same limitations as other public access programming. In order to promote the fullest and fairest presentation of divergent political views, issues and candidate forums are encouraged.

However, in an effort to bring fairness and order, AccessModesto has established the following voluntary guidelines, which we encourage candidates to abide by. A candidate in definition is any individual who will appear on an electoral ballot.

**Political Programming Guidelines:**

1. A Campaign Period, for the purposes of AccessModesto shall be defined as beginning on Monday of the first full week, 4 weeks prior to an election and will continue until all run-off elections are completed.
2. AccessModesto may broadcast Candidates Forums, a Candidates Forum is considered a program or programs produced specifically for candidates during the election periods in which all-running candidates are invited to participate and non-partisan groups sponsor the forums.
3. All candidates do not have to accept the invitation for a Candidates Forum program in order for AccessModesto to air the program on the access channels.
4. On the Government and Education Channels, programs, other than government meetings, such as council meetings, that have as guest/host/talent political candidates may not air during the Campaign Period.

VII. Technical Issues

A. Media Formats

Acceptable media format for cablecasting include prerecorded programs on DVD, Mini-DV, and DV Cam, SVHS, VHS.

B. Technical Standards

Programs must have technical standards high enough to deliver a clear and unbroken picture to cable subscribers.

1. The audio must be clearly understandable and at audible levels without distortion.
2. Tapes should be recorded in standard play speed (SP).
3. Tapes recorded in extended play (EP) will not be accepted.
C. Technical Information

1. There must be at least 30 and no more than 90 seconds of black at the head of the tape. Tapes will not be accepted with more than 90 seconds of black before the program. Color bars are not necessary.

2. The black section must be followed by the Viewers Discretion Advisory, if required. The beginning of this Advisory is the beginning of the program.

3. An identification slate, which includes the name and address of the presenter of the program, may then be displayed for at least 10 seconds. A phone number is optional.

4. The program audio and video should begin within 3 seconds of the end of the presenter's slate.

5. Program credits should appear at the end of the program. Credits should include the name of each crewmember (unless anonymity is requested), and allowable credit to the underwriters/sponsors of the show.

6. Repeat the presenter's slate. The end of this page is the end of the show.

7. The end of the show must be followed by 30 seconds of black.

D. Label Information

The following information must be legibly included on labels affixed to both the videocassette and videocassette box. If the information is not on the label or is unreadable, the tape will not air.

1. Presenter's name, local address, and phone number
2. Program Title
3. Exact length of programs (minutes, seconds, and frames timed from the first frame of the beginning title page to the last frame the end title page)
4. Date (month and year) program is scheduled to air.

VIII. Infractions and Appeals Process

A. Violations

Violations of AccessModesto programming policies and procedures, or breaches of the Statement of Compliance may subject the offender to immediate forfeiture of the privilege of using the channel, facilities, and services. The Chief Information Officer, according to the severity and frequency of the infractions, will determine the duration of the forfeiture. Violations of AccessModesto Operating Policies and Procedures will be documented in writing in the user's file. Violators of the AccessModesto Policies and Procedures will face the following penalties:

1. First Violation: Written warning
2. Second Violation: Loss of privileges for 6 months and a possible fine.
3. Third Violation: Subject to Permanent forfeiture of privileges.
B. Appeals Process

If staff imposes sanctions on a user or refuses to cablecast a user’s program, the user may appeal for a hearing. The following steps shall be followed for appeals:

1. Submit a written appeal to the AccessModesto Manager within 15 days of the action. The AccessModesto Manager must then investigate the circumstances surrounding the action and provide a written response.

2. If the user feels his/her concern has not been resolved, the user must present a written report to the Chief Information Officer, which will be reviewed and make recommendations to the AccessModesto Manager and/or the Local Cable Citizen Advisory Committee. If a quorum of the Local Cable Citizen Advisory Committee is not available, appeals will be taken directly to the City Manager to review.

3. The Modesto City Manager may request a public hearing with the City Council.

4. Following investigation, the City Council or Local Cable Citizen Advisory Committee will recommend any action they deem appropriate. The decision will be final and binding upon the AccessModesto user.
I hereby acknowledge having read these AccessModesto Policies and Procedures and agree to abide by these and any other requirements and/or changes that may be instated by AccessModesto or required by The City of Modesto. I understand any violation of the AccessModesto Operating Policies and Procedures may result in immediate forfeiture of privileges on AccessModesto.

Name of Program

______________________________
Signature of Producer

______________________________
Date

853592v1 05026/0025
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-191

A RESOLUTION APPROVING THE RENEWAL OF A ONE-YEAR AGREEMENT WITH QUALITY VIDEO FOR GRANTED USE OF THE PUBLIC ACCESS CABLE CHANNEL DURING DEDICATED TIME ALLOCATIONS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT.

WHEREAS, on the 26th day of November 2002, by Resolution No. 2002-592, the City Council approved the agreement between City of Modesto and Quality Video to grant specific time allocations to cablecast a daily program entitled “Central Valley Reports” on the AccessModesto Public Access Channel, and

WHEREAS, the City Council now desires to renew for a period of one-year agreement between Quality Video and City of Modesto. (Exhibit B), and

WHEREAS, the time slots allocated for “Central Valley Reports” are as follows:

Tuesday through Saturday - *7:00 to 7:30 a.m.
Tuesday through Saturday - 12:00 to 12:30 p.m.
Monday through Friday - 6:00 to 6:30 p.m.
Monday through Friday - 10:00 to 10:30 pm
Monday through Friday - 11:00 to 11:30 p.m.

WHEREAS, the City of Modesto through AccessModesto Community Television reserves the right to pre-empt any of the above scheduled time slots. Previously scheduled programming will take precedence. In the event of scheduling conflicts, program times will be determined by a lottery system on AccessModesto, and
WHEREAS, Quality Video agrees to provide such program on a format that meets the technical playback requirements of AccessModesto Community Television as set forth in the current Operating Policies and Procedures for AccessModesto, and

WHEREAS, the City of Modesto grants this agreement for a one (1) year period which is renewable at the discretion of the Modesto City Council, and

WHEREAS, Quality Video agrees to provide such program within a timely schedule that meets the technical playback requirements of AccessModesto Community Television, and

WHEREAS, Quality Video shall assume all liability related to all content submitted as part of the Central Valley Reports programs, and shall indemnify and hold harmless the City, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney’s fees, arising out of, or resulting from programming written and/or produced by Quality Video, and

WHEREAS, Quality Video shall be solely responsible for obtaining the right to use any patented or copyrighted materials in the performance of this Agreement and shall furnish a warranty of such right to use to City at the request of City, and

WHEREAS, Quality Video has no authority or responsibility to exercise any rights or power vested in the City, and

WHEREAS, Quality Video, 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, and
WHEREAS, the Safety and Communities Committee has reviewed the renewal agreement and recommended that it be submitted to the full Council,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a one-year agreement with QUALITY VIDEO for granted use of the public access channel during dedicated time allocations.

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 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ________________________________

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: ________________________________

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-192

A RESOLUTION ACCEPTING $300,000 IN GRANT FUNDING FROM THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, CALHOME PROGRAM FOR MORTGAGE ASSISTANCE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT AGREEMENT.

WHEREAS, funding for the CalHome Mortgage Assistance Program has been made available by the California Department of Housing and Community Development (Department), Proposition 46, the Housing and Emergency Shelter Trust Fund Act of 2002, to provide funds to local public agencies or non-profit corporations, and

WHEREAS, pursuant to the statute, the Department is authorized to approve funding allocations for the program, subject to the terms and conditions of the program application form, and

WHEREAS, on September 23, 2003, by Resolution No. 2003-508, the City Council approved the submission of a grant application, and the City of Modesto, Parks, Recreation and Neighborhoods (PR&N) Department applied for, and was successful in receiving grant funding in the amount of $300,000, and

WHEREAS, the PR&N Department shall be subject to the terms and conditions as specified in the standard agreement (Contract), and funds are to be used for allowable expenditures, and

WHEREAS, the application in full is incorporated as part of the Agreement and any and all activities funded, information provided and timelines represented in the application are enforceable through the Agreement,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby accepts $300,000 in grant funding under the California Department of Housing and Community Development for CalHome Mortgage Assistance Program.

BE IT FURTHER RESOLVED that the City Council hereby authorizes the City Manager, or his designee, to execute the Agreement, and any and all instruments required by the Department for this program.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
A RESOLUTION AMENDING THE FISCAL YEAR 2003-2004 OPERATING BUDGET TO ESTIMATE $300,000 IN NEW REVENUE AND APPROPRIATE $300,000 TO CALHOME MORTGAGE ASSISTANCE PROGRAM (0410-320-3280-0497).

WHEREAS, on September 23, 2003, by Resolution No. 2003-508, the City Council approved the submission of a grant application to the California State Department of Housing and Community Development for funding under the CalHome Mortgage Assistance Program for $300,000 for low-income first time homebuyers, and,

WHEREAS, the City of Modesto, Parks, Recreation and Neighborhoods (PR&N) Department applied for, and was successful in receiving grant funding of $300,000, and

WHEREAS, staff received a grant agreement for the above project in the amount of $300,000,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves amending the fiscal year 2003-2004 operating budget to estimate $300,000 in grant revenue from the California Department of Housing and Community Development, and to appropriate $300,000 to the CalHome Mortgage Assistance Program (0410-320-3280-0497).

BE IT FURTHER RESOLVED that the Finance Director, or her designee, is hereby authorized to take the necessary steps to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: 

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: 

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-194

A RESOLUTION ALLOCATING $10,000 FROM THE HOME COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) SET ASIDE FUNDS TO HABITAT FOR HUMANITY, STANISLAUS (HABITAT) FOR DEPOSIT OF A 2-ACRE PARCEL LAND PURCHASE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT.

WHEREAS, on March 1, 2004, Anita Hellam, Executive Director for Habitat for Humanity, Stanislaus (Habitat), contacted the City of Modesto Parks, Recreation and Neighborhoods Department (PR&N) regarding a two-acre parcel of property that the Habitat Site Selection Committee had recently discovered for sale, and

WHEREAS, Habitat for Humanity was interested in pursuing the property due to the parcel's appropriate zoning and ideal location, and

WHEREAS, the parcel is located at the end of Houser Lane in Southwest Modesto, north of Paradise Road, and

WHEREAS, Habitat has requested $650,000 to help fund the purchase of the property, and

WHEREAS, the Citizens Housing and Community Development Committee met on March 26, 2004, and recommended funding the $10,000 deposit from the CHDO set aside funds, and

WHEREAS, this recommendation will also allow staff, as well as the CH&CDC, to more fully study and examine this issue, without penalizing Habitat for the additional time and study needed, and
WHEREAS, funds are budgeted in 1170-320-3259-0508, CHDO Set-aside,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves allocating $10,000 from the HOME Community Housing Development Organization (CHDO) set aside funds to Habitat for Humanity, Stanislaus (Habitat) for a deposit on a 2-acre parcel land purchase.

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 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: [Signature]
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: [Signature]
MICHAEL D. MILICH, City Attorney
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 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. CLASSIFICATION CREATED. The Position Classification Plan of the City of Modesto is hereby amended to create the following classification:

Community Services Supervisor

The job specification for this classification is being created as a result of the need for a new job specification as part of a job audit. The specification for the classification of Community Services Supervisor, as shown on the attached Exhibit “A”, which is hereby made a part of this resolution by reference, is hereby approved and made part of the Position Classification Plan of the City of Modesto.
SECTION 2. CLASSIFICATION AMENDED. The Position Classification Plan of the City of Modesto is hereby amended to revise the following classification:

Customer Services Supervisor

The job specification for this classification is being amended as a result of updating the job specification as part of a job audit. The specification for the classification of Customer Services Supervisor, as shown on the attached Exhibit “B”, which is hereby made a part of this resolution by reference, is hereby approved and made part of the Position Classification Plan of the City of Modesto.

SECTION 3. EFFECTIVE DATE. This resolution shall become effective on and after April 6, 2004.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By

MICHAEL D. MILICH, City Attorney

2004-195
COMMUNITY SERVICES SUPERVISOR

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 plan, coordinate and administer and manage the activities at City Hall At The Mall (CHATM) and other assigned programs including Sister Cities and the Financial Assistance Program in the Parks, Recreation and Neighborhoods Department.

SUPERVISION RECEIVED AND EXERCISED:

Receives general direction from upper management staff.

Exercises direct supervision over clerical staff.

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

Essential Functions:

Recommend goals and objectives including the development and implementation of policies and procedures at City Hall At The Mall, a retail operation; manage all facility needs including acting as a liaison between internal and external clients.

Direct, oversee, and participate in the development of projects; assign work activities; monitor work flow; create attractive and informative displays including window displays; review and evaluate work products, methods, and procedures at City Hall At The Mall.

Respond to requests for information and advise City Departments, governmental agencies, and the public on matters related to assigned areas.

Review and approve applications for assistance related to the Financial Assistance Program; maintain program database.

Coordinate the City’s Sister Cities program including acting as a liaison between the council and Sister City’s Board to arrange related events and activities.
Maintain the department’s registration/reservation software including upgrades; monitor input of classes for the Activity Guide; assist with balancing system to general ledger.

Participate in recommending the appointment of personnel; provide or coordinate staff training; work employees to improve performance; implement discipline procedures as necessary.

Participate in budget preparation; assist in budget implementation; participate in the forecast of additional funds needed for staffing, equipment, materials, and supplies; administer the approved budget.

Participate in intergovernmental meetings for the purpose of developing cooperative methods and practices.

Address a variety of customer service issues and complaints and resolve in an appropriate manner.

Confer with members of the public to respond to complaints and requests for information.

Develop and implement various facility management and reporting procedures for CHATM.

Review, develop, and modify ways to improve existing procedures; ensure conformity to policy and increase effectiveness.

Conduct fiscal analyses and studies.

Marginal Functions:

Perform related duties as assigned.

QUALIFICATIONS:

Knowledge of:

Customer relations practices and techniques.

Principles and practices of organization and public administration.

Principles and practices of effective employee supervision, including selection, training, work evaluation, and discipline.

Laws regulating public utilities and cashiering, activities. Applicable Federal,
State, and local laws, codes, and regulations.

Budget procedures and techniques.

Methods and techniques of effective technical report preparation and presentation.

**Ability to:**

Analyze problems, identify options, project consequences of proposed actions, and recommend changes in policies and procedures.

Interpret and apply rules, regulations, and policies.

Prepare and analyze technical and administrative reports, statements, and correspondence.

Work with and control sensitive, confidential information.

Communicate clearly and concisely, both orally and in writing.

Establish and maintain effective working relationships with others.

**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:**

Four years of increasingly responsible financial experience in a public or utility agency with emphasis in professional utility, collections, cashiering, and customer service; including two years of supervisory or lead responsibility.

**Training:**

Equivalent to an Associate of Arts degree from an accredited college in business administration, accounting, or a related field.

**License:**

Possession of, or ability to obtain, an appropriate and valid California driver’s license.
WORKING CONDITIONS

Environmental Conditions:

Office environment.

Physical Conditions:

Essential and marginal functions may require maintaining physical condition necessary for sitting for prolonged periods of time; using various office equipment including a computer and 10-key.
CUSTOMER SERVICES SUPERVISOR

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 plan, coordinate and administer assigned sections of the Customer Services Division to include Accounts Receivable, Utility Billing, Cashiering, Business Licensing and Revenue Recovery.

SUPERVISION RECEIVED AND EXERCISED:

Receives general direction from Deputy Director-Finance.

Exercises direct supervision over technical and clerical staff.

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

Essential Functions:

Recommend goals and objectives; assist in the development and implementation of policies and procedures.

Prepare and coordinate completed staff work in assigned area.

Manage a variety of software systems including conversions in assigned area.

Act as a liaison to software vendors involving system upgrades, enhancements, training and the implementation of new software technology.

Provide city-wide training on various systems software including Utility Billing, Accounts Receivable and the Citation Processing system.

Direct, oversee, and participate in the development of the Division's work plan; assign work activities, projects, and programs; monitor work flow; review and evaluate work products, methods, and procedures.
CITY OF MODESTO
CUSTOMER SERVICES SUPERVISOR
PAGE 2

Respond to requests for information and advise City Departments, governmental agencies, and the public of City utility, collections, cashiering, accounts receivable, revenue recovery and business license policies.

Participate in recommending the appointment of personnel; provide or coordinate staff training; work with employees to improve performance; implement discipline procedures as necessary.

Prepare the Division budget; assist in budget implementation; participate in the forecast of additional funds needed for staffing, equipment, materials, and supplies; administer the approved budget.

Participate in intergovernmental meetings for the purpose of developing cooperative methods and practices.

Consult with department directors, city attorney’s office and city manager’s office on customer service issues including rate setting and municipal code revisions.

Write council agenda reports and resolutions, representing the department at council and committee meetings.

Confer with members of the public to respond to complaints and requests for information.

Review, develop, and modify methods to improve existing procedures; ensure conformity to policy and increase effectiveness.

Conduct fiscal analyses and studies.

Marginal Functions:

Perform related duties as assigned.

QUALIFICATIONS:

Knowledge of:

Customer relations practices and techniques.

Principles and practices of organization and public administration.

Principles and practices of effective employee supervision, including selection, training, work evaluation, and discipline.
Laws regulating public utilities, collections, cashiering, revenue recovery or business license activities. Pertinent Federal, State, and local laws, codes, and regulations.

Budget procedures and techniques.

Mainframe and personal computer applications.

Methods and techniques of effective technical report preparation and presentation.

**Ability to:**

Analyze problems, identify options, project consequences of proposed actions, and recommend changes in policies and procedures.

Interpret and apply complex rules, regulations, and policies.

Prepare and analyze technical and administrative reports, statements, and correspondence.

Work with and control sensitive, confidential information.

Communicate clearly and concisely, both orally and in writing.

Establish and maintain effective working relationships with others.

**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:**

Four years of increasingly responsible financial experience in a public or utility agency with emphasis in professional utility, collections, cashiering, or business license work; including two years of supervisory or lead responsibility.

**Training:**

Equivalent to an Associate of Arts degree from an accredited college in business administration, accounting, or a related field.

**License:**
Possession of, or ability to obtain, an appropriate and valid California driver's license.

WORKING CONDITIONS

Environmental Conditions:
Office environment.

Physical Conditions:

Essential and marginal functions may require maintaining physical condition necessary for sitting for prolonged periods of time; using various office equipment including a computer and 10-key.
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-196

A RESOLUTION AMENDING RESOLUTION NO. 2003-178 (MODESTO CONFIDENTIAL AND MANAGEMENT ASSOCIATION MEMORANDUM OF UNDERSTANDING) TO AMEND THE CLASS RANGE TABLE FOR REPRESENTED MANAGEMENT AND CONFIDENTIAL NON-SWORN CLASSES TO ADD COMMUNITY SERVICES SUPERVISOR AT RANGE 430 AND CHANGE CUSTOMER SERVICES SUPERVISOR FROM RANGE 428 TO RANGE 432.

WHEREAS, the City Council desires to amend Resolution No. 2003-178 (MCMA Memorandum Of Understanding),

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

SECTION I. AMENDMENT TO RESOLUTION NO. 2003-178, (MCMA Memorandum of Understanding), entitled “City of Modesto Class Range Table Represented Management And Confidential Non-Sworn Classes Effective April 8, 2003”, is hereby amended as shown on the amended Exhibit “A” entitled “City of Modesto Class Range Table Represented Management and Confidential Non-Sworn Classes Effective April 6, 2004, which is attached hereto and made a part hereof as though set forth in full herein. Said amended Exhibit “A” adds the classification of Community Services Supervisor at Salary Range 430 and changes the salary range for Customer Services Supervisor from Range 428 to Range 432.

SECTION 2. EFFECTIVE DATE. This resolution shall become effective on and after April 6, 2004.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
CITY OF MODESTO
CLASS RANGE TABLE
REPRESENTED MANAGEMENT AND CONFIDENTIAL NON-SWORN CLASSES
Effective April 6, 2004

<table>
<thead>
<tr>
<th>RANGE</th>
<th>TITLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>403</td>
<td>Administrative Office Assistant I (Confidential)</td>
</tr>
<tr>
<td>407</td>
<td>Administrative Clerk II (Confidential)</td>
</tr>
<tr>
<td></td>
<td>Administrative Office Assistant II (Confidential)</td>
</tr>
<tr>
<td>408</td>
<td></td>
</tr>
<tr>
<td>409</td>
<td></td>
</tr>
<tr>
<td>410</td>
<td></td>
</tr>
<tr>
<td>411</td>
<td>Administrative Office Assistant III (Confidential)</td>
</tr>
<tr>
<td></td>
<td>Police Clerk II (Confidential)</td>
</tr>
<tr>
<td>412</td>
<td></td>
</tr>
<tr>
<td>413</td>
<td>Administrative Technician (Confidential)</td>
</tr>
<tr>
<td></td>
<td>Senior Personnel Clerk</td>
</tr>
<tr>
<td>414</td>
<td></td>
</tr>
<tr>
<td>415</td>
<td>Senior Administrative Office Assistant (Confidential)</td>
</tr>
<tr>
<td></td>
<td>Secretary</td>
</tr>
<tr>
<td>416</td>
<td></td>
</tr>
<tr>
<td>417</td>
<td></td>
</tr>
<tr>
<td>418</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>419</td>
<td>Police Training and Records Technician (Confidential)</td>
</tr>
<tr>
<td></td>
<td>Public Information Technician (Confidential)</td>
</tr>
<tr>
<td>420</td>
<td>Accountant I (Confidential)</td>
</tr>
<tr>
<td></td>
<td>Deputy City Clerk</td>
</tr>
<tr>
<td></td>
<td>Employee Benefits Coordinator</td>
</tr>
<tr>
<td></td>
<td>Executive Secretary (Represented)</td>
</tr>
<tr>
<td></td>
<td>Legal Services Technician</td>
</tr>
<tr>
<td></td>
<td>Systems Technician</td>
</tr>
<tr>
<td>RANGE</td>
<td>TITLE</td>
</tr>
<tr>
<td>-------</td>
<td>-------</td>
</tr>
<tr>
<td>421</td>
<td>Office Supervisor</td>
</tr>
<tr>
<td>422</td>
<td>Utility Dispatch Supervisor</td>
</tr>
<tr>
<td>423</td>
<td>Custodian Supervisor</td>
</tr>
<tr>
<td>424</td>
<td>Assistant Planner</td>
</tr>
<tr>
<td>425</td>
<td>Administrative Analyst I</td>
</tr>
<tr>
<td>426</td>
<td>Police Civilian Supervisor</td>
</tr>
<tr>
<td>427</td>
<td>Assistant City Clerk/Auditor</td>
</tr>
<tr>
<td>428</td>
<td>Accountant II (Represented)</td>
</tr>
<tr>
<td>429</td>
<td>Associate Planner</td>
</tr>
<tr>
<td>430</td>
<td>Community Services Supervisor</td>
</tr>
<tr>
<td>431</td>
<td>Administrative Analyst II</td>
</tr>
</tbody>
</table>

**Office Supervisor**
- Utility Dispatch Supervisor
- Workers' Compensation Claims Examiner I

**Custodian Supervisor**

**Assistant Planner**
- Buyer

**Administrative Analyst I**

**Police Civilian Supervisor**
- Stores Manager

**Assistant City Clerk/Auditor**
- Legal Services Administrator
- Workers' Compensation Claims Examiner II

**Accountant II (Represented)**
- Customer Services Specialist
- Senior Buyer

**Associate Planner**

**Community Services Supervisor**
- Events Supervisor I
- Junior Civil Engineer
- Junior Traffic Engineer
- Senior Crime Analyst
- Social Services Program Supervisor

**Administrative Analyst II**
- Assistant Risk Manager
- Budget Analyst I
- Geographic Information Systems Analyst
- Personnel Analyst
- Recycling Program Coordinator
- Senior Community Development Program Specialist
- Systems Analyst
<table>
<thead>
<tr>
<th>RANGE</th>
<th>TITLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>432</td>
<td>Communications Specialist</td>
</tr>
<tr>
<td></td>
<td>Customer Services Supervisor</td>
</tr>
<tr>
<td></td>
<td>Neighborhood Preservation Supervisor</td>
</tr>
<tr>
<td></td>
<td>Operations and Maintenance Supervisor</td>
</tr>
<tr>
<td></td>
<td>Recreation Supervisor II</td>
</tr>
<tr>
<td></td>
<td>Senior Accountant</td>
</tr>
<tr>
<td></td>
<td>Water Quality Control Maintenance Supervisor</td>
</tr>
<tr>
<td></td>
<td>Water Quality Control Operations Supervisor</td>
</tr>
<tr>
<td></td>
<td>Youth Program Supervisor</td>
</tr>
<tr>
<td>433</td>
<td>Organizational Development Specialist</td>
</tr>
<tr>
<td>434</td>
<td>Arborist</td>
</tr>
<tr>
<td></td>
<td>Assistant Civil Engineer</td>
</tr>
<tr>
<td></td>
<td>Assistant Traffic Engineer</td>
</tr>
<tr>
<td></td>
<td>Budget Analyst II</td>
</tr>
<tr>
<td></td>
<td>Electrical Supervisor</td>
</tr>
<tr>
<td></td>
<td>Events Supervisor II</td>
</tr>
<tr>
<td></td>
<td>Geographic Information Systems Coordinator</td>
</tr>
<tr>
<td></td>
<td>Laboratory &amp; Environmental Monitoring Supervisor</td>
</tr>
<tr>
<td></td>
<td>Operations Supervisor</td>
</tr>
<tr>
<td></td>
<td>Regulatory Compliance Supervisor</td>
</tr>
<tr>
<td></td>
<td>SCADA Supervisor</td>
</tr>
<tr>
<td></td>
<td>Senior Housing Rehabilitation Specialist</td>
</tr>
<tr>
<td></td>
<td>Senior Programmer Analyst</td>
</tr>
<tr>
<td>435</td>
<td>Business Analyst</td>
</tr>
<tr>
<td></td>
<td>Cultural Services Manager</td>
</tr>
<tr>
<td></td>
<td>Integrated Waste Specialist</td>
</tr>
<tr>
<td></td>
<td>Management Analyst</td>
</tr>
<tr>
<td></td>
<td>Senior Personnel Analyst</td>
</tr>
<tr>
<td>436</td>
<td>Senior Planner</td>
</tr>
<tr>
<td>437</td>
<td></td>
</tr>
<tr>
<td>RANGE</td>
<td>TITLE</td>
</tr>
<tr>
<td>-------</td>
<td>-------</td>
</tr>
</tbody>
</table>
| 438   | Budget Officer  
       | Communications and Marketing Manager  
       | Development and Operations Coordinator  
       | Financial/Investment Officer  
       | Housing Program Supervisor  
       | Land Surveyor  
       | Property Agent  
       | Purchasing Supervisor  
       | Senior Business Analyst  
       | Systems Engineer  
       | Transportation Planner |
| 439   | Administrative Services Officer  
       | Community Facilities Districts Administrative Officer |
| 440   | Associate Civil Engineer  
       | Associate Traffic Engineer |
| 441   | Airport Manager  
       | Building Maintenance Superintendent  
       | Fire Marshal  
       | Fleet Manager  
       | Golf Services Manager  
       | Parks Operations Superintendent  
       | Parks Planning and Development Manager  
       | Police Records Manager  
       | Recreation Superintendent  
       | Solid Waste Program Manager  
       | Streets Engineer  
       | Transit Manager  
       | Urban Forestry Superintendent  
       | Wastewater Collections Superintendent  
       | Water Superintendent |
| 442   | Customer Services Division Manager  
       | Information Services Manager  
       | Manager of Budget and Financial Analysis  
       | Supervising Building Inspector  
<pre><code>   | Supervising Construction Inspector |
</code></pre>
<p>| 443   | |</p>
<table>
<thead>
<tr>
<th>RANGE</th>
<th>TITLE</th>
</tr>
</thead>
</table>
| 444   | Business Development Manager  
       | Deputy Chief Building Official  
       | General Services Manager  
       | Principal Planner |
| 445   | Accounting Division Manager  
       | Housing and Neighborhoods Division Manager |
| 446   | Water Quality Control Superintendent |
| 447   | Business Development Division Manager  
       | Chief Building Official  
       | Planning Division Manager  
       | Senior Civil Engineer  
       | Traffic Engineer |
| 448   |       |
| 449   |       |
| 450   |       |
| 451   |       |
| 452   |       |
| 453   |       |
| 455   |       |
A RESOLUTION APPROVING A CONSULTANT SERVICES AGREEMENT WITH THE YOSEMITE COMMUNITY COLLEGE DISTRICT FOR RETENTION OF A MODESTO POLICE LIEUTENANT AS DIRECTOR OF THE RAY SIMON REGIONAL CRIMINAL JUSTICE TRAINING CENTER AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the Yosemite Community College District is desirous of retaining a Modesto Police Lieutenant as Director of its Ray Simon Regional Criminal Justice Training Center, and

WHEREAS, the Commission on Peace Officer Standards and Training is supportive of this business model, and

WHEREAS, the City of Modesto Police Department can provide a Police Lieutenant for this position, and

WHEREAS, a fulltime sworn Police Manager will benefit both the Yosemite Community College District in the provision of its Law Enforcement Academy and benefit law enforcement agencies in the greater Modesto area that hire the graduates of that academy, and

WHEREAS, the total cost ($128,718) of this position for fiscal year 2003/2004 will be paid by the Yosemite Community College District,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, that it hereby approves the agreement with the Yosemite Community College District for a Modesto Police Lieutenant at a cost of $128,718 to serve as Director of the Ray Simon Regional Criminal Justice Training Center.
BE IT FURTHER RESOLVED that the City Manager 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 6th day of April, 2004, by Councilmember Jackman, who
moved its adoption, which motion being duly seconded by Councilmember O’Bryant,
was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ________________
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ________________
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2004-198

A RESOLUTION AMENDING THE FISCAL YEAR 2003/2004 ANNUAL BUDGET ESTIMATING REVENUE AND APPROPRIATING FUNDS FOR A CONSULTANT SERVICES AGREEMENT WITH THE YOSEMITE COMMUNITY COLLEGE DISTRICT FOR A MODESTO POLICE LIEUTENANT TO DIRECT THE RAY SIMON REGIONAL CRIMINAL JUSTICE TRAINING CENTER

WHEREAS, the Yosemite Community College District entered into a agreement with the City of Modesto for retention of a Modesto Police Manager to serve as Director of its Ray Simon Regional Criminal Justice Training Center, and

WHEREAS, the annual cost of this Modesto Police Manager is $128,718 which is payable by the Yosemite Community College District to the City of Modesto under the terms of the agreement,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the 2003/2004 Annual Budget is hereby amended as indicated below:

<table>
<thead>
<tr>
<th>To Revenue:</th>
<th>Amount:</th>
<th>Account:</th>
</tr>
</thead>
<tbody>
<tr>
<td>From YCCD</td>
<td>$128,718</td>
<td>0100-190-1921-4062 YCCD Training Partnership</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>To Expenditure:</th>
<th>Amount:</th>
<th>Account:</th>
</tr>
</thead>
<tbody>
<tr>
<td>From the City of Modesto Police Department Budget</td>
<td>$128,718</td>
<td>0100-190-1921-0100 and 0188 Salaries and Benefits</td>
</tr>
</tbody>
</table>

BE IT FURTHER RESOLVED that the Finance Director 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 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney

4/6/04/Police/J.Togsonini/Item 33 2 2004-198
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-199


WHEREAS, the City Council (the “Council”) of the City of Modesto (the “City”), did, on March 2, 2004, adopt its Resolution No. 2004-127, entitled “A Resolution of the City Council of the City of Modesto of Intention to Establish City of Modesto Community Facilities District No. 2004-1 (Village One #2) and Authorize the Levy of Special Taxes Therein” stating its intention to establish its City of Modesto Community Facilities District No. 2004-1 (Village One #2) (the “District”), and levy special taxes therein, pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code, commonly known as the “Mello-Roos Community Facilities Act of 1982” (the “Act”); and

WHEREAS, Resolution No. 2004-127 (1) describing the proposed boundaries of the District, the name of the District, and the types of facilities (the “Facilities”) and services (the “Services”) proposed to be financed by the District, (2) providing that, except where funds are otherwise available to pay for the Facilities to be financed by the District, including the incidental expenses thereof, and/or the principal and interest as it becomes due on the bonds of the District issued to finance such Facilities, and the Services, special taxes sufficient to pay the costs thereof, secured by recordation of a continuing lien against all nonexempt real property in the District, will be levied within
the boundaries of the District, (3) specifying the rate, method of apportionment, and manner of collection of the special taxes in sufficient detail to allow each landowner or resident within the proposed District to estimate the maximum amount that he or she will have to pay, and (4) setting a hearing thereon, is incorporated herein by this reference; and

WHEREAS, notice of the hearing was duly published as required by law, as evidenced by the affidavit of publication on file with the City Clerk; and

WHEREAS, at the time and date set for the hearing, April 6, 2004, this Council held the public hearing as required by law relative to the proposed formation of the District, the levy of the special taxes, and all other matters set forth in Resolution No. 2004-127; and

WHEREAS, at least 15 days prior to the hearing, a map of the proposed boundaries of the District, entitled “Boundary Map of City of Modesto Community Facilities District No. 2004-1 (Village One #2)” (the “Boundary Map”) was recorded pursuant to Section 3111 of the California Streets and Highways Code in the office of the County Recorder of the County of Stanislaus, in Book 3 of Maps of Assessment and Community Facilities Districts, at page 85; and

WHEREAS, prior to the hearing a report (the “Report”) containing a description of the Facilities and Services required to adequately meet the needs of the District and an estimate of the cost of providing the Facilities and Services, including, to the extent the purchase of completed Facilities or the payment of incidental expenses is proposed, the estimated fair and reasonable cost thereof, including the costs of the proposed bond
financing, was filed with this Council as a part of the record of the hearing and duly considered by this Council; and

WHEREAS, the special tax consultant to the City has recommended that the rate and method of special taxes, attached as Exhibit A to Resolution No. 2004-127, be revised in order to make certain administrative and clarifying amendments. Such amendments have been incorporated into the Report and into Exhibit A hereto. The revisions do not increase either the maximum special taxes or the probable special taxes to be paid by the owner of any lot or parcel.

WHEREAS, at the hearing all persons desiring to be heard on all matters pertaining to the formation of the District, the levy of the special taxes, and all other matters set forth in Resolution No. 2004-127, including all interested persons or taxpayers for or against the establishment of the District, the extent of the District, or the furnishing of specific type or types of Facilities or Services, were heard and considered, and a full and fair hearing was held thereon; and

WHEREAS, at the hearing evidence was presented to this Council on the matters before it, and this Council, at the conclusion of the hearing, was fully advised as to all matters relating to the formation of the District, the levy of the special taxes, and all other matters set forth in Resolution No. 2004-127; and

WHEREAS, written protests against the establishment of the District, the furnishing of specified type or types of Facilities and Services within the District as listed in the Report, or the levying of the special taxes, have not been filed with the City Clerk by fifty percent (50%) or more of the registered voters, or six registered voters, whichever is more, residing within the territory proposed to be included in the District, or
the owners of one-half (1/2) or more of the area of land in the territory proposed to be included in the District and not exempt from this special taxes; and

WHEREAS, the Stanislaus County Registrar of Voters has certified there are less than twelve (12) registered voters residing in the District; accordingly, the qualified electors in the District are the landowners; and

WHEREAS, the City Clerk has concurred in the election date herein set forth for the election herein called;

NOW THEREFORE, BE IT RESOLVED, that the Council hereby finds and determines as follows:

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. The proposed special taxes to be levied in the District have not been precluded by majority protest pursuant to Section 53324 of the Act. All protests (there were none) to the establishment of the District, the extent thereof, or the furnishing of the Facilities and Services proposed therefor, or the levy of the special taxes proposed to be levied in the District, are hereby overruled.

SECTION 3. As proposed in Resolution No. 2004-127, a community facilities district is hereby established pursuant to the Act, designated “City of Modesto Community Facilities District No. 2004-1 (Village One #2),” the boundaries of which are shown on the Boundary Map.

SECTION 4. (a) The Facilities to be financed by the District are set forth in Exhibit B attached hereto and by this reference incorporated herein. The Facilities are public facilities having a useful life of five years or longer.
(b) The Facilities are necessary to meet the increased demands placed upon the City and other local agencies operating within the area of the District as a result of development occurring in the District.

(c) No land within the District is devoted primarily to agricultural, timber or livestock uses or is being used for the commercial production of agricultural, timber or livestock products.

SECTION 5. (a) The Services to be financed by the District are set forth in Exhibit C attached hereto and by this reference incorporated herein. The proposed Services are governmental services which the City is authorized by law to provide since they are in addition to those provided in the territory of the District before the District was created.

(b) The Services are necessary to meet the increased demands placed upon the City and other local agencies operating within the area of the District as a result of development occurring in the District.

SECTION 6. The Report related to the Facilities and Services shall be a part of the record in these proceedings. For purposes hereof, the Report shall refer to the Report as modified, amended, revised or corrected pursuant to and in accordance with any resolution or order heretofore adopted or made by this Council.

SECTION 7. (a) As stated in Resolution No. 2004-127, except where funds are otherwise available, it is the intention of this Council, subject to the approval of the qualified electors of the District, to levy special taxes sufficient to pay for the Facilities to be financed by the District, and/or the principal and interest as it becomes due on bonds issued to finance such Facilities, the Services to be financed by the District, and to pay
incidental expenses related thereto, secured by recordation of a continuing lien against all nonexempt real property in the District.

(b) For purposes hereof, expenses shall include the payment in full of all amounts necessary to eliminate any fixed special assessment liens or to pay, repay, or defease any obligation to pay or any indebtedness secured by any tax, fee charge, or assessment levied within the area of the District or to pay debt service on that indebtedness.

(c) The rate, method of apportionment, and manner of collection of the special taxes, in sufficient detail to allow each landowner or resident within the District to estimate the maximum amount that he or she will have to pay, is described in Exhibit A attached hereto and by this reference incorporated herein.

(d) There is no ad valorem property tax currently being levied on property within the District for the exclusive purpose of making lease payments or paying principal or interest on bonds or other indebtedness incurred to finance the construction of capital facilities which are the same the Facilities to be financed by the District.

(e) Any reimbursement made to the District pursuant to Section 53313.5(e) of the California Government Code shall be utilized to reduce or minimize the special taxes levied within the District or to finance additional Facilities within the District.

(f) Landowners may prepay the “Annual Facilities Special Tax” component of the special taxes (as defined in Exhibit A) pursuant to the procedures set forth in Exhibit A.
(g) The special taxes as apportioned to each parcel pursuant to Exhibit A is based on the cost of making the Facilities and Services available to each parcel, or other reasonable basis, and is not based on or upon the ownership of real property.

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

SECTION 8. The description of the proposed voting procedure, as set forth in Resolution No. 2004-127, is incorporated herein by this reference, and shall be the voting procedure to be used in these proceedings.

SECTION 9. The District Administrator is hereby designated as the office, department or bureau which will be responsible for annually preparing the current roll of special tax levy obligations by assessor’s parcel number on nonexempt property within the District and which will be responsible for estimating future special tax levies. The name, address, and telephone number of the office of the District Administrator, and the person responsible for administering the District, is as follows:

District Administrator
City of Modesto
Tenth Street Place
P.O. Box 642
Modesto, California 95353
(209) 577-5211

Such officer is hereby directed to establish procedures to promptly respond to inquiries concerning current and future estimated tax liability pursuant to Section 53340.2 of the Act.
SECTION 10. Upon a determination by this Council, after the canvass of the returns of the election contemplated in Sections 13 and 14 hereof, that at least two-thirds (2/3) of the votes cast upon the question of levying the special taxes were in favor thereof, the City Clerk shall record the notice of special tax lien provided for in Section 3114.5 of the California Streets and Highways Code. Upon recordation of the notice of special tax lien pursuant to Section 3114.5 of the California Streets and Highways Code, a continuing lien to secure each levy of the special taxes shall attach to all nonexempt real property in the District, and this lien shall continue in force and effect until collection of the special taxes by this Council ceases, or, in the case of the Annual Facilities Special Tax Component of the special taxes (as defined in Exhibit A), the obligation to pay that component of the special taxes is prepaid and permanently satisfied and the lien thereof cancelled in accordance with the Act.

SECTION 11. All prior proceedings taken with respect to the establishment of the District were valid and in conformity with the requirements of the Act.

SECTION 12. In accordance with Section 53325.7 of the Act, the annual appropriations limit of the District, as defined by subdivision (h) of Section 8 of Article XIIIIB of the California Constitution, is hereby preliminarily established at $75,000,000, and this annual appropriations limit shall be submitted to the voters of the District as hereafter provided. The proposition establishing the appropriations limit shall become effective if approved by the qualified electors voting thereon and shall thereafter be adjusted in accordance with the applicable provisions of Section 53325.7 of the Act.
SECTION 13. This Council hereby calls a special election and submits the question of levying the special taxes, and the establishment of the annual appropriations limit for the District in connection therewith, to the qualified electors within the District, in accordance with and subject to the Act, the terms of which shall, unless waived as herein provided, be applicable to such election.

(a) Fewer than twelve (12) persons have been registered to vote within the territory of the District for each of the ninety (90) days preceding the close of the hearing referenced herein. Accordingly, for the purposes of these proceedings, the qualified electors shall be the landowners within the District. The vote shall be by such landowners, or their authorized representatives, each having one vote for each acre or portion thereof that such landowner owns in the District as of the close of the hearing; and the ballots for the special election shall be distributed by mail with return postage prepaid or by personal service to each such landowner, all as provided in Section 53326 of the Act.

(b) The Council hereby designates the City Clerk, and the City Clerk hereby agrees to serve, as the election official to conduct the election. The shortening of the election as herein provided has been concurred in by the City Clerk.

(c) If the City Clerk receives appropriate waivers of time limits and other requirements pertaining to the conduct of the election by all of the owners of land included in the District (collectively, the “Landowners”) on or before the 6th day of April, 2004, the election shall be held on the 6th day of April, 2004. Otherwise, the election shall be held on the first Tuesday after that date which is 90 days after the date this Resolution is adopted.
Unless waived by the Landowners, there shall be prepared and included in the ballot material provided to each voter an impartial analysis and arguments and rebuttals, if any, as provided in Section 53327 of the Act. The election shall be conducted by the City Clerk in the manner required by this Resolution, the Act and applicable laws.

Unless waived by the Landowners, the City Clerk shall publish this Resolution as notice of the special election.

SECTION 14. This Council hereby further directs that the election at which the question of levying the special taxes and the establishment of an appropriations limit in connection therewith is submitted to the qualified electors within the District be consolidated with the election at which the question of incurring a bonded indebtedness in an aggregate principal amount not to exceed $75,000,000 for the District, as set forth in Resolution No. 2004-128, is submitted to the qualified electors with the District, and the question of levying the special taxes shall be combined in one ballot proposition with the question of incurring such bonded indebtedness and the question of establishing an appropriations limit for the District, all as provided by the Act; and this Council further directs that the resolution adopted by this Council determining the necessity to incur such bonded indebtedness shall constitute the notice of the consolidated election on the combined propositions of authorizing the levy of the special tax, establishing an appropriations limit, and incurring such bonded indebtedness. However, the giving of such notice is waived if the City Clerk receives unanimous consent to such waiver from the Landowners.
SECTION 15. If two-thirds (2/3) of the votes cast upon the question of levying the special tax are cast in favor of levying the special taxes, as determined by this Council after the canvass of the returns of the consolidated election, this Council may levy the special taxes within the District in the amount and for the purposes specified in this Resolution. The special taxes may be levied only at the rate and may be apportioned only in the manner specified in this Resolution, subject to the Act, except that the special taxes may be levied at a lower rate.

SECTION 16. The City Clerk, as the designated election official, shall, within three business days after the adoption of this Resolution, obtain a certified copy thereof. The City Clerk has previously been provided with a map of the boundaries of the District, a sufficient description from which to determine the boundaries of the District, and the assessor's parcel numbers for the land within the District.

SECTION 17. The Council hereby determines that the formation of the proposed District is the creation of a government funding mechanism which is not a project under the provisions of C.E.Q.A. pursuant to Section 15378(b)(4) of the C.E.Q.A. guidelines.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman,
who moved its adoption, which motion being duly seconded by Councilmember
O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

APPROVED AS TO FORM:

By

MICHAEL D. MILICH, City Attorney

ATTEST: Jean Zahr
JEAN ZAHR, City Clerk

04/06/04/CFD/T Rocha/Item 35
EXHIBIT A

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2004-1
(VILLAGE ONE #2)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES

Special Taxes applicable to each Assessor’s Parcel in Community Facilities District No. 2004-1 (Village One #2) [herein “CFD No. 2004-1” or “the CFD”] shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2004-1, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2004-1 unless a separate Rate and Method of Apportionment is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

“Acre” or “Acreage” means the land area of an Assessor’s Parcel as shown on an Assessor’s Parcel Map, or if the land area is not shown on an Assessor’s Parcel Map, the land area shown on the applicable Final Map or other Development Plan.

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

“Administrative Expenses” means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City carrying out its duties with respect to CFD No. 2004-1 and the Bonds, including, but not limited to, levying and collecting the Special Taxes, the fees and expenses of legal counsel, charges levied by the County Auditor’s Office, Tax Collector’s Office, and/or Treasurer’s Office, costs related to annexing property into the CFD, costs related to property owner inquiries regarding the Special Taxes, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Taxes, and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

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

“Annual Facilities Special Tax” means a special tax levied in any Fiscal Year to pay the Annual Facilities Special Tax Requirement, as defined below.
“Annual Facilities Special Tax Requirement” means the amount necessary in any Fiscal Year (i) to pay principal and interest, including scheduled sinking fund payments, on Bonds, (ii) pay administrative expenses of CFD No. 2004-1 that have not been included in the Annual Maintenance Special Tax Requirement for the Fiscal Year, (iii) to create or replenish reserve funds, (iv) to cure any delinquencies in the payment of principal or interest on indebtedness of CFD No. 2004-1 which have occurred in the prior Fiscal Year or (based on delinquencies in the payment of the Annual Facilities Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected, and (v) to construct or acquire Authorized Facilities. The amounts referred to in clauses (i) and (iii) of the preceding sentence may be reduced in any Fiscal Year by: (i) interest earnings on or surplus balances in funds and accounts for the Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to a Bond indenture, Bond resolution, or other legal document that sets forth these terms; (ii) proceeds received by CFD No. 2004-1 from the collection of penalties associated with delinquent Annual Facilities Special Taxes; and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

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

“Annual Maintenance Special Tax Requirement” means that amount necessary in any Fiscal Year to (i) pay for Authorized Services, (ii) pay administrative expenses of CFD No. 2004-1 that have not been included in the Annual Facilities Special Tax Requirement for the Fiscal Year, and (iii) cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Maintenance Special Taxes which have already taken place) are expected to occur in the current Fiscal Year.

“Assessor’s Parcel” or “Parcel” means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

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

“Authorized Facilities” means those facilities that are authorized to be funded by CFD No. 2004-1.

“Authorized Services” means those services that are authorized to be funded by CFD No. 2004-1.

“Bonds” means bonds or other debt (as defined in the Act), whether in one or more series, issued, insured or assumed by CFD No. 2004-1 related to Authorized Facilities.

“Capitalized Interest” means funds in any capitalized interest account available to pay debt service on Bonds.

“CFD Formation” means the date on which the Resolution of Formation to form CFD No. 2004-1 was adopted by the City Council.

“City” means the City of Modesto.
“City Council” means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2004-1.

“Commercial Property” means all Parcels in CFD No. 2004-1 for which building permits have been or may be issued for construction of a commercial building based on reference to the Village One Specific Plan and/or the Parcel’s zoning designation.

“County” means the County of Stanislaus.

“Developed Property” means, in any Fiscal Year, the following:

For purposes of levying the Annual Maintenance Special Tax, “Developed Property” means:

- for Low Density Residential Property and Village Residential Property, all Parcels for which a Final Map was recorded prior to June 30 of the preceding Fiscal Year but not prior to June 30, 2002,
- for Multi-Family Property, all Parcels for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year, and
- for Commercial Property and Industrial Property, all Parcels for which a building permit for construction, reconstruction or expansion of a building structure was issued prior to June 30 of the preceding Fiscal Year. Notwithstanding the foregoing, Parcels of Commercial Property or Industrial Property on which a vacant building is located that cannot be occupied without demolition or reconstruction of the building shall not be categorized as Developed Property until a permit is issued for construction of a new building or reconstruction of the existing building.

For purposes of levying the Annual Facilities Special Tax, “Developed Property” means:

- for Low Density Residential Property and Village Residential Property, all Parcels for which a building permit for construction, or reconstruction of a unit was issued prior to June 30 of the preceding Fiscal Year but not prior to June 30, 2002,
- for Multi-Family Attached Property, all Parcels for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year, and
- for Commercial Property and Industrial Property, all Parcels for which a building permit for construction, reconstruction or expansion of a building structure was issued prior to June 30 of the preceding Fiscal Year. Notwithstanding the foregoing, Parcels of Commercial Property or Industrial Property on which a vacant building is located that cannot be occupied without demolition or reconstruction of the building shall not be categorized as Developed Property.
until a permit is issued for construction of a new building or reconstruction of the existing building.

“Expected Land Uses” means the Net Taxable Acreage of each Land Use Class expected on an Original Parcel in CFD No. 2004-1 based on reference to the Expected Land Use Map. The Expected Land Uses for each Original Parcel in the CFD at the time of CFD Formation, and the corresponding Maximum Special Tax for each Parcel, are reflected in Attachment 2, which will be updated with each annexation of property into CFD No. 2004-1.

“Expected Land Use Map” means the map entitled “Village One Zoning of Unvested Properties” which is on file with the CFD Administrator at the City and the City Clerk and which identifies the Expected Land Uses on all Parcels within the Village One Specific Plan that either (i) are in CFD No. 2004-1 at CFD Formation, or (ii) may be annexed into the CFD in future Fiscal Years. The Expected Land Use Map may be updated in future years to add property within the Village One Specific Plan that was vested to develop when the map was prepared and, therefore, was not included in the map but subsequently has its vesting expire or for any other reason becomes subject to a condition of development that requires formation of, or annexation into, a CFD.

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

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

“Improvement Area” means a geographic area that, upon annexation into CFD No. 2004-1, is identified as an improvement area as defined in the Act instead of a Tax Zone, as defined below. Special Taxes collected within an Improvement Area will be the sole security for Bonds issued for that Improvement Area.

“Industrial Property” means all Parcels in CFD No. 2004-1 for which building permits have been or may be issued for construction of an industrial building based on reference to the Village One Specific Plan and/or the Parcel’s zoning designation.

“Land Use Class” means one of the five mutually-exclusive land use classes identified in Table 1 in Section C below and defined in this Section A. The City shall, in its sole discretion, determine the appropriate Land Use Class for Parcels on which a structure was built prior to CFD Formation.

“Low Density Residential Property” means all Parcels in CFD No. 2004-1 for which a building permit has been or may be issued for construction of a residential unit on a Parcel with a maximum density of two or less dwelling units per gross acre based on reference to the Village One Specific Plan and/or the Parcel’s zoning designation.
“Maximum Annual Facilities Special Tax” means the greatest amount of Annual Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

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

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

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

“Multi-Family Property” means all Parcels in CFD No. 2004-1 for which building permits have been or may be issued for construction of a residential structure consisting of two or more residential units that share common walls, including but not limited to, townhomes, condominiums, duplexes, triplexes, fourplexes, and apartment units. If a building permit has not yet been issued on the Parcel, the Administrator shall reference the Village One Specific Plan and/or the Parcel’s zoning designation to determine whether the Parcel is Multi-Family Property.

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

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

“Original Parcel” means an Assessor’s Parcel in CFD No. 2004-1 at the time of CFD Formation or added to the CFD upon annexation, as identified in Attachment 2 (which shall be updated after each annexation). A Successor Parcel that is being further subdivided shall also be considered an Original Parcel for purposes of determining the Maximum Special Taxes pursuant to Section C below.

“Per-Acre Special Taxes” means the per-acre Special Taxes identified in Table 1 in Section C below.

“Proportionately” means, for Developed Property, that the ratio of the actual Annual Facilities Special Tax and Annual Maintenance Special Tax levied in any Fiscal Year to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax authorized to be
levied in that Fiscal Year is equal for all Assessor’s Parcels of Developed Property, respectively. In addition, for Undeveloped Property, “Proportionately” means that the ratio of the actual Annual Facilities Special Tax and actual Annual Maintenance Facilities Special Tax to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax is equal for all Assessor’s Parcels of Undeveloped Property, respectively.

“Public Property” means any property within the boundaries of CFD No. 2004-1 that is owned by the federal government, State of California, County, City, or other public agency.

“Single Family Detached Lot” means an individual numbered lot, which is in its final configuration and for which a building permit may be issued for a single family detached unit.

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

“Special Tax Category” means, individually, the One-Time Facilities Special Tax, the Annual Facilities Special Tax, and the Annual Maintenance Special Tax.

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

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

“Taxable Property” means all of the Assessor’s Parcels within the boundaries of CFD No. 2004-1 which are not exempt from the Special Tax pursuant to law or Section G below.

“Taxable Public Property” means, in any Fiscal Year, all Parcels of Public Property within CFD No. 2004-1 that, (i) based on the Village One Specific Plan, were expected to be Taxable Property and, (ii) based on this expectation, Maximum Special Taxes were assigned to the Parcels in a prior Fiscal Year.

“Tax Zone” means a mutually exclusive geographic area within which particular Special Tax rates may be levied pursuant to this Rate and Method of Apportionment of Special Taxes. Attachment 1 identifies the Tax Zone in CFD No. 2004-1 at CFD Formation; additional Tax Zones may be created when property is annexed into the CFD. Alternatively, additional Original Parcels may be added to a Tax Zone with assigned Maximum Special Taxes based on the Expected Land Uses on each Original Parcel.

“Tax Zone #1” means the geographic area that is designated in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Tax Zone #1. Tax Zone #1 may be expanded to include additional Original Parcels that annex to CFD No. 2004-1; Attachments 1 and 2 will be updated each time such an annexation takes place.

“Undeveloped Property” means, in any Fiscal Year, all Parcels of Taxable Property within CFD No. 2004-1 that are not Developed Property.
“Village One Specific Plan” means the specific plan for development within the Village One project in the City of Modesto adopted by the City Council on April 1, 2003, as amended from time to time.

“Village Residential Property” means, in any Fiscal Year, all Parcels in CFD No. 2004-1 for which a building permit has been or may be issued for construction of a residential unit on a Parcel with a maximum density greater than two dwelling units per gross acre based on reference to the Village One Specific Plan and/or the Parcel’s zoning designation.

B. DATA FOR ANNUAL ADMINISTRATION

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Parcels of Taxable Property in CFD No. 2004-1. The Administrator shall also determine: (i) the Tax Zone within which each Parcel of Taxable Property is located, (ii) whether each Assessor’s Parcel of Taxable Property is Developed Property or Undeveloped Property, (iii) which Parcels are Commercial Property, Industrial Property, Multi-Family Property, Low Density Residential Property, and Village Residential Property (the City shall, in its sole discretion, determine the appropriate Land Use Class for Parcels on which a structure was built prior to CFD Formation), (iv) the Net Taxable Acreage of each Parcel, and (v) the Annual Facilities Special Tax Requirement and the Annual Maintenance Special Tax Requirement.

In any Fiscal Year, if it is determined that (i) a parcel map for a portion of property in CFD No. 2004-1 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the parcel map, and (iii) one or more of the newly-created Parcels meets the definition of Developed Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the parcel map by determining the Special Tax that applies separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Original Parcel or Successor Parcel that was subdivided by recordation of the parcel map.

C. CALCULATING MAXIMUM SPECIAL TAXES

The Administrator shall use the procedures set forth below to calculate the Maximum Special Taxes for each Parcel in CFD No. 2004-1 in each Fiscal Year, including the Maximum One-Time Facilities Special Tax, Maximum Annual Facilities Special Tax, and Maximum Annual Maintenance Special Tax. A separate method of calculating the Maximum Special Taxes may be identified for Tax Zones or Improvement Areas added to CFD No. 2004-1 as a result of future annexations. The Per-Acre Special Taxes set forth in Table 1 below shall be used for purposes of Sections C.1 and C.2 below:
Table 1
Per-Acre Special Taxes
Fiscal Year 2004-05 *

<table>
<thead>
<tr>
<th>Land Use Class</th>
<th>Per-Acre Special Tax: One-Time Facilities Special Tax</th>
<th>Per-Acre Special Tax: Annual Facilities Special Tax</th>
<th>Per-Acre Special Tax: Annual Maintenance Special Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Density Residential Property</td>
<td>$13,342 per Net Taxable Acre</td>
<td>$3,517 per Net Taxable Acre</td>
<td>$525 per Net Taxable Acre</td>
</tr>
<tr>
<td>Village Residential Property</td>
<td>$30,281 per Net Taxable Acre</td>
<td>$6,405 per Net Taxable Acre</td>
<td>$1,233 per Net Taxable Acre</td>
</tr>
<tr>
<td>Multi-Family Property</td>
<td>$101,437 per Net Taxable Acre</td>
<td>$7,222 per Net Taxable Acre</td>
<td>$4,020 per Net Taxable Acre</td>
</tr>
<tr>
<td>Commercial Property</td>
<td>$52,102 per Net Taxable Acre</td>
<td>$3,570 per Net Taxable Acre</td>
<td>$920 per Net Taxable Acre</td>
</tr>
<tr>
<td>Industrial Property</td>
<td>$13,103 per Net Taxable Acre</td>
<td>$2,550 per Net Taxable Acre</td>
<td>$920 per Net Taxable Acre</td>
</tr>
</tbody>
</table>

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

1. Original Parcels

The Maximum Special Taxes for each Land Use Class in the Original Parcel in CFD No. 2004-1 as of CFD Formation is identified in Attachment 2. Attachment 2 will be updated by the Administrator as needed to reflect Original Parcels added to the CFD due to annexations. Until an Original Parcel is subdivided, the Maximum Special Taxes shown in Attachment 2 (escalated as set forth herein) shall be the Maximum Special Taxes for the Parcel unless the zoning on the Original Parcel changes to a Land Use Class that has higher Per-Acre Special Taxes, as shown in Table 1 above. Upon approval of such change in zoning by the City Council, the Administrator shall multiply the applicable Per-Acre Special Taxes by the Net Taxable Acreage of each Land Use Class that is expected on the Parcel based on the rezone. The Administrator shall then update Attachment 2 to reflect the higher Maximum Special Taxes for the Parcel. If a rezone results in a Land Use Class that has a lower Per-Acre Special Tax than the previous Expected Land Uses, there shall be no corresponding reduction in the Maximum Special Taxes for the Parcel. The potential reduction in Maximum Special Tax revenues must be considered separately for each Special Tax Category. If the rezone would cause a reduction in the Maximum Special Tax revenues in any Special Tax Category, the Maximum Special Tax identified for that Special Tax Category shall remain the same as originally assigned to the Original Parcel.
2. **Successor Parcels**

a. **All Successor Parcels are Single Family Detached Lots**

If the Parcels created by a recorded Subdivision Map are all Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes for the Original Parcel to each of the Successor Parcels created by the subdivision:

**Step 1:** Determine the greater of (i) the Maximum Special Taxes assigned to each Expected Land Use for the Original Parcel, or (ii) the Net Taxable Acreage of Low Density Residential Property and/or Village Residential Property within the Subdivision Map multiplied by the Per-Acre Special Taxes for such Land Use Classes from Table 1 above. If the Subdivision Map includes both Low Density Residential Property and Village Residential Property, separately calculate the amount that applies to each Land Use Class.

**Step 2:** Separately for any Low Density Residential Property and Village Residential Property created by the Subdivision Map, divide the Maximum Special Taxes from Step 1 by the number of Successor Parcels to determine the Maximum Special Taxes for each Single Family Detached Lot.

b. **No Successor Parcels are Single Family Detached Lots**

If none of the Successor Parcels created by recordation of a Subdivision Map are Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels:

**Step 1:** Identify the Expected Land Uses for the Original Parcel.

**Step 2:** Determine the Net Taxable Acreage within each Land Use Class created by the Subdivision Map.

**Step 3:** If the Net Taxable Acreage of each Land Use Class from Step 2 is the same as the Expected Land Uses, the Maximum Special Taxes assigned to each of the Expected Land Uses on the Original Parcel shall be allocated to the Successor Parcels based on the Acreage of each Land Use Class that occurs on each Successor Parcel.

**Step 4:** If the Net Taxable Acreage within each Land Use Class from Step 2 is different than the Expected Land Uses for the Original Parcel, the Administrator shall apply the following steps **separately for each Special Tax Category**:

A-9
Step 4a. Multiply the applicable Per-Acre Special Tax by the Net Taxable Acreage of each Land Use Class created by the Subdivision Map.

Step 4b. If the amount calculated in Step 4a is greater than the Maximum Special Tax assigned to the Original Parcel, multiply the Net Taxable Acreage of each Land Use Class on each Successor Parcel by the applicable Per-Acre Special Tax from Table 1 above to determine the Maximum Special Tax for each Successor Parcel.

Step 4c. If the amount calculated in Step 4a is less than the Maximum Special Tax assigned to the Original Parcel: (i) identify the Maximum Special Tax that was assigned to each of the Expected Land Uses on the Parcel, (ii) divide the Maximum Special Tax for each Land Use Class by the Net Taxable Acreage of each Land Use Class actually created by the Subdivision Map, and (iii) multiply the per-acre Maximum Special Tax calculated in (ii) by the Net Taxable Acreage of each Land Use Class on each Successor Parcel to determine the Maximum Special Tax for each Parcel.

If the Land Use Classes on a Successor Parcel or Parcels are different than the Expected Land Uses for that Parcel(s) and such difference would result in a reduction in the Maximum Special Tax assigned to the Original Parcel for any Special Tax Category, the Maximum Special Tax assigned to the Original Parcel shall either be distributed equally on a per-acre basis to the Successor Parcels or, if multiple Land Use Classes are created by the Subdivision Map, the Maximum Special Tax from the Original Parcel shall be distributed to each Land Use Class so that the per-acre tax for each Land Use Class has the same proportional relationship as the Per-Acre Special Taxes in Table 1 above.

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

c. Some, But Not All, Successor Parcels are Single Family Detached Lots

If a Subdivision Map divides an Original Parcel into Successor Parcels, of which some are Single Family Detached Lots and some are not, the Administrator shall (i) break out the Net Taxable Acreage of Low Density Residential Property and/or Village Residential Property separately from the Net Taxable Acreage of other Land Use Classes, (ii) for the Low Density Residential Property and/or Village
Residential Property created by the Subdivision Map, apply the steps in Section C.2a to determine the Maximum Special Taxes for each Single Family Detached Lot, and (iii) apply the steps in Section C.2b above to determine the Maximum Special Taxes for Land Use Classes other than Low Density Residential Property and Village Residential Property.

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

After each reallocation of the Maximum Special Taxes upon subdivision or reconfiguration of Original Parcels, the sum of the Maximum Special Taxes assigned to Successor Parcels shall never be less, but may be more, than the Maximum Special Taxes assigned to the Original Parcels prior to such reallocation.

D. **ESCALATION OF MAXIMUM SPECIAL TAXES**

1. **One-Time Facilities Special Tax**

   Beginning in January 2005 and each January thereafter, the Maximum One-Time Facilities Special Tax assigned to each Parcel and the Per-Acre Special Tax shown in Table 1 above shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the One-Time Facilities Special Tax shall become effective on the subsequent July 1.

2. **Annual Facilities Special Tax**

   Beginning in Fiscal Year 2005-06, and each Fiscal Year thereafter, the Maximum Annual Facilities Special Tax assigned to each Parcel and the Per-Acre Special Tax shown in Table 1 above shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.

3. **Annual Maintenance Special Tax**

   Beginning in January 2005 and each January thereafter, the Maximum Annual Maintenance Special Tax assigned to each Parcel and the Per-Acre Special Tax shown in Table 1 above shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.
E. METHOD OF LEVY OF THE SPECIAL TAX

1. One-Time Facilities Special Tax

The Maximum One-Time Facilities Special Tax determined pursuant to Sections C and D above shall be levied on all Taxable Property in CFD No. 2004-1 and shall be collected as set forth in Section F below.

2. Annual Facilities Special Tax

Commencing with Fiscal Year 2004-05 and for each following Fiscal Year, the Administrator shall determine the Annual Facilities Special Tax Requirement for the Fiscal Year. The Annual Facilities Special Tax shall then be levied on all Parcels of Taxable Property in CFD No. 2004-1 as follows:

Step 1: The Annual Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Facilities Special Tax for each Parcel for such Fiscal Year until the amount levied on Developed Property is equal to the Special Tax Requirement prior to applying any Capitalized Interest that is available in the CFD accounts;

Step 2: If additional revenue is needed after Step 1, and after applying Capitalized Interest to the Annual Facilities Special Tax Requirement, the Annual Facilities Special Tax shall be levied Proportionately on each Assessor’s Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Facilities Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;

Step 3: If additional revenue is needed after applying the first two steps, the Annual Facilities Special Tax shall be levied Proportionately on each Assessor’s Parcel of Taxable Public Property, up to 100% of the Maximum Annual Facilities Special Tax assigned to each Parcel of Taxable Public Property.

3. Annual Maintenance Special Tax

Commencing with Fiscal Year 2004-05 and for each following Fiscal Year, the Administrator shall determine the Maintenance Special Tax Requirement for the Fiscal Year. The Annual Maintenance Special Tax shall then be levied on all Parcels of Taxable Property as follows:

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

Step 2: If additional revenue is needed after Step 1, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor’s Parcel of Undeveloped
Property within the CFD, up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;

**Step 3:** If additional revenue is needed after applying the first two steps, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Annual Maintenance Special Tax assigned to each Parcel of Taxable Public Property.

**F. COLLECTION OF SPECIAL TAX**

The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of any residential or non-residential structure on Taxable Property within CFD No. 2004-1, and shall be immediately delinquent if not so paid.

The Annual Facilities Special Tax and Annual Maintenance Special Tax for CFD No. 2004-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that prepayments are permitted as set forth in Section H below and provided further that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual Facilities Special Taxes and Annual Maintenance Special Taxes through foreclosure or other available methods.

The Annual Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring Authorized Facilities from Annual Facilities Special Tax proceeds have been paid, and all Administrative Expenses have been reimbursed. However, in no event shall an Annual Facilities Special Tax be levied after Fiscal Year 2060-61. The Annual Maintenance Special Tax will continue to be levied and collected unless and until the City determines that the Annual Maintenance Special Tax no longer needs to be levied to pay Authorized Services of the CFD and all Administrative Expenses have been reimbursed. Under no circumstances may the Annual Facilities Special Tax on one Parcel in the CFD be increased by more than ten percent (10%) as a consequence of delinquency or default in payment of the Annual Facilities Special Tax levied on another Parcel or Parcels in the CFD.

**G. EXEMPTIONS**

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

**II. PREPAYMENT OF SPECIAL TAX**

The following definitions apply to this Section H:

"*Outstanding Bonds*" means all Previously Issued Bonds which remain outstanding, with the following exception: if an Annual Facilities Special Tax has been levied against, or already paid by, an Assessor's Parcel making a prepayment, and a portion of the Annual Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains
outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

"Previously Issued Bonds" means all Bonds that have been issued on behalf of the CFD prior to the date of prepayment.

"Public Facilities Requirements" means either $1,327,000 in 2004 dollars, which shall increase on January 1, 2005, and on each January 1 thereafter by the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or such other number as shall be determined by the City as sufficient to fund Authorized Facilities. The Public Facilities Requirements shown above shall be adjusted or a separate Public Facilities Requirements identified each time property annexes into CFD No. 2004-1; at no time shall the added Public Facilities Requirement for the annexation area exceed the amount of public improvement costs that are expected to be supportable by the Maximum Annual Facilities Special Tax generated within that annexation area.

"Remaining Facilities Costs" means the Public Facilities Requirements (as defined above), minus costs of Authorized Facilities funded by Outstanding Bonds (as defined above), developer equity, and/or any other source of funding.

The Annual Facilities Special Tax obligation applicable to an Assessor’s Parcel in the CFD may be prepaid and the obligation of the Assessor’s Parcel to pay the Annual Facilities Special Tax permanently satisfied as described herein, provided that a prepayment may be made only if there are no delinquent Annual Facilities Special Taxes with respect to such Assessor’s Parcel at the time of prepayment. The Annual Maintenance Special Tax may not be prepaid. An owner of an Assessor’s Parcel intending to prepay the Annual Facilities Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Assessor’s Parcel. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Annual Facilities Special Taxes. The Prepayment Amount shall be calculated as follows: (capitalized terms as defined below):

\[
\text{Prepayment Amount} = \text{Bond Redemption Amount} + \text{Remaining Facilities Amount} + \text{Redemption Premium} + \text{Defeasance Requirement} + \text{Administrative Fees and Expenses} - \text{Reserve Fund Credit}
\]

As of the proposed date of prepayment, the Prepayment Amount shall be determined by application of the following steps:

**Step 1:** Compute the total Maximum Annual Facilities Special Tax that could be collected from the Assessor’s Parcel prepaying the Annual Facilities Special Tax in the Fiscal Year in which prepayment would be received by the City.
Step 2: Divide the Maximum Annual Facilities Special Tax from Step 1 by the total amount that could be collected if the Maximum Annual Facilities Special Tax was levied on all Parcels of Taxable Property in the CFD.

Step 3: Multiply the quotient computed pursuant to Step 2 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (the “Bond Redemption Amount”).

Step 4: Compute the current Remaining Facilities Costs (if any).

Step 5: Multiply the quotient computed pursuant to Step 2 by the amount determined pursuant to Step 4 to compute the amount of Remaining Facilities Costs to be prepaid (the “Remaining Facilities Amount”).

Step 6: Multiply the Bond Redemption Amount computed pursuant to Step 3 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (the “Redemption Premium”).

Step 7: Compute the amount needed to pay interest on the Bond Redemption Amount starting with the first Bond interest payment date after which the prepayment has been received until the earliest redemption date for the Outstanding Bonds, which, depending on the Bond offering document, may be as early as the next interest payment date.

Step 8: Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.

Step 9: Take the amount computed pursuant to Step 7 and subtract the amount computed pursuant to Step 8 (the “Defeasance Requirement”).

Step 10: Determine the costs of computing the prepayment amount, the costs of redeeming Bonds, and the costs of recording any notices to evidence the prepayment and the redemption (the “Administrative Fees and Expenses”).

Step 11: If and to the extent so provided in the indenture pursuant to which the Outstanding Bonds to be redeemed were issued, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the “Reserve Fund Credit”).

Step 12: The Annual Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 3, 5, 6, 9, and 10, less the amount computed pursuant to Step 11 (the “Prepayment Amount”).
If an owner that has prepaid the Annual Facilities Special Tax obligation assigned to a Parcel subsequently rezones the Parcel to a Land Use Class that has a higher Per-Acre Annual Facilities Special Tax, the City may in its sole discretion and as a condition of approval of the rezoning, collect the additional Annual Facilities Special Tax prepayment that would have applied had the Parcel been rezoned at the time of the original prepayment for the Parcel.

I. INTERPRETATION OF SPECIAL TAX FORMULA

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

DESCRIPTION OF FACILITIES

All facilities described herein are as presented in the Village One Facilities Master Plan ("FMP") update, dated May 2003. Said master plan is incorporated herein by reference. The following descriptions summarize the facilities to be funded within CFD 2004-1.

A. Arterial Roads:

Included in the FMP are improvements to four arterial roads that will be funded by the CFD. They include Roselle Ave., from Briggsmore to the northern boundary of Village One (north of Sylvan), Floyd Ave. from Oakdale Rd. to Claus Rd., Oakdale Rd. from Briggsmore to Sylvan Ave., and Sylvan Ave. from Oakdale Rd. to Claus Rd. Also included in the CFD is partial funding for a pedestrian overcrossing on Sylvan Ave. to serve the new high school.

B. Storm Drain System:

The storm drainage system for Village One contains three detention basins:

1. West Basin: Dual-use basin that pumps water to the Central Basin.

2. Central Basin: Percolation/detention basin that pumps water to the MID Lateral #3 and may pump to Dry Creek via Claus Rd. at some time in the future.

3. East Basin: Dual-use basin that pumps water to Dry Creek via Claus Rd.

The facilities to be funded by the CFD include: basin property, trunk pipelines, force mains, pump stations, and other necessary appurtenances.

C. Parks:

Three neighborhood parks and one community park will be developed within the Village One Specific Plan area. The development of the parks will include the acquisition of land, park improvements and street frontage improvements for the Grogan Community Park, the Roselle Neighborhood Park, the Claus Neighborhood Park and the Merle Neighborhood Park.

In addition, buffer land for the community park is to be acquired, a bike trail is to be developed along MID Lateral No. 3, and a trail is to be developed along Claus Rd.

D. Public Facilities:

An area office for police is proposed within Village One. Funds are provided within the CFD for tenant improvements necessary to set up an area office.
E. Other:

Other costs associated with Village One include reimbursement to the City of Modesto for engineering of the Facilities Master Plan and planning related to the Village One Specific Plan, future annual administration costs for the CFD, and community signage for Village One.
EXHIBIT C

DESCRIPTION OF SERVICES

Included in this CFD is the maintenance of the Grogan Community Park, Roselle Neighborhood Park, Merle Neighborhood Park, Claus Neighborhood Park, arterial road parkway, median and roundabout landscaping, connector street parkway, median and roundabout landscaping, bike trails and storm drain facilities.
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-200

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO DETERMINING THE NECESSITY TO INCUR A BONDED INDEBTEDNESS WITHIN PROPOSED CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2004-1 (VILLAGE ONE #2) AND CALLING AN ELECTION FOR THE PURPOSE OF SUBMITTING THE PROPOSITION TO THE QUALIFIED ELECTORS OF THE DISTRICT

WHEREAS, the City Council (the “Council”) of the City of Modesto (the “City”), did, on March 2, 2004, adopt its Resolution No. 2004-127, entitled “A Resolution of the City Council of the City of Modesto of Intention to Establish City of Modesto Community Facilities District No. 2004-1 (Village One #2) and to Authorize the Levy of Special Taxes therein” (the “Resolution of Intention to Establish the District”) stating its intention to form Community Facilities District No. 2004-1 (the “District”) pursuant to Chapter 2.5 of Part 1 of Title 5 (commencing with Section 53311) of the California Government Code, commonly known as the “Mello-Roos Community Facilities Act of 1982” (the “Act”);

WHEREAS, on such date this Council also adopted its Resolution No. 2004-128, entitled “A Resolution of the City Council of the City of Modesto of Intention to Incur Bonded Indebtedness in an Amount not to Exceed $75,000,000 within Proposed City of Modesto Community Facilities District No. 2004-1 (Village One #2)” (the “Resolution of Intention to Incur Indebtedness”) stating its intention to incur bonded indebtedness within the boundaries of the District for the purpose of financing the Facilities to be financed by the District as specified in the Resolution of Intention to Establish the District;

WHEREAS, at the time and date set for the hearing (April 6, 2004) pursuant to the Resolution of Intention to Establish the District, this Council held the public hearing, as required by the Act, relative to the formation of the District, the provision of the
Facilities, as well as the Services specified in the Resolution of Intention to Establish the District, and the rate, method of apportionment, and manner of collection of the special taxes to be levied within the District;

WHEREAS, on April 6, 2004, pursuant to the Resolution of Intention to Incur Indebtedness, this Council held the public hearing as required by the Act relative to the matters material to the questions set forth in the Resolution of Intention to Incur Indebtedness;

WHEREAS, no written protests with respect to the matters material to the questions set forth in the Resolution of Intention to Incur Indebtedness were filed with the City Clerk as of the closing of the hearing thereon;

WHEREAS, subsequent to the hearings, this Council did, on April 6, 2004, adopt its Resolution No. 2004-199, entitled “A Resolution of the City Council of the City of Modesto of Formation, Establishing City of Modesto Community Facilities District No. 2004-1 (Village One #2), Authorizing the Levy of Special Taxes within the District, Preliminarily Establishing an Appropriations Limit for the District, and Calling and Election for the Purpose of Submitting the Levy of the Special Taxes and the Establishment of the Appropriations Limit to the Qualified Electors of the District” (the “Resolution of Formation”), which describes the Facilities and Services to be financed by the District;

WHEREAS, this Council did, in the Resolution of Formation, and in accordance with Sections 53325.7 and 53353.5 of the Act, determine to consolidate the election on the levy of the special taxes and the establishment of an appropriations limit for the District with the election on whether to incur a bonded indebtedness in the District;
WHEREAS, the Stanislaus County Registrar of Voters has certified there are less than 12 registered voters residing in the District; accordingly, the qualified electors in the District are the landowners; and

WHEREAS, the City Clerk, being this Council’s designated election official for purposes of the election, has concurred in the date herein set forth for the election.

NOW, THEREFORE, the Council hereby finds and determines and orders as follows:

1. The foregoing recitals are true and correct.
2. This Council deems it necessary to incur bonded indebtedness.
3. The indebtedness will be incurred for the purpose of financing the construction and/or acquisition of certain public facilities (the “Facilities”), having a useful life of five years or longer, and the paying of incidental expenses thereof, as provided in the Resolution of Formation.
4. The whole of the District shall pay for the bonded indebtedness.
5. The amount of bonded indebtedness to be incurred is not to exceed $75,000,000.
6. The maximum term of the bonds of any series thereof shall not exceed thirty-five (35) years from their date.
7. The bonds shall bear interest at rate or rates not to exceed the maximum rate permitted by law at the time the bonds are issued, payable semiannually or in such other manner as this Council shall determine, the actual rate or rates and times of payment of such interest to be determined by this Council at the time or times the bonds are issued.
8. The proposition of incurring the bonded indebtedness shall be submitted to the voters of the District and, pursuant to Section 53353.5 of the Act and the Resolution of Formation, the propositions on the levy of a special taxes, the establishment of an appropriations limit, and whether to incur the bonded indebtedness shall be combined in a single ballot measure substantially in the form attached hereto as Exhibit A.
9. A special consolidated election is hereby called at which the measures referenced in Section 8 shall be submitted to the qualified electors of the District. The election shall be held in accordance with and subject to the Act, all the terms of which shall, unless waived as herein provided, be applicable to the election.

10. Fewer than twelve (12) persons have been registered to vote within the territory of the District for the ninety (90) days preceding the close of the hearings on the special tax levy and the proposed bonded indebtedness. Accordingly, the vote shall be by the landowners of the District, and each such landowner shall have one vote for each acre or portion thereof that he or she owns within the District. The City Clerk shall canvass the returns and certify the results of the election to this Council.

The City Clerk has received the appropriate waivers of time limits and other requirements pertaining to the conduct of the election by the owners of all of the Land within the District (the “Landowners”) and the election shall be held on the 6th day of April, 2004. The election shall be conducted by the City Clerk in the manner required by this Resolution, the Act and applicable laws.

The hour on such date when the ballots are required to be received in the office of the City Clerk is noon, Pacific Time. If all qualified electors have voted prior to such time, the election shall be closed.

11. In accordance with Section 53327(b) of the Act, analysis and arguments as required by Section 53327(a) of the Act are hereby waived subject to the unanimous consent of Landowners, as herein provided.

12. If two-thirds (2/3) of the votes cast upon the question of incurring the bonded indebtedness are cast in favor of the indebtedness, this Council may thereafter, at the time or times it deems proper, incur the indebtedness so authorized.

13. The publication of this resolution as notice of special bond election is hereby waived as the City Clerk has received the unanimous consent to such waiver from the Landowners.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By:

MICHAEL D. MILICH, City Attorney

ATTEST: JEAN ZAHN

JEAN ZAHN, City Clerk

(SEAL)
EXHIBIT A

SAMPLE

OFFICIAL BALLOT

COMMUNITY FACILITIES DISTRICT NO. 2004-1 (Village One #2)
OF
THE CITY OF MODESTO
STATE OF CALIFORNIA
SPECIAL TAX AND BOND ELECTION
April 6, 2004

BALLOT NO. ___

___ % of land in District
You are entitled to cast ___ votes
(VOTER MAY REMOVE AND RETAIN THIS STUB)

INSTRUCTIONS TO VOTERS

To vote, make a mark (x) in the voting area to the right of the word "YES" or "NO." All distinguishing marks or erasures are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, call the Office of the City Clerk of the City of Modesto as soon as possible at (209) 577-5398, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. for instructions.

MARK YOUR CHOICE IN THIS MANNER ONLY: ☑
MEASURE SUBMITTED TO VOTE OF VOTERS

Proposition A. Shall an appropriations limit in the amount of $75,000,000 per fiscal year be established for Community Facilities District No. 2004-1 (the "District") of the City of Modesto ("the City"), and shall special taxes with the rates, method of apportionment, and manner of collection as provided in Exhibit A to the City’s Resolution No. 2004-127 (the "Resolution of Intention") adopted by the City Council of the City of Modesto on March 2, 2004, including any amendments thereto up to, and including the election date, which are incorporated herein by this reference, be levied within the District in order to finance certain public facilities (the "Facilities") as set forth in the Resolution of Intention and services (the "Services") also set forth in the Resolution of Intention, including any incidental expenses related thereto, and shall a bonded indebtedness in the amount of not to exceed $75,000,000 be incurred within the District in order to finance the Facilities?

BALLOT NO. ___

___ % of land in District
THIS BALLOT HAS A VALUE OF ___ VOTES

A-1