MODESTO CITY COUNCIL
RESOLUTION NO. 2005-546

A RESOLUTION REJECTING THE SOLE BID FOR THE PROJECT TITLED “FREEDOM NEIGHBORHOOD PARK” AND AUTHORIZING STAFF TO RE-ADVERTISE THE PROJECT AT A FUTURE DATE

WHEREAS, the bid received for Freedom Neighborhood Park was opened at 11:00 a.m. on October 4, 2005, and later tabulated by the Public Works Director for the consideration of the Council, and

WHEREAS, during the bid evaluation process staff determined that the sole bid for the project unreasonably exceeded the consultant architect’s estimate. Therefore, staff recommends the bid be rejected and staff be allowed to re-advertise the project,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the sole bid received for “Freedom Neighborhood Park,” opened in the office of the City Clerk on October 4, 2005, is hereby rejected.

BE IT FURTHER RESOLVED that staff is hereby authorized to re-advertise the project at a future date.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of November 2005, 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, Jackman, Keating, Marsh, O’Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: 

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-547

A RESOLUTION APPROVING SPECIFIC PLAN AMENDMENT NO. 20 TO THE VILLAGE ONE SPECIFIC PLAN TO MODIFY POLICIES RELATED TO THE DEVELOPMENT OF THE VILLAGE CENTER, PROPERTY LOCATED AT THE SOUTHEAST CORNER OF FLOYD AVENUE AND ROSELLE AVENUE. (BEST PROPERTIES)

WHEREAS, Government Code Section 65450 et. seq. permits cities and counties to adopt specific plans for the systematic implementation of the General Plan and to provide for a greater level of detail in planning sites or areas of special interest or value, and

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

WHEREAS, Government Code Section 65453 permits the amendment of specific plans as often as deemed necessary by the legislative body, and

WHEREAS, the City Council on June 18, 1991, by Resolution No. 91-405, adopted Specific Plan Amendment No. 1 to the Village One Specific Plan to adopt an amended Affordable Housing Program, and

WHEREAS, the City Council on May 5, 1992, by Resolution No. 92-222, adopted Specific Plan Amendment No. 2 to the Village One Specific Plan to improve technical correctness, readability, and comprehension, and

WHEREAS, the City Council on February 1, 1994, by Resolution No. 94-72, adopted Specific Plan Amendment No. 3 to the Village One Specific Plan to rewrite and reorganize the Plan to be more implementation oriented, and
WHEREAS, the City Council on May 24, 1994, by Resolution No. 94-297, certified the Final Supplemental EIR for Village One (SCH No. 90020181) which provided environmental analysis for the revisions in Specific Plan Amendment No. 4, and

WHEREAS, the City Council on May 24, 1994, by Resolution No. 94-298, adopted Specific Plan Amendment No. 4 to the Village One Specific Plan to widen Floyd Avenue from three-to-five lanes, realign the Claus/Sylvan intersection, delete the non-potable water supply for public landscaping, and integrate mitigation monitoring into the Specific Plan, and

WHEREAS, the City Council on June 28, 1994, by Resolution No. 94-372, adopted Specific Plan Amendment No. 5 to the Village One Specific Plan to revise the Residential Design Policies for cul-de-sacs, alleys, garage orientation, and plan processing, and

WHEREAS, the City Council on June 28, 1994, by Resolution No. 94-373, adopted Specific Plan Amendment No. 6 to the Village One Specific Plan to revise the school and park sites within the Specific Plan and redistribute residential units among the Village One Precise Plan Areas, and

WHEREAS, the City Council on October 10, 1995, by Resolution No. 95-487, adopted Specific Plan Amendment No. 7 to the Village One Specific Plan to reduce costs and to implement recommendations to increase the marketability of development within the Village One area, and

WHEREAS, the City Council on May 14, 1996, by Resolution No. 96-245, adopted Specific Plan Amendment No. 7.1 to the Village One Specific Plan to delete the multiple-family development designation from Precise Plan Areas Nos. 8 and 33, and
Resolution No. 26-246 to amend the Design Standard portion of the Village One Specific Plan pertaining to single-family dwelling setbacks and three-car garages, limited to Precise Plan Areas Nos. 8, 32, and 33, and

WHEREAS, the City Council on June 4, 1996, by Resolution No. 96-295, adopted Specific Plan Amendment No. 8 to the Village One Specific Plan to incorporate changes previously approved in Specific Plan Amendment No. 7 into the Specific Plan document itself, to make minor editorial changes to the Specific Plan, and to incorporate changes resulting from development of a revised Village One Facilities Master Plan, and

WHEREAS, the City Council on August 13, 1996, by Resolution No. 96-453, adopted Specific Plan Amendment No. 9 to the Village One Specific Plan to modify the standards for dwelling setbacks and three-car garages for the entire Specific Plan area, and

WHEREAS, the City Council on May 6, 1997, by Resolution No. 97-225, adopted Specific Plan Amendment No. 10 to the Village One Specific Plan to eliminate redundancy with the General Plan Housing Element policies and to eliminate language that was too restrictive, and

WHEREAS, the City Council on June 3, 1997, by Resolution No. 97-300, adopted Specific Plan Amendment No. 11 to the Village One Specific Plan to exempt public facilities from precise plan requirements, to streamline the Specific Plan amendment process, and to provide minor clarification to various policies and diagrams, and

WHEREAS, the City Council on October 21, 1997, by Resolution No. 97-602, adopted Specific Plan Amendment No. 12 to the Village One Specific Plan to allow
changes in public service providers, delete the requirement for a business park market study, revise Amtrak station language, revise the business park precise plan diagram, and allow regional commercial uses in the business park, and

WHEREAS, the City Council on February 17, 1998, by Resolution No. 98-97, adopted Specific Plan Amendment No. 13 to the Village One Specific Plan to redesignate 9.8 acres in Precise Plan Area No. 3 from Multi-Family Residential to Village Residential, and

WHEREAS, the City Council on August 17, 1999, by Resolution No. 99-416, adopted Specific Plan Amendment No. 14 to the Village One Specific Plan to modify the mix of land uses allowed in the southeast quadrant of Precise Plan Area No. 20, and

WHEREAS, the City Council on September 26, 2000, by Resolution No. 2000-507, adopted Specific Plan Amendment No. 15 to the Village One Specific Plan to reduce the noise setback along Claus Road, and

WHEREAS, the City Council on May 7, 2002, by Resolution No. 2002-230, adopted Specific Plan Amendment No. 16 to the Village One Specific Plan to move 4.1 acres from Precise Plan Area No. 6 to Precise Plan Area No. 7, and

WHEREAS, the City Council on April 1, 2003, by Resolution No. 2003-177, adopted Specific Plan Amendment No. 17 to the Village One Specific Plan to allow for a revised infrastructure financing plan for Village One, including the formation of a new community facilities district for the remaining undeveloped, unvested property in Village One, and

WHEREAS, the City Council on December 7, 2004, by Resolution No. 2004-650, adopted Specific Plan Amendment No. 18 to the Village One Specific Plan to
change the land use designations of Precise Plan Areas 23 and 24 from Commercial, Village Residential, and Multi-Family Residential to Village Residential and Medium-Density Residential and to amend some of the Village One design and development standards, and

WHEREAS, the City Council on March 8, 2005, by Resolution No. 2005-129, adopted Specific Plan Amendment No. 19 to the Village One Specific Plan to change the land use designation of a portion of Precise Plan Area No. 1 from Very Low Density Residential to Office and High School and to allow City Council approval of a Final Development Plan concurrent with approval of Precise Plan Area No. 1, and

WHEREAS, Best Properties has filed an application to amend the Village One Specific Plan to modify design policies related to the development of the Village Center at the southeast corner of Floyd Avenue and Roselle Avenue, and

WHEREAS, on October 17, 2005, at 7:00 p.m. the Planning Commission held a duly noticed public hearing in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered concerning the proposed Village One Specific Plan amendment, and

WHEREAS, after said public hearing, the Modesto City Planning Commission by Resolution No. 2005-39, recommended to the City Council approval of an amendment to the Village One Specific Plan to modify design policies related to the development of the Village Center at the southeast corner of Floyd Avenue and Roselle Avenue, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing on November 1, 2005, at 5:30 p.m., in the Tenth Street Place Chambers
located at 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds and determines that the proposed Amendment No. 20 to the Village One Specific Plan to modify design policies related to the development of the Village Center at the southeast corner of Floyd Avenue and Roselle Avenue is consistent with the Modesto Urban Area General Plan, as the overall land use, intensity and circulation of the Village One Specific Plan and Village Center would not be changed by the amendment, and the Village One Specific Plan is hereby amended to modify design policies related to the development of the Village Center at the southeast corner of Floyd Avenue and Roselle Avenue as shown on Exhibit "A" attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED by the Council that the City Clerk is hereby authorized and directed to send certified copies of this resolution and said amendment to the Village One Specific Plan to the Board of Supervisors of the County of Stanislaus.

BE IT FURTHER RESOLVED that the project applicant shall indemnify, defend, and hold harmless the City of Modesto, its agents, officers, and employees from any and all claims, actions, or proceedings against the City of Modesto, its agents, officers, and employees to attack, set aside, void, or annul, any approval by the City of Modesto and its advisory agency, appeal board, or a legislative body concerning this Specific Plan Amendment (File No. SPA-05-003). The City of Modesto shall promptly notify the applicant of any claim, action, or proceeding and shall cooperate fully in the defense. If
the City fails to do so, the applicant shall not thereafter be responsible to defend, indemnify, or hold City harmless.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of November 2005, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: Dunbar

ABSENT: Councilmembers: Hawn

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney

ATTEST: JEAN ZAHR, City Clerk
EXHIBIT "A"
VILLAGE ONE SPECIFIC PLAN AMENDMENT NO. 20

Included in the City Council Packet
STAFF PROPOSED SPECIFIC PLAN AMENDMENT
1. **Acreage:**

   100 Acres

2. **Land Use Intensity**

   There are three alternatives for development of this Precise Plan Area. These are detailed in Section 3, below. Following is a land use summary of the three alternatives:

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Alternative A</th>
<th>Alternative B</th>
<th>Alternative C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Village Commercial Center</td>
<td>10 ac.</td>
<td>10 ac.</td>
<td>12 ac.</td>
</tr>
<tr>
<td>Office</td>
<td>6 ac.</td>
<td>8 ac.</td>
<td>5 ac.</td>
</tr>
<tr>
<td>Multi-Family</td>
<td>20 ac.</td>
<td>20 ac.</td>
<td>25 28° ac.</td>
</tr>
<tr>
<td>Senior Housing/Multi-family</td>
<td>17 ac.</td>
<td>17 ac.</td>
<td>6 ac.</td>
</tr>
<tr>
<td>Village Residential</td>
<td>47 ac.</td>
<td>45 ac.</td>
<td>55 ac.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100 ac.</td>
<td>100 ac.</td>
<td>103-106 ac.</td>
</tr>
</tbody>
</table>

   a. The 5 acres designated office are permitted to be developed as Village Commercial and/or Office and/or Senior Housing and/or Multi-Family.

   b. The 5 acres of the Multi-Family around the Village Commercial Center may also be developed as Village Residential.

   c. The 6 acres of Senior Housing shall be exclusively for Senior Housing.

3. **Special Considerations**

   a. There are three alternative land use configurations for this Precise Plan Area. These are shown in the Figure III-21 diagrams, following pages. The three alternatives are based on three alternative locations for the Village Commercial Center. Descriptions of the three alternatives follow:

   **Alternative A:**

   - The Village Commercial Center (10 acres) is located at the northwest corner of Floyd Avenue and Roselle Avenue.

   - The remainder of the northwest quadrant of the Precise Plan Area is designated Office (6 acres) and Senior Housing/Multi-Family Housing (17 acres).

   - The northeast and southeast corners of Floyd Avenue and Roselle Avenue are designated Multi-Family Residential (10 acres each). The remainder of these quadrants is designated Village Residential.
Alternative B

☐ The Village Commercial Center (10 acres) is located at the northeast corner of Floyd Avenue and Roselle Avenue.

☐ The remainder of the northeast quadrant of the Precise Plan Area is designated Office (7 acres) and Senior/Multi-family Housing (17 acres).

☐ The northwest and southeast corners of Floyd Avenue and Roselle Avenue are designated Multi-Family Residential (10 acres each). The remainder of these quadrants is designated Village Residential.

Alternative C

☐ The Village Commercial Center (12 acres) is located at the southeast corner of Floyd Avenue and Roselle Avenue.

☐ The remainder of the southeast quadrant of the Precise Plan Area is designated Office, which can also be developed as Village Commercial, Senior Housing or Multi-Family (5 acres), Senior Housing/Multi-family (6 acres), Multi-Family Housing, which can also be developed as Village Residential (5 acres), and Village Residential (7 acres).

• The northwest and northeast corners of Floyd Avenue and Roselle Avenue are designated Multi-Family Residential (10 acres each). The remainder of these quadrants is designated Village Residential.

b. The decision of which Alternative for this Precise Plan Area will be developed will be based on the location of the Village Commercial Center. The first development proposal for the Village Commercial Center on one of the three sites shown in the alternatives will determine the Alternative chosen for development of this Precise Plan.

c. Ideally, the Village Commercial Center is the first development to occur in this Precise Plan Area. At a minimum, development of the Village Commercial center should precede the development of the 10 acres closest to the Floyd/Roselle intersection on each of the other two corners.

d. The first phase of development of the Village Commercial Center shall include construction of a supermarket. Construction of other permitted commercial uses may accompany construction of the supermarket subject to the condition that the supermarket shall be the first use to open for business.
e. The time limit for commencement of construction of the first phase of development of the Village Commercial Center shall not be more than three years from the effective date of approval of the precise Plan by the City Council. One-year time extensions, not to exceed three in number, may be granted by the Planning Commission after benefit of a public hearing, if adequate cause for such time extension is shown by the developer.

f. If construction of the first phase of the Village Commercial Center does not occur within the specified time limitations, the City may consider Precise Plan applications for development of the Village Commercial Center at one of the other two corners of Floyd and Roselle Avenues.

g. The Precise Plan shall provide for a maximum of 350,000 square feet of gross leasable area for commercial and office uses distributed in the following manner:

1. The Village Commercial Center will contain a maximum of 215,000 - 250,000 square feet of gross leasable area.

2. The Office designation will contain a maximum of 100,000 - 125,000 square feet of gross leasable area.

h. The Village Commercial Center should be of a substantially improved design over a typical neighborhood shopping center, reflecting pedestrian orientation and direct linkage to a residential/office complex.

i. The Village Commercial Center should be designed in accordance with the policies presented in Sections II-G(4) and II-G.

j. Within each area designated Multi-family, only multi-family uses will be allowed with the following number of dwelling units:

1. The maximum number of dwelling units for each area is calculated as follows:

   10 Acres x 26.25 dwelling units/acre = 263 dwelling units for each 10-acre multi-family site.

2. The minimum number of dwelling units for each area is calculated as follows:

   263 dwelling units x 90% = 237 dwelling units for each 10-acre multi-family site.
k. Within each area designated Senior Housing/Multi-family Housing, either Multi-Family Housing or Senior Housing are allowed. If Multi-Family Housing is developed, the maximum density allowed is 26.75 dwelling units/gross acre, with a minimum density of 90% of the maximum density. If Senior Housing is developed, then the maximum density allowed is 50 dwelling units/gross acre.

l. It is desirable that the City and the property owners in this Precise Plan Area agree on the process for coordinated development of this Precise Plan Area in advance of initiating any development. In any case, a single development entity should manage the development process. This role should include coordinating all aspects of land assemblage and infrastructure improvements, construction of the buildings, and implementation of the sales and leasing programs. In addition, consistent and centralized ongoing management of the retail/commercial components of the Village Center should be maintained.
Figure III - 21
Precise Plan Area #20

Alternative C

VR  Village Residential
MF  Multi-Family
SH/MF  Senior Housing & Multi-Family
O  Office
VC  Village Commercial Center

III - 55
APPLICANT PROPOSED SPECIFIC PLAN AMENDMENT
Specific Plan Amendment Findings

B. Specific Plan Amendment Process

The following process must be followed in reviewing proposed Specific Plan Amendments:

1. Description of Amendment

Proposals to amend the Village One Specific Plan must be accompanied by detailed information to document the change requested. This information should include a revised Specific Plan Text (or excerpt therefrom) and revised Land Use Diagram, where relevant, depicting the Amendment requested.

*The Village One Specific Plan text proposed for revision is attached.*

2. Presentation of Need for Amendment

Any proposals to amend the Specific Plan must document the need for such changes. The applicant should indicate the economic, social, or technical issues which generate the need to amend the Specific Plan.

*The main text changes are modifications of the architectural and design policies that relate to the Village One Commercial Center. The original design standards would better fit an urban commercial development, and based on the size and shape of the Village Center, do not fit well with a practical commercial layout of the site. As such, these standards are proposed to be modified, or deleted, and some new standards added, which more closely approximate the type of development proposed for the Village One Commercial Center project.*

3. Criteria for Analysis of Amendment

Any proposal to amend the Village One Specific Plan must be accompanied by an analysis of the Amendment’s effects, compared to the adopted Specific Plan and any adopted Precise Plans, of the following issues:

a) Conformance with Specific Plan Guiding Principles in Chapter I of this Specific Plan.

*There are four (4) guiding principles in Chapter I. These are listed and responded to below:*
C. Guiding Principles of the Village One Specific Plan

The following principles are an integral part of the Village One planning process. These principles shall be followed throughout this Specific Plan and throughout all subsequent processing of land use approvals within the Specific Plan area:

1. Neo-traditional planning concepts are incorporated into the Plan through development of a pedestrian-oriented village that focuses community life within the Village area by orienting the residential neighborhoods to a central Village Center. This center, which contains commercial, civic, cultural and recreational uses, will make pedestrian access available to residents of Village One through a highly interconnected street system providing a direct connection to the Village Center.

*The Village Center will be connected to adjacent development on all four sides by pedestrian access, and to the north and west by vehicular access.*

2. The Village is defined not by its edges nor by isolation from the rest of the City, but rather by a focus of activities that are common to the Village as a whole. Village One is intended to be an integral part of the existing City.

*No changes are proposed which would affect this policy.*

3. The Village streets serve as structuring elements and significant open spaces that contribute to the overall quality of life, as well as fulfill the needs for vehicular and alternative circulation modes, such as transit, bicycle and pedestrian. The Village Center core is directly connected to each residential neighborhood.

*The Village Center is connected to adjacent development on all four sides by pedestrian access points, and to the north and west by vehicular access points.*

4. The Specific Plan creates an overall community identity through the well-ordered compositions of the residential neighborhoods, and activity centers. Each of these levels is organized around a public element, with the districts focus on schools and parks, and individual homes on the character of landscaped streets. These elements of the Village are closely linked with one another in a town pattern designed to facilitate direct access between major activity areas.

*As discussed above, the development will not hamper direct access between major activity areas.*
b) Compatibility with any adopted Precise Plans, which will be affected by the Specific Plan Amendment.

*The adopted Precise Plan is being modified, and these modifications will be processed concurrently with this Specific Plan Amendment.*

c) Consistency with the Comprehensive Policies presented in Chapter II of this Specific Plan.

*Where necessary, the Comprehensive Policies in Chapter II are proposed for revision as needed to be consistent with the proposed request.*

d) Compatibility with surrounding existing and planned land uses.

*There are no proposed changes to land uses in the area.*

e) Visual impacts, on-site and off-site.

*The project will be developed with land uses consistent with the Specific Plan.*

f) Traffic impacts.

*The land uses are consistent with the adopted Specific Plan and EIR, and so the projected traffic generated by the project was analyzed in the existing EIR for the Village One Specific Plan.*

g) Preservation of Open Space.

*The project will not result in the loss of any lands identified for Open Space uses.*

h) Public Utilities, documented in Chapter II of this Specific Plan, as well as any adopted Public Facility Master Plans.

*Utilities will be provided consistent with the Village One Facilities Master Plan.*
3. **Village Center – Overview**

This section defines the purpose of the Village Center, expanding upon the brief narrative presented in Section IIB-2. This narrative is further refined later in Section IIG-4 and supplemented by the narrative for “Precise Plan Area #20,” in Chapter III.

The Village Center is essentially a hybrid form of commercial development that includes the best pedestrian-oriented features of the traditional small town and the automobile orientation of strip shopping centers. By locating the Village Center at the heart of the community and concentrating commercial uses within it, the number of daily trips related to automobile traffic can be substantially reduced.

The Village Center is a compact district with a hierarchy of streets, sidewalks, and pedestrian passageways. Commercial buildings are clustered around key intersections and along streets, which lead directly into adjacent residential neighborhoods. Historical precedents for certain design aspects of the Village Center include the traditional main street or commons that forms the focus of small towns throughout the United States.

The Village Center is envisioned as a place where people go on an everyday basis to shop, conduct business, socialize with neighbors, and gather for community events. It serves as one of the fundamental elements for creating a strong sense of community. Therefore, direct access from throughout Village One on both primary and secondary roads is essential.

An attractive image and identity for the Village Center shall be established through the unique configuration of streets and open spaces. Detailed design guidelines shall be maintained, to establish a consistent character and quality standards for buildings.

The creation of an attractive image and identity for the Village Center will add to the potential success of the commercial activities, while simultaneously lending an image and identity to all of Village One, and providing a stronger sense of place and orientation. The design of individual buildings and open spaces can reinforce the role of the place, not only for shopping, but also as a people-oriented gathering place.

4. **Village Center – Land Use Policies**

The following policies should be addressed in the overall design of the Village Center. The term ‘should’ is advisory. However, attention should be paid to the concepts that follow:

a) The Village Center will house the major concentration of retail uses within the Village and will also serve as the “living room” of the community and the focus of its social activities. Figure II-2 illustrates a potential Village Center Plan which incorporates an appropriate mixture of land uses in conformance with this policy (see also Precise Plan Area No. 20, in Chapter III).
b) A concentration and mixture of uses should be provided within the Village Center Plan to accommodate approximately 350,000 square feet of commercial (retail and office) uses within the core area. Additionally, an appropriate environment should be created for the inclusion of higher density single-family residential dwellings, senior housing, and community facilities.

c) The Village Center includes a diverse mixture of uses that are concentrated in a distinct district. Boundaries between properties and uses are soft and not clearly delineated. Retail shops, general commercial establishments, and some professional offices will comprise the majority of the local-serving commercial uses. The suggested commercial program for the Village Center is outlined in Precise Plan Area No. 20, in Chapter III.

d) Higher density single-family and senior housing should ring the Village Center. In addition, selected parcels within the predominantly commercial core are planned to accommodate mixed-use or higher density residential apartments or condominiums.

e) Emphasis should be placed on pedestrian activities and linkages, and the possibility of future transit should be provided for along Roselle Avenue to serve the Village Center.

f) The Village Center should be people-oriented and easily accessible to all residents of Village One by foot or bicycle. Due to its important role within the community, the Village Center must also accommodate the required flow of automobile traffic and provide ease of access and parking convenience. However, it is important that the image of the Village Center is not dominated by the automobile.

g) No drive-through commercial facilities (such as those related to financial institutions and fast food enterprises) should be traditionally sited in the Village Center. These uses reduce pedestrian activity and often disrupt retail continuity along the street. They should be sited in the transitional area between the neighborhood commercial area and the offices/multi-family area.

h) Parking areas should be located so as not to interrupt pedestrian movement along streets and passageways wherever possible. Off-street parking lots should be located behind buildings or screened by landscaping, so that the dominant image of the Village Center is one of buildings and pedestrian activity. The Village Center is a logical location for future transit service due to its concentration of uses, higher density housing, and central location.

i) Higher density single-family residential uses are permitted within the Village Center where they can take advantage of transit connections along Roselle Avenue and the retail activities focused within the heart of the community. These higher density single-family residential uses may develop at a gross density of approximately ten dwelling units per net acre, and they could consist of either attached or detached housing units.
j) Mixed-use (residential and retail) developments are encouraged within the Village Center.

A small development with retail on the ground floor and residential development on upper floors is encouraged within the higher density Village Center. While this type of development is relatively unconventional in the Central Valley, it would take advantage of the opportunities in this particular location for the establishment of a small, relatively unique, new urban prototype that is complementary in intensity and in scale with its surroundings.

5. Village Center - Community Design Policies

In addition to the Land Use policies listed above, all developments within the Village Center should incorporate the following Design Policies, as appropriate. The term “should” is advisory. However, attention should be paid to the concepts that follow.

a) Site Design Policies

1. Commercial building parcels should be delineated in various sizes ranging from approximately 30 to 250 foot frontages in order to create architectural variety and a more visually interesting environment for the pedestrian.

2. Residential building parcels within the Village Center should be located outside of the designated core area. These parcels should be large enough to accommodate appropriately scaled, high-density projects.

3. Screened service courts and enclosed trash containers should be required for garbage and delivery.

4. The electrical services and other mechanical areas of buildings should be screened from view or located to minimize their visual appearance.

b) Street Design Policies

1. On-street parking should be provided on both sides of the streets serving the Village Center.

2. All Village Center streets should be designed for 24-inch box street trees with high canopies that could be planted at 20-foot intervals. Tree species should be selected for branching at heights greater than 15 feet, for light, feathery leafing (for visibility to storefronts) and for ease of maintenance.

3. Consistent pedestrian-scale ornamental light fixtures should be utilized along streets in the Village Center. Light fixtures should include attachments for banners and planters. Fixtures should be high-pressure sodium vapor for the best rendition of natural colors.
c) **Architectural Design Policies**

1. Passageways for pedestrians between parking areas and adjacent streets should be provided. Public passageways between buildings should be landscaped with trees, flowers, sidewalks, and lighting.

2. Commercial projects with multiple buildings, that do not allow on-street parking, should place some buildings along street frontages. Minimal setbacks should occur for landscaping between buildings and street. All commercial buildings should have facades built right to the sidewalk, with no setbacks on the first level, in order to maintain an active and interesting edge for window shoppers, strollers and passersby. There may be variations for landscaping but off-street parking areas between the street and buildings and public streets should be minimized where practical avoided.

3. Buildings at key intersections should be designed to mark the corner. Various design devices include setbacks at the corner, accentuated architecture entrances, and additional height, using for instance, public gathering places towers and cupolas. By treating intersections as prominent landmarks in the Village, people and visitors are more quickly oriented to the entire district.

4. Blank walls shall not occur where buildings face the public street. These faces shall include architecture similar to the face of the building containing entries and storefronts. While building entries and storefronts are not required along street frontage, the buildings must contain architecture to produce a building with 360 degree articulation. Or solid walls (without glazing) should not exceed approximately 30 feet in length at street level so that visual interest is maintained along sidewalks for pedestrians. Walls that are blank should be articulated with murals, trompe-l'oeil, or some type of wall detailing, wherever possible.

5. Store and building entrances should not be recessed more than ten feet. Doorways should be designed to focus on the street in order to create a more immediate and direct relationship between indoor and outdoor activities.

6. Ideally, the height of street-facing facades should be greater than 16 feet but not more than 35 feet, as measured from the grade sidewalk to the top of the cornice. These height limits will ensure an appropriate pedestrian scale for the Village Center.

7. Landscape structures such as portals, trellises, arbors, and benches, shall occur within the parking lot of the project in order to emphasize the pedestrian scale of the project. Buildings overhanging the sidewalk or freestanding shelter structures creating street arcades that intrude into the sidewalks should be continuous, extending along the full length of a block or, at minimum, linking a series of contiguous buildings.
8. Awnings should be encouraged, but should not interfere with street tree planting.

9. Storefronts should be encouraged to wrap corners at the building entrance of public passageways and at street intersections in order to create activity, and eyes on the street at these critical junctures in the pedestrian network of the Village Center.

10. Consistent wall mounted exterior lighting should be used along pedestrian passageways, at corners of buildings, and at the rear of buildings facing the parking lots.

11. Signage should be scaled to the pedestrian.

12. Heraldic signs, vertical banners stretched between two horizontal standards, should be encouraged.

13. All signage for project tenants shall be individual letters of logos attached to the building. General merchandising and off-premise signs should not be permitted.

14. The buildings and streets within the Village Center should be organized to concentrate pedestrian activity within an appropriately scaled district, in order to create a strong sense of identity and community at the geographic center of Village One.

15. People-oriented activities (window shopping, store entrances, cafes, displays, signage) should be focused along the streets and in front of buildings of the Village Center. Parking, deliveries, trash and other ancillary services should be located at the rear of buildings.

16. A focused, efficient pattern of buildings and open spaces should be developed in order to concentrate activities, rather than dissipate them in a way that requires greater dependency upon the automobile.

17. Buildings, streets, and parking lots should be designed to be scaled to pedestrians (with regard to such issues as to height and length of walls, the amount of uninterrupted asphalt paving, the width of streets, and the distance between crosswalks, the continuity of shop fronts, the size of signage).

18. The development of pedestrian amenities such as benches, trash receptacles, and pedestrian-scale lighting should be encouraged as well as outdoor cafes and sidewalk magazine stands – all of which enhance the experience of moving through the Village Center by foot.

a) Parking Design Policies

1. An adequate supply of parking should be provided to meet retail needs. In the case of predominantly night time uses, such as nightclubs, shared parking opportunities should be encouraged.
2. On-street parking should be provided on all major streets in the Village Center.

3. All off-street parking should be generally located to the rear of buildings instead of between the public street and buildings. Access to stores and streets should be easily visible from all areas of the parking lot.

4. Surface parking areas should be constructed in small increments, or large lots should be divided into small areas through the use of landscaping, so that asphalt does not dominate.

5. Conversions of surface parking areas to allow additional development utilizing structured parking should be encouraged as market demand increases over time.

6. Trees should be planted at sufficient density in parking lots to meet the objective of achieving an 85% coverage at maturity.

7. Parking lot lighting should be located at frequent intervals for pedestrian orientation. All exterior lighting should be high-pressure sodium vapor fixtures to create an attractive light quality suitable to retail and pedestrian uses.

Chapter III, Precise Plan Area #20, Special Consideration 3(h): (Page III-51)

h. The Village Commercial Center should be of an substantially improved design over a typical neighborhood shopping center, reflecting pedestrian orientation and direct linkage to neighboring land uses a residential/office complex.
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-548

A RESOLUTION FINDING THAT THE FOLLOWING PROJECT IS WITHIN THE SCOPE OF THE VILLAGE ONE PROGRAM ENVIRONMENTAL IMPACT REPORT (SCH NO. 90020181), AS AMENDED BY THE SUPPLEMENTAL EIR: SPECIFIC PLAN AMENDMENT NO. 20 TO THE VILLAGE ONE SPECIFIC PLAN TO AMEND THE VILLAGE ONE SPECIFIC PLAN TO MODIFY POLICIES RELATED TO THE DEVELOPMENT OF THE VILLAGE CENTER, AND AN AMENDMENT TO THE PRECISE PLAN FOR THE SOUTHEAST QUADRANT OF AREA NO. 20 TO MODIFY POLICIES AND DIAGRAMS TO ACCOMMODATE A PROPOSAL FOR THE VILLAGE CENTER RETAIL CENTER, PROPERTY LOCATED AT THE SOUTHEAST CORNER OF FLOYD AVENUE AND ROSELLE AVENUE. (BEST PROPERTIES)

WHEREAS, the Modesto City Council has adopted Resolution No. 90-757 certifying that the Village One Final Environmental Impact Report ("EIR") (State Clearinghouse No. 90020181) is complete and adequate pursuant to Section 15090 of the California Environmental Quality Act ("CEQA") Guidelines, and

WHEREAS, the Modesto City Council has adopted Resolution No. 94-297 which certified the Final Supplemental EIR for Village One; thus, the 1990 Village One Program EIR has been amended and updated by the 1994 Supplemental EIR, adopted by Resolution No. 94-297 on May 24, 1994, and

WHEREAS, on May 6, 2003, the City Council adopted Resolution No. 2003-223 which adopted an Addendum to Village One Specific Plan Program Environmental Impact Report for the Village One Facilities Master Plan Update – May 2003 ("V1 FMP"), and

WHEREAS, an application has been filed by Best Properties for an amendment to the Village One Specific Plan to modify design policies related to the development of the Village Center at the southeast corner of Floyd Avenue and Roselle Avenue, and to
amend the Precise Plan for Area No. 20 to modify policies and diagrams to accommodate the design of a proposal for the Village Center (collectively the "Project"), and

WHEREAS, the City's Community and Economic Development Department reviewed the proposed Project to determine if said Project might have a significant effect on the environment, and

WHEREAS, City staff has prepared a Written Checklist, Environmental Assessment No. EA/C&ED 2005-30, which concluded that the proposed Project is within the scope of the Village One Program EIR (SCH No. 90020181), as amended by the Village One Supplemental EIR, and the Addendum to Village One Specific Plan Program Environmental Impact Report for the Village One Facilities Master Plan, and

WHEREAS, the Planning Commission, by Resolution No. 2005-40, adopted on October 17, 2005, and City staff, by a report dated October 13, 2005, from the Community and Economic Development Department, recommended to the City Council approval of Amendment No. 20 to the Village One Specific Plan to modify design policies related to the development of the Village Center at the southeast corner of Floyd Avenue and Roselle Avenue, and to amend the Precise Plan for Area No. 20 to modify policies and diagrams to accommodate the design of a proposal for the Village Center, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on November 1, 2005, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council has reviewed and considered Environmental Assessment No. EA/C&ED
2005-30, entitled "Village Center Specific Plan Amendment, Precise Plan Amendment, Final Development Plan and Tentative Parcel Map", for the proposed Project, and the Council hereby makes the following findings:

1. As per Sections 15168(c) and 15182 of the California Environmental Quality Act ("CEQA") Guidelines, this Project is within the scope of the projects covered by the Village One Program EIR, as amended by the 1994 Supplemental EIR and the 2003 Addendum to the EIR ("Program EIR") and no new environmental document or findings are required by CEQA.

2. There are no substantial changes proposed in the Project which result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Program EIR are required.

3. No substantial changes have occurred with respect to the circumstances under which the project is undertaken which will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and therefore, no major revisions to the Program EIR, are required.

4. There is no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence when the Program EIR was adopted, which shows any of the following:
   a. one or more significant effects which is not discussed in the Program EIR; or,
   b. significant effects which were previously examined will be substantially more severe than previously shown; or,
   c. previously infeasible mitigation measures or alternatives are now feasible and would substantially reduce one or more significant effects of the project, but the Project proponents decline to adopt the mitigation measure or alternative; or,
   d. mitigation measures or alternatives which are considerably different from those analyzed in the Program EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.
5. The Initial Study, Environmental Assessment EAJC&ED 2005-30, provides the substantial evidence to support findings 1-4, noted above.

A copy of said Environmental Assessment No. EAJC&ED 2005-30, entitled "Village Center Specific Plan Amendment, Precise Plan Amendment, Final Development Plan and Tentative Parcel Map", is on file with the City Clerk.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of November 2005, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: Dunbar

ABSENT: Councilmembers: Hawn

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-549

A RESOLUTION APPROVING THE LEASE AGREEMENT BY AND BETWEEN THE CITY OF MODESTO AND FMC CORPORATION, INC. AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LEASE AGREEMENT

WHEREAS, on October 18, 1983 and pursuant to City Council Resolution No. 83-676, the City of Modesto ("City") approved a Lease Agreement with FMC Corporation, Inc. ("FMC") for the lease of a portion of City-owned property for the purpose of installing three (3) monitoring wells, and

WHEREAS, on July 23, 1985 and pursuant to City Council Resolution No. 85-482, the City approved a second Lease Agreement with FMC for the lease of a portion of City-owned property for the purpose of installing three (3) additional monitoring wells, and

WHEREAS, the terms of said Leases were both 20 years, and

WHEREAS, said Leases have both expired, and

WHEREAS, FMC is desirous of continuing to maintain five (5) of the monitoring wells in perpetuity for the purpose of assessing the underground aquifer to identify any contamination of the groundwater as a result of past activity on FMC’s property in proximity to said monitoring wells, and

WHEREAS, the City and FMC have been working with the State of California to complete a remediation plan to remediate the contamination on FMC’s property, and

WHEREAS, the City has determined that the integrity of the water system is paramount to the health and safety of its citizens and the monitoring of the water system is vital to ensure the continual assessment of said water system,
NOW, THEREFORE, BE IT RESOLVED by the City Council that the Lease Agreement for operation of five (5) monitoring wells by and between the City of Modesto and FMC Corporation, Inc., a Delaware corporation, is hereby approved and the term of said Lease Agreement is twenty (20) years.

BE IT FURTHER RESOLVED that the City Council does hereby authorize and direct its City Manager, or his/her designee, to execute on behalf of the City said Lease Agreement, which is attached as Exhibit A and incorporated herein by this reference.

The foregoing resolution was introduced at a regular meeting of the City of Modesto held on the 9th day of November 2005, by Councilmember Keating, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmember: Dunbar, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmember: None

ABSENT: Councilmember: Hawn, Mayor Ridenour

ATTEST:  
JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

By
MICHAEL D. MILICH, City Attorney

11/09/05/CEDD/L Boston/Item No 5 2 2005-549
LEASE AGREEMENT

This Indenture of Lease, made and entered into in the City of Modesto, County of Stanislaus, State of California, as of this ____ day of ____________, 2005, by and between the CITY OF MODESTO, a municipal corporation of the State of California, hereinafter called CITY, and FMC CORPORATION, a Delaware corporation, hereinafter called LESSEE or FMC.

WHEREAS, pursuant to Lease Agreements, encroachment permits, and/or Resolutions adopted by the Council of the City of Modesto in 1983 and 1985, FMC installed some six (6) groundwater monitoring wells on certain CITY premises for purposes of environmental investigations;

WHEREAS, five (5) of these wells, denominated M-112, M-113, M-119, M-120, and M-121, remain active and in use, and are required to be monitored under the terms of an administrative order and monitoring and reporting program issued to FMC by the California Regional Water Quality Control Board for the Central Valley Region ("RWQCB");

WHEREAS, FMC desires a new Indenture of Lease ("Lease Agreement") for purposes of maintenance and use of the five existing groundwater monitoring wells; and

WHEREAS, CITY is willing to enter into a new Lease Agreement upon the terms and conditions set forth below.

THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

That CITY for and in consideration of the covenants, conditions, agreements and stipulations hereinafter expressed, does hereby demise and lease unto LESSEE, and LESSEE hereby hires from CITY the nonexclusive use of those certain premises situated in the City of Modesto, County of Stanislaus, State of California, more particularly shown on the attachment hereto marked "Exhibit A" and more particularly described in the attachment hereto marked "Exhibit B", and by this reference made a part hereof as though set forth in full herein, together with the right of reasonable
access across CITY's adjacent property to maintain, inspect, and test the monitoring wells located on the demised premises.

1. TERM. LESSEE shall be entitled to have and to hold the demised premises, together with the appurtenances, rights, privileges and easements thereunto belonging to or appertaining, for a twenty (20) year term commencing on the date above first written and ending twenty (20) years thereafter.

2. RENTAL. LESSEE shall pay One Hundred and no/100ths Dollars ($100.00) per year to CITY in consideration of CITY leasing the demised premises to LESSEE, which shall be paid to CITY's Director of Finance, P.O. Box 642, Modesto, California, by January 1, of each year, which shall be considered the due date.

In addition to other remedies contained in this Lease Agreement, in the event any payment is not made on the due date, LESSEE shall pay to CITY a late charge on said unpaid balance calculated at the rate of five percent (5%) per month commencing on the due date and continuing until the date such payment is made.

3. ADDITIONAL CONSIDERATION. LESSEE agrees as further consideration for the lease of the demised premises to not commit or suffer to be committed any waste on the demised premises, to provide CITY with all testing data obtained from the monitoring wells located on the demised premises, and to let CITY make reasonable use of the demised premises as long as CITY's use does not unreasonably interfere with LESSEE's use thereof.

4. USE. LESSEE shall use the demised premises solely for the purpose of maintaining and using five (5) monitoring wells for monitoring groundwater.

5. IMPROVEMENTS. It is understood that any improvements on the demised premises will be done at the sole cost and expense of LESSEE. Except as authorized by paragraph 19 herein, no buildings, structures, or other improvements shall be erected, installed, or placed upon the demised premises unless the consent of CITY's City Manager is first had in writing; however, where such improvements are for purposes
of restricting access or otherwise providing for the security of the monitoring wells, such consent shall not be unreasonably withheld or delayed. LESSEE agrees to notify CITY at the time any improvements are begun so that CITY may post and record Notices of Nonresponsibility. LESSEE agrees not to permit any liens to be placed upon the demised premises by reason of any improvements which it may make thereon and further agrees to hold CITY harmless from any liability to pay for such improvements or liens therefor.

6. RIGHT OF ENTRY UPON PREMISES. CITY and its agents and employees shall have the right to enter upon the demised premises at all reasonable times to inspect the same, to determine if LESSEE is performing the covenants of this Lease Agreement on its part to be performed and to post such reasonable notices as CITY may desire to protect its rights.

7. TAXES. LESSEE recognizes and understands that this Lease Agreement may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of property taxes on such interest. LESSEE further agrees to pay, without the right to deduct from rental fees provided herein, any and all property taxes, if any, assessed during the term of this Lease Agreement against LESSEE'S possessory interest in the demised premises.

LESSEE further agrees to pay, without right to deduct from rental fees provided herein, any and all personal property taxes assessed against its property on the demised premises, and such portion of any real property taxes as may be levied against improvements owned by LESSEE and erected upon land owned by CITY.

8. UTILITIES. LESSEE agrees to pay all utility bills that may be incurred as a result of its activities or improvements on the demised premises.

9. ASSIGNMENT BY LESSEE. LESSEE shall not assign this Lease Agreement nor any right hereunder, nor sublet the demised premises, nor any part thereof, or suffer any other person or entity to occupy or use the demised premises or any portion thereof, whether through direct assignment, merger, sale of stock or business assets, or otherwise, without the prior written consent of CITY'S City Manager first had and
obtained, and a consent to one assignment, subletting, occupation or use by any other person or entity shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person or entity. Any such assignment, subletting and occupation or use by any other person or entity without such consent shall be void, and shall at the option of CITY’S City Manager, terminate this Lease Agreement. This Lease Agreement shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE by operation of law, without the prior written consent of CITY.

10. INDEMNITY. LESSEE agrees to indemnify, defend and hold CITY, and its officers, agents and employees, free and harmless from any and all liabilities, claims, demands, actions, losses, damages and costs, including all costs of defense thereof, caused by, arising out of, or in any way related to LESSEE’S use or occupancy of the demised premises, or occurring on the demised premises during the term of this Lease Agreement or any time of occupancy of the premises by LESSEE after expiration of this Lease Agreement, including claims, liabilities and actions based upon nuisance or inverse condemnation. Upon demand LESSEE shall, at its own expense, defend CITY, and its officers, agents and employees, against any and all such liabilities, claims, demands, actions, losses, damages and costs. LESSEE shall not be responsible for liability arising from the negligent acts or omissions of CITY, its agents, employees, or invitees.

11. (a) LIABILITY INSURANCE. LESSEE agrees to provide and keep in full force and effect throughout the term of this Lease Agreement a policy of comprehensive public liability insurance, covering any and all claims for injury, sickness and disease, including death therefrom, to any/all persons and damage to property, arising out of LESSEE’S use of, occupancy of, or occurring on the demised premises, with Combined Single Limits of not less than One Million and no/100ths Dollars ($1,000,000.00). Said policy of insurance so provided shall contain a contractual liability clause covering the liability assumed by LESSEE under the terms of this Lease Agreement. Prior to the commencement of this Lease Agreement, a Certificate evidencing said insurance shall be filed with CITY’S City Clerk. Said Certificate shall provide for a minimum of thirty (30) days' written notice to CITY’S City Clerk in the event of cancellation or material change in the terms of said policy of insurance.
(b) WORKERS’ COMPENSATION INSURANCE. LESSEE agrees to provide and keep in full force and effect during the term of this Lease Agreement a policy of Worker’s Compensation Insurance, in content and form approved by CITY’S City Attorney, covering all employees of LESSEE who at any time are employed in connection with the operation of LESSEE contemplated herein. The policy of insurance so provided shall contain a provision that such policy shall not be cancelled or terms, coverage or conditions modified except upon thirty (30) days’ prior written notice to CITY’S City Clerk. A certificate evidencing the same shall be filed with CITY’S City Clerk.

12. SELF INSURANCE. Notwithstanding any provision of paragraphs 11(a) and 11(b), LESSEE shall have no obligation to provide, maintain or pay for any insurance covering any risk described in paragraphs 11(a) and 11(b) so long as LESSEE shall (i) self-insure such risk on the same terms as set forth in such paragraphs, and (ii) file evidence of such self-insurance with the City Clerk of CITY.

13. TERMINATION BY CITY PRIOR TO EXPIRATION. CITY’S City Manager shall have the right to immediately terminate this Lease Agreement, in whole or in part, on the occurrence of any of the following events:

a. Failure on the part of LESSEE to pay rent when due.

b. Filing by or the final adjudication of LESSEE of any petition in bankruptcy or the making of any transfer of general assignment for the benefit of creditors which has not been previously authorized by CITY.

c. The failure of LESSEE to perform substantially or keep or observe any of the terms, covenants and conditions which it is obligated to perform, keep or observe under this Lease Agreement after the expiration of a fifteen (15) day period of warning or ultimatum given by CITY’S City Manager to LESSEE to correct any such deficiency or default.

d. The abandonment of the demised premises or any portion thereof, or discontinuance of LESSEE’S operations, or any portion thereof. Should this occur, CITY shall not be responsible for the custodial protection of equipment abandoned, even though it is necessary for CITY to remove same from the demised premises for storage
14. COMPLIANCE WITH LAWS. LESSEE shall not do or suffer to be done on or about the demised premises anything that would or does violate or conflict with any applicable law, ordinance, rule or regulation which is now in force or effect or which may hereafter be enacted or adopted by federal, state, county or municipal authority.

15. VACATING AND RESTORATION OF PREMISES. LESSEE agrees to vacate the demised premises upon completion of the term of this Lease Agreement, or the termination of this Lease Agreement prior to that time, and, upon vacating, LESSEE further agrees, at its sole cost and expense, (i) in accordance with all applicable laws to permanently and effectively abandon any monitoring well(s) that it has installed thereon according to the latest revision of the State Department of Water Resources Bulletins 74-81 and 74-90, Water Well Standards State of California and California Well Standards Water Wells, Monitoring Wells, Cathodic Protection Wells; Supplement to Bulletin 74-81, and (ii) to remove any other improvements it has installed thereon and to otherwise restore the premises to the condition that existed or would have existed in the absence of LESSEE’S use of such premises pursuant to this Lease Agreement. Said abandonment, removal and restoration shall be done to the reasonable satisfaction of CITY’S City Manager or his designee.

16. FAILURE TO VACATE OR RESTORE. In the event that LESSEE fails to vacate, abandon, or restore the wells as provided in paragraph 15, then CITY, or its authorized agents, may enter upon the premises and abandon the monitoring wells in accordance with paragraph 15 and/or remove all of LESSEE’S property therefrom and otherwise restore such premises. In such case, LESSEE agrees to reimburse CITY for any and all reasonable expenses it may so incur and waives any and all claims for damages against CITY, its agents or employees. Nothing herein shall be deemed a waiver of any rights of CITY to demand and obtain possession of the demised premises in accordance with law in the event of a violation on LESSEE’S part of any of the terms or conditions hereof.

17. EARLY TERMINATION BY LESSEE. In the event the demised premises are no longer needed by LESSEE for purposes of maintenance and use of groundwater
monitoring wells, upon sixty (60) days' written notice LESSEE may terminate this Lease Agreement and vacate and restore the premises in accordance with paragraph 15.

18. RELOCATION OF WELLS AND PROVISION OF REPLACEMENT PREMISES. In the event the demised premises are needed by CITY for municipal purposes so that relocation of monitoring wells installed thereupon by LESSEE is necessitated, upon sixty (60) days' written notice by CITY, LESSEE shall, at its sole cost and expense, abandon the wells and vacate and restore the premises in accordance with paragraph 15. CITY shall then make available to LESSEE replacement site(s) for the purposes of installing, maintaining, and using new monitoring wells, which replacement sites(s) shall be as near as possible in location to the demised premises. At that time, LESSEE may choose to install, maintain, and use new wells on the replacement site(s), or may elect to terminate this Lease Agreement. In the event LESSEE chooses to utilize the replacement site(s) for installation, maintenance, and use of new monitoring wells, and from and after the giving by CITY to LESSEE of written authorization to use the replacement site(s) for the same purposes as set forth in paragraph 4 hereof, such replacement site(s) shall be deemed to be the demised premises under this Lease Agreement.

19. PERMISSION. The Modesto City Council, by authorizing and approving this Lease Agreement, hereby gives its permission, as required by Section 5-1.501 of the Modesto Municipal Code, to the maintenance and use of the five (5) monitoring wells on the demised premises pursuant to this Lease Agreement.

20. NONWAIVER. Any waiver of any breach of covenants or conditions herein contained to be kept and performed by either party shall be effective only if in writing and shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the other party from declaring a forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.

21. COPARTNERSHIP DISCLAIMER. It is mutually understood and agreed that nothing in this Lease Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners between the parties hereto, or as constituting LESSEE as an agent or representative of CITY for any purpose or in any
manner whatsoever.

22. ATTORNEY'S FEES. In the event that either party hereto shall commence any legal action or proceeding against the other by reason of the alleged failure of the other to perform any term, covenant, or condition of this Lease Agreement by it to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover a reasonable attorney's fee to be fixed by the court, and such recovery shall include court costs and attorney's fee on appeal if any. As used herein, "the party prevailing" means the party in whose favor final judgment is rendered, and "legal action or proceeding" shall include arbitration.

23. TIME OF ESSENCE, BINDING UPON HEIRS, ETC. Time is of the essence of each and all the terms and provisions of this Lease Agreement and the terms and provisions of this Lease Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

24. NUMBER AND GENDER. All words used herein in the singular number shall include the plural and the present tense shall include the future and the masculine gender shall include the feminine and neuter, as the context may require.
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Lease Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. _______, adopted by the Council of the City of Modesto on the ___ day of _________, 2005, and LESSEE has caused this Lease Agreement to be executed.

CITY OF MODESTO, a municipal corporation

By _______________________________, City Manager

FMC CORPORATION

By _______________________________

Title _______________________________

ATTEST

By _______________________________, City Clerk

(SEAL)

APPROVED AS TO FORM:

By _______________________________, City Attorney
EXHIBIT B

DESCRIPTION OF MONITORING WELL SITES

1. Monitoring wells M-112 and M-113 are located approximately 650 feet northwest of the intersection of Elm Street and Jefferson Street, and also approximately 500 feet west of the entrance to the City of Modesto Corporation Yard from Jefferson Street. These wells are within an approximately 300-square foot parcel, identified as APN 002-001-002. Wells M-112 and M-113 are located along the fence line on the northwest parcel boundary parallel with the MID canal. Each well is located within a two-foot cubed concrete monument. The X-Y coordinates for the wells, in the State Plane Coordinate System, North American Datum 83 are: M-112 Easting 6413785.8423 and Northing 2057258.4115; M-113 Easting 6413781.7523 and Northing 2057245.4415.

2. Monitoring wells M-119 and M-120 are located approximately 950 feet southwest from the intersection of Tully Road and Coldwell Avenue. These wells are within an approximately 90-square foot parcel, adjacent to 9th Street. Wells M-119 and M-120 are located northeast of the northwest-bound traffic lanes of 9th Street. Each well is located within a two-foot cubed concrete monument. The X-Y coordinates for the wells, in the State Plane Coordinate System, North American Datum 83 are: M-119 Easting 6412494.9423 and Northing 2059963.6915; M-120 Easting 6412503.6823 and Northing 2059956.2715.

3. Monitoring well M-121 is located approximately 200 feet southwest of the intersection of Needham Street and Nellie Avenue. This well is within an approximately 600-square foot parcel, adjacent to 9th Street. Well M-121 is located under the north side of the 9th Street overpass. The well is located within a two-foot cubed concrete monument. The X-Y coordinates for the well, in the State Plane Coordinate System, North American Datum 83 are: M-121 Easting 6414382.9223 and Northing 2057975.8715.
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-550

A RESOLUTION APPROVING WAIVING PENALTIES FOR MODESTO IRRIGATION DISTRICT UTILITY USERS TAX PAYMENTS OF $58,871.52 FOR THE MONTH OF OCTOBER 2002 AND $66,700.42 FOR THE MONTH OF OCTOBER 2003 IN EXCHANGE FOR A WAIVER OF $243,755.77, OR A NEGOTIATED LESSER AMOUNT, IN LATE FEES AND PENALTIES, RECENTLY ASSESSED TO THE CITY OF MODESTO

WHEREAS, staff reported to the Finance Committee on June 27, 2005, that in October 2002 and October 2003 Modesto Irrigation District paid their Utility User’s Tax after the due date, making them subject to a 15% penalty under Modesto Municipal Code Section 8-2.908, and

WHEREAS, Modesto Irrigation District requested a waiver of said penalties, and

WHEREAS, at its meeting on June 27, 2005, the Finance Committee was reluctant to approve Modesto Irrigation District’s request for a waiver and directed staff to research whether the City of Modesto’s payment history with Modesto Irrigation District had been timely, and

WHEREAS, City of Modesto Accounting staff researched the City’s payment history to Modesto Irrigation District and found outstanding penalties for Domestic Water Treatment Plant service dating back to February 2003 in the amount of $243,755.77, and

WHEREAS, Section 2-3.406 of the Modesto Municipal Code states that where a fee or charge in excess of twenty-five thousand dollars is incorrectly levied or found to be un-collectable, such accounts will be referred to the City Manager who will promptly report them to the City Council with his/her recommendations, and
WHEREAS, at its meeting on September 26, 2005, the Finance Committee recommended that staff present to City Council the recommendation to allow City staff to waive Modesto Irrigation District penalties in the amount of $125,571.94 in exchange for a waiver of part or all of the City of Modesto’s penalties to Modesto Irrigation District in the amount of $243,755.77,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves waiving penalties assessed to Modesto Irrigation District in the amount of $125,571.94 in exchange for a waiver of penalties levied to the City of Modesto by Modesto Irrigation District in the amount of $243,755.77, or a negotiated lesser amount.

BE IT FURTHER RESOLVED that the Finance Director, or his designee, is hereby authorized to negotiate and process said waiver of penalties to the Modesto Irrigation District.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November 2005 by Councilmember Keating, 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, Jackman, Keating, Marsh, O’Bryant,
NOES: Councilmembers: None
ABSENT: Councilmembers: Hawn, Mayor Ridenour

ATTEST: 

APPROVED AS TO FORM:

By: 

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-551

A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PRINTING OF MODESTO AREA EXPRESS (MAX) RIDE GUIDES TO SAN DIEGUITO PRINTERS FOR AN INITIAL TWO (2) YEAR PERIOD, WITH THREE (3) ONE-YEAR CONTRACT EXTENSION OPTIONS FOR A TOTAL ESTIMATED ANNUAL COST OF $36,090.89

WHEREAS, the Public Works Department-Transit Division has requested the printing of Modesto Area Express (MAX) Ride Guides, and

WHEREAS, Resolution No. 2005-426 authorized the Purchasing Supervisor to solicit formal bids for the printing of Modesto Area Express (MAX) Ride Guides, and

WHEREAS, Modesto Area Express (MAX) Ride Guides are usually printed twice per year, and

WHEREAS, the ride guides are the only printed materials available to MAX patrons that show the transit system’s individual routes and schedules, and

WHEREAS, for each printing the information in the ride guide is updated to show transit riders new routes, schedule changes, service policies and any other information the patron might need to help them ride MAX more efficiently, and

WHEREAS, there is no charge to the public for the ride guides, and

WHEREAS, guides can be obtained either on the bus or at one of the MAX pass outlets throughout the City, and

WHEREAS, the Purchasing Division solicited formal bids for the printing of Modesto Area Express (MAX) Ride Guides on Request for Bid (RFB) 0506-06, and

WHEREAS, eighteen (18) vendors were solicited, and nine (9) of which were local vendors, and
WHEREAS, out of the eighteen (18) vendors solicited, two (2) chose to respond, and

WHEREAS, the Purchasing Division and the Public Works-Transit Division staff evaluated bids, and

WHEREAS, the maximum total annual cost for printing Modesto Area Express (MAX) Ride Guides, including sales tax, is approximately $36,090.89, and

WHEREAS, San Dieguito Printers of San Marcos CA., is the lowest responsive and responsible bidder, and

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

WHEREAS, this Request for Bid (RFB) process conforms to City Code, and

WHEREAS, the City Council has appropriated funds for printing Modesto Area Express (MAX) Ride Guides in account number 6540-165-1672-0205 (BUS FIXED ROUTE MAX OPERATIONS), and

WHEREAS, the Purchasing Division has coordinated the solicitation of and evaluation of bids for the printing of Modesto Area Express (MAX) Ride Guides with the Public Works Department-Transit Division staff,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby awards the bid and contract for the printing of Modesto Area Express (MAX) Ride Guides to San Dieguito Printers of San Marcos, CA., for an initial two (2) year period, with three (3) one-year contract extension options for a total estimated annual cost of $36,090.89.
BE IT FURTHER RESOLVED that the Purchasing Division is hereby authorized to issue a purchase order for the printing of Modesto Area Express (MAX) Ride Guides for a total estimated annual cost of $36,090.89.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of November 2005, by Councilmember Keating, 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, Jackman, Keating, Marsh, O’Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Mayor Ridenour

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-552

A RESOLUTION AUTHORIZING THE AWARD OF PROPOSAL AND CONTRACTS FOR THE FURNISHING OF POLYGRAPH EXAMINATION SERVICES FOR THE POLICE DEPARTMENT, TO CENTRAL COAST POLYGRAPH, INC., SCOTTS VALLEY, CA, AS THE “PRIMARY” CONTRACTOR, WITH DEE MOODY POLYGRAPH & INVESTIGATIONS, FOSTER CITY, CA, AS THE “SECONDARY” CONTRACTOR, FOR A TWO (2) YEAR AGREEMENT, WITH THREE (3) ONE-YEAR EXTENSION OPTIONS, FOR AN ESTIMATED ANNUAL COST OF $18,750

WHEREAS, the use of pre-employment polygraph investigation provides very useful information for the Police Department, which is used during the background investigation of applicants, and

WHEREAS, the Police Department does not have any qualified in-house polygraph examiners, nor does it have the staffing to dedicate an existing employee to perform polygraph examinations, and

WHEREAS, the start up costs and salary of an in-house examiner would exceed the cost associated with outsourcing this service, and

WHEREAS, on May 15, 2002, the Police Department entered into a three (3) year contract for polygraph examination services, as part of a pre-employment program on all sworn employment applicants, and

WHEREAS, polygraphs have proven to be a useful tool in identifying the most qualified candidates for police officer and reserve police officer positions for the City. Approximately 125 polygraph examinations are administered each year, and

WHEREAS, on April 26, 2005, Council approved Resolution No. 2005-186, authorizing the Purchasing Supervisor to formally solicit proposals for the furnishing of
polygraph examination services for the Police Department, for a two (2) year agreement, with three (3) one-year extension options, and

WHEREAS, the Purchasing Division solicited Request for Proposal No. 0405-27, for the furnishing of polygraph examination services, to fourteen (14) companies, posted the proposal on the City’s web site, and formally advertised as required by law, and

WHEREAS, of the fourteen (14) companies solicited, three (3) companies chose to respond, and

WHEREAS, of those three (3) companies, two (2) companies provided responsive and responsible proposals, and

WHEREAS, proposal language allows the award of proposal and contracts to more than one (1) company, in order to provide backup, or in case the “primary” contractor is unable to meet the City’s needs, and

WHEREAS, the secondary or third company could be awarded a specific job, only if the primary contractor is unable to perform the service, or if the primary contractor is unable to complete the specific job within the timeframe required by the City, and finally, if the primary contractor is unable to maintain acceptable quality standards required by the City, and

WHEREAS, based on being the lowest responsive and responsible proposal, City staff recommends the award of Proposal No. 0405-27 and contract for the furnishing of polygraph examination services, to Central Coast Polygraph, Inc., Scotts Valley, CA, as the “primary” contractor, for a two (2) year agreement, with three (3) one-year extension options, for an estimated annual cost of $18,750, and
WHEREAS, City staff also recommends the award of Proposal No. 0405-27 and contract for the furnishing of polygraph examination services, to Dee Moody Polygraph & Investigations, Foster City, CA, as the “secondary” contractor, for a two (2) year agreement, with three (3) one-year extension options,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby awards Proposal No. 0405-27 and contract for the furnishing of polygraph examination services, to Central Coast Polygraph, Inc., Scotts Valley, CA, as the “primary” contractor, for a two (2) year agreement, with three (3) one-year extension options, for an estimated annual cost of $18,750.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby awards Proposal No. 0405-27 and contract for the furnishing of polygraph examination services, to Dee Moody Polygraph & Investigations, Foster City, CA, as the “secondary” contractor, for a two (2) year agreement, with three (3) one-year extension options.

BE IT FURTHER RESOLVED that the City Manager or his designee, is hereby authorized to execute said contracts.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November 2005, by Councilmember Keating, 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, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Mayor Ridenour

ATTEST: 
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-553

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF MODESTO AND AMERICAN MEDICAL RESPONSE (AMR), WHEREIN AMR COMPENSATES THE CITY OF MODESTO $72,000 PER YEAR FOR FIRST RESPONDER AND RELATED MEDICAL SERVICES, PERFORMED BY THE MODESTO FIRE DEPARTMENT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT

WHEREAS, in July 2003, the City of Modesto and AMR entered into a "Pilot" Advanced Life Support (ALS) Program, and

WHEREAS, for over two years, the Modesto Fire Department has been delivering ALS services from one engine company at an annual cost of approximately $54,000, and

WHEREAS, it has been the goal of the City to operate the ALS program on a cost neutral basis, and

WHEREAS, by executing the above contract that has been negotiated with AMR, the current cost of ALS service will be offset and there will be enough funding for a second ALS engine in the City of Modesto, and

WHEREAS, having two (2) ALS engines would greatly benefit the citizens of Modesto,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the contract between the City and AMR.

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 9th day of November 2005, by Councilmember Keating, 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, Jackman, Keating, Marsh, O'Bryant
NOES: Councilmembers: None
ABSENT: Councilmembers: Hawn, Mayor Ridenour

Attest: ____________________________
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: ________________________________
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-554

A RESOLUTION AUTHORIZING THE ACTING PUBLIC WORKS DIRECTOR TO FORMALLY SOLICIT REQUESTS FOR BIDS TO PROVIDE CONSTRUCTION OF THE NEIGHBORHOOD CENTER AT MARSHALL PARK

WHEREAS, three City departments desire to develop The Neighborhood Center at Marshall Park located at the southwest corner of Sutter Avenue and Chicago Avenue on the existing Marshall Park site, and

WHEREAS, the City contracted with WLC architects to master plan the building, and

WHEREAS, the final design was presented to City Council on September 28, 2004, and

WHEREAS, WLC has been working on the construction documentation and engineering and is now ready to present the documents and specifications for bidding, and

WHEREAS, staff has produced a cost estimate of $5.3 million for this project based on the architect’s estimate which reflects current market conditions, and

WHEREAS, Modesto Municipal Code 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, the issuance of a formal Request for Bid for the construction of The Neighborhood Center at Marshall Park located at the southwest corner of Sutter Avenue and Chicago Avenue on the existing Marshall Park site will conform to Modesto Municipal Code Section 8-3.203,
NOW, THEREFORE, BE IT HEREBY 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 construction of The Neighborhood Center at Marshall Park, located at the southwest corner of Sutter Avenue and Chicago Avenue on the existing Marshall Park site 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 9th day of November 2005, by Councilmember Keating, 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, Jackman, Keating, Marsh, O’Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Mayor Ridenour

Attest: 
JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-555

A RESOLUTION AMENDING THE FY 05-06 OPERATING AND CAPITAL IMPROVEMENT PROGRAM BUDGET TO: A) DECREASE APPROPRIATION TO CIP PROJECT 1350-310-P503, NEW PARKLAND ACQUISITION, BY $536,515 AND RETURN TO CFF FUND RESERVE; B) TRANSFER $536,515 FROM CFF FUND TO SPECIAL FUND FOR CAPITAL OUTLAY ACCOUNT 1350-700-M163; C) DECREASE ACCOUNT 1300-800-8000-8003, SPECIAL FUND FOR CAPITAL OUTLAY BY $500,000; AND, D) INCREASE CIP PROJECT 1300-310-M163, NEIGHBORHOOD CENTER AT MARSHALL PARK, BY $1,036,515 TO FULLY FUND THE PROJECT

WHEREAS, three City departments desire to develop The Neighborhood Center at Marshall Park located at the southwest corner of Sutter Avenue and Chicago Avenue on the existing Marshall Park site, and

WHEREAS, the cost estimate for the project, including construction, is now $5.3 million, which reflects current market conditions, and

WHEREAS, the current budget for 1300-310-M163, Neighborhood Center at Marshal Park, Capital Improvement Project is $4,277,485, and

WHEREAS, $536,515 is available in Capital Improvement Program Project 1350-310-P503, New Parkland Acquisition, and

WHEREAS, $500,000 is available from the Special Fund for Capital Outlay Reserve, 1300-800-8000-8003, previously allocated to the Fire Department,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves amending the FY 05-06 operating and Capital Improvement Program budget to: a) decrease appropriation to CIP project 1350-310-P503, New Parkland Acquisition, by $536,515, return to CFF Fund Reserve; b) transfer $536,515 from CFF fund to the Special Fund for Capital Outlay account 1350-700-M163
c) decrease account 1300-800-8000-8003, Special Fund for Capital Outlay by $500,000; and, d) increase CIP project 1300-310-M163, Neighborhood Center at Marshall Park, by $1,036,515 to fully fund the project.

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 9th day of November 2005, by Councilmember Keating, 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, Jackman, Keating, Marsh, O’Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Mayor Ridenour

Attest: Jean Zahr

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-556

A RESOLUTION APPROVING ALLOCATION OF COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) SET-ASIDE FUNDS IN THE AMOUNT OF $206,372 FOR HABITAT FOR HUMANITY AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto receives annual entitlements from the U.S. Department of Housing and Urban Development (HUD) based on the population size, number of households living below poverty level and number of sub-standard housing units, and

WHEREAS, a percentage of the HOME Investment Partnership Program (HOME) entitlement plus estimated program income may be allocated for the purposes of providing assistance consistent with the functions of HOME funding, and

WHEREAS, Community Housing Development Organizations (CHDO) funds can be allocated only to non-profit organizations that have been approved by the City of Modesto as CHDOs, and are active in Modesto and operating in compliance with the HOME regulations, and

WHEREAS, on October 26, 2004, by Resolution No. 2004-564, the Modesto City Council authorized staff to send a letter to the three active and approved Community Housing Development Organizations (CHDOs) and invite them to submit a letter of interest if they are interested to apply for these funds, and

WHEREAS, on October 28, 2004, a request for “Letters of Interest” was sent, requesting interested organizations to submit a letter of interest by November 19, 2004, and
WHEREAS, Habitat for Humanity, Stanislaus, was the only CHDO to submit a “Letter of Interest,” and

WHEREAS, according to the “Letter of Interest,” Habitat for Humanity will use the CHDO Set-Aside Fund for one potential project and has verbally discussed several other possibilities, and

WHEREAS, at the December 17, 2004, meeting, the Citizens Housing and Community Development Committee (CH&CDC) recommended the allocation of $68,791 in CHDO Operating Funds to Habitat for Humanity, and further recommended staff to continue to work with Habitat for Humanity to clarify the proposed scope of the CHDO Set-Aside fund in the amount of $206,372, and

WHEREAS, on January 4, 2005, the City Council, by Resolution 2005-015, accepted staff’s recommendation to continue working with Habitat for Humanity to clarify the proposed scope of the CHDO Set-Aside fund in the amount of $206,372, and authorized staff to allocate the CHDO Set-Aside funds to Habitat for Humanity, Stanislaus if the revised proposal is in compliance with the HOME regulations, and staff and the CH&CDC approve the revised proposal, and

WHEREAS, on May 8, 2005, Habitat submitted a CHDO Set-Aside proposal for the Hope Village project and indicated that they are specifically seeking CHDO funds to compliment their technical assistance and building grants and that they will utilize the CHDO funds to pay for demolition of existing units, zoning approval, utility hook up fees, MID line repairs and improvements required to accommodate the addition of 20 units, as well as other required on- and off-site improvements, and
WHEREAS, on June 17, 2005, the CH&CDC reviewed additional information submitted by Habitat clarifying the use of the set aside CHDO funds and recommended staff to move forward and to submit Habitat’s proposal to the City Council along with the HOME CHDO Agreement allocating the $206,372 in CHDO set aside funds, and

WHEREAS, staff has been preparing the agreement and working with Habitat for Humanity to set up a timeline for the development of this project., and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the allocation of Community Housing Development Organization (CHDO) Set-Aside Funds in the amount of $206,372 for Habitat for Humanity, Stanislaus.

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

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of November 2005, by Councilmember Keating, 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, Jackman, Keating, Marsh, O’Bryant
NOES: Councilmembers: None
ABSENT: Councilmembers: Hawn, Mayor Ridenour

Attest: [Signature]
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: [Signature]
MICHAEL D. MILICH, City Attorney
A RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS, AWARDING THE BID, AND APPROVING A $68,800 CONSTRUCTION CONTRACT WITH COLLINS ELECTRICAL FOR THE PROJECT ENTITLED, “BRIGGSMORE AVENUE STREETLIGHT MODIFICATIONS,” AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AGREEMENT

WHEREAS, City staff has reviewed the plans and specifications for the project entitled, “Briggsmore Avenue Streetlight Modifications,” and recommends approval to the City Council, and

WHEREAS, the bids received for the “Briggsmore Avenue Streetlight Modifications” project were opened at 11:00 a.m., on October 4, 2005, and later tabulated by the Public Works Director for the consideration of the Council, and

WHEREAS, the Public Works Director has recommended that the bid of $68,800 received from Collins Electrical be accepted as the lowest responsible bid, and the contract be awarded to Collins Electrical,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the “Briggsmore Avenue Streetlight Modifications” project.

BE IT FURTHER RESOLVED that the Council accepts the bid of Collins Electrical in the amount of $68,800, and hereby awards Collins Electrical the contract for “Briggsmore Avenue Streetlight Modifications.”

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 9th day of November 2005, by Councilmember Keating, 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, Jackman, Keating, Marsh, O’Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Mayor Ridenour

Attest: _____________________
JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

By: _____________________
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-558

A RESOLUTION INCREASING THE PUBLIC WORKS DIRECTOR'S AUTHORITY TO ISSUE CHANGE ORDERS ON THE "2003/04 PAVEMENT MAINTENANCE PROGRAM – COFFEE ROAD RECONSTRUCTION FROM 365' NORTH OF SYLVAN AVENUE TO 2,500' NORTH OF SYLVAN AVENUE" PROJECT FROM 10 PERCENT ($99,325.65) TO 15 PERCENT ($148,988.48) OF THE ORIGINAL CONTRACT PRICE WITH TOP GRADE CONSTRUCTION, INC. TOTAL ESTIMATED COST OF THIS PROJECT IS $1,369,176.18, WHICH INCLUDES CONSTRUCTION CONTINGENCY, CONSTRUCTION ADMINISTRATION AND ENGINEERING DESIGN

WHEREAS, on March 22, 2005, the City Council awarded a $993,256.50 contract to Top Grade Construction, Inc. to construct the "2003/04 Pavement Maintenance Program – Coffee Road Reconstruction from 365' North of Sylvan Avenue to 2,500' North of Sylvan Avenue” project, and

WHEREAS, authority was granted to issue change orders on said project to 10 percent of the original contract price, and

WHEREAS, the contractor started work on May 23, 2005, and

WHEREAS, extra work is necessary that was not foreseen under the original contract to allow completion of the project to design requirements, and

WHEREAS, the cost of the extra work could be as high as 15 percent over the original contract price, an estimated $148,988.48, an amount which exceeds the Director’s authority for the project as established by the Council’s Change Order Approval Policy adopted by Resolution No. 94-443 on July 19, 1994, and

WHEREAS, the Director currently has authority to approve change orders up to a cumulative amount of $99,325.65, and seeks authority to issue change orders in an increased amount,
NOW, THEREFORE BE IT RESOLVED by the Council of the City of Modesto
that it hereby increases the Public Works Director's authority level to issue change
orders, from 10 percent ($99,325.65) to 15 percent ($148,988.48) of the original contract
price for the project entitled “2003/04 Pavement Maintenance Program – Coffee Road
Reconstruction from 365’ North of Sylvan Avenue to 2,500’ North of Sylvan Avenue.”

The foregoing resolution was introduced at a special meeting of the Council of the
City of Modesto held on the 9th day of November 2005, by Councilmember Keating,
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, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Mayor Ridenour

ATTEST:  

APPROVED AS TO FORM:

By  
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-559

A RESOLUTION APPROVING THE FINAL MAP OF THE HACIENDA DEL SOL UNIT NO. 2 SUBDIVISION IN THE VILLAGE ONE SPECIFIC PLAN AREA AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBDIVISION AGREEMENT WITH CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP

WHEREAS, CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP is possessed of a tract of land situated in the City of Modesto, County of Stanislaus, consisting of 16.125 acres, known as THE HACIENDA DEL SOL UNIT NO. 2 SUBDIVISION IN THE VILLAGE ONE SPECIFIC PLAN AREA ("SUBDIVISION"), and

WHEREAS, an application for a vesting tentative subdivision map was deemed complete by the Secretary of the Planning Commission on August 7, 2003, and

WHEREAS, a tentative map of said tract was approved by the Planning Commission of the City of Modesto on the 25th day of August, 2003, and

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

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

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

BE IT FURTHER RESOLVED that the City Manager and the City Clerk be authorized to execute and attest, respectively, an agreement with subdivider as required by Section 4-4.604(c) of the Modesto Municipal Code.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November 2005, by Councilmember Keating, 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, Jackman, Keating, Marsh, O’Bryant
NOES: Councilmembers: None
ABSENT: Councilmembers: Hawn, Mayor Ridenour

ATTEST: ________________________
JEAN ZAHR City Clerk

APPROVED AS TO FORM:

By: ________________________________
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-560

A RESOLUTION APPROVING A SECOND AMENDMENT TO THE AGREEMENT TO CONSTRUCT NECESSARY INFRASTRUCTURE BETWEEN THE CITY AND DEL VALLE CAPITAL CORPORATION, INC. (DEL VALLE) TO AUTHORIZE FINAL INSPECTION AND OCCUPANCY PERMITS FOR UP TO 58 ADDITIONAL HOMES IN THE GALAS BROTHERS UNIT NO. 1 AND UNIT NO. 2 SUBDIVISIONS, TO INCORPORATE THE TERMS AND PROVISIONS OF THE INTERIM WATER IMPROVEMENTS AGREEMENT DATED SEPTEMBER 30, 2005, TO PROVIDE FOR AN ADDITIONAL DEPOSIT OF FUNDS TO SECURE DEVELOPERS' CONTRIBUTION TO THE COST OF THE INTERIM WATER IMPROVEMENTS, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY

WHEREAS, the City entered into an agreement with Del Valle on December 23, 2003, which required Del Valle to complete necessary infrastructure prior to final inspection or occupancy of any home within the Galas Brothers Unit No. 1 and Unit No. 2 subdivisions ("Del Valle Agreement"), and

WHEREAS, due to unforeseen circumstances, Del Valle was unable to complete the necessary infrastructure improvements for the water system within the original time frames, and

WHEREAS, this delay impacted Del Valle’s ability to meet contractual obligations with developers, and

WHEREAS, Del Valle met with City staff to determine if interim steps could be taken to develop additional sources of water to allow for a certain number of homes to be occupied, and

WHEREAS, on January 25, 2005, by Resolution 2005-66, Council approved an Amendment to the Del Valle Agreement ("Amendment") to allow for phasing in of water
infrastructure associated with the Del Valle project in order to provide occupancy of up to 108 single-family residences prior to final infrastructure completion, and

WHEREAS, the Amendment also authorized the Director to allow occupancy of up to 50 additional homes if the Director determined that sufficient action had been taken to augment the water supply to serve the Del Valle project and there was sufficient water supply available to serve the West Modesto area, and

WHEREAS, as of September 21, 2005, the 108 homes authorized under the Amendment were constructed and permitted for occupancy, and

WHEREAS, West Yost & Associates (WYA) issued a Technical Memorandum – Phase 1 Study that concluded the City’s water system could not meet the minimum standards during high demand periods to existing or new customers without construction of additional infrastructure improvements in South Modesto, and

WHEREAS, based on information provided in the Phase 1 Study, a preliminary cost estimate of additional infrastructure improvements was determined to be up to, but not to exceed, $1.5 million, and

WHEREAS, on September 30, 2005, the Acting Public Works Director authorized occupancy permits for 50 additional units within the Galas Brothers subdivisions, pursuant to an agreement with Del Valle, D.R. Horton and Pulte Home Corporation (Del Valle/Developers) who agreed to pay up to $1,250,000 toward the interim water infrastructure improvements necessary to support these units and provided $1 million as a deposit toward their funding obligation, and

WHEREAS, on October 17, 2005, WYA issued a draft supplemental – Phase 2 Study, amended on November 7, 2005, which identified the necessary Interim Water
Improvements to guarantee adequate water supply to the requested 216 units [108 (Jan. 25, 2005) + 50 (Sep. 30, 2005) + 58 (Nov. 9, 2005)], and

WHEREAS, this Phase 2 Study, as amended, allowed the Acting Public Works Director to make the appropriate findings to recommend the Second Amendment to the Agreement to Construct Necessary Infrastructure between the City and Del Valle (“Second Amendment”) to release an additional 58 homes for final inspection and occupancy, and

WHEREAS, this Second Amendment also incorporates the September 30, 2005 Agreement regarding the Funding and Construction of Certain Interim Water Improvements in Return for City’s Issuance of Certain Permits between the City, Del Valle Corporation, D.R. Horton, Inc., and Pulte Home Corporation (“Interim Water Improvements Agreement”),

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Second Amendment to the Agreement between the City and Del Valle Capital Corporation, Inc. to authorize final inspection and occupancy permits for up to 58 additional homes in the Galas Brothers Unit No. 1 and Unit No. 2 subdivisions, to incorporate the terms and provisions of the Interim Water Improvements Agreement dated September 30, 2005, and to provide for an additional deposit of funds to secure Del Valle/Developers’ contribution toward the cost of the interim water improvements.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Second Amendment to Agreement on behalf of the City.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of November 2005, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Mayor Ridenour

ATTEST: ________________

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: _____________________

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-561

A RESOLUTION APPROVING AN AMENDMENT TO THE 2005-2006 CAPITAL IMPROVEMENT PROGRAM (CIP) TO INCREASE THE ALLOCATION TO SOUTH MODESTO INTERIM WATER IMPROVEMENTS PROJECT, ACCOUNT NO. MY-6181-480-W336, INITIALLY FUNDED AT $1 MILLION, WITH ADDITIONAL FUNDING TO BE PROVIDED FOR A TOTAL ESTIMATED AMOUNT OF $1,492,000, AS SPECIFIED IN THE SECOND AMENDMENT TO THE AGREEMENT TO CONSTRUCT NECESSARY INFRASTRUCTURE BETWEEN THE CITY AND DEL VALLE CAPITAL CORPORATION, INC. AND ATTACHMENTS

WHEREAS, the City entered into an agreement with Del Valle on December 23, 2003, which required Del Valle to complete necessary infrastructure prior to final inspection or occupancy of any home within the Galas Brothers Unit No. 1 and Unit No. 2 subdivisions ("Del Valle Agreement"), and

WHEREAS, due to unforeseen circumstances, Del Valle was unable to complete the necessary infrastructure improvements for the water system within the original timeframes, and

WHEREAS, this delay impacted Del Valle’s ability to meet contractual obligations with developers, and

WHEREAS, Del Valle met with City staff to determine if interim steps could be taken to develop additional sources of water to allow for a certain number of homes to be occupied, and

WHEREAS, on January 25, 2005 by Resolution 2005-66, Council approved an Amendment to the Del Valle Agreement with the City to allow for phasing in of water infrastructure to provide for occupancy of 108 homes prior to completion of the permanent water infrastructure, and
WHEREAS, as of September 21, 2005, the 108 homes were constructed and permitted for occupancy, and

WHEREAS, the Amendment also authorized the Director to allow occupancy of up to 50 additional homes if the Director determined that sufficient action had been taken to augment the water supply to serve the Del Valle project and there was sufficient water supply available to serve the West Modesto area, and

WHEREAS, West Yost & Associates issued a Technical Memorandum – Phase I Study that concluded the City’s water system could not meet the minimum standards during high demand periods to existing or new customers without construction of additional infrastructure improvements, and

WHEREAS, based on information provided in the Phase 1 Study, a preliminary cost estimate was determined to be up to, but not to exceed $1.5 million, and

WHEREAS, on September 30, 2005, the Acting Public Works Director authorized occupancy permits for 50 additional units within the Galas Brothers subdivisions, pursuant to an agreement with Del Valle, D.R. Horton and Pulte Home Corporation (Del Valle/Developers) who agreed to pay up to $1,250,000 toward the interim water infrastructure improvements necessary to support these units and provided $1 million as a deposit toward their funding obligation, and

WHEREAS, the proposed Capital Improvement project, Southwest Modesto Interim Water Improvements Project, will include the following infrastructure improvements, and incidental work thereto:

- Increase pumping capacity for Water Tank 6 by addition of a new 100 hp pump and redundant back up pump
- Increase pumping capacity for Water Tank 7 by addition of a new 100 hp pump and redundant backup pump or replace the existing pump with a
new single pump (& associated backup) capable of producing 2400 gallons per minutes (gpm)
• Construct 3800 linear feet of 12” pipeline to parallel the existing 10-inch pipeline along Lassen Avenue
• Increase pumping capacity for Water Tank 8 by addition of a new 100 hp pump and redundant backup pump or replace the existing pump with a new single pump (& associated backup) capable of producing 3700 gpm
• All items as shown on the CIP Budget Estimate,

and

WHEREAS, these infrastructure improvements will primarily be funded through the $1 million Del Valle/Developers’ contribution for this purpose which resides in South Modesto Interim Water Improvements Project, Account Number MY-6181-480-W336, and the additional $242,000 contribution which Del Valle/Developers will pay under the Second Amendment to the Del Valle Agreement, and

WHEREAS, the City’s contribution of $250,000 toward the interim water improvements costs, will be funded through Wellhead Treatment – Primary, Account MY-6180-430-W430, and

WHEREAS, the West Yost Phase 2 Study is completed and the total costs are estimated at $1,492,000 for the work described in the Study, as amended on November 7, 2005, and

WHEREAS, after receipt of the additional $242,000 from Del Valle/Developers, the Acting Public Works Director will authorize release of an additional 58 homes in the Galas Brothers subdivisions,

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an amendment to the 2005-06 Capital Improvement Program to increase the allocation to South Modesto Interim Water Improvements Project, initially funded at $1.0 million, with additional funding to be provided for a total cost of
$1,492,000, as specified in the Second Amendment to the Agreement to Construct Necessary Infrastructure between the City and Del Valle Capital Corporation and Attachments.

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

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of November 2005, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Mayor Ridenour

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney

ATTEST: JEAN ZAHN, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-562

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO CALLING AN ELECTION FOR THE PURPOSE OF SUBMITTING THE LEVY OF THE CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2004-1 (VILLAGE ONE #2) SPECIAL TAXES TO THE QUALIFIED ELECTORS OF THE TERRITORY PROPOSED TO BE ANNEXED TO THE DISTRICT (ANNEXATION NO. 10)

WHEREAS, this Council did, on September 13, 2005, adopt its Resolution No. 2005-456 (the "Resolution of Intention to Annex") to indicate its intention to annex certain territory to the City's Community Facilities District No. 2004-1 (Village One #2) (the "District") and authorize the levy of the District special taxes within the territory proposed to be annexed (the "Annexed Territory"), 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 set a hearing thereon; and

WHEREAS, pursuant to the Act, this Council did, by its Resolution No. 2004-681, adopted on December 14, 2004, clarify the Rate and Method of Apportionment with respect to the Maximum Special Taxes to be generated by a parcel that has been rezoned, and

WHEREAS, pursuant to the Act, this Council did, by its Resolution No. 2004-683, adopted on December 14, 2004 ("Resolution of Creation of Tax Zone #2), create Tax Zone #2 within the District; and

WHEREAS, the One-Time Facilities Special Tax component of the special taxes is higher in Tax Zone #2 than in Tax Zone #1; and
WHEREAS, the Annexed Territory will be annexed to and subject to the special
taxes in Tax Zone #2; and

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

WHEREAS, a map of the Annexed Territory, entitled “Annexation Map No. 10
of Community Facilities District No. 2004-1 (“Village One #2) of the City of Modesto,
County of Stanislaus, State of California,” was recorded on September 23, 2005, in the
Office of the County Recorder of the County of Stanislaus, in Book 4 of Maps of
Assessment and Community Facilities Districts, at page 29; and

WHEREAS, at the time and date set for the hearing (October 25, 2005 and
continued to November 9, 2005) pursuant to the Resolution of Intention to Annex, this
Council held the public hearing on Wednesday, November 9, 2005, as required by the
Act, related to the proposed annexation and the levy of the District special taxes for Tax
Zone #2 within the Annexed Territory, and all other matters set forth in the Resolution of
Intention to Annex; and

WHEREAS, at the hearing all persons desiring to be heard on all matters
pertaining to the proposed annexation and the levy of the District special taxes for Tax
Zone #2 within the Annexed Territory, and all other matters set forth in the Resolution of
Intention to Annex, including all interested persons for or against the proposed
annexation to the District and the levy of the District special taxes for Tax Zone #2 within
the Annexed Territory 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 related to the proposed annexation and the levy of the District special taxes for Tax Zone #2 within the Annexed Territory, and all other matters set forth in the Resolution of Intention to Annex; and

WHEREAS, written protests against the proposed annexation and the levy of the District special taxes for Tax Zone #2 within the Annexed Territory have not been filed with the City Clerk by 50 percent or more of the registered voters or six registered voters, whichever is more, residing within the District or residing within the Annexed Territory, or the owners of one-half or more of the land in the District, or in the Annexed Territory; and

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

WHEREAS, the City Clerk, being the Council’s designated election official for purposes of the election herein called, has concurred in the election date herein set forth for the election;

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

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. All prior proceedings taken with respect to the annexation of the Annexed Territory to the District, and the levy of the District special taxes for Tax Zone
Within the Annexed Territory were valid and in conformity with the requirements of the Act. This determination shall be final and conclusive upon all persons.

SECTION 3. The proposed annexation of the Annexed Territory to the District and the levy of the District special taxes for Tax Zone #2 within the Annexed Territory have not been precluded by majority protest pursuant to Section 5339.5 of the Act.

SECTION 4. As stated in the Resolution of Intention to Annex, it is the intention of this Council, subject to the approval of the qualified electors of the Annexed Territory, to annex the Annexed Territory to the District and levy the District special taxes for Tax Zone #2 within the Annexed Territory. Upon such approval the Council will be authorized to levy the District special taxes for Tax Zone #2 within the Annexed Territory.

SECTION 5. A special election is hereby called at which the question of levying the District special taxes for Tax Zone #2 within the Annexed Territory shall be submitted to the qualified electors of the Annexed Territory. The election shall be held in accordance with and subject to the Act, all of the terms of which shall, unless waived as herein provided, be applicable to such election. The ballot measure shall be substantially in the form attached hereto as Exhibit A.

SECTION 6. Fewer than 12 persons have been registered to vote within the Annexed Territory for each of the 90 days preceding the close of the hearing referenced herein. Accordingly, the vote shall be by the landowners of the Annexed Territory, and each such landowner shall have one vote for each acre or portion thereof that he or she owns within the Annexed Territory. The ballots shall be distributed by mail with return
postage prepaid, or by personal service, to each landowner, all as provided in Section 53326 of the Act.

Since the City Clerk has received an appropriate waiver of time limits and other requirements pertaining to the conduct of the election by the owner of all of the land in the Annexed Territory (the “Landowner”), the election shall be held on the 9th day of November 2005. 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.

SECTION 7. In accordance with Section 53327(b) of the Act, analysis and arguments, as required by Section 53327(a) of the Act are hereby waived, as the City Clerk has received the unanimous consent to such waivers from the Landowner.

SECTION 8. The publication of this Resolution as notice of the special election is hereby waived as the City Clerk has received the unanimous consent to such waiver from the Landowner.

SECTION 9. The Annexed Territory shall constitute a single election precinct for the purpose of holding the election.

SECTION 10. The City Clerk is hereby authorized to take any and all steps necessary for the holding of the election, and to perform and render all services and proceedings incidental to and in connection with the election.

SECTION 11. The City Clerk shall canvass the returns and certify the results of the election to this Council. If two-thirds or more of the votes cast are in favor of levying
the District special taxes for Tax Zone #2 in the Annexed Territory, this Council may thereafter, order the annexation of the Annexed Territory to the District and levy the District special taxes in the Annexed Territory in the amount and for the purposes specified in Resolution No. 2004-199 adopted by this Council on April 6, 2004 (the "Resolution of Formation"). The Special Tax will be levied only at the rate and apportioned only in the manner specified in the Resolution of Formation, as clarified by the City Council on December 14, 2004 (Resolution No. 2004-681) and at the rates set forth in Tax Zone #2 created by the City Council on December 14, 2004 (Resolution No. 2004-683).

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th of November 2005, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Mayor Ridenour

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney

MICHAEL D. MILICH, City Attorney
SAMPLE
OFFICIAL BALLOT

BALLOT NO. _____

CITY OF MODESTO
COMMUNITIES FACILITIES DISTRICT NO. 2004-1
(VILLAGE ONE #2)
ANNEXATION NO. 10
SPECIAL TAX ELECTION

November 9, 2005

___% OF LAND IN TERRITORY PROPOSED TO BE ANNEXED TO DISTRICT
NUMBER OF VOTES ENTITLED TO BE CAST _____
(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, telephone the Office of the
City Clerk of the City of Modesto for instructions as soon as possible at
(209) 577-5398, Monday through Friday, between the hours of 9:00 a.m. and noon

MARK YOUR CHOICE IN THIS MANNER ONLY:  ❑
MEASURE SUBMITTED TO VOTE OF VOTERS

Proposition A. Shall special taxes for Tax Zone #2, with maximum rates, method of
apportionment, and manner of collection as provided in Exhibit A to the City’s Resolution
No. 2004-683, entitled “A Resolution of the City Council of the City of Modesto Creating
Tax Zone #2 in Community Facilities District No. 2004-1 (Village One #2), Approving an
Increase in the One-Time Facilities Special Tax Therein, and Approving Updates of the
Rate and Method of apportionment of Special Taxes for the District”, adopted by the City
Council of the City of Modesto on December 14, 2004, which is incorporated herein by
this reference, be levied within the territory proposed to be annexed to Tax Zone #2 of the
City of Modesto Community Facilities District No. 2004-1 (Village One #2) pursuant to
the City’s Resolution No. 2005-456, entitled “A Resolution of the City Council of the City
of Modesto of Intention to Annex Territory to Community Facilities District No. 2004-1
(Village One #2) and to Authorize the Levy of Special Taxes therein (Annexation No. 10)”
adopted by the City Council of the City of Modesto on September 13, 2005, for the
purposes set forth in 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 an
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”,
adopted by the City Council of the City of Modesto on April 6, 2004, which is
incorporated herein by this reference?

BALLOT NO. _____

___% of land in territory proposed to be annexed to District

THIS BALLOT HAS A VALUE OF ___ VOTES
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-563

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO
CANVASSING THE RESULTS OF THE NOVEMBER 9, 2005, ELECTION HELD
WITHIN THE TERRITORY PROPOSED TO BE ANNEXED TO CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2004-1 (VILLAGE ONE #2), AND
ORDERING ANNEXATION OF THE TERRITORY TO THE DISTRICT
(ANNEXATION NO. 10)

WHEREAS, this Council is conducting proceedings pertaining to the annexation of
certain territory to the City’s Community Facilities District No. 2004-1 (Village One #2) (the
“District”) and the levy of the District special taxes (the “District Special Taxes”) within such
territory, as described in its Resolution No. 2005-456, entitled “A Resolution of the City Council
of the City of Modesto of Intention to Annex Territory to Community Facilities District
No. 2004-1 (Village One #2) and to Authorize the Levy of Special Taxes therein (Annexation
No. 10)” adopted on September 13, 2005, 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, pursuant to the Act, this Council did, by its Resolution No. 2004-681,
adopted on December 14, 2004, clarify the Rate and Method of Apportionment with respect to
the Maximum Special Taxes to be generated by a parcel that has been rezoned; and

WHEREAS, pursuant to the Act, this Council did, by its Resolution No. 2004-683,
adopted on December 14, 2004 (“Resolution of Creation of Tax Zone #2), create Tax Zone #2
within the District; and

WHEREAS, the territory to be annexed will be subject to the tax rates in Tax Zone #2;
and
WHEREAS, the owners of all the property within the territory proposed to be annexed to
the District waived those provisions related to the timing and conduct of the election referenced
in Sections 5, 6, 7 and 8 of this Council's Resolution No. 2005-562, adopted on November 9,
2005, and, as a result, this Council called an election within the territory proposed to be annexed
to the District (the "Election") for November 9, 2005, or as soon thereafter as practicable,
relative to the foregoing; and

WHEREAS, on November 9, 2005, the Election was held; and

WHEREAS, the City Clerk has certified that at the Election the proposition of levying
the District Special Taxes within the territory proposed to be annexed to the District was
approved by more than two-thirds (2/3) of the votes cast at the Election;

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

SECTION 1. The Election was duly and validly conducted in conformity with all
applicable laws pertaining thereto. It is hereby determined that the owners of the territory
proposed to be annexed is as set forth in the Certificate of City Clerk as to Distribution of
Official Ballots, submitted to this Council and on file with the City Clerk.

SECTION 2. The ballot proposition presented to the qualified electors of the territory
proposed to be annexed at the Election received at least two-thirds (2/3) of the votes cast at the
Election. A copy of the City Clerk's certificate of election results is attached.

SECTION 3. Pursuant to Section 53339.8 of the Act, it is hereby ordered that the
territory proposed to be annexed to the District pursuant to Resolution No. 2005-456 be annexed
to and be a part of the District with full legal effect, and that the District Special Taxes be levied
within the territory so annexed as set forth in the Resolution of Creation of Tax Zone #2.
SECTION 4. The City Clerk is hereby directed to enter this resolution on the minutes of this City Council, which shall constitute the official declaration of the result of the Election.

SECTION 5. The City Clerk is further authorized and directed to record an amendment to the Notice of Special Tax Lien with the County Recorder of the County of Stanislaus, within 15 days from the date hereof, in accordance with the provisions of Sections 3114.5 and 3117.7 of the California Streets and Highways Code.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of November 2005, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Mayor Ridenour

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney

ATTEST: JEAN ZAHR City Clerk
CERTIFICATE OF CITY CLERK

I, JEAN ZAHR, City Clerk of the City of Modesto, hereby certify that, pursuant to Resolution No. 2005-562, A Resolution of the City Council of the City of Modesto Calling an Election for the Purpose of Submitting the Levy of the City of Modesto Community Facilities District No. 2004-1 (Village One #2) Special Taxes to the Qualified Electors of the Territory Proposed to be Annexed to the District (Annexation No. 10) adopted on September 13, 2005, by the City Council of the City of Modesto, I did conduct the Special Tax Election on November 9, 2005, and that the election was conducted by mail or in person at the City Hall of the City of Modesto.

I further certify that the following shows the full text of the measure submitted to the voters at the election and the full and true totals of all votes cast for and against the measure.

**Proposition A.** Shall special taxes for Tax Zone #2, with maximum rates, method of apportionment, and manner of collection as provided in Exhibit A to the City’s Resolution No. 2004-683, entitled “A Resolution of the City Council of the City of Modesto Creating Tax Zone #2 in Community Facilities District No. 2004-1 (Village One #2), Approving an Increase in the One-Time Facilities Special Tax Therein, and Approving Updates of the Rate and Method of apportionment of Special Taxes for the District”, adopted by the City Council of the City of Modesto on December 14, 2004, which is incorporated herein by this reference, be levied within the territory proposed to be annexed to Tax Zone #2 of the City of Modesto Community Facilities District No. 2004-1 (Village One #2) pursuant to the City’s Resolution No. 2005-456, entitled “A Resolution of the City Council of the City of Modesto of Intention to Annex Territory to Community Facilities District No. 2004-1 (Village One #2) and to Authorize the Levy of Special Taxes therein (Annexation No. 10)” adopted by the City Council of the City of Modesto on September 13, 2005, for the purposes set forth in 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 an 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”, adopted by the City Council of the City of Modesto on April 6, 2004, which is incorporated herein by this reference?

TOTAL VOTES CAST: YES 2  NO 0

Jean Zahr  
City Clerk of the City of Modesto  
Dated: NOV 15, 2005

Exhibit A to 2005-563 Resolution - Canvassing (Annexation No.10 to CFD No. 2004-1) revised for 110905
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2005-564

A RESOLUTION APPROVING THE EXPENDITURE OF THE STATE OF CALIFORNIA SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND (SLESF) GRANT MONIES ALLOCATED TO THE CITY OF MODESTO IN THE 2005/2006 FISCAL YEAR

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

WHEREAS, the legislation has continued to be funded each subsequent year at $100 million, statewide, from sales and use taxes, for exclusive funding of municipal police services, in accordance with written requests submitted by the Chief of Police of a city to his or her governing body, convened in public hearing, and

WHEREAS, the purpose of the law is to ensure public safety, and

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

WHEREAS, the allocation to the City of Modesto for fiscal year 2005/2006 is $299,591, and

WHEREAS, the program requires a public hearing by local governmental Chiefs of Police or Sheriffs regarding spending plans, and

WHEREAS, these funds must be held in an interest-bearing Supplemental Law Enforcement Services Fund and must not be used to supplant existing budget funds, and

WHEREAS, the Modesto Police Department plans to budget these funds for technology, communication equipment, and field equipment, which is needed but was not included in the budget due to budget reductions,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, after holding a public hearing, that it hereby approves the Chief of Police's spending plan for the 2005/2006 State Supplemental Law Enforcement Services Fund allocation of $299,591 for technology, communication equipment, and field equipment, which was not included in the 2005/2006 budget.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November 2005, by Councilmember O’Bryant, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Mayor Ridenour

Attest: 

APPROVED AS TO FORM:

By: 

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2005-565

A RESOLUTION AMENDING THE 2005/2006 FISCAL YEAR BUDGET, TO
APPROPRIATE REVENUES AND EXPENSES FOR THE STATE OF
CALIFORNIA SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND
(SLESF) GRANT

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

WHEREAS, the legislation has continued to be funded each subsequent year at
$100 million, statewide, from sales and use taxes, for exclusive funding of municipal
police services, in accordance with written requests submitted by the Chief of Police of a
city to his or her governing body, convened in public hearing, and

WHEREAS, the purpose of the law is to ensure public safety, and

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

WHEREAS, the allocation to the City of Modesto for fiscal year 2005/2006 is
$299,591, and

WHEREAS, the Modesto Police Department plans to budget these funds for
technology, communication equipment, and field equipment which is needed but was not
included in the budget due to budget reductions, and

WHEREAS, the adopted 2005/2006 Police 05-06 SLESF Grant monies will be
applied to 0400-190-2922-5000 budget in the amount of $299,591 with these funds,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto,
after holding a public hearing, that it amends the 2005/2006 budget to appropriate
revenues and expenses to 0400-190-2922-5000 for technology, communication
equipment, and field equipment, which is needed but was not included in the budget due to budget reductions.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November 2005, by Councilmember O’Bryant, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Mayor Ridenour

Attest: 

APPROVED AS TO FORM:

By: 

MICHAEL D. MILICH, City Attorney
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO ORDERING THE CONSOLIDATION OF BOUNDARY MAPS RELATED TO COMMUNITY FACILITIES DISTRICT NO. 2004-1 (VILLAGE ONE #2)

WHEREAS, this Council has, pursuant to its Resolution No. 2004-127, “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,” adopted on March 2, 2004, conducted proceedings for the formation of the City’s Community Facilities District No. 2004-1 (Village One #2) (the “District”) pursuant to Chapter 2.5 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, as a part of the proceedings, a map of the District was approved by this Council and recorded with the County Recorder of the County of Stanislaus in accordance with the Act; and

WHEREAS, as a part of subsequent proceedings related to annexations to the District, maps of the annexed areas were also approved by this Council and recorded with the County Recorder in accordance with the Act; and

WHEREAS, Section 3113.5 of the California Streets and Highways Code authorizes this Council to direct the consolidation of previously recorded maps;

NOW, THEREFORE, BE IT RESOLVED, ORDERED AND FOUND, by the City Council of the City of Modesto, that:
SECTION 1. The foregoing recitals are true and correct.

SECTION 2. The map of the District and the map related to each annexation thereto, being Annexation Nos. 1 through 10, heretofore recorded with the County Recorder pursuant to Sections 3100 and 3110.5 of the California Streets and Highways Code, are hereby ordered consolidated into a single map.

SECTION 3. The City Clerk is directed to cause the consolidated map to be prepared and recorded with the County Recorder pursuant to Sections 3113 and 3113.5 of the California Streets and Highways Code. Upon such recordation, the map of the District, as originally recorded, as well as the maps related to each of the referenced annexations, shall be deemed superseded.

SECTION 4. The title of the map shall be “Boundaries of City of Modesto Community Facilities District No. 2004-1 (Village One #2)” and references on the face of the map, and the cross-indexing by the County Recorder, shall include all maps being superseded.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 9th day of November 2005, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers:  None

ABSENT: Councilmembers:  Hawn, Mayor Ridenour

ATTEST: Jean Zahr

JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-567

A RESOLUTION OF THE COUNCIL OF THE CITY OF MODESTO
CONFIRMING THE CANVASS OF THE REGULAR MUNICIPAL ELECTION
WHICH WAS HELD IN THE CITY OF MODESTO ON NOVEMBER 8, 2005,
AND DECLARING THE RESULTS OF SAID ELECTION

WHEREAS, on Tuesday, November 8, 2005, a Regular Municipal Election was held in the City of Modesto (herein called “City”) and in the Modesto High School District (herein called “District”) of Stanislaus County to elect the following:

1. One Councilmember to Chair No. 2 for a four year term;
2. One Councilmember to Chair No. 4 for a four year term;
3. One Councilmember to Chair No. 5 for a four year term;
4. Four Board of Education Members for four year terms; and

WHEREAS, said election was held on Tuesday, November 8, 2005, in accordance with law and the proceedings of this Council, and the votes thereat received and canvassed, and the returns thereof ascertained, determined, and declared in all respects as required by law, and

WHEREAS, the City Clerk canvassed the returns of said regular municipal election in accordance with law, and certified the results of the election of the Council by a Certificate of Canvass and Statement of Votes dated November 18, 2005, a copy of which is attached hereto marked Exhibit “A” and made a part hereof,

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

SECTION 1. Said canvass by the City Clerk as shown on the Certificate of Canvass and Statement of Votes and the results of the election are hereby ratified, confirmed and approved.
SECTION 2. That in accordance with Section 10264 of the Elections Code, a copy of said Certificate of Canvass and Statement of Votes, which is attached hereto marked as Exhibit “A” and made a part hereof, shows a complete tabulation of the following:

(A) The whole number of votes cast in the City.
(B) The whole number of votes cast in the Modesto High School District.
(C) The names of the persons voted for.
(D) For what office each person was voted for.
(E) The number of votes given in the City to each person.

SECTION 3. That, at said Regular Municipal election, the following named persons having received a majority of the votes cast for the elective offices, as designated on Exhibit “A”, are hereby declared to be duly and regularly elected to such office, and the City Clerk is hereby directed to issue a Certificate of election to each such persons, certifying his/her election to the office appearing after his/her name, and to administer to each of said persons the oath of office prescribed by the Constitution and laws of the State of California and the Chart of the City, to wit:

Janice Keating Councilmember for a term of four years, Chair No. 2, Modesto City Council.

Nancy Cline Member, Modesto Board of Education, for a term of four years.

Steve Collins Member, Modesto Board of Education, for a term of four years.

Belinda Rolicehek Member, Modesto Board of Education, for a term of four years.

Cindy Marks Member, Modesto Board of Education, for a term of four years.
SECTION 4. The Charter provides that if no candidate for an elective office of
the City receives a majority vote at a regular municipal election, a Second Regular
Municipal Election shall be held by mail ballot at which the two candidates receiving the
highest number of votes at the first election shall have their names on the ballot for
election of the office, therefore, the two candidates receiving the highest number of votes
for City Council Chair 4, Will O'Bryant and Dave Lopez, and the two candidates
receiving the highest number of votes for City Council Chair 5, Kristin Olsen and Dennis
V. Jackman shall have their names on the ballot for a run-off election to be held on
Tuesday, December 13, 2005.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 22nd of November 2005, by Councilmember Dunbar,
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

JEAN ZAHRI, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
CERTIFICATE OF CANVASS AND STATEMENT OF VOTE
CITY OF MODESTO REGULAR MUNICIPAL ELECTION
November 8, 2005

I, Jean Zahr, City Clerk of the City of Modesto, do hereby certify that I caused the Stanislaus County Clerk’s Office, on November 22, 2005, to publicly canvass the returns of the City of Modesto Regular Municipal Election held on November 8, 2005, in accordance with Modesto City Council Resolution 67-36. The following are the results of said election:

<table>
<thead>
<tr>
<th>CANDIDATES</th>
<th>NUMBER OF VOTES</th>
<th>PERCENTAGE OF VOTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chair 2, Modesto City Council</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Janice Keating</td>
<td>27,475</td>
<td>94.36%</td>
</tr>
<tr>
<td>Write-In Candidates</td>
<td>1,642</td>
<td>5.64%</td>
</tr>
<tr>
<td>Total Votes Cast for Chair 2</td>
<td>29,117*</td>
<td>100.00%</td>
</tr>
<tr>
<td>*Number of Votes for Write-In Candidates includes ballots cast for Marcus Nugent, Qualified Write-In Candidate for Chair 2, and other Non-Qualified Write-In Candidates for Chair 2</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Chair 4, Modesto City Council       |                 |                   |
| Ralph Saxton                     | 5,810           | 16.96%            |
| Dave Lopez                       | 12,195          | 35.60%            |
| Will O’Bryant                    | 16,006          | 46.73%            |
| Write-In Candidates             | 244             | .71%              |
| Total Votes Cast for Chair 4     | 34,255          | 100.00%           |

| Chair 5, Modesto City Council       |                 |                   |
| George B. Sharp                   | 6,336           | 18.18%            |
| Kristin Olsen                     | 17,375          | 49.86%            |
| Denny Jackman                     | 10,893          | 31.26%            |
| Write-In Candidates              | 243             | .70               |
| Total Votes Cast for Chair 5      | 34,847          | 100.00%           |

| Member, Modesto Board of Education – 4 year term |                 |                   |
| Nancy Cline                        | 26,333          | 20.68%            |
| Steve Collins                      | 25,074          | 19.69%            |
| Belinda Rolichcheck               | 20,303          | 15.94%            |
| Robin Brown                       | 17,793          | 13.97%            |
| Cindy Marks                        | 20,177          | 15.84%            |
| Bob Fromuth                        | 17,219          | 13.52%            |
| Write-In Candidates               | 459             | .36%              |
| Total Votes Cast for Board of Education | 127,358   | 100.00%           |

<table>
<thead>
<tr>
<th>VOTER TURNOUT:</th>
<th>TOTAL REGISTERED VOTERS</th>
<th>TOTAL TURNOUT</th>
<th>TURNOUT PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Modesto Council Seats</td>
<td>97,099</td>
<td>41,098</td>
<td>42.33%</td>
</tr>
<tr>
<td>Modesto High School District</td>
<td>123,191</td>
<td>51,267</td>
<td>41.62%</td>
</tr>
</tbody>
</table>

JEAN ZAHR
City Clerk/Auditor
City of Modesto
November 22, 2005
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-568

A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF ARNOLD BLANK FROM THE GOLF COURSES ADVISORY COMMITTEE

WHEREAS, ARNOLD BLANK was appointed a member of the Golf Courses Advisory Committee on July 25, 2000, and

WHEREAS, ARNOLD BLANK has tendered his resignation from the aforementioned committee,

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

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, 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. 2005-569

A RESOLUTION ADOPTING THE POPULATION-BASED COST-SHARING FORMULA FOR THE STANISLAUS REGIONAL 9-1-1 CENTER THAT WAS APPROVED BY THE 9-1-1 COMMISSION ON AUGUST 25, 2005

WHEREAS, on August 27, 1996 the City of Modesto and Stanislaus County entered into an “Emergency Dispatch Agreement”, and

WHEREAS, on September 1, 1999 this agreement expired and the City of Modesto and Stanislaus County entered into a new joint powers agreement for emergency dispatch services, and

WHEREAS, by way of this agreement the Consolidated Emergency Dispatch Agency (Agency) was created, and

WHEREAS, this agreement indicated that the cost-sharing formula utilized in the 1996 agreement would remain in place until a new cost-sharing formula was adopted by the Agency, and

WHEREAS, in 1999, the Warner Group – Management Consultants conducted a cost-sharing model study, and

WHEREAS, this study looked at three alternative cost-share models used by other regional dispatch centers, and

WHEREAS, available records indicate that the Agency Commission reviewed the consultant’s report but a new cost-sharing formula was never adopted, and

WHEREAS, on May 12, 2005, the Joint Powers Agency Commission authorized Paul Stein, Director Stanislaus Regional 9-1-1 to work with the City of Modesto and
Stanislaus County finance officials to meet and discuss options for the cost-sharing formula for Stanislaus Regional 9-1-1 (SR 9-1-1), and

WHEREAS, the 9-1-1 Center Cost Share Formula Team consisting of representatives from SR 9-1-1, the Modesto Police Department, the Modesto Fire Department, the City Manager's Office, the City Finance Department, the Auditor-Controller's Office, the Chief Executive Office, the County Fire Warden's Office, and the Sheriff's Office was formed to study this issue, and

WHEREAS, the team met as a group on June 16, 2005, June 23, 2005, and July 14, 2005 to review the Warner Group study and to discuss possible cost-sharing options, and

WHEREAS, on July 14, 2005, the Cost Share Formula Team reviewed five cost-sharing formula alternatives, and

WHEREAS, after much discussion and analysis the Cost Share Formula Team reached the consensus that the Population Model would be the best fit for SR 9-1-1, and

WHEREAS, the Population Model will be based on the May 2005 California Department of Finance population statistics for Stanislaus County, will take effect July 1, 2006, and will be updated annually thereafter, and

WHEREAS, to ensure that the Population Model continues to accommodate the agencies of SR 9-1-1, the 9-1-1 Center Cost Share Formula Team will conduct a review of the model every three years, and

WHEREAS, during this review the team will compare the cost share burdens associated with the Population Model and the New Santa Cruz Model with the first review scheduled to take place prior to the adoption of the FY 2009/2010 budget, and
WHEREAS, the Population Model was presented to and approved by the 9-1-1 Commission at its open and public meeting held on August 25, 2005,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the adoption of the population-based cost-sharing formula for the Stanislaus Regional 9-1-1 Center that was approved by the 9-1-1 Commission.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, 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

JEAN ZAHNR, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-570

A RESOLUTION RESTATING AND AMENDING CITY COUNCIL
RESOLUTION NO. 2003-626 TO GRANT AN ADDITIONAL TWO YEARS TO
FULFILL THE CONDITIONS OF ABANDONMENT OF THE PORTION OF
BEYER PARK DRIVE RIGHT-OF-WAY BETWEEN CLARATINA AVENUE
AND INSPIRATION DRIVE (FROWEIN; CHAMBERS)

WHEREAS, Naja & Michael Frowein and Maurice Chambers filed an application
to vacate and abandon a portion of the Beyer Park Drive right-of-way, between
Inspiration Drive and the future path of Claratina Avenue ("Proposed Abandonment"),
and

WHEREAS, Streets and Highways Code Section 8320 et seq. prescribes the
procedures to vacate and abandon public rights-of-way, and

WHEREAS, a title report was submitted by the project applicants with the
abandonment request which shows that fee title to the property underlying the proposed
abandonment belongs to the adjacent land owners who are proponents of the
abandonment, and

WHEREAS, the Proposed Abandonment was referred to affected City
departments and local utility companies, and no objection to the Proposed Abandonment
has been received, and

WHEREAS, utility easements exist within the subject right-of-way that must be
retained sufficient in width to serve existing utility lines and to allow continued
maintenance of said lines, and
WHEREAS, Government Code Section 65402 requires that prior to abandoning a public right-of-way, the Planning Commission shall make a determination as to whether the abandonment is consistent with the General Plan, and

WHEREAS, a public hearing was held by the Planning Commission on October 20, 2003, in the Tenth Street Chambers, located at 1010 Tenth Street, Modesto, California, at which hearing both oral and documentary evidence was received and considered regarding the proposed vacation and abandonment, and

WHEREAS, by Planning Commission Resolution No. 2003-63, the Planning Commission rendered a report finding that the Proposed Abandonment is in conformance with the Modesto Urban Area General Plan and recommended that the Council vacate and abandon the alley, and

WHEREAS, a duly noticed public hearing was held by the Council of the City of Modesto on Tuesday, November 25, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which time all persons interested in or objecting to the Proposed Abandonment were afforded the opportunity to appear, and

WHEREAS, three notices were posted in the proposed right-of-way abandonment area for two successive weeks prior to the hearing, and notice was published in the Modesto Bee for two successive weeks prior to the hearing, per Streets & Highways Code sections 8323 and 8332, respectively, and

WHEREAS, all things and acts necessary to be done as required by the State of California Streets and Highways Code, Section 8300 through 8363: Public Streets,
Highways and Service Easements Vacation Law, in order to vacate and abandon the subject right-of-way have been done and accomplished, and

WHEREAS, a hearing notice has been published in the Modesto Bee and posted at the project site for two successive weeks prior to the Council hearing in accordance with State of California Streets and Highways Code, Section 8300 through 8363, and

WHEREAS, the Council of the City of Modesto has determined that the Proposed Abandonment be approved conditioned on the construction of needed improvements and the reservation of the necessary utility easements to ensure that the abandoned right-of-way functions in a manner not detrimental to the public welfare, and

WHEREAS, on November 25, 2003, the Council of the City of Modesto reviewed the Initial Study (EA/C&ED 2003-85) for the proposed right-of-way abandonment and adopted Resolution No. 2003-627, which determined that the potential environmental effects of the Proposed Abandonment are adequately addressed within the context of the previously-adopted Mitigated Negative Declaration for the North Beyer Park Specific Plan, and

WHEREAS, on October 31, 2005, applicants filed a written request for an eighteen (18) month extension for the abandonment of Beyer Park Drive with the City of Modesto Community and Economic Development Department, and

WHEREAS, Resolution No. 2003-626 is hereby amended solely with respect to the timeframe in which the applicants must fulfill the conditions precedent to the abandonment as set forth in 1.a. thru 1.c. below, and

WHEREAS, Resolution No. 2003-626 is reaffirmed in every other respect and restated in its entirety herein for the sake of administrative convenience.
NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto finds and determines as follows:

1. That the portion of Beyer Park Drive to be abandoned is unnecessary for present or future pedestrian or vehicular use.

2. That Environmental Assessment No. EA C&ED 2003-85 determined that the potential environmental effects of the subdivision are adequately addressed within the context of the previously-adopted Mitigated Negative Declaration for the North Beyer Park Specific Plan.

3. That the vacation and abandonment of the portion of Beyer Park Drive right-of-way between Inspiration Drive and the future path of the Claratina Expressway, is in conformance with the City of Modesto General Plan.

BE IT FURTHER RESOLVED that the Council hereby orders and declares the vacation and abandonment of the portion of the Beyer Park Drive right-of-way, between Inspiration Drive and the future path of Claratina Avenue, subject to the following conditions:

1. The applicants shall secure and construct the following improvements to the satisfaction of the Engineering and Transportation Director:

   a. Construction of an eight-foot masonry wall across the opening in the existing wall along the south side of the Claratina Avenue right-of-way at Beyer Park Drive.

   b. Demolition and removal of the pavement and concrete within the boundaries of the abandoned right-of-way.

   c. Construction of curb, gutter and sidewalk along the north side of Inspiration Drive/Court.
Said right-of-way to be vacated and abandoned is more particularly described in Exhibit “A” attached hereto, and by this reference made a part hereof as though set forth in full herein.

BE IT FURTHER RESOLVED that in the event the required conditions have not been fulfilled by November 25, 2007, the conditional right-of-way abandonment shall expire and the Beyer Park Drive shall remain as public right-of-way.

BE IT FURTHER RESOLVED that the Council hereby approves the reservation of public utility easements within the portion of Beyer Park Drive proposed to be abandoned, as follows: a) a 15-foot-wide public utility easement as described in Exhibit “B” attached hereto, and by this reference made a part hereof as though set forth in full herein; and b) the extension of the existing 10-foot-wide public utility easement along the north side of Inspiration Drive, across the abandoned right-of-way area as described in Exhibit “C” attached hereto, and by this reference made a part hereof as though set forth in full herein.

BE IT FURTHER RESOLVED that the City Clerk shall hold this resolution of abandonment until conditions 1.a. through 1.c. above have been fully satisfied to the satisfaction of the City’s Community and Economic Director and not less than five (5) working days after said conditions have been fully satisfied, the City Clerk shall cause a certified copy of this resolution, attested under seal of the City, to be recorded in the Office of the County Recorder of Stanislaus County.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 22nd day of November 2005, by Councilmember
Jackman, who moved its adoption, which motion being duly seconded by
Councilmember Marsh, was upon roll call carried and the resolution adopted by the
following vote:

AYES: Councilmembers: Dunbar, Hawn, 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
PARCEL ONE:
THE WEST 1/2 BEYER PARK DRIVE LYING ADJACENT TO AND WEST OF LOT 1 IN BLOCK 15019 OF ROSE LANE NO. 5 PER MAP FILED FEBRUARY 11, 2000 IN BOOK 38 OF SUBDIVISIONS AT PAGE 97, STANISLAUS COUNTY.

SAID LOT 1 IS APN: 082 15 42
COMMONLY KNOWN AS 1449 INSPIRATION DRIVE, MODESTO CA 95357

PARCEL TWO:
THE EAST 1/2 OF BEYER PARK DRIVE LYING ADJACENT TO AND EAST OF LOT 40 IN BLOCK 15004 ROSE LANE NO. 5 PER MAP FILED FEBRUARY 11, 2000 IN BOOK 38 OF SUBDIVISIONS AT PAGE 97, STANISLAUS COUNTY.

SAID LOT 40 IS APN: 082 15 40
COMMONLY KNOWN AS 1501 INSPIRATION DRIVE, MODESTO CA 95357
Exhibit "B"
LEGAL DESCRIPTION
15' SANITARY SEWER EASEMENT

All that certain real property in the southwest quarter of Section 3, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

Commencing at the intersection of the centerline of 50.00 feet wide Inspiration Drive with the centerline of 60.00 feet wide Beyer Park Drive as shown on the map of Rose Lane No. 5, filed March 1, 2000 in Volume 38 of Maps, Page 97, Stanislaus County Records; thence North 0° 59' 13" West on the centerline of Beyer Park Drive, 25.00 feet to the POINT OF BEGINNING of this description; thence South 89° 00' 47" West, parallel with and 25.00 feet north of the centerline of Inspiration Drive, 13.50 feet; thence North 0° 59' 13" West, parallel with and 13.50 feet west of the centerline of Beyer Park Drive, 117.00 feet; thence North 89° 33' 12" East, parallel with and 67.50 feet south of the centerline of Claratina Avenue, 15.00 feet; thence South 0° 59' 13" East, parallel with and 1.50 feet east of the centerline of Beyer Park Drive, 116.86 feet; thence South 89° 00' 47" West, parallel with and 25.00 feet north of the centerline of Inspiration Drive, 1.50 feet to the point of beginning,

Date Signed: November 17, 2003
ROSE LANE 
NO. 5

BEING A SUBDIVISION OF A PORTION 
OF PARCEL 4, AS SHOWN IN BOOK 47 
OF PARCEL MAPS AT PAGE 9, & LYING 
WITHIN THE SOUTHWEST QUARTER OF 
SECTION 3, TOWNSHIP 3 SOUTH, 
RANGE 9 EAST, MOUNT DIABLO BASE & 
MERIDIAN, CITY OF MODESTO, COUNTY 
OF STANISLAUS, STATE OF CALIFORNIA 

JANUARY, 2000

MID-VALLY ENGINEERING 
900 "H" STREET - SUITE "G" 
MODESTO, CALIFORNIA 95354 
(209) 526-4214

MILESTONE
CIRCLE

Sheet 4 of 4 Sheets  
Job No. 38-11-97
LEGAL DESCRIPTION
10' PUBLIC UTILITY EASEMENT

All that certain real property in the southwest quarter of Section 3, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

Commencing at the intersection of the centerline of 50.00 feet wide Inspiration Drive with the centerline of 60.00 feet wide Beyer Park Drive as shown on the map of Rose Lane No. 5, filed March 1, 2000 in Volume 38 of Maps, Page 97, Stanislaus County Records; thence North 0° 59' 13" West on the centerline of Beyer Park Drive, 25.00 feet to the POINT OF BEGINNING of this description; thence South 89° 00' 47" West, parallel with and 25.00 feet north of the centerline of Inspiration Drive, 45.00 feet to the point of cusp with a tangent curve concave northwest, having a radius of 15.00 feet and a central angle of 70° 31' 44"; thence northeasterly on the arc of said curve 18.46 feet; thence North 89° 00' 47" East, parallel with and 35.00 feet north of the centerline of Inspiration Drive, 61.72 feet to the beginning of a non-tangent curve concave northeasterly having a radius of 15.00 feet and a central angle of 70° 31' 44" and from which point the radius point of said curve bears North 69° 32' 31" East; thence southeasterly on the arc of said curve 18.46 feet to the point of cusp; thence South 89° 00' 47" West, parallel with and 25.00 feet north of the centerline of Inspiration Drive, 45.00 feet to the point of beginning.
BEING A SUBDIVISION OF A PORTION OF PARCEL 4, AS SHOWN IN BOOK 47 OF PARCEL MAPS AT PAGE 1, LAYING WITHIN THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 9 SOUTH, RANGE 9 EAST, MOUNT DIABLO BASE & MERIDIAN, CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA

JANUARY, 2000

MID-VALLEY ENGINEERING
209-526-4214

SANCTUARY COURT

MILESTONE CIRCLE

ROSE LANE NO. 5

38-M-97
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-571

A RESOLUTION AUTHORIZING THE AWARD OF PROPOSAL AND CONTRACT FOR THE FURNISHING OF ARMED/UNIFORMED SECURITY GUARD SERVICES TO NCLN20, INC., OAKLAND, CA, FOR A TWO (2) YEAR AGREEMENT, WITH THREE (3) ONE-YEAR EXTENSION OPTIONS, FOR AN ESTIMATED ANNUAL COST OF $344,558 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT

WHEREAS, the Parks, Recreation and Neighborhoods Department, Public Works Department, Modesto City/County Airport and Joint Powers Agency (JPA) have requested the furnishing of armed/uniformed security guard services for the following locations; American Legion Hall, Amtrak Station, Bus Maintenance Facility, Modesto City/County Airport, Transportation Center, Water Quality Control (WQC), 9th, 10th and 11th Street Parking Garages, and the 1010 Tenth Street Place (TSP), and

WHEREAS, for the American Legion Hall this facility is rented to the public for special events held on the weekends, and

WHEREAS, uniformed security guard service is required for these events to help ensure public safety, and

WHEREAS, the Modesto Police Department (MPD) determines the number of security guards needed, depending on the type and size of the event, and

WHEREAS, this number can vary from two (2) to eight (8) security guards, and

WHEREAS, currently the Parks, Recreation and Neighborhoods Department requires the renters of the Hall to contract directly with the security guard company, so there are no expenditures or revenues to the Parks, Recreation and Neighborhoods Department, and
WHEREAS, problems arise when the renter provides proof of a security contract and subsequently cancels the contract, and

WHEREAS, there are currently no controls in place to prevent the renter from canceling the security contract, and

WHEREAS, staff proposes that the City contract the security services and charge the security services directly to the renter, and

WHEREAS, an hourly fee equivalent to the current cost of security services plus 1% for the administration of the services would be charged to the user at the time of the reservation, and

WHEREAS, the number of security guards needed for the event would be determined by the MPD, and

WHEREAS, by contracting the security services, the City hopes to eliminate current security concerns as a result of renter’s canceling their security contracts after providing proof of contracted services to the City, and

WHEREAS, security staff hired through a contract with the City should provide the necessary means to alleviate potential liability issues, and

WHEREAS, for the Amtrak Station uniformed security guards provide enforcement of the no loitering laws and added security to the Amtrak Station, and

WHEREAS, during peak holiday travel periods (Christmas/New Years, Thanksgiving, Memorial Day, 4th of July, Labor Day, etc.), on-site guard service is provided from station closing to station opening, and
WHEREAS, for the other times of the year when the station is closed, a “pass-through” patrol makes four (4) to five (5) random unscheduled vehicle and walking passes through the station, and

WHEREAS, the Federal Transit Administration (FTA) requires transit agencies to spend a minimum of 1% of their annual FTA allocation on security projects, and

WHEREAS, if the City does not meet this requirement, it must formally certify that there is no need for transit security, and

WHEREAS, a portion of the rent paid by the County and the Greyhound Bus Co. for use of the Transportation Center is used to offset City-provided security guard service at the center, and

WHEREAS, for the Bus Maintenance Facility armed/uniformed security guards provide security to employees collecting the money received from bus fares, and

WHEREAS, when buses return to the yard in the evening, fare boxes are removed from the buses and the resulting tickets and cash receipts are consolidated with cash and coins, and then delivered to the bank for deposit, and

WHEREAS, having an on-site armed security guard during this transfer period is a positive and widely accepted business practice in the transit industry, and

WHEREAS, to date, there have been no security incidents with this critical operation, and

WHEREAS, during the late night period when the City and County Transit operations are closed, security guard service is shared with the 9th street parking garage, and
WHEREAS, this service also supports the Greyhound Bus Co. operation twenty-four (24) hours per day, seven (7) days per week, and

WHEREAS, for the Water Quality Control (WQC) Sutter Avenue Facility uniformed security guards ensure enforcement of the “no trespassing” and “authorized personnel only” policies, and

WHEREAS, the guards also provide additional safety and security for shift operators, as well as providing greater security for critical areas such as: the main building, which houses wastewater operations, including laboratory and industrial waste buildings, two (2) maintenance shops and the administration building, and

WHEREAS, several of these buildings store equipment that is critical to the successful operation of the wastewater facility, and

WHEREAS, for the 9th, 10th and 11th Street Parking Garages a roving patrol officer, using a City owned vehicle, provides security guard service to the parking garages monitoring the activity of the garages, and

WHEREAS, the officer interacts with customers, parking garage attendants, other security and the MPD, as necessary, and

WHEREAS, additional responsibilities include conducting continuous rounds and inspections of the parking garages at prescribed intervals and escorting parking garage attendants at the end of their shift as they drop moneybags into the safe, and

WHEREAS, for the JPA – 1010 Tenth Street Place (TSP) uniformed security guards at TSP perform many functions, from escorting City employees to their cars after hours, to patrolling the plaza evenings and weekends, and
WHEREAS, TSP security guards monitor visitors in the lobby area, and monitor security cameras mounted inside and outside of the building and at the 9th street parking garage, and

WHEREAS, the security guards patrol the TSP building and plaza to help ensure employees and citizens are safe and protected, and

WHEREAS, the security guards also help with the removal of citizens who are panhandling or are a disrupting influence in the plaza, and

WHEREAS, the security guards carry police radios to contact MPD in order to expedite the response time to an emergency situation in the TSP building plaza, and

WHEREAS, another function is to serve the police and/or sheriff officer assigned to the TSP Chamber during City Council and County Board meetings, as backup to the officer on issues that may arise during these meetings, and

WHEREAS, on January 4, 2005, Council approved Resolution No. 2005-24, authorizing the Purchasing Supervisor to formally solicit Request for Proposals for the furnishing of armed/uniformed security guard services for a two (2) year agreement, with three (3) one-year extension options, and

WHEREAS, the Purchasing Division solicited Request for Proposal No. 0405-03, for the furnishing of armed/uniformed security guard services to thirty-five (35) companies, posted the proposal on the City’s web site, and formally advertised as required by law, and

WHEREAS, of the thirty-five (35) companies solicited, five (5) companies chose to respond, and
WHEREAS, of those five (5) companies, four (4) companies provided responsive and responsible proposals, and

WHEREAS, on July 27, 2005, an evaluation committee was comprised of technical experts from the City and the JPA to evaluate the proposals. The Mayor attended the evaluation process as an observer, and the Purchasing Division facilitated the evaluation process taking no active role in the evaluation process, and

WHEREAS, the committee’s individual scores were pre-tallied to identify and select the top three (3) proposers for proposer interviews, and

WHEREAS, on October 14, 2005, proposer interviews were held and all three (3) proposers attended, and

WHEREAS, based on being the lowest responsive and responsible proposal, City staff recommends the award of Proposal No. 0405-03 and contract for the furnishing of armed/uniformed security guard services to NCLN20, Inc., Oakland, CA, for a two (2) year agreement, with three (3) one-year extension options, for an estimated annual cost of $344,558.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby awards Proposal No. 0405-03 and contract for the furnishing of armed/uniformed security guard services to NCLN20, Inc., Oakland, CA, for a two (2) year agreement, with three (3) one-year extension options, for an estimated annual cost of $344,558.
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 22nd day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

APPROVED AS TO FORM:

By:

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-572

A RESOLUTION AUTHORIZING THE PURCHASING SUPERVISOR TO SOLICIT FORMAL REQUEST FOR BIDS (RFB) FOR TRAFFIC SIGNAL HARDWARE FOR AN INITIAL ONE (1) YEAR PERIOD, FOR A FIRST YEAR ESTIMATED ANNUAL COST OF $75,041, WITH A ONE (1) YEAR CONTRACT EXTENSION PURCHASE OPTION

WHEREAS, the Public Works Department-Electrical Division has requested the purchase of traffic signal hardware, and

WHEREAS, traffic signal hardware will be utilized to restock necessary inventory, and

WHEREAS, the hardware is needed to replace or upgrade damaged or obsolete equipment such as: traffic signal framework and indications, pedestrian pushbuttons and assemblies, and walk/don’t walk pedestrian signal indications, and

WHEREAS, for the most part, the traffic signal hardware must be upgraded periodically due to normal aging (wear and tear), and

WHEREAS, some traffic signal hardware is damaged in vehicular accidents, by trucks, or by vandals and graffiti, and

WHEREAS, upgrades also include routine maintenance change-outs of traffic signal indications from metal indications to polycarbonate indications, and

WHEREAS, the term of any award/contract resulting from this Request for Bid (RFB) for traffic signal hardware shall be for a period of two (2) years from date of award, and

WHEREAS, pricing provided in this bid shall remain in effect for the duration of the contract period, and
WHEREAS, the purchase of this equipment is necessary to properly maintain the City's traffic signal operations, and service our vehicular and pedestrian traffic safely, and

WHEREAS, by soliciting competitive bids, the City will achieve the best value for traffic signal hardware and meet Modesto Municipal Code (MMC) requirements for formal bids, and

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

WHEREAS, this Request for Bid (RFB) process conforms to City Code, and

WHEREAS, the City Council has appropriated funds for traffic signal hardware in account numbers: 0700-160-1612-0365 (STREET, TRAFFIC & FORESTRY, ELECTRICAL DIVISION EQUIPMENT MAINTENANCE AND REPAIR), and 1410-160-E695-6040 (TULLY, MT VERNON, COLDWELL SIGNAL UPGRADES), and

WHEREAS, the Purchasing Division has coordinated the drafting of bid specifications for traffic signal hardware with the Public Works Department-Electrical Division staff,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the Purchasing Supervisor to solicit formal Request for Bids (RFB) for traffic signal hardware for an initial one (1) year period, with a one (1), one-year contract extension option, for a total estimated annual cost of $75,041.00 as follows:

SECTION 1. The City Clerk is hereby authorized to call for public formal bids for the purchase of traffic signal hardware for an initial one (1) year period, with a one (1),
one-year contract extension option, for a total estimated annual cost of $75,041.00 to be opened in the office of the City Clerk, 1010 10th Street, in the City of Modesto. The City Clerk is hereby directed to give notice inviting such sealed bids in the time, form, and manner provided by law.

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

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 22nd day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, 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
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-573

A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF MODESTO AND MOUNTAIN VALLEY EMERGENCY MEDICAL SERVICES AGENCY (MVEMSA), TO PERMIT THE MODESTO FIRE DEPARTMENT TO PROVIDE ADVANCED LIFE SUPPORT (ALS) SERVICES AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT

WHEREAS, in July 2003, the City of Modesto and American Medical Response (AMR) entered into a “Pilot” ALS Program, and

WHEREAS, for over two years, the Modesto Fire Department has been delivering ALS services from one engine company at an annual cost of approximately $54,000, and

WHEREAS, it has been the goal of the City to operate the ALS program on a cost neutral basis, and

WHEREAS, AMR and the City of Modesto wish to execute a contract where AMR will reimburse the City in the amount of $72,000 for ALS services, which will enable the City to add a second ALS engine, and

WHEREAS, the MVEMSA must approve all EMS providers within Stanislaus County, and

WHEREAS, in order for the Modesto Fire Department to provide ALS services, a contract between the MVEMSA and City of Modesto is necessary,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the contract between the MVEMSA and the City of Modesto to permit the Modesto Fire Department to provide ALS services.

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 22nd day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney

Attest: ZAHR

JHAN ZAHR, City Clerk

2005-573
MODESTO CITY COUNCIL  
RESOLUTION NO. 2005-574

A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PURCHASE AND INSTALLATION OF A LIEBERT 65KVA UNINTERRUPTIBLE POWER SUPPLY (UPS) SYSTEM FOR THE INFORMATION TECHNOLOGY DEPARTMENT TO ELITE POWER, INC., SACRAMENTO, CA, FOR AN ESTIMATED PURCHASE PRICE OF $124,650

WHEREAS, the 5th floor data center is provided with "clean" power and outage protection through an IPM/Powerware BPII Uninterruptible Power Supply (UPS) unit located on the 5th floor, and

WHEREAS, this UPS supports Citywide financial systems such as budget, accounting and payroll, and

WHEREAS, the UPS has experienced several failures over the last several months to its charging system and is currently experiencing total system failure, and

WHEREAS, the existing Powerware BPII is a discontinued model, and

WHEREAS, parts have a limited availability and this has resulted in long delays in service and repair, and

WHEREAS, in the past three (3) months the Information Technology Department has experienced three (3) system failures resulting in total data center blackouts, as well as loss/damage to the data equipment, and

WHEREAS, the system experienced total system failure on August 29, 2005, resulting in numerous service calls, and

WHEREAS, parts replacement has been unsuccessful in repairing the system, and

WHEREAS, the current UPS is located in a non-environmentally controlled location, and

WHEREAS, this may have been a partial cause of the system’s failure, and
WHEREAS, the 5th floor data center UPS provides continuous power to all computer equipment in the event utility provided power fails, and

WHEREAS, the UPS is a "failsafe" that protects the City's data center, including all mission critical servers and data systems, and

WHEREAS, the UPS provides critical temporary power in the event of loss of utility power to allow servers and data systems to shut down in a normal fashion, and

WHEREAS, failure of the utility provided power source, without UPS protection, would result in immediate failure and shutdown of all data center systems, and

WHEREAS, additionally, this immediate mode of shutdown often results in severe damage to the servers and/or data systems, and

WHEREAS, shutdown of data center and web-based applications will negatively impact City staff and citizens of Modesto, and

WHEREAS, due to the critical nature of having a dependable UPS system in place that protects several operating systems Citywide, such as the financial systems budget, accounting and payroll systems, and based on the fact of the recent power losses experienced by the Information Technology Department, the City Manager's Office determined this to be a critical situation, demanding a (critical need) circumstance, and

WHEREAS, due to the critical need situation the Information Technology Department obtained a rough cost estimate from an electrical contractor experienced in UPS systems, and

WHEREAS, the rough cost estimate of approximately $90,000 was for the purchase of a new UPS system including installation and construction material, for a location in close proximity to the critical load or the 5th floor data center, and

11/22/05/T/G Cook/Item No 12 2 2005-574
WHEREAS, the estimate provided by the electrical contractor was without the benefit of an onsite survey and knowledge of the circumstances surrounding the failure of the old UPS system, and

WHEREAS, the Information Technology Department decided to provide City Council with an estimated cost of $100,000 for the project. This figure was determined to be a reasonably safe number above the contractor’s estimate to cover unexpected cost overruns, and

WHEREAS, on September 13, 2005, Council approved Resolution No. 2005-464, authorizing the purchase and installation of a Liebert 65KVA Uninterruptible Power Supply System for the Information Technology Department, for a total estimated price of $100,000, and

WHEREAS, additionally, Council authorized the Purchasing Supervisor to solicit competitive quotes for the purchase and installation of a Liebert 65KVA Uninterruptible Power Supply System, evaluate bid responses for the best overall value to the City and issue a purchase order to the selected vendor, based on the critical nature of this project, and

WHEREAS, On October 4, 2005, the Purchasing Division solicited Request for Bid (RFB) No. 0506-14 for the purchase and installation of a Liebert 65KVA Uninterruptible Power Supply System to five (5) companies and posted the bid on the City’s web site, and

WHEREAS, at the time of the RFB submittal two (2) sites were being considered for the location of the new UPS system:
• Fifth floor telecommunications closet located at 1010 Tenth Street, 5th Floor, Modesto, CA
• Basement telecommunications room located at 1010 Tenth Street, Basement, Modesto, CA, and

WHEREAS, bidders were to furnish bid pricing for both locations, and based on the bids received, the City would choose the site location that best suited its needs, and

WHEREAS, on October 10, 2005, a site walk-through and bidders conference was held to allow bidders the opportunity to inspect the two (2) site locations and address bidder inquires, and

WHEREAS, during the bid walk-through it was determined that the 5th floor telecommunications closet was not a viable location to install the new UPS system due to environmental control issues (heat) in the room, and

WHEREAS, on October 28, 2005, bids were opened in the Purchasing Division, and

WHEREAS, of the five (5) companies solicited, two (2) companies chose to respond, and

WHEREAS, the low bid came in approximately 25% higher than the $100,000 cost estimate submitted to Council, and

WHEREAS, the Information Technology Department believes the higher cost is attributed to the fact of relocating the new UPS system to the basement telecommunications room, and
WHEREAS, the relocation of the UPS system to the basement requires additional materials and labor over installing the system in the 5th floor telecommunication room, and

WHEREAS, additional electrical conduit and wiring is needed as well as additional labor to core bore each floor to provide the pathway, and

WHEREAS, each core bore is very labor intensive and costly, due to the amount of concrete that will need to be bored, and

WHEREAS, additionally, the recent hurricane disasters have affected the construction market on material prices, and

WHEREAS, this was mentioned by two (2) of the contractors that attended the site walk-through, and

WHEREAS, the contractors mentioned that the hurricanes in the Louisiana and Texas regions have put a market strain on the cost and availability of materials required to rebuild the devastated infrastructure in those areas, and

WHEREAS, this includes copper and electrical conduit that would be used in the construction of the new UPS system, and

WHEREAS, based on being the lowest responsive and responsible bid, City staff recommends the award of Bid No. 0405-14 and contract for the purchase and installation of a Liebert 65KVA Uninterruptible Power Supply (UPS) System for the Information Technology Department to Elite Power, Inc., Sacramento, CA, for an estimated purchase price of $124,650,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby awards Bid No. 0405-14 and contract for the purchase and installation of a
Liebert 65KVA Uninterruptible Power Supply (UPS) System for the Information Technology Department to Elite Power, Inc., Sacramento, CA, for an estimated purchase price of $124,650.

BE IT FURTHER RESOLVED that the Purchasing Supervisor is hereby authorized to issue a purchase order for the purchase and installation of a Liebert 65KVA Uninterruptible Power Supply (UPS) System for the Information Technology Department to Elite Power, Inc., Sacramento, CA, for an estimated purchase price of $124,650.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, 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. 2005-575

A RESOLUTION AMENDING THE 2005/2006 BUDGET TO APPROPRIATE $24,650 FROM THE GENERAL FUND RESERVES 0100-800-8000-8003 TO THE INFORMATION TECHNOLOGY OPERATING BUDGET 7130-070-0744-5400 TO FULLY FUND THE PURCHASE OF A LIEBERT 65KVA UNINTERRUPTIBLE POWER SUPPLY (UPS) SYSTEM

WHEREAS, the Information and Technology (IT) Department obtained a rough cost estimate of approximately $90,000 for the purchase of a new Uninterruptible Power Supply (UPS) system including installation and construction material, for a location in close proximity to the critical load or the 5th floor data center, and

WHEREAS, the estimate provided by an electrical contractor experienced in UPS systems was without the benefit of an onsite survey and knowledge of the circumstances surrounding the failure of the old UPS system, and

WHEREAS, the IT Department decided to provide City Council with an estimated cost of $100,000 for the project. This figure was determined to be a reasonably safe number above the contractor's estimate to cover unexpected cost overruns, and

WHEREAS, on September 13, 2005, Council approved Resolution No. 2005-464, authorizing the purchase and installation of a Liebert 65KVA Uninterruptible Power Supply System for the IT Department, for a total estimated price of $100,000, and

WHEREAS, additionally, Council authorized the Purchasing Supervisor to solicit competitive quotes for the purchase and installation of a Liebert 65KVA Uninterruptible Power Supply System, evaluate bid responses for the best overall value to the City and issue a purchase order to the selected vendor, based on the critical nature of this project, and
WHEREAS, On October 4, 2005, the Purchasing Division solicited Request for Bid (RFB) No. 0506-14 for the purchase and installation of a Liebert 65KVA Uninterruptible Power Supply System to five (5) companies and posted the bid on the City’s web site, and

WHEREAS, at the time of the RFB submittal two (2) sites were being considered for the location of the new UPS system:

- Fifth floor telecommunications closet located at 1010 Tenth Street, 5th Floor, Modesto, CA
- Basement telecommunications room located at 1010 Tenth Street, Basement, Modesto, CA, and

WHEREAS, bidders were to furnish bid pricing for both locations, and based on the bids received, the City would choose the site location that best suited its needs, and

WHEREAS, on October 10, 2005, a site walk-through and bidders conference was held to allow bidders the opportunity to inspect the two (2) site locations and address bidder inquires, and

WHEREAS, during the bid walk-through it was determined that the 5th floor telecommunications closet was not a viable location to install the new UPS system due to environmental control issues (heat) in the room, and

WHEREAS, on October 28, 2005, bids were opened in the Purchasing Division, and

WHEREAS, of the five (5) companies solicited, two (2) companies chose to respond, and
WHEREAS, the low bid came in approximately 25% higher than the $100,000 cost estimate submitted to Council, and

WHEREAS, the IT Department believes the higher cost is attributed to the fact of relocating the new UPS system to the basement telecommunications room, and

WHEREAS, the relocation of the UPS system to the basement requires additional materials and labor over installing the system in the 5th floor telecommunication room, and

WHEREAS, additional electrical conduit and wiring is needed as well as additional labor to core bore each floor to provide the pathway, and

WHEREAS, each core bore is very labor intensive and costly, due to the amount of concrete that will need to be bored, and

WHEREAS, additionally, the recent hurricane disasters have affected the construction market on material prices, and

WHEREAS, this was mentioned by two (2) of the contractors that attended the site walk-through, and

WHEREAS, the contractors mentioned that the hurricanes in the Louisiana and Texas regions have put a market strain on the cost and availability of materials required to rebuild the devastated infrastructure in those areas, and

WHEREAS, this includes copper and electrical conduit that would be used in the construction of the new UPS system, and

WHEREAS, based on being the lowest responsive and responsible bid, City staff recommends the award of Bid No. 0405-14 and contract for the purchase and installation
of a Liebert 65KVA Uninterruptible Power Supply (UPS) System for the IT Department to Elite Power, Inc., Sacramento, CA, for an estimated purchase price of $124,650,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby adopts a resolution amending the 2005/2006 budget to appropriate $24,650 from the general fund reserves 0100-800-8000-8003 to the IT operating budget 7130-070-0744-5400 to fully fund the purchase of a Liebert 65KVA Uninterruptible Power Supply (UPS) System.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-576

A RESOLUTION APPROVING AN APPLICATION FOR $1,500,000 FOR
BICYCLE TRANSPORTATION ACCOUNT PROGRAM FUNDING THROUGH
THE STANISLAUS COUNTY COUNCIL OF GOVERNMENTS TO THE STATE
OF CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR
CONSTRUCTION OF THE BRIGGSMORE BRIDGE AS PART OF PHASE V OF
THE VIRGINIA CORRIDOR AND AUTHORIZING THE CITY MANAGER TO
EXECUTE THE GRANT APPLICATION

WHEREAS, the City of Modesto has completed the Specific Plan for the Virginia
Corridor Rails-to-Trails Project, and

WHEREAS, staff has been informed of the opportunity to apply for Bicycle
Transportation Account (BTA) funding through the Stanislaus County Council of
Governments to State of California Department of Transportation, and

WHEREAS, the BTA is intended to provide State funds for city and county
projects that improve safety and convenience for bicycle commuters,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that the Council hereby supports an application by the Stanislaus Council of
Governments for $1,500,000 for Bicycle Transportation Account program funding
through the State of California Department of Transportation for construction of the
Briggsmore Bridge as part of Phase V of the Virginia Corridor.

BE IT FURTHER RESOLVED that the Council hereby certifies that the required
ten percent (10%) local share of the total project cost is available from Federal Highway
Transportation Fund grant funding.

BE IT FURTHER RESOLVED that the City Manager or his authorized designee
is hereby authorized to execute the grant application.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: "Jean Zahr",
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: "Michael D. Milich",
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-577

A RESOLUTION AUTHORIZING EXPENDITURE OF THE CURRENTLY BUDGETED STANISLAUS & TUOLUMNE RIVERS' GROUNDWATER BASIN ASSOCIATION (STRGBA) - GROUNDWATER MANAGEMENT PLAN (GWMP) - SECONDARY FUNDS (APPROXIMATELY $49,950) TO CONTINUE PARTICIPATION IN ONGOING GROUNDWATER MANAGEMENT RELATED ACTIVITIES

WHEREAS, the City of Modesto authorized staff to participate in the development of Groundwater Management Plans and authorized the initial expenditure of budgeted funds for the development of Groundwater Management Plans for both of the two groundwater sub-basins underlying the City of Modesto on January 27, 2004, and

WHEREAS, the City of Modesto is currently participating in two groundwater associations, the Stanislaus and Tuolumne Rivers’ Groundwater Basin Association (STRGBA) and the Turlock Groundwater Basin Association (TGBA), to discuss groundwater issues within these respective basins, and

WHEREAS, the City has experienced a decline in groundwater quality at a number of well sites, which has resulted in those wells being taken out of service, and

WHEREAS, in June 2005, the City adopted an Integrated Regional Groundwater Management Plan (IRGMP) with the STRGBA that provides a framework for overseeing and coordinating both groundwater and surface water management activities within the Modesto Groundwater Sub-basin, and

WHEREAS, additional expenditures by the City are required to continue participating in on-going groundwater management related activities in order to: 1) make payment to the Modesto Irrigation District (MID) for the City’s fair share ($21,000) of the $195,000 ongoing United States Geological Survey (USGS) – Phase IV, Groundwater...
Flow Modeling project ("Modeling project"); 2) make payment to MID for the City's fair share ($2,000 remaining balance of the $21,000 total) of the $195,000 USGS – Phase III, Modeling project; and 3) expend the balance of the budgeted funds (approximately $26,950) for other groundwater management related work in both the Modesto Groundwater Sub-basin and the Turlock Groundwater Sub-basin, including City staff charges, and

WHEREAS, City desires to pay the amounts for the total additional expenditures, which is approximately $49,950, and

WHEREAS, sufficient funds have been budgeted in CIP account – 6180-430-W620-6010, STRGBA-GWMP-Secondary to support said ongoing activities, and

WHEREAS, the Acting Public Works Director recommends approving the expenditures to continue participation in ongoing groundwater management related activities,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes expenditures of currently budgeted funds, in the estimated amount of $49,950, as requested above to continue participating in ongoing groundwater management related activities.

BE IT FURTHER RESOLVED that the Council hereby authorizes the expenditure of said currently budgeted funds for ongoing groundwater management related activities for both the Modesto and Turlock Groundwater Sub-basins underlying the City of Modesto.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, 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 APPROVING A SUPPLEMENTAL LEASE AGREEMENT
WITH THE GENERAL SERVICES ADMINISTRATION FOR OFFICE SPACE
AT THE MODESTO CITY-COUNTY AIRPORT AND AUTHORIZING THE
CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT ON
BEHALF OF THE CITY

WHEREAS, the City of Modesto and the General Services Administration (GSA)
entered into a Lease Agreement on November 20, 2002 for office space at the Modesto
City-County Airport, and

WHEREAS, said office space is being used by the Transportation Safety
Administration (TSA) to house its security staff serving the Modesto City-County
Airport, and

WHEREAS, GSA foresees the need to extend its lease with the City of Modesto
through February 2007 for office space used by TSA, and

WHEREAS, the current lease and subsequent amendments provided for a lease
period that expired February 28, 2005, and

WHEREAS, the General Services Administration has requested that the City
extend the lease to March 1, 2007, and

WHEREAS, based on the Consumer Price Index (CPI), rates for airport rental
leases have increased 4.7% since 2002, and

WHEREAS, if the leased space should be needed for other airport uses during the
extension period, Airport staff may relocate GSA within the terminal or near the terminal
with 30 days notice,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves Supplemental Lease Agreement 6A to the General Services Administration Lease No. GS-09B-01257.

BE IT FURTHER RESOLVED that the City Manager or his authorized designee is hereby authorized to execute the Supplemental Lease Agreement on behalf of the City.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmember: None

ABSENT: Councilmember: None

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney

ATTEST: JEAN ZAHR, City Clerk
MODesto City Council
Resolution No. 2005-579

A Resolution Approving the Award of a Professional Services Agreement to West Yost and Associates for $1,262,000 to Complete the Final Design for the City Water System Tier 1 Downstream Improvements to Accommodate the Modesto Regional Water Treatment Plant Phase Two Expansion, 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 design for the Critical Downstream Improvements needs to be completed by the winter of 2006 to remain on schedule with the Phase Two project’s scheduled operation in the year 2007, and

Whereas, the Economic Development Committee at its meeting on March 8, 2004, concurred with staff’s recommendation of requiring critical facilities consisting of the pressure and/or flow regulating valves, the north tank and pump station, and water transmission pipelines to be moved into design, and
WHEREAS, on March 8, 2004, the Economic Development Committee directed staff to proceed with the negotiations with West Yost and Associates for the preparation of the design of the Critical Downstream Facilities, and

WHEREAS, on April 6, 2004, the Council of the City of Modesto adopted Resolution 2004-176 approving the Agreement with West Yost and Associates, for preparation of the Preliminary Design Report of the Downstream Improvements for the City of Modesto’s water system in an amount not to exceed $449,000, and

WHEREAS, City staff determined that Design Services for the City Water System Tier 1 Downstream Improvements to accommodate the MRWTP Phase Two Expansion would be prepared in two stages, namely Preliminary Engineering and Final Design, and

WHEREAS, on December 14, 2004, the Council of the City of Modesto adopted Resolution 2004-671 approving the Agreement with West Yost and Associates to complete Preliminary Engineering Services for the City Water System Tier 1 Downstream Improvements to accommodate the Modesto Regional Water Treatment Plant Phase Two Expansion in an amount not to exceed $710,200, and

WHEREAS, the Public Works Director has recommended accepting the proposed contract with West Yost and Associates to complete the Final Design for the City Water System Tier 1 Downstream Improvements to accommodate the MRWTP Phase Two Expansion in an amount not to exceed $1,262,000,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Agreement with West Yost and Associates to complete the Final Design for the City Water System Tier 1 Downstream Improvements to
accommodate the MRWTP Phase Two Expansion in an amount not to exceed $1,262,000.

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 22nd day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

ATTEST: 
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-580

A RESOLUTION ACCEPTING IMPROVEMENTS IN PAPILLON PARK SUBDIVISION, AUTHORIZING THE CITY CLERK TO RECORD A NOTICE OF COMPLETION AND AUTHORIZING RELEASE OF BONDS

WHEREAS, Marilyn Shroyer, Trustee Of The Marilyn Shroyer Trust, is the subdivider of the Papillon Park Subdivision, and

WHEREAS, Marilyn Shroyer, Trustee Of The Marilyn Shroyer Trust, has filed irrevocable subdivision bonds to secure faithful performance and payment for labor and materials in the amounts of $22,199.10 and $11,099.55, respectively, and

WHEREAS, Marilyn Shroyer, Trustee Of The Marilyn Shroyer Trust, has filed a warranty bond in the amount of $2,219.91 to guarantee improvements in the Papillon Park Subdivision, and

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

WHEREAS, the Public Works Director has indicated that it would be in order for the City Council to accept the improvements in 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 Papillon Park Subdivision are hereby accepted and the City Clerk is hereby authorized to record 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 $22,199.10.00 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 $11,099.55 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 $2,219.91 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 22nd day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-581

A RESOLUTION AUTHORIZING THE AWARD OF PROPOSAL FOR THE
FURNISHING OF LANDSCAPE MAINTENANCE SERVICES TO GROVER
LANDSCAPE SERVICES, INC. AND DIRECTING STAFF TO NEGOTIATE A
LANDSCAPE MAINTENANCE SERVICE AGREEMENT WITH GROVER
LANDSCAPE SERVICES, INC. FOR PARKS, RIGHT-OF-WAYS AND PUBLIC
LANDSCAPING OWNED AND/OR MAINTAINED BY THE CITY OF
MODESTO WITH GROVER LANDSCAPE SERVICES, INC.

WHEREAS, the City of Modesto’s Parks, Recreation and Neighborhoods
Department, Parks Services Division provides landscape maintenance services to over
530 acres of landscaping for 66 parks and about 150 other landscaped sites including
public buildings, street medians, sound walls, traffic islands and other miscellaneous
sites, and

WHEREAS, funding for this maintenance is provided primarily by the City’s
General Fund, although a number of sites are funded from other sources including the
Tuolumne River Regional Park JPA, Parking Fund, Storm Drain Fund and several
Community Facility Districts, and

WHEREAS, over the past four to five years there has been a dramatic decline in
landscape maintenance service levels, and

WHEREAS, in order to evaluate the potential to reduce costs and/or improve the
level of service, City management staff recommended that consideration be given to
issuing a Request for Proposals for the purpose of improving landscape maintenance
standards, and
WHEREAS, the Modesto Municipal Code, MMC 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, the issuance of a formal Request for Proposal (RFP) for the furnishing of landscape maintenance services conforms to MMC Section 8-3.203, and

WHEREAS, Modesto City Council Resolution No. 96-676 set forth the policy for competitive delivery of City services and Resolution No. 2004-691 authorized staff to solicit RFP’s for landscape maintenance services, and

WHEREAS, on December 14, 2004, Council approved Resolution No. 2004-691, authorizing the Purchasing Supervisor to formally solicit Request for Proposals (RFP) for Landscape Maintenance Services for all park, right-of-way and public landscaping owned and/or managed by the City of Modesto for a five (5) year period with an option to renegotiate for an additional five (5) year period at an estimated annual cost of $1,200,000, and

WHEREAS, on May 3, 2005, RFP’s were formally opened in the City Clerk’s office, and

WHEREAS, of the twenty-nine (29) prospective proposers solicited, sixteen of which were local companies, two (2) proposers chose to respond, MCEA and Grover Landscape Services, Inc., and

WHEREAS, on June 2, 2005, an evaluation committee was formed, comprised of three (3) City staff personnel and two (2) outside technical experts to evaluate the two (2) proposals; in addition, the Mayor appointed Councilmember Dunbar as an observer of the evaluation process, and
WHEREAS, the proposals were evaluated by the Committee based on the criteria of: Completeness of Response (5 points); Understanding of the Project (10 points); Relevant Experience (10 points); Management and Technical Summaries (30 points); Quality Assurance Program (5 points); and, Qualification Summary (10 points), and

WHEREAS, the committee gave an overall score, including costs, of 79.5 to MCEA and 91.6 to Grover Landscaping, and

WHEREAS, because of MCEA’s steadfast position regarding the use of Honor Farm labor at “B” sites, despite several opportunities to amend their proposal, the committee could not truly evaluate their proposal for “B” Site locations and had no choice but to reject that portion of their proposal for being non-responsive, and

WHEREAS, based on the evaluation criteria, the determination that MCEA was unresponsive regarding “B” sites and the proposed costs, the evaluation committee is recommending that staff be authorized to negotiate a landscape maintenance service agreement with Grover Landscape Services, Inc. (Grover) for all parks, right-of-ways and public landscaping owned and/or maintained by the City of Modesto, and

WHEREAS, staff has evaluated Grover’s proposal, and compared the City’s actual costs, and found that after the cost of sprinkler replacement and turf vandalism repair is added into the contract and the savings from fleet rental rates are deducted from the City’s current costs, the estimated annual savings is $377,242 in the first year, increasing to $519,834 in year five, with a total estimated savings over the five-year contract of $2,309,968, and

WHEREAS, the Finance Committee met on October 24, 2005, and supported the recommendation to accept the recommendation of the RFP Review Committee and staff
for the City Council to award the proposal for landscape maintenance services to Grover Landscape Services, Inc. and to authorize staff to negotiate an agreement with Grover,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby authorizes the award of proposal for the furnishing of landscape maintenance services to Grover Landscape Services, Inc.

BE IT FURTHER RESOLVED that the Council hereby directs staff to negotiate a landscape maintenance service agreement with Grover Landscape Services, Inc. for parks, sound walls and public landscaping owned and/or maintained by the City of Modesto with Grover Landscape Services, Inc., and to return to Council for approval of said agreement and related budget amendments.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of November 2005, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: Jackman, Marsh

ABSENT: Councilmembers: None

Attest: JEAN ZAHR

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney