RESOLUTION ADOPTING A POLICY TO REQUIRE THE INSTALLATION OF CERTAIN STORM DRAINAGE IMPROVEMENTS PRIOR TO ANY DEVELOPMENT IN THE VILLAGE ONE PRECISE PLAN AREA #30

WHEREAS, in the Village One Specific Plan Area there exists an area bounded by Merle Avenue, Claus Road, Sharon Avenue, and Fine Avenue known as Precise Plan Area #30 ("PPA #30"), and

WHEREAS, this PPA #30 is a roughly 40 acre area of ranchettes, comprised of 16 properties, and one of the property owners would like to develop/subdivide a 3 acre parcel within this PPA #30, and

WHEREAS, the Village One Facilities Master Plan provides for this PPA #30 to drain its storm water to the East Basin which will be located on the east side of Claus Road, and

WHEREAS, City staff hired Camp Dresser & McKee to provide additional analysis of the storm drainage system to allow staff to determine if other storm drainage solutions for PPA #30 were feasible, and

WHEREAS, based on the information provide by CDM, City staff and the Economic Development Committee determined that there are three possible storm drainage solutions described below that can be constructed to serve the PPA #30, and that prior to any development in PPA #30, one of these options must be constructed, and

WHEREAS, at its meeting on August 8, 2005, the Economic Development Committee recommended the three options,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it finds and determines that prior to any development in PPA #30, any one of the following options for storm drainage facilities must be installed:

1. To require that the East Basin as described in the Village One Facilities Master Plan and all the appurtenant piping be installed;

2. To require that a detention basin or linear facility capable of containing 7.4 acre-feet of storm water, with metered discharge to the lines connecting to the West Basin, be designed and constructed and a mechanism established for its maintenance;

3. To require that the existing storm drain line along Merle Avenue and into the Central Basin be upsized or paralleled to accommodate the additional runoff from the entire PPA #30 area.

BE IT FURTHER RESOLVED that the Council finds and determines that the implementation of any one of the above options for storm drainage is required to protect the public health, safety and welfare, and to ensure that any proposed development has adequate and appropriately designed storm drainage facilities to serve it.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of September 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
RESOLUTION ACCEPTING THE WORK BY ON GRADE CONTRACTING, INC., FOR THE “SEWER EXTENSION TO 2336 SYLVAN AVENUE” PROJECT AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION, AND AUTHORIZING PAYMENT OF AMOUNTS DUE TOTALING $57,377 PER THE CONTRACT. TOTAL PROJECT COST IS $159,007

WHEREAS, a report has been filed by the Acting Public Works Director that the project titled “Sewer Extension to 2336 Sylvan Avenue” has been completed by On Grade Contracting, Inc., in accordance with the contract agreement dated November 23, 2004,

NOW, THEREFORE, BE IT RESOLVED by the Council that the “Sewer Extension to 2336 Sylvan Avenue” project be hereby accepted from said contractor, On Grade Contracting, Inc., that the Notice of Completion be filed with the Recorder of Stanislaus County and that payment of amounts due totaling $57,377, as provided in the contract, be authorized.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of September 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By MICHAEL D. MILICH, City Attorney

09/06/05/PW/ K Ohlson/Item No 20
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-441

A RESOLUTION ACCEPTING THE WORK BY COLLINS ELECTRICAL COMPANY, INC., FOR THE "TRAFFIC SIGNAL MODIFICATIONS AT 7 LOCATIONS" PROJECT AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION, AND AUTHORIZING PAYMENT OF AMOUNTS DUE TOTALING $399,593 PER THE CONTRACT. TOTAL PROJECT COST IS $424,509

WHEREAS, a report has been filed by the Acting Public Works Director that the project titled "Traffic Signal Modifications at 7 Locations" has been completed by Collins Electrical Company, Inc., in accordance with the contract agreement dated December 7, 2004,

NOW, THEREFORE, BE IT RESOLVED by the Council that the "Traffic Signal Modifications at 7 Locations" project be hereby accepted from said contractor, Collins Electrical Company, Inc., that the Notice of Completion be filed with the Recorder of Stanislaus County and that payment of amounts due totaling $399,593 as provided in the contract, be authorized.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of September 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:
By [Signature]
MICHAEL D. MILICH, City Attorney
RESOLUTION APPROVING A FOURTH AMENDMENT TO AGREEMENT WITH DOKKEN ENGINEERING IN THE AMOUNT OF $22,507.65, TO REVISE THE REVEGETATION PLAN FOR THE PROJECT TITLED "REPLACEMENT OF THE 9TH STREET BRIDGE OVER TUOLUMNE RIVER," AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AMENDMENT TO AGREEMENT

WHEREAS, on April 13, 1999, the City and Consultant entered into an Agreement for design services for Replacement of the 9th Street Bridge over Tuolumne River, and

WHEREAS, revegetation of riparian habitat removed during project construction is a condition of the approvals issued for the project by the State of California Department of Fish and Game, the U.S. Army Corps of Engineers, and National Marine Fisheries Service, and

WHEREAS, revegetation plans and specifications were prepared by Dokken Engineering under Amendment No. 1 consistent with the Ninth Street Bridge Riparian Revegetation Guidelines, and

WHEREAS, plans for the Tuolumne River Regional Park have been prepared and the park is scheduled to begin construction in 2006, and

WHEREAS, modification of the revegetation plans and specifications is recommended to delete revegetation on the north bank of the Tuolumne River where the park improvement plans show regrading and replanting, and

WHEREAS, Consultant represents that it is qualified, willing, and able to provide said services within the required time,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Fourth Amendment to the agreement with Dokken Engineering in the not-to-exceed amount of $22,507.65, for revision of the revegetation plans and specifications.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of September 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
A RESOLUTION APPROVING THE FINAL MAP OF THE TRAILS AT DRY CREEK SUBDIVISION, AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBDIVISION AGREEMENT WITH JOHN J. MACHADO AND JUDY A. MACHADO, CO-TRUSTEES OF THE MACHADO FAMILY TRUST AGREEMENT, U/D/T

WHEREAS, JOHN J. MACHADO and JUDY A. MACHADO, CO-TRUSTEES OF THE MACHADO FAMILY TRUST AGREEMENT, U/D/T are possessed of a tract of land situated in the City of Modesto, County of Stanislaus, consisting of 20.96 acres, known as THE TRAILS AT DRY CREEK SUBDIVISION ("SUBDIVISION"), and

WHEREAS, an application for a vesting tentative subdivision map was deemed complete by the Secretary of the Planning Commission on July 1, 2004, and

WHEREAS, a tentative map of said tract was approved by the Planning Commission of the City of Modesto on the 18th day of October, 2004, 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 6th day of August 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2005-444

A RESOLUTION APPROVING THE FINAL MAP OF THE LAGOS SUBDIVISION, IN THE VILLAGE ONE SPECIFIC PLAN AREA, OF THE CITY OF MODESTO AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBDIVISION AGREEMENT WITH JOHN LAGOS AND MARIE T. LAGOS, HUSBAND AND WIFE, AS COMMUNITY PROPERTY, AND BURKSHIRE ESTATES, A CALIFORNIA LIMITED LIABILITY COMPANY

WHEREAS, JOHN LAGOS and MARIE T. LAGOS, husband and wife, as community property, and BURKSHIRE ESTATES, a California Limited Liability Company, are possessed of a tract of land situated in the City of Modesto, County of Stanislaus, consisting of 8.45 acres, known as the LAGOS SUBDIVISION ("SUBDIVISION"), in the Village One Specific Plan Area, and

WHEREAS, an application for a vesting tentative subdivision map was deemed complete by the Secretary of the Planning Commission on July 1, 2004, and

WHEREAS, a tentative map of said tract was approved by the Planning Commission of the City of Modesto on the 12th day of July, 2004, and

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

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

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that 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 6th day of September 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST:  
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By  
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-445

A RESOLUTION ACCEPTING A PORTION OF THE SUBDIVISION IMPROVEMENTS INSTALLED WITHIN THE GALAS BROTHERS UNITS NOS. 1 AND 2 SUBDIVISIONS AS DESCRIBED ON EXHIBIT "A" IN THE ACQUISITION AND SHORTFALL AGREEMENT #1 BETWEEN THE CITY OF MODESTO COMMUNITY FACILITY DISTRICT NO. 2003-1 AND DEL VALLE HOMES, A CALIFORNIA CORPORATION, AND AUTHORIZING THE CITY CLERK TO RECORD A NOTICE OF COMPLETION

WHEREAS, DEL VALLE HOMES, a California Corporation, ("Subdivider") is the subdivider of the GALAS BROTHERS UNITS NOS. 1 AND 2 SUBDIVISIONS (collectively "Subdivisions") in the Fairview Village Specific Plan Area, and

WHEREAS, the Fairview Village Community Facilities District #2003-1 ("CFD") was formed to fund both the infrastructure and maintenance of facilities needed to serve the Fairview Village Specific Plan Area, and

WHEREAS, the Subdivisions were the first developments to occur in the Fairview Village Specific Plan Area and were required to install a significant amount of infrastructure to support their proposed developments, and

WHEREAS, on June 22, 2004, an Acquisition and Shortfall agreement between the City of Modesto Community Facilities District No. 2003-1 (Fairview Village) and Del Valle Homes was approved by the City Council, and

WHEREAS, Exhibit "A" of said Agreement describes the following facilities to be constructed by Del Valle Homes and to be reimbursed by the CFD:

1. Surface Water Supply Line
2. Water Distribution Pipe Lines
3. Storm Drain Gravity Line to Outfall Line
4. Storm Drain Basin Excavation

5. Sanitary Sewer Force Main, and

WHEREAS, the Agreement allows the Subdivider to obtain reimbursement upon completion of certain functional segments of the Subdivisions improvements, and

WHEREAS, the above-referenced improvements are functional segments of the Subdivisions' improvements, and

WHEREAS, in order for the City to acquire and reimburse the Subdivider for the above functional segments, the City must accept the complete segments on behalf of the public for public use, and

WHEREAS, the Subdivider has filed warranty bonds to guarantee all improvements in the Subdivisions, which warranty bonds will be held until one year and one day after the last of the Subdivisions' Improvements have been accepted by Council, and

WHEREAS, the City Engineer, in a memorandum to Council, indicates that all work as described by Exhibit "A" of the Agreement has been completed to the satisfaction of the Public Works Department, and

WHEREAS, the City Engineer has indicated that it would be in order for the City Council to accept the partial improvements in said subdivisions as complete, and to authorize the City Clerk to file a Notice of Completion.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that:
1. The following partial public improvements in the Galas Brothers Units Nos. 1 and 2 Subdivisions, as described in Exhibit “A” of the Agreement, are hereby accepted:
   a. Surface Water Supply Line
   b. Water Distribution Pipe Lines
   c. Storm Drain Gravity Line to Outfall Line
   d. Storm Drain Basin Excavation
   e. Sanitary Sewer Force Main

2. The City Clerk is hereby authorized to record a Notice of Completion for the above-listed improvements.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of September 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

Approved as to form:

By

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-446

A RESOLUTION APPROVING AN UPDATE TO THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR FEDERALLY FUNDED STREET, AIRPORT, AND TRANSIT PROJECTS

WHEREAS, the Federal Government has adopted Federal Regulation 49 CFR Part 26 that mandates that the City adopt a Disadvantaged Business Enterprise (DBE) Program to be eligible to receive federal street, airport, and transit funds, and

WHEREAS, Caltrans has tentatively approved the draft City of Modesto DBE Program for federally funded street projects, contingent upon Council adopting the program, and

WHEREAS, the recommended overall goal for Modesto in the upcoming year is seven (7%) percent DBE participation, and

WHEREAS, in order to continue to receive Federal funding for street, airport, and transit projects, the City must adopt a DBE Program consistent with Federal regulations and receive approval, and

WHEREAS, the City of Modesto has requested public comments regarding the DBE Program, and none were received,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the City of Modesto DBE Program for federally funded streets, airport, and transit projects is hereby approved and adopted.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of September, 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: 
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2005-447  

A RESOLUTION AUTHORIZING THE CITY MANAGER TO PAY UP TO $2,000 FOR PARTICIPATION IN THE STATEWIDE DISADVANTAGED BUSINESS “UNIFIED CERTIFICATION PROGRAM” (UCP)  

WHEREAS, Federal regulations (49 CFR Part 26) necessitate that the City participate in the California Unified Certification Program (UCP), and  

WHEREAS, this program is the vehicle for certifying Disadvantaged Business Enterprise (DBE) contractors, and  

WHEREAS, Federal regulations require that all jurisdictions receiving federal funds must participate in training costs for the certifying agencies, and  

WHEREAS, in order to continue receiving federal funding on street, airport, and transit projects, the City must adopt a DBE Program consistent with federal regulations and receive approval, and  

WHEREAS, financial participation in the Unified Certification Program is also required in order to continue receiving Federal funding on street projects,  

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the City Manager, or his designee, is hereby authorized to pay up to $2,000 for participation in the statewide Disadvantaged Business “Unified Certification Program” (UCP).
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of September, 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: 

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-448

A RESOLUTION ACCEPTING THE OFFICE OF TRAFFIC SAFETY (OTS) GRANT IN THE AMOUNT OF $110,000, WITH A CITY MATCH OF $40,000, AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE, TO EXECUTE NECESSARY GRANT DOCUMENTS

WHEREAS, in May, 2005, Traffic Engineering staff received notification that they were awarded an OTS grant in the amount of $110,000, with a City match of $40,000, and

WHEREAS, the OTS grant will pay for the purchase of equipment and the City will be responsible for the cost of design and installation of the four in-pavement lighted crosswalk systems and the installation of the countdown pedestrian indications, and

WHEREAS, the Economic Development Committee at their August 8, 2005, reviewed and concurred with staff’s recommendation to accept the grant funds and install four lighted crosswalk systems and to install countdown pedestrian indications,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the Office of Traffic Safety (OTS) grant in the amount of $110,000.

BE IT FURTHER RESOLVED that the City Manager or his designee, is hereby authorized to execute the necessary grant documents for said projects.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of September 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: ______________________________

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: ______________________________

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-449

A RESOLUTION AMENDING THE FISCAL YEAR 2005/2006 CAPITAL IMPROVEMENT PROGRAM (CIP) BUDGET ACCEPTING THE GRANT FUNDS AND ESTABLISHING ONE NEW CIP PROJECT TITLED, "PEDESTRIAN AND BICYCLIST SAFETY ENHANCEMENT," IN THE AMOUNT OF $150,000

WHEREAS, in May, 2005, Traffic Engineering staff received notification from the Office of Traffic Safety (OTS) that the City was awarded a grant in the amount of $110,000 for the installation of four lighted crosswalks, and

WHEREAS, the OTS grant will pay for the purchase of equipment, and

WHEREAS, the City will be responsible for the cost of design and installation of the four in-pavement lighted crosswalk systems and the countdown pedestrian indications, and

WHEREAS, this recommendation will require $40,000 be transferred from Gas Tax Reserves to fund the equipment installation, and

WHEREAS, the Economic Development Committee at their August 8, 2005, meeting, reviewed and concurred with staff's recommendation,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the Fiscal Year 2005/2006 Capital Improvement Program budget accepting Office of Traffic Safety grant in the amount of $110,000, with a $40,000 City match from Gas Tax Reserves, for a total of $150,000 and creating a new Capital Improvement Project entitled, "Pedestrian and Bicyclist Safety Enhancement."
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of September 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: 

JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

By: 

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-450


WHEREAS, City Traffic Engineering staff received a request from the Sherwood Forest area residents to install speed humps on various streets in the subdivision, and

WHEREAS, the speed hump installation request has met the City of Modesto Speed Hump Policy criteria, and

WHEREAS, the citizens collected the resources needed to fully fund the speed hump installations, and

WHEREAS, the Economic Development Committee at its August 8, 2005, meeting reviewed and concurred with staff’s recommendation to install speed humps in the Sherwood Forest Subdivision,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves approving the installation of speed humps in the Sherwood Forest Subdivision and amending the 2005/2006 Budget to recognize and appropriate neighborhood participation, per the City of Modesto Speed Hump Policy, in the amount of $18,200 for fiscal year 2005/2006, for the installation of speed humps in the Sherwood Forest neighborhood.

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 6th day of September 2005, by Councilmember Jackman, 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: Hawn, Jackman, Keating, Marsh, O’Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

Attest: Jean Zahr

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-451

A RESOLUTION ACCEPTING A $550,000 GRANT FROM THE SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM, U.S. DEPARTMENT OF TRANSPORTATION, FOR AIRLINE STARTUP INCENTIVES TO ATTRACT ADDITIONAL AIRLINE ROUTES TO MODESTO, APPROVING THE GRANT AGREEMENT AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE GRANT AGREEMENT ON BEHALF OF THE CITY

WHEREAS, on January 19, 2005, the Department of Transportation (DOT) opened the opportunity for communities such as Modesto to apply for the Small Community Air Service Development Program, and

WHEREAS, said grant is intended to provide support for cities wishing to enhance their air service by attracting additional airline routes, and

WHEREAS, Modesto has been identified by DOT as having inadequate air service and unreasonably high airfares, and

WHEREAS, the Airport Advisory Committee endorsed application for the grant being offered by the Small Community Air Service Development Program, and

WHEREAS, the Economic Development Committee approved submittal of a grant application for the Small Community Air Service Development Program in the amount of $550,000 at its April 11, 2005 meeting, and

WHEREAS, on April 26, 2005, by Resolution No. 2005-212, the Modesto City Council approved submittal of a grant application for a Small Community Air Service Development Program in the amount of $550,000, and

WHEREAS, on August 25, 2005, the City of Modesto was notified that the Modesto Airport had been awarded a Grant of $550,000 from the DOT under the Small Community Air Service Development Program, and
WHEREAS, the Grant must be accepted by the City Council on or by September 9, 2005, and

WHEREAS, in order to accept the Grant, the City Council must approve the Grant Agreement and authorize the City Manager to execute it,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the $550,000 Small Community Air Service Development Program Grant from the U.S. Department of Transportation, and approves the Grant Agreement, a copy of which is attached hereto as Exhibit “A”.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of September 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
GRANT OFFER AND AGREEMENT BETWEEN THE
U.S. DEPARTMENT OF TRANSPORTATION
AND THE MODESTO CITY-COUNTY AIRPORT, ACTING FOR THE
COMMUNITY OF MODESTO, CALIFORNIA, UNDER THE SMALL
COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM

WHEREAS, the Modesto City-County Airport (hereinafter referred to as the Sponsor),
on behalf of the community of Modesto, California, has applied for a Grant under the
Small Community Air Service Development Program; now THEREFORE, the U.S.
Department of Transportation, hereinafter referred to as the DOT, acting for the UNITED
STATES, offers the Sponsor a grant in the amount of $550,000 to assist in the Sponsor’s
efforts to address the air service needs of the community.

THIS OFFER IS MADE ON AND SUBJECT TO THE FOLLOWING TERMS
AND CONDITIONS:

A. GENERAL CONDITIONS

1. The maximum obligation of the United States payable under this Offer shall
be $550,000.

2. Payment of the United States’ share of the agreed project costs will be made
pursuant to and in accordance with the provisions of such regulations and
procedures as the DOT may prescribe. Final determination of the United
States’ share may be based upon a final review of the total amount of agreed
project costs and settlement will be made for adjustments to the United States’
share of costs.

3. The Sponsor shall carry out and complete the Projects without undue delays
and in accordance with the terms hereof, and such regulations and procedures
as the DOT may prescribe.

4. The DOT reserves the right to amend or withdraw this offer at any time prior
to its acceptance by the Sponsor.

5. This offer shall expire and the United States shall not be obligated to pay any
part of the costs of the project unless the Sponsor accepts this offer on or
before September 9, 2005, or such subsequent date as may be prescribed in
writing by the DOT.

6. The Sponsor shall take all steps, including litigation, if necessary, to recover
Federal funds when DOT determines, after consultation with the Sponsor, that
such funds have been spent fraudulently, wastefully, or in violation of Federal
laws, or misused in any manner in any project upon which Federal funds have
been expended. For the purposes of this agreement, the term “Federal funds”
means funds however used or disbursed by the Sponsor that were originally
paid pursuant to this DOT Grant Agreement (hereinafter referred to as the
Grant Agreement).

7. The Sponsor shall retain all documents relevant to the grant award for a period
of three years from completion of all projects undertaken pursuant to the
Grant Agreement and receipt of final reimbursement from the U.S. Treasury.
It shall furnish the DOT, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the DOT.

8. The United States shall not be responsible or liable for damage to property or injury to persons that may arise from, or be incident to, compliance with this Grant Agreement.

9. The Sponsor shall ensure compliance with Federal regulations requiring conduct of a Federally-approved audit of any expenditure of funds of $500,000 or more in a year in Federal awards.

10. The provisions of 49 CFR Part 18 (DOT’s procurement standards for grants) will apply to the extent that the Sponsor procures property and services in carrying out the approved grant project(s).

B. SPECIAL CONDITIONS

1. Subject to terms set forth in this agreement, the DOT reserves the right to terminate the Grant Agreement, and the DOT’s obligations thereunder, on 90 days’ written notice, unless otherwise agreed between the Sponsor and the DOT, if any of the following occurs:
   a. The Sponsor fails to provide the local contribution as provided in its application, or alternatives approved in writing by the DOT;
   b. The Sponsor fails to provide the in-kind contributions as provided in its grant application, or alternative in-kind contributions approved in writing by the DOT;
   c. The Sponsor does not meet the conditions and obligations specified under this Grant Agreement;
   d. The DOT determines that termination is in the public interest.

2. Either party may seek to amend or modify this Grant Agreement on 30 days’ written notice to the other party. The Grant Agreement will be amended or modified only on mutual written agreement by both parties.

3. At any time, on 30 days’ written notice, the Sponsor may request termination of this Grant Agreement.

4. Subject to the terms set forth in this Grant Agreement, and unless otherwise agreed between the Sponsor and the DOT, this Grant Agreement will expire two years from the date of execution.

C. PROPOSAL SPECIFIC CONDITIONS

1. Legal Sponsor: City of Modesto, designated by the community of Modesto, California, as the legal Sponsor under the Small Community Air Service Development Program, shall administer the Grant according to the conditions set forth in this Grant Agreement.
Sponsor Contact:

Michael Musca, AAE
Airport Manager
Modesto City-County Airport
617 Airport Way
Modesto, California 95354
Tel. 209.577.5319
Fax 209.576.1985
mmusca@modestogov.com

2. Project Goals and Objectives

- Secure new service to a hub airport utilizing carrier incentives and marketing, thereby:
  - Improving air service to a broad section of the traveling community surrounding Modesto, California;
  - Mitigating the need for travelers to drive long distances to access air service;
  - Providing better access to the national air transportation system for Stanislaus County.

3. Funding

a. Total Project Cash Costs: $650,000
   Federal Share: $550,000
   Local Share: $100,000

b. Payment by DOT shall not exceed $550,000 for the total project cash costs, which include a financial incentive agreement to secure new service and a comprehensive marketing program to support the new service.

c. The community will provide the in-kind contributions of $55,000, as detailed in its application, or alternative in-kind contributions approved by the DOT, toward implementation of the authorized grant project.

d. The Sponsor shall pay the costs associated with the grant project prior to seeking reimbursement from the DOT.

e. To seek reimbursement from the DOT, the Sponsor shall submit documentary evidence of all expenditures associated with the grant project set forth in paragraph b., above, and included in the total project costs set forth in paragraph a., above (those to be covered by the local and/or state contribution, as well as those covered by the Federal contribution) on a monthly basis. The DOT will reimburse the Sponsor on a monthly basis for 84.62 percent of all valid expenditures submitted (Federal share of total project costs set forth in paragraph a., above), subject to paragraph f., below. All reimbursement requests to the DOT shall include sufficient documentation to justify reimbursement of the Sponsor, including invoices and proof of payment of the invoice.
f. Payment of the final 10 percent of the Federal funding for the project will be made after receipt by the DOT of the final report set forth in Section C.4., below.

g. No reimbursement by the DOT will be made for the financial incentive agreement component until the Sponsor has provided the DOT with a copy of the financial incentive agreement, including the cost and revenue bases for the compensation required.

h. At the sole option of the DOT, funding may terminate nine months after the execution of this Grant Agreement if the Sponsor has not executed an agreement with Horizon Air or another carrier for air service to a hub airport, unless otherwise agreed between the Sponsor and the DOT.

i. At the sole option of the DOT, funding may terminate three months after execution of an agreement with Horizon Air or another air carrier if the marketing program to support the service has not been developed and implemented, unless otherwise agreed between the Sponsor and the DOT.

j. At the sole option of the DOT, funding under this agreement may terminate if no air service by Horizon Air or another carrier has commenced within 18 months of the execution of this grant agreement, unless otherwise agreed between the Sponsor and the DOT.

k. If during the financial incentive period, the carrier stops providing the subject service, the DOT may choose to terminate reimbursement for that component.

l. The Sponsor shall ensure that the funds provided by the DOT are not misappropriated or misdirected to any other account, need, project, line-item, or the like.

m. Any Federal funds not expended in conjunction with the project by the date of expiration (Section B.4) of the Grant Agreement will remain with the DOT, unless otherwise agreed between the Sponsor and the DOT. No further reimbursements to the Sponsor for costs incurred after that date will be made or are to be expected.

n. Should this Grant Agreement be terminated prior to the expiration date provided herein, the DOT reserves the right to require that any of the funds reimbursed to the Sponsor be returned to the DOT.

4. Reports

a. Project reports, including progress on milestones as set forth in paragraph b., below, shall be reported to the DOT on a quarterly basis, with reports due to the DOT as follows: April 15 for the First Quarter, July 15 for the Second Quarter, October 15 for the Third Quarter, and January 15 for the Fourth Quarter.

b. Project reports shall include the following: (i) brief narrative detailing the status of the grant project and the progress being made towards the goals and objectives described in Section C.2.; (ii) status report on the hiring of any consultants in conjunction with implementation of the authorized grant project; (iii) status report on progress toward completion of the in-kind contributions committed to implementation of the authorized grant
project, including documentation evidencing that in-kind contributions were made; (iv) status report on all marketing or promotional activities undertaken; (v) status report on contract negotiations with airlines, including any financial incentive agreement(s); (vi) status report on contract negotiations with other third parties; and (vii) comparison of enplanements at the airport generally on a monthly basis beginning with the month of execution of the Grant Agreement with the same month in each of the previous two years and in 2000 (in a format provided by the DOT).

c. Final report (in a format to be provided by DOT) of the Sponsor's assessment of the project shall be made to the DOT within three months after expiration of this Grant Agreement or conclusion of the grant project, whichever occurs earlier.

5. **Sponsor Obligations**

a. Within three months following the date of execution of an agreement with an airline for service at the community, the Sponsor shall submit to the DOT a detailed marketing plan as set forth in the application, including the types of media to be used, projected expenditures for each marketing component, and timeline for release of the marketing/advertising material.

b. The Sponsor shall provide, in its quarterly Progress Reports, copies of all promotional materials including:
   (i) copies of any newspaper and/or magazine advertisements/inserts, direct mailings, and any other promotional material used in implementing its proposal;
   (ii) copies of billboard advertisements and cities or airports where the billboards will appear;
   (iii) details of any Internet marketing program, including the sites on which the marketing will take place; and
   (iv) other samples of marketing materials (e.g., VHS, DVDs, or CDs for commercial television and/or radio advertisements) to be used.

c. The Sponsor shall, within 15 calendar days of their execution, provide the DOT with a copy of all agreements concluded between the Sponsor and any consultants, air carriers, or other parties with respect to the grant project. The Sponsor shall, within 15 calendar days of execution, also provide the DOT with notice of any amendment to, or termination of such agreements. The Sponsor shall ensure that all agreements entered into with third parties regarding this grant are consistent with this Grant Agreement and the documents incorporated by reference into the Grant Agreement, pursuant to Section E, below.

d. The Sponsor shall provide evidence on a quarterly basis as set forth in Section C.4., above, to demonstrate the progress that it has made toward securing the in-kind contributions of $55,000 detailed in its application, or alternative in-kind contributions approved by DOT.
c. The Sponsor shall ensure that the obligations set forth in this Grant Agreement are met.

D. ASSURANCES
The Sponsor shall execute the attached assurances and certifications in conjunction with execution of this Grant Agreement and shall ensure compliance by the grant recipient with those assurances and certifications.

E. DEFINITIONS

Agreement: Any written or oral contract, obligation, commitment, or understanding between the Sponsor and/or all parties identified in the community’s grant proposal.

Application or Grant Application: The complete document submitted by the community/sponsor to the DOT in Docket OST-2005-20127, including amendments.

Carrier or Air Carrier or Airline: A citizen of the United States undertaking, by any means, directly or indirectly to provide air transportation, including commuter air carriers and air taxi operators.

Community: All parties identified in the grant application as participating in the approved grant project, including the designated Legal Sponsor.

DOT: United States Department of Transportation.

Execution of Grant Agreement: Signing of the written Grant Agreement by the DOT and the Sponsor.

Federal Share: Federal funds authorized for use by the grant recipient in implementing the approved grant project.

Grant Agreement: The written agreement between the DOT and the Sponsor for the authorized project under the Small Community Air Service Development Program and DOT Order 2005-8-19, incorporating by reference, except to the extent otherwise inconsistent with the terms of the written agreement, the Application originally submitted to the DOT on April 21, 2005, in Docket OST-2005-20127-70, including any amendments, as well as any material submitted in the Docket as Confidential Material.

Grant Recipient/Grantee: Community entity/entities receiving the SCASDP grant.
**Local Share:** Public, community, state, or private funds, excluding in-kind contributions described in the grant application, committed in the grant application for use in implementing the approved grant project.

**Party:** The Department of Transportation and/or the Sponsor, as the context indicates.

**Project or Grant Project:** The authorized use of Federal and/or local funds to fulfill the goals and objectives described in the community grant application.

**Proposal:** Project defined by the community in its grant application.

**Quarter or Quarterly:** Calendar quarter. Reports or other information required for submission on a quarterly basis are due no later than 15 calendar days after close of the calendar quarter.


**Sponsor Obligations:** Responsibilities of the Sponsor under this Grant Agreement and those documents incorporated by reference into the Grant Agreement according to B.1.

**Sponsor or Legal Sponsor:** The designated representative of the grantee to administer and oversee implementation of the Grant Agreement and fulfillment of the authorized grant project.

**Third Party In-Kind Contribution:** property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

**Total Project Cash Costs:** Sum of the Federal and local cash shares contributed toward completion of the approved grant project, excluding in-kind contributions.
OFFER

This offer is made in accordance with Public Law 108-176 and Public Law 108-447, according to the above conditions and assurances.

Executed this ______ day of ______________, 2005.

(SEAL)

United States Department of Transportation

Teresa B. Bingham
Associate Director
Office of Aviation Analysis

ACCEPTANCE

The Sponsor agrees to accomplish each element of the project in compliance with the terms and conditions contained herein.

Executed this ______ day of ______________, 2005.

Modesto City-County Airport
Modesto, California

(SEAL)

Signature of Sponsor's Designated Official Representative

______________________________
Title

Attest: ______________________________

Title: ______________________________
CERTIFICATE OF SPONSOR'S ATTORNEY

I, _______________________, acting as Attorney for the Sponsor do hereby certify:
That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State (or Commonwealth) of _____________.
Further, I have examined the foregoing Grant Agreement, and the actions taken by said Sponsor relating thereto, and find that the acceptance thereof by said Sponsor and Sponsor’s official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State (or Commonwealth) and Title 49 U.S.C. In addition, for grants involving projects to be carried out on property not owned by the Sponsor or where Sponsor may make payments to others, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement, including the Assurances, constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

______________________________
Signature of Sponsor’s Attorney

______________________________
Date

______________________________
Printed or Typed Name

______________________________
Telephone
OFFICE OF THE SECRETARY
DEPARTMENT OF TRANSPORTATION

TITLE VI ASSURANCE
(Implementing Title VI of the Civil Rights Act of 1964, as amended)

ASSURANCE CONCERNING NONDISCRIMINATION ON THE BASIS OF DISABILITY IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE


49 CFR Parts 21 and 27 and 14 CFR Parts 271 and 382

(Name of Grant Recipient) HEREBY AGREES THAT,

I. As a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply: with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d--42 U.S.C. 2000d-4; all requirements imposed by or pursuant to: Title 49, Code of Federal Regulations, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964; and other pertinent directives so that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the Department of Transportation. This assurance is required by Title 49, Code of Federal Regulations, section 21.7(a) and Title 14, Code of Federal Regulations, section 271.9(c).

II. As a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply with: section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); the Air Carrier Access Act of 1986 (49 U.S.C. 1374(c)); and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, Title 14, Code of Federal Regulations, Part 382, Nondiscrimination on the Basis of Handicap in Air Travel; and other pertinent directives so that no otherwise qualified person with a disability, be excluded from participation in, be denied the benefits of, be discriminated against by reason of such handicap in the provision of air transportation, or otherwise be subjected to discrimination under any program for which the Recipient receives Federal financial assistance.
from the Department of Transportation. This assurance is required by Title 49, Code of Federal Regulations, section 27.9 and Title 14, Code of Federal Regulations, sections 271.9(c) and 382.9.

III. It will promptly take any measures necessary to effectuate this agreement. The Recipient further agrees that it shall take reasonable actions to guarantee that it, its contractors and subcontractors subject to the Department of Transportation regulations cited above, transferees, and successors in interest will comply with all requirements imposed or pursuant to the statutes and Department of Transportation regulations cited above, other pertinent directives, and the above assurances.

IV. These assurances obligate the Recipient for the period during which Federal financial assistance is extended. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the statutes and Department of Transportation regulations cited above, other pertinent directives, and the above assurances.

V. These assurances are given for the purpose of obtaining Federal grant assistance under the Small Community Air Service Development Program and are binding on the Recipient, contractors, subcontractors, transferees, successors in interest, and all other participants receiving Federal grant assistance in the Small Community Air Service Development Program. The person or persons whose signatures appear below are authorized to sign this agreement on behalf of the Grant Recipient.

VI. In addition to these assurances, the Recipient agrees to file: a summary of all complaints filed against it within the past year that allege violation(s) by the Recipient of Title VI of the Civil Rights Act of 1964, as amended, section 504 of the Rehabilitation Act of 1973, as amended, or the Air Carrier Access Act of 1986; or a statement that there have been no complaints filed against it. The summary should include the date the complaint was filed, the nature of the complaint, the status or outcome of the complaint (i.e., whether it is still pending or how it was resolved).

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<th>Date</th>
<th>Legal Name of Grant Recipient</th>
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<th>By:</th>
<th>Signature of Authorized Official</th>
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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
OFFICE OF AVIATION ANALYSIS

CERTIFICATION REGARDING INFLUENCING ACTIVITIES

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the
undersigned, to any person for influencing or attempting to influence an officer or employee of any
agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member
of Congress in connection with the awarding of any Federal contract, the making of any Federal
grant, the making of any Federal loan, the entering into of any cooperative agreement, and the
extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan,
or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person
for influencing or attempting to influence an officer or employee of any agency, a Member of
Congress, an officer or employee of Congress, or an employee of a Member of Congress in
connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall
complete and submit Standard Form-LLL, "Disclosure Form to Report Influencing Activities," in
accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award
documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under
grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose
accordingly.

This certification is a material representation of fact upon which reliance was placed when this
transaction was made or entered into. Submission of this certification is a prerequisite for making
or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who
fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and
not more than $100,000 for each such failure.

________________________________________________________________________
Signature                                                                  Date
________________________________________________________________________
Title
________________________________________________________________________
Grant Recipient
CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS
IN THE PERFORMANCE OF SMALL COMMUNITY AIR SERVICE PURSUANT TO GRANT AWARD
UNDER THE SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM

A. The grant recipient certifies that it will, or will continue, to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grant recipient's workplace, and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—
   (1) The dangers of drug abuse in the workplace;
   (2) The grantee's policy of maintaining a drug-free workplace;
   (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
   (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of work supported by the grant award be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment supported by the grant award, the employee will—
   (1) Abide by the terms of the statement; and
   (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to the Office of Aviation Analysis. Notice shall include the order number of the grant award;

(f) Taking one of the following actions, within 30 days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—
   (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or
   (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grant recipient may, but is not required to, insert in the space provided below the site for the performance of work done in connection with the specific grant.

Places of Performance (street address, city, county, state, zip code). For the provision of air service pursuant to the grant award, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the grant award.

Check [ ] if there are workplaces on file that are not identified here.

______________________________  ______________________
Grant Recipient Signature          Date
SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM

GRANT ASSURANCES

Certification. The Grantee hereby assures and certifies, with respect to this grant, that:

1. General Federal Requirements. It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

   Federal Legislation
   h. Clean Air Act, P.L. 90-148, as amended.
   i. Coastal Zone Management Act, P.L. 93-205, as amended.
   j. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.1
   r. Wild and Scenic Rivers Act, P.L. 90-542, as amended.

   Executive Orders
   Executive Order 11246 - Equal Employment Opportunity
   Executive Order 11990 - Protection of Wetlands
   Executive Order 11998 – Flood Plain Management
   Executive Order 12372 - Intergovernmental Review of Federal Programs.
   Executive Order 12898 - Environmental Justice

   Federal Regulations
   d. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.
   e. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).
Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).

Office of Management and Budget Circulars

a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are incorporated by reference in the grant agreement.

2. Responsibility and Authority of the Grantee.

a. It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

3. Fund Availability. It has sufficient funds available for that portion of the project costs that are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement that it will own or control.


a. It will not take or permit any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the DOT, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the DOT.

5. Accounting System, Audit, and Record Keeping Requirements.

a. It shall keep all project accounts and records that fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
b. It shall make available to the DOT and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The DOT may require that a recipient
conduct an appropriate audit. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

6. Minimum Wage Rates. It shall include, in all contracts in excess of $2,000 for work on any projects funded under this grant agreement that involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

7. Economic Nondiscrimination. In any agreement, contract, lease, or other arrangement under any project funded under this grant agreement and for which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the Grantee will insert and enforce provisions requiring the contractor to (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

8. Engineering and Design Services. It will award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the Grantee.

9. Foreign Market Restrictions. It will not allow funds provided under this grant to be used to fund any project that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

10. Relocation and Real Property Acquisition. (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.
11. **Buy America.** In accepting this award, the grant recipient agrees to comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c, popularly known as the "Buy American Act"). The recipient should review the provisions of the Act to ensure that expenditures made under this award are in accordance with it. In compliance with Section 508 of Public Law 108-447, the grant recipient is hereby notified that it is in the sense of the Congress of the United States that only American-made equipment and products should be purchased with financial assistance provided under this award.

________________________________________
Grant Recipient

________________________________________
Signature of Authorized Grant Recipient Official  Date
OFFICE OF THE SECRETARY OF TRANSPORTATION

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant
may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

________________________________________  ____________________________________________
Name                                            Affiliation

________________________________________  ____________________________________________
Title                                            Date
OFFICE OF THE SECRETARY OF TRANSPORTATION
CERTIFICATION REGARDING DEBARMET, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION -- LOWER TIER COVERED
TRANSACTIONS

Instructions for Certification
1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

____________________________________
Name

____________________________________
Title

____________________________________
Affiliation

____________________________________
Date
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-452

A RESOLUTION AMENDING THE 2006 OPERATING BUDGET TO APPROPRIATE $705,000 TO THE DEPARTMENT OF TRANSPORTATION AIR SERVICE DEVELOPMENT GRANT ACCOUNT (6310-440-5415) AND TO BUDGET APPROPRIATE REVENUES, WHICH ARE $550,000 IN GRANT FUNDS FROM THE SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM, U.S. DEPARTMENT OF TRANSPORTATION, AND $155,000 OF LOCAL SHARE FUNDING, WHICH INCLUDES $35,000 FROM AIRPORT FUND RESERVES

WHEREAS, on January 19, 2005, the Department of Transportation (DOT) opened the opportunity for communities such as Modesto to apply for the Small Community Air Service Development Program, and

WHEREAS, said grant is intended to provide support for cities wishing to enhance their air service by attracting additional airline routes, and

WHEREAS, Modesto has been identified by DOT as having inadequate air service and unreasonably high airfares, and

WHEREAS, the Airport Advisory Committee endorsed application for the grant being offered by the Small Community Air Service Development Program, and

WHEREAS, the Economic Development Committee approved submittal of a grant application for the Small Community Air Service Development Program in the amount of $550,000 at its April 11, 2005 meeting, and

WHEREAS, on April 26, 2005, by Resolution No. 2005-212, the Modesto City Council approved submittal of a grant application for a Small Community Air Service Development Program in the amount of $550,000, and
WHEREAS, on August 25, 2005, the City of Modesto was notified that the Modesto Airport had been awarded a Grant of $550,000 from the DOT under the Small Community Air Service Development Program, and

WHEREAS, amending the 2006 Operating Budget to appropriate the $705,000 to Department of Transportation Air Service Development Grant Account (6310-440-5415) and to budget appropriate revenues, which are $550,000 in grant funds from the Small Community Air Service Development Program, U.S. Department of Transportation, and $155,000 of Local Share funding, which includes $35,000 from Airport Fund Reserves,

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Modesto that it hereby approves amending the 2006 Operating Budget to appropriate $705,000 to the Department of Transportation Air Service Development Grant (Account 6310-440-5415) and to budget appropriate revenues which are $550,000 grant funds from the Small Community Air Service Development Program, U.S. Department of Transportation, and $155,000 of Local Share funding, which includes $35,000 from Airport Fund Reserves.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of September 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

Attest: Jean Zahr
JEAN ZAHR, City Clerk

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2005-453  

A RESOLUTION DENYING THE APPEAL OF JET INVESTMENTS REGARDING KANSAS AVENUE AUTO CENTER FOR MODIFICATION OF CAPITAL FACILITIES FEES

WHEREAS, on June 24, 2003, the Modesto City Council adopted Resolution No. 2003-309 updating its Capital Facilities Fee (CFF) program for the establishment and collection of fees for future capital facilities, and

WHEREAS Resolution No. 2003-309 defines the categories of uses and rates on which the fees will be collected, and

WHEREAS, the categories identified in the CFF program include a broad range of uses based on square footage to ensure that each use pays its share of the CFF based on the anticipated impacts of the development, and

WHEREAS, the current City practice is to charge auto service centers the retail rate based on square footage as a result of the comprehensive study undertaken to enact the CFF program which went into effect in September 2003, and

WHEREAS, on January 21, 2005, a request was received from Morad Engineering on behalf of JET Investments to collect CFF at the industrial rate rather than the retail rate for the 830 Kansas Avenue Auto Center, and

WHEREAS, on January 31, 2005, Edmond Morad of Morad Engineering was notified by letter from Amy Gedney, Infrastructure Financing Program Administrative Officer, that the CFF Committee had determined that CFF for an auto parts store should be collected at the retail rate, and
WHEREAS, on April 4, 2005, a letter from Michael A. Rein, Esq, was received, on behalf of JET Investments regarding payment of CFF under protest, and

WHEREAS, on June 29, 2005, Michael Rein, Esq., was notified by letter from Amy Gedney, Infrastructure Financing Program Administrative Officer, that based on an analysis by the City Traffic Engineer, using ITE standards, a determination had been made that the traffic generated by an auto service center use falls within the normal range for retail uses, and

WHEREAS, by letter from Horizon Consulting Services dated July 28, 2005, to Jean Zahr, City Clerk, JET Investments appealed the City’s determination that auto service centers should be charged CFF at the retail rate, and

WHEREAS, said appeal was set for a public hearing before the City Council at its regular meeting place in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, on September 6, 2005, at 5:30 p.m., at which date and time said duly noticed public hearing was held and evidence, both oral and documentary, was received and considered.

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

1. The City Council has reviewed JET Investments request based on traffic data and has determined that auto service centers fall within the normal range for retail uses as outlined in the CFF program based on the afternoon peak hour rates per 1,000 sq. feet for the range of retail uses as denoted in the Institute of Transportation Manual.

2. Said appeal should be denied as recommended because auto service centers fall within the normal range for retail uses as outlined in the CFF program.
BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby denies the appeal of JET Investments regarding modification of Capital Facilities Fees for automotive service centers for the reason set forth above.

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

Attest: Jean Zahr
JEAN ZAHR, City Clerk

By: Michael D. Milich
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-454

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. 8)

WHEREAS, this Council did, on June 28, 2005, adopt its Resolution No. 2005-320 (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. 8 of
Community Facilities District No. 2004-1 ("Village One #2) of the City of Modesto, County of
Stanislaus, State of California," was recorded on June 29, 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 20; and

WHEREAS, at the time and date set for the hearing (August 9, 2005) pursuant to the
Resolution of Intention to Annex, the public hearing was opened and continued to Tuesday,
September 6, 2005; and

WHEREAS, this Council held the public hearing on Tuesday, September 6, 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 #2 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 53339.5 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 or owners of all of the land in the Annexed Territory (hereinafter referred to as “Landowner,” without regard to number), the election shall be held on the 6th day of September 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 regular meeting of the Council of the City of Modesto held on the 6th of September 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney

ATTEST: JEAN ZAHR, City Clerk
SAMPLE
OFFICIAL BALLOT

BALLOT NO. _____

CITY OF MODESTO
COMMUNITIES FACILITIES DISTRICT NO. 2004-1
(VILLAGE ONE #2)
ANNEXATION NO. 8
SPECIAL TAX ELECTION

September 6, 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: YES __ NO __

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. 2005-320182, 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. 87)” adopted by the City Council of the City of Modesto on June 28, 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. 2005-455

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO
CANVASSING THE RESULTS OF THE SEPTEMBER 6, 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. 8)

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. 2005-320, 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. 8)” adopted on June 28, 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,

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. 2005-454, adopted on September 6, 2005, and, as a result, this Council called an election within the territory proposed to be annexed to the District (the “Election”) for September 6, 2005, or as soon thereafter as practicable, relative to the foregoing; and

WHEREAS, on September 6, 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. 2005-320 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 regular meeting of the Council of the City of Modesto held on the 6th day of September 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney

ATTEST: 
JEAN ZAHN, City Clerk
CERTIFICATE OF CITY CLERK

I, JEAN ZAHR, City Clerk of the City of Modesto, hereby certify that, pursuant to Resolution No. 2005-454, 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. 8) adopted on June 28, 2005, by the City Council of the City of Modesto, I did conduct the Special Tax Election on September 6, 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. 2005-320, 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. 8)” adopted by the City Council of the City of Modesto on June 28, 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 7 NO 0

Jean Zahr
City Clerk of the City of Modesto

Dated: 9/7, 2005

Exhibit A to 2005-455 Canvassing (Annexation No. 8 to CFD No. 2004-1)
A RESOLUTION 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)

WHEREAS, pursuant to Chapter 3.5 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”), proceedings for the annexation of territory to an existing community facilities district may, pursuant to Chapter 3.5 of the Act, be instituted by the adoption by the legislative body of a resolution of intention to annex such territory, and

WHEREAS, pursuant to the Act, this Council did, by its Resolution No. 2004-199, adopted on April 6, 2004 (the “Resolution of Formation”), establish the City’s Community Facilities District No. 2004-1 (Village One #2) (“the District”), 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, this Council hereby determines that the public convenience and necessity require the annexation of certain territory to the District, and

WHEREAS, the territory to be annexed is within the City limits, and

WHEREAS, it is intended that the territory be annexed to Tax Zone #2.

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

SECTION 1. The above recitals are true and correct.

SECTION 2. The boundaries of the District are shown on a map entitled “Proposed Boundaries of Community Facilities District No. 2004-1 (Village One #2) of the City of Modesto, County of Stanislaus, State of California” on file with the County Recorder of the County of Stanislaus, at Book 3 of Maps of Assessment and Community Facilities Districts, at Page 85; the map entitled “Proposed Boundaries of Annexation #1 to City of Modesto CFD No. 2004-1 (Village One #2),” on file with the County Recorder at Book 3 of Maps of Assessment and Community Facilities Districts, at page 86 (as amended by the map entitled “Annexation Map No. 1 of Community Facilities District No. 2004-1 (Village One #2),” on file with the County Recorder at Book 3 of Maps of Assessment and Community Facilities Districts, at page 90); the map entitled “Annexation Map No. 2 of Community Facilities District No. 2004-1 (Village One #2),” on file with the County Recorder at Book 3 of Maps of Assessment and Community Facilities Districts, at Page 91; the map entitled “Annexation Map No. 3 of Community Facilities District No. 2004-1 (Village One #2),” on file with the County Recorder at Book 3 of Maps of Assessment and Community Facilities Districts, at Page 96; the map entitled “Annexation Map No. 4 of Community Facilities District No. 2004-1 (Village
One #2),” on file with the County Recorder at Book 3 of Maps of Assessment and Community Facilities Districts, at Page 99; the map entitled “Annexation Map No. 5 of Community Facilities District No. 2004-1 (Village One #2),” on file with the County Recorder at Book 4 of Maps of Assessment and Community Facilities Districts, at Page 2; the map entitled “Annexation Map No. 6 of Community Facilities District No. 2004-1 (Village One #2),” on file with the County Recorder at Book 4 of Maps of Assessment and Community Facilities Districts, at Page 7; the map entitled “Annexation Map No. 7 of Community Facilities District No. 2004-1 (Village One #2), As Amended,” on file with the County Recorder at Book 4 of Maps and Assessment and Community Facilities Districts, at Page 12; the map entitled “Annexation Map No. 8 of Community Facilities District No. 2004-1 (Village One #2),” on file with the County Recorder at Book 4 of Maps and Assessment and Community Facilities Districts, at Page 20; and the map entitled “Annexation Map No. 9 of Community Facilities District No. 2004-1 (Village One #2),” on file with the County Recorder at Book 4 of Maps and Assessment and Community Facilities Districts, at Page 27.

SECTION 3. The territory proposed to be annexed to the District (the “Territory”) is described in Exhibit A.

SECTION 4. The boundaries of the Territory are also shown on the map thereof, 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,” on file in the office of the City Clerk, which map is hereby approved and adopted. Pursuant to Sections 3110.5 and 3113 of the California Streets and Highways Code, the City Clerk shall endorse her certificate on the original and one copy of the map evidencing the date
and adoption of this Resolution, file the original in her office and, not later than ten days after the adoption of this Resolution, file a copy of the map with the County Recorder of the County of Stanislaus. The map shall contain the legends provided in Sections 3110, 3110.5, and 3313 of the California Streets and Highways Code, including a reference to the title, book, page and recording date of the original boundary map of the District.

SECTION 5. The public facilities and services to be provided for the District are set forth in the Resolution of Formation. It is intended that these same facilities and services be provided to the Territory.

SECTION 6. The special taxes to be levied in the District are set forth in the Resolution of Formation. It is intended that the same special taxes be levied in the Territory, except that the increase of the One-Time Facilities Special Tax component of the special taxes, as authorized by the Resolution of Creation of Tax Zone #2, shall be levied in the Territory.

SECTION 7. A public hearing on this Resolution will be held at 5:30 p.m., or as soon thereafter as practicable, on Tuesday, October 25, 2005, at the regular meeting place of the City Council, City Council Chambers, Basement Level, 1010 Tenth Street, Modesto, California 95353, such time being not less than 30 or more than 60 days following the adoption hereof.

SECTION 8. At the hearing, any interested persons for or against the annexation of the Territory to the District, and the levy of the special taxes therein, may appear and will be heard and considered. Any protest may be made orally or in writing. However, any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and clearly set forth the irregularities and defects to which the objection is made.
All written protests shall be filed with the City Clerk on or before the time fixed for the public hearing. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

SECTION 9. The City Clerk is directed to publish, not later than seven days prior thereto, a notice of the hearing, in the form required by the Act, in a newspaper of general circulation published in the area of the District, being The Modesto Bee, and otherwise in accordance with Section 6061 of the California Government Code, stating (a) the text or a summary of this Resolution, (b) the time and place of the hearing, and (c) that all interested persons for or against the annexation of the Territory to the District or the levying of the special taxes in the Territory will be heard.

SECTION 10. (a) If a majority (but at least six) of the registered voters residing within the District or a majority (but at least six) of the registered voters residing within the Territory, or the owners of one-half or more of the area of the land in the District and not exempt from the special tax, or the owners of one-half or more of the Territory, file written protests against the proposed annexation, and the protests are not withdrawn so as to reduce the value of the protests to less than a majority, no further proceedings to annex the Territory to the District, or to levy in the Territory the special taxes to be levied in the District, shall be taken for a period of one year from the date of the decision of the Council on the issues discussed at the hearing.

SECTION 11. At the conclusion of the hearing, if the Council determines to annex the Territory to the District, it will submit the levy of the special taxes to the qualified electors of the Territory in a special election.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 13th day of September 2005, by Councilmember Dunbar,
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: Dunbar, Hawn, Jackman, Keating, Marsh,
        O’Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: Jean Zahr
        JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
EXHIBIT A

ANNEXATION NO. 9 TO
COMMUNITY FACILITIES DISTRICT NO. 2004-1 (VILLAGE ONE #2)

Proposed Boundary Map
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-457

A RESOLUTION APPROVING AN AGREEMENT BETWEEN CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2004-1 (VILLAGE ONE #2) AND SYLVAN SCHOOL DISTRICT FOR INSTALLATION OF A STORM DRAIN LINE ON KODIAK DRIVE (ADJACENT TO SANDERS PARK SITE), AND AUTHORIZING THE DISTRICT ADMINISTRATOR TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto desires to complete the core infrastructure needed to serve the Village One area, and

WHEREAS, Sylvan School District ("School District") has agreed to install certain improvements on Kodiak Drive (adjacent to Sanders Park site), and

WHEREAS, the City Council has considered the proposed Acquisition & Shortfall Agreement ("agreement") between City of Modesto Community Facilities District No. 2004-1 and School District, and

WHEREAS, said agreement shall have a maximum reimbursement amount of $114,626, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Acquisition and Shortfall Agreement between City of Modesto Community Facilities District No. 2004-1 (Village One #2) and Sylvan School District, a copy of which is on file in the City Clerk’s Office, and authorize the District Administrator to execute the Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of September 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, Hawn, Jackman, Keating, Marsh, O’Bryan, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney

ATTEST: JEAN ZAHN, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-458

A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PURCHASE OF INET SYSTEM EQUIPMENT TO NETLOGIC SOLUTIONS, MODESTO, CA, FOR A TOTAL BID PRICE OF $246,858.94

WHEREAS, as part of the City’s franchise agreement with Comcast, Comcast is to develop a Citywide fiber INET to be utilized by the City of Modesto and several participating school districts, and

WHEREAS, the construction of the INET is completed and currently undergoing validation testing, and

WHEREAS, the INET will not be functional until the City and its participants are able to acquire and install equipment that will allow communications to flow between facilities connected to the INET, and

WHEREAS, on October 12, 2004, by Resolution NO. 2004-535 Council approved the use of $150,000 of funding for the first phase of the INET implementation, which provides for service to all Fire Stations, and

WHEREAS, this funding request connected the remaining 26 City sites providing high speed data connectivity and the framework for future deployment of voice over IP (VOIP) and other advanced services, and

WHEREAS, the City is unable to take advantage of the INET without purchasing and installing equipment that allows the facilities on the INET to communicate with one another, and

WHEREAS, the INET will provide the City the capability to increase network speeds and bandwidth, which is desperately needed for some remote sites, and
WHEREAS, the INET will also provide the City with the opportunity to broadcast video to any facility on the INET as well as begin the migration to VOIP phone services, saving the City more than $95,000 annually, and

WHEREAS, the INET will serve as the “hard wired backbone” for a future City of Modesto wireless application that is also being planned for, and

WHEREAS, on May 24, 2005, by Resolution No. 2005-265 Council approved authorizing the Purchasing Supervisor to formally solicit bids for the purchase of INET system equipment, and

WHEREAS, the Purchasing Division solicited Request for Bid No. 0506-04, for the purchase of INET system equipment to eleven (11) companies, posted the bid on the City’s web site, and formally advertised as required by law, and

WHEREAS, of the eleven (11) companies solicited, one (1) company chose to respond, and

WHEREAS, City staff recommends the award of Bid No. 0506-04 and contract for the purchase of INET system equipment to Netlogic Solutions, Modesto, CA, for a total bid price of $246,858.94.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby awards Bid No. 0506-04 and contract for the purchase of INET system equipment to Netlogic Solutions, Modesto, CA, for a total bid price of $246,858.94.

BE IT FURTHER RESOLVED that the Purchasing Supervisor is hereby authorized to issue a purchase order for the purchase of INET system equipment to Netlogic Solutions, Modesto, CA, for a total bid price of $246,858.94.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of September 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, Hawn, Jackman, Keating, Marsh, O'Bryan, 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. 2005-459

A RESOLUTION APPROVING AN AGREEMENT WITH TURNSTONE CONSULTING FOR PREPARATION OF A MASTER ENVIRONMENTAL IMPACT REPORT FOR THE CITY’S WASTEWATER MASTER PLAN AND WASTEWATER RATES AND COLLECTION FEES UPDATES IN AN AMOUNT NOT TO EXCEED $456,396, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the City is in the process of planning for a significant wastewater capital improvement program ("CIP") in order to meet existing deficiencies and replacement needs within its wastewater system, as well as to provide capacity to meet the needs of projected growth; and

WHEREAS, the planning effort includes an update to the City’s 1995 Wastewater Master Plan to evaluate the City’s infrastructure needs, as well as a comprehensive update to the City’s wastewater rates and collection fees to provide the funding necessary to implement the CIP (collectively, the "Project"); and

WHEREAS, the City has determined that a master environmental impact report ("MEIR") should be prepared for the proposed Project to satisfy the requirements of the California Environmental Quality Act; and

WHEREAS, the City has determined that Turnstone Consulting is willing, able and well-qualified to prepare the MEIR for the proposed Project.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Agreement between the City of Modesto and Turnstone Consulting for preparation of a Master Environmental Impact Report for the City’s Wastewater Master Plan and Rates and Collection Fees Updates, in an amount not to exceed $456,396, a copy of which is on file in the City Clerk's office.
BE IT FURTHER RESOLVED THAT the City Manager is hereby authorized to execute the 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 13th day of September, 2005, by Councilmember Hawn, 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: 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. 2005-460

A RESOLUTION TO AMEND THE FY 2006 CIP BUDGET: A) TO REDUCE COLLECTION SYSTEMS REHAB PROJECT 6210-480-B574 BY $150,000; B) TO REDUCE ANNUAL R&R PRIMARY SITE PROJECT 6210-480-B576 BY $317,700; C) TO REDUCE ANNUAL R&R SECONDARY SITE PROJECT 6210-480-B577 BY $317,700 AND RETURN THOSE FUNDS TO WASTEWATER FUND BALANCE 6210-800-8000-8003 TO BE REALLOCATED TO THE WASTEWATER MASTER PLAN 6210-430-A208 FOR A TOTAL OF $785,400

WHEREAS, on September 6, 2005, the City Council approved a Professional Services Agreement with Turnstone Consulting to prepare an Environmental Impact Report for the Wastewater Master Plan and Wastewater Rate and Connection Fees Update ("EIR"), and

WHEREAS, the EIR’s total cost of $456,396 is more than the Wastewater Master Plan Fund balance of $21,000, by an amount of $435,396, and

WHEREAS, on September 27, 2005, the City Council will consider approving a Professional Services Agreement with Carollo Engineers to prepare the Wastewater Master Plan Phase 2 for the amount of $332,000, and

WHEREAS, on September 27, 2005, the City Council will also consider approving staff charges of $18,000 to administer the Carollo Engineer’s Wastewater Master Plan Phase 2 Agreement, and

WHEREAS, the Wastewater Master Plan Phase 2 will perform critical infrastructure planning tasks, including identifying improvements for existing and future services, and

WHEREAS, the EIR will identify new wastewater rates and connection fees which will fund capital projects associated with the Wastewater Master Plan, and
WHEREAS, the Finance Department has indicated that there are sufficient funds in the Fund 6210 fund balance for the appropriation of this project within the FY 2006 Capital Improvement Program Budget to fully fund 6210-430-A208,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the amendment to the FY 2006 CIP Budget: a) to reduce Collection Systems Rehab Project 6210-480-B574 by $150,000; b) to reduce Annual R&R Primary Site Project 6210-480-B576 by $317,700; c) to reduce Annual R&R Secondary Site Project 6210-480-B577 by $317,700 and return those funds to Wastewater Fund Balance 6210-800-8000-8003 to be reallocated to the Wastewater Master Plan 6210-430-A208 for a total of $785,400.

BE IT FURTHER RESOLVED that the Finance Director, or designee, is hereby authorized to take the steps necessary to amend the Capital Improvement Budget.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of September 2005, by Councilmember Hawn, 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: Dunbar, Hawn, Jackman, Keating, Marsh, O’Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By  
MICHAEL D. MILICH, City Attorney

ATTEST:  
JEAN ZAHR, City Clerk

09/13/05/PW/Rich Ulm/Item No 7 2 2005-460
A RESOLUTION ACCEPTING THE WORK BY VANGUARD CONSTRUCTION FOR THE “2004 ADA CURB RAMP CONSTRUCTION” PROJECT AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION, AND AUTHORIZING PAYMENT OF AMOUNTS DUE TOTALING $171,470.50 PER THE CONTRACT. TOTAL PROJECT COST IS $225,166.24

WHEREAS, a report has been filed by the Acting Public Works Director that the project titled “2004 ADA Curb Ramp Construction” has been completed by Vanguard Construction, in accordance with the contract agreement dated April 5, 2005,

NOW, THEREFORE, BE IT RESOLVED by the Council that the “2004 ADA Curb Ramp Construction” project be hereby accepted from said contractor, Vanguard Construction, that the Notice of Completion be filed with the Recorder of Stanislaus County and that payment of amounts due totaling $171,470.50, as provided in the contract, be authorized.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of September, 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, 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

WHEREAS, the bids received for “Pump Station For Well 62 At Freedom Park” were opened at 11:00 a.m. on August 16, 2005, and later tabulated by the Acting Public Works Director for the consideration of the Council, and

WHEREAS, the Acting Public Works Director has recommended that the bid of $632,315 received from R.L. Davis Construction Co., Inc., be accepted as the lowest responsible bid and the contract be awarded to R.L. Davis Construction Co., Inc.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for said project, and accepts the bid of R.L. Davis Construction Co., Inc., in the amount of $632,315, and hereby awards R.L. Davis Construction Co., Inc., the contract titled “Pump Station For Well 62 At Freedom Park”

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of September 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, Hawn, Jackman, Keating, Marsh, O’Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By ___________________________
  MICHAEL D. MILICH, City Attorney

ATTEST: _______________________
  JEAN ZAHN, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-463

RESOLUTION ADOPTING A MITIGATED NEGATIVE DECLARATION (SCH #2005042019) FOR THE WELLS REPLACEMENT PROJECT AND ADOPTING A FINDING THAT THE CITY COUNCIL HAS REVIEWED AND CONSIDERED AND MADE FINDINGS REGARDING THE CEQA ENVIRONMENTAL REVIEW DOCUMENT

WHEREAS, Section 15064 (f)(2) of the CEQA Guidelines relating to Initial Study/Mitigated Negative Declarations permits a lead agency to prepare an Initial Study/Mitigated Negative Declaration on any proposed Project to analyze whether the Project may cause any significant effect on the environment, and

WHEREAS, a proposed Wells Replacement Project consists of two new drinking water well sites in the City of Modesto to replace the water supply capacity that the City has lost from the closure of existing drinking water well sites within the City in order to serve existing and approved development in the City, and

WHEREAS, the proposed Project includes two well sites and an alternate site, the first site located within the Village One Specific Plan area in the northeast corner of the Freedom Park site and adjacent to Freedom Elementary School, the second site located within the Pelandale/Snyder Specific Plan area at the northwest corner of the existing McKinney Colony park site near the corner of Warm Springs Drive and Pickford Way, and an Alternative Site located within the Village One Specific area in the future Grogan Park site near the corner of Litt Road and Sylvan Avenue, and

WHEREAS, Pacific Municipal Consultants (PMC), under contract with the City, prepared an Initial Study and Mitigated Negative Declaration (SCH #2005042019) for the Wells Replacement Project and said Initial Study and Mitigated Negative Declaration...
identified potential significant impacts from the proposed Project relating to biological resources, hazardous materials and the generation of noise, and

WHEREAS, pursuant to CEQA Section 15070, the City agreed to incorporate feasible mitigation measures into the proposed Wells Replacement Project before the Initial Study/Mitigated Negative Declaration was released for public review in order to avoid or mitigate the identified impacts to a point where clearly no significant impact on the environment will occur, and

WHEREAS, CEQA Guidelines Section 15070 permits the adoption of Mitigated Negative Declarations when the Project has been revised, so that potential significant adverse impacts can be avoided or mitigated to a less than significant level, and

WHEREAS, a 30-day public review period for the proposed Project began on April 4, 2005 and ended on May 3, 2005, and

WHEREAS, the City did not receive any public comments on the draft Initial Study/Mitigated Negative Declaration so, following the public review, there were no suggested technical revisions to be made to the document or any of the proposed mitigation measures, and

WHEREAS, the Mitigation Monitoring and Reporting Program (MMRP) is included and described within the Initial Study/Mitigated Negative Declaration,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council has reviewed and considered the Initial Study/Mitigated Negative Declaration prepared for the Wells Replacement Project, a copy of which is on file in the City Clerk’s Office, and based on the substantial evidence provided in said Initial Study/Mitigated Negative Declaration makes the following findings:
1. This Initial Study, prepared pursuant to CEQA Section 15063, has identified potential significant environmental effects that would result from the Project. The additional significant effects are potential impacts related to biological resources, hazardous materials and the generation of noise.

2. Feasible mitigation measures were agreed to by the City and incorporated into the proposed Project before the Initial Study and Mitigated Negative Declaration was released for public review pursuant to CEQA Section 15070 in order to avoid or mitigate the identified effects to a point where clearly no significant effects on the environment will occur.

3. There is no substantial evidence in light of the whole record before the public agency that the proposed Project, as revised, may have a significant effect on the environment (CEQA Section 21064.5(2)).

4. Based on the above-referenced Initial Study/Mitigated Negative Declaration and the fact that feasible mitigation measures were incorporated to revise the proposed Project in order to avoid the effects or mitigate the effects to the point where clearly no significant effect on the environment will occur, the Initial Study/Mitigated Negative Declaration should be adopted for the proposed Project.

5. Although the proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described above have been added to the Project. The Initial Study/Mitigated Negative Declaration, (SCH #2005042109) will therefore be adopted.

6. The City further finds that the cumulative impacts of this Project are less than significant as described in Section 4.0 of the Initial Study/Mitigated Negative Declaration (Cumulative Impacts). As such, this Project would generate no additional cumulative impacts that were not previously addressed in the Master EIR. All appropriate mitigation measures from the Master EIR have been incorporated into the Project, and no further evaluation of cumulative impacts is required.

7. As required by CEQA Section 21081.6 et seq., the mitigation monitoring program (Section 6.0 of the Initial Study/Mitigated Negative Declaration) is hereby adopted.

8. The Initial Study/Mitigated Negative Declaration (SCH #2005042019) provides the substantial evidence to support findings 1 through 7, above.
A copy of said Initial Study/Mitigated Negative Declaration (SCH NO. 2005042019) is on file with the City Clerk. The City of Modesto Public Works Department, Capital Improvement Services, is the custodian of the documents and other materials which constitute the record of proceedings upon which its decision is based. The records are located at the office of the City of Modesto Public Works Deputy Director, 1010 Tenth Street, Fourth Floor, Modesto, CA 95354.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Public Works Director is hereby authorized and directed to file a Notice of Determination 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 13th day of September 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, Hawn, Jackman, Keating, Marsh, O’Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ______________

JBAN ZAHR, City Clerk

APPROVED AS TO FORM:

By ____________________

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-464

A RESOLUTION AUTHORIZING THE PURCHASE AND INSTALLATION OF A LIEBERT 65KVA UNINTERRUPTIBLE POWER SUPPLY FOR THE IT DEPARTMENT, FOR A TOTAL ESTIMATED COST OF $100,000

WHEREAS, the 5th floor datacenter is provided with “clean” power and power 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 Power BPII is a discontinued model, and

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

WHEREAS, in the past two (2) months, the IT Department has experienced three (3) system failures resulting in total datacenter blackouts, as well as loss/damage to data and 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 vendor is still trying to determine the problem, and cannot provide a realistic timeframe for successful repair, and
WHEREAS, the datacenter is currently operating on utility power with no backup protection in place, and no guaranteed UPS repair time estimates, 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 new system’s cost estimate includes relocation to an environmentally controlled location, as well as associated wiring and installation costs, and

WHEREAS, engineering site visits will be a requirement in the solicitation of bids, and

WHEREAS, the 5th floor datacenter UPS provides continuous power to all enterprise computer equipment in the event utility provided power fails, and

WHEREAS, the UPS is the “failsafe” that protects the City’s datacenter, 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 datacenter systems, and

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

WHEREAS, shutdown of datacenter and web-based applications will negatively impact all 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 system’s budget, accounting and payroll systems, and based on the fact of the recent power losses experienced by the IT Department, the City Manager’s Office has determined this to be a critical situation, demanding a (critical need) circumstances, 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. However, one exception to the code (8-3.204 (c)), allows for the Purchasing Supervisor, in his or her discretion, to determine that calling for formal bids on a competitive basis, as set forth in Section 8-3.203 is undesirable due to demanding circumstances, and

WHEREAS, based on the critical nature of the request the Purchasing Supervisor evoked that exception for this purchase and installation. The solicitation of informal competitive bids for the purchase and installation of a Liebert 65KVA uninterruptible power supply will conform to Modesto Municipal Code Section 8-3.203, and demonstrate that a competitive process was met

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

SECTION 1. Following Council approval, the Purchasing Division will solicit competitive quotes for the purchase and installation of a Liebert 65KVA uninterruptible power supply, evaluate bid responses for the best overall value to the City, and issue a purchase order to the selected vendor.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of September 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, 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. 2005-465

A RESOLUTION APPROVING A DEVELOPMENT PLAN FOR PLANNED DEVELOPMENT ZONE, P-D(574). (ERNIE YOSHINO)

WHEREAS, a verified application for an amendment to Section 16-3-9 of the Zoning Map was filed by Ernie Yoshino on January 24, 2005, to reclassify from Medium-High Density Residential Zone, R-3, to Planned Development Zone, P-D(574), to allow conversion of an existing residence to a medical office, property located on the west side of Coffee Road south of Athens Avenue, described as follows:

R-3 to P-D(574)

A portion of the North Half of Southeast quarter of Section 16, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

Commencing at the Northeast corner of the Southeast quarter of said Section 16, said point being on the centerline of a 50 foot County Road known as Coffee Road, thence along the Northerly line of said Southeast quarter, North 88° 37' West 25.01 feet to a point on the Westerly line of said Coffee Road; thence South along the Westerly line of said Coffee Road parallel with and 25.00 feet distant from the Easterly line of said Section 16, a distance of 426.99 feet to the Southeast corner of Lot 10 in Block 12910 of Brookdale Park No. 3, as per map filed February 25, 1963 in Volume 20 of Maps, as Page 61, and THE TRUE POINT OF BEGINNING; thence at right angles West along the South line of said Lot 10 a distance of 136.39 feet to a point on the East line of a 20 foot alley shown in said Block 12910 Map of Brookdale Park No. 3; thence South 0° 29' West along the east line of said 20 foot alley a distance of 111.53 feet to the Northwest corner of Lot 11 in said Block 12910; thence North 89° 07' East along the North line of said Lot 11 a distance of 139.05 feet to the Northeast corner of said Lot 11 also being a point on the West line of 50 foot wide Coffee Road; thence North 0° 53' West along said West line of said Coffee Road a distance of 111.50 feet, more or less, to THE POINT OF BEGINNING;

Including also all of the 20 foot alley immediately adjacent to the above described property.
WHEREAS, after a public hearing held on June 20, 2005, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, it was found and determined by the Planning Commission, by its Resolution No. 2005-32, that rezoning of the property as requested is required by public necessity, convenience, and general welfare for the following reasons:

a. The proposed Planned Development corresponds with the “Coffee Road Zoning & Development Policy” adopted by the Planning Commission on January 18, 1972 (Amended on February 6, 1989). The Policy attempts to concentrate higher intensity land uses such as Professional Office (P-O) Zones along the Coffee Road Frontage.

b. That the proposed Planned Development Zone, by reason of its plot plan design, will be compatible with the surrounding land uses.

WHEREAS, said matter was set for a public hearing of the City Council to be held on September 13, 2005, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing was held, and

WHEREAS, after said public hearing the Council found and determined that the application of Ernie Yoshino for a Planned Development Zone should be granted as consonant with public necessity, convenience and general welfare for the reasons set forth in Planning Commission Resolution No. 2005-32 and quoted above, and

WHEREAS, the Council has introduced Ordinance No. 3394-C.S. on the 13th day of September, 2005, reclassifying the above-described property from Medium-High Density Residential Zone, R-3, to Planned Development Zone, P-D(574).

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto as follows:
SECTION 1. DEVELOPMENT PLAN. The development plan for Planned Development Zone, P-D(574), is hereby approved subject to the following conditions:

1. All development shall conform to the plot plan and floor plans titled "Dr Gervacio Diaz Building" as amended in red, stamped approved by the City Council on September 13, 2005.

2. Prior to the issuance of a building permit, a landscaping and irrigation plan shall be approved by the Parks, Recreation and Neighborhood Director or designee. Screen landscaping shall be installed along the north, south and west property lines. Landscaping and the irrigation system shall be installed and maintained in accordance with the approved plan.

3. The project shall dedicate 5 feet of street right-of-way along Coffee Road and repair all street improvements including, but not limited to curb, gutter, and sidewalk, and be consistent to Standard Specifications. This shall be provided prior to the occupancy of any structures or when requested by the City Engineer or designee to alleviate a health, safety, or traffic problem in the area.

4. Prior to issuance of a building permit, improvement plans for required improvements shall be prepared by a Registered Civil Engineer and approved by the City Engineer or designee. Improvements shall be constructed in accordance with the approved plans.

5. Prior to issuance of a building permit the developer shall dedicate public utility easements as required by the utility companies and the City Engineer or designee.

6. Irrigation lines shall be removed, relocated, or protected as required by the Modesto Irrigation District and the City Engineer or designee. Easements for irrigation lines to remain shall be dedicated.

7. Local Stormwater Pollution Prevention Plan (SWPPP) for project must be submitted to Development Services-Stormwater prior to the issuance of a Building Permit. Local SWPPP to include soil stabilization measures, sediment controls; drain inlet protection in public right-of-way, stabilized construction entrance, and concrete wash out area.
8. Fences or walls shall be constructed prior to occupancy and shall be as follows:

a. Install a six-foot-high, single-board fence with decorative masonry pilasters at 16-foot-on-centers along the north property line adjacent to the existing building,

b. Install a six-foot-high, batton-board fence with decorative masonry pilasters at 16-foot-on-centers along the north and south property lines on that portion of the property line adjacent to the parking area.

c. Install a seven-foot-high, batton-board fence with decorative masonry pilasters at 16-foot on-centers, along the west property line adjacent to the residential dwelling units.

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

10. All outdoor lighting shall be shielded from adjacent residential properties as required by the City Engineer or designee.

11. Trash bins shall be kept in enclosures in accordance with the approved plan and in accordance with plans approved by the Public Works Director or designee. Enclosures shall be constructed of building materials consistent with those used in the major buildings as approved by the Community and Economic Development Department Director or designee. The enclosure shall be sized to adequately accommodate recyclable materials. The trash enclosure for this project shall be altered to meet current City Stormwater Standards:

a. Berm to prevent stormwater run-on.

b. Grade to drain to adjacent landscape area.

12. No operations conducted on the premises shall cause an unreasonable amount of noise, odor, dust, mud, smoke, vibration, or electrical interference detectable off the premises. All machinery or equipment shall be soundproofed as required by the Chief Building Official.

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

In addition, the following recommended conditions of approval are mitigation measures from the Modesto Urban Area General Plan Master EIR that should be applied to the project, pursuant to the Initial Study (Environmental Assessment No. EA/C&ED 2005-25) prepared for the project:

15. All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover.

16. All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.

17. When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.

18. All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. Use of blower devices is expressly forbidden.

19. Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.
20. Within urban areas, trackout shall be immediately removed when it extends 50 or more feet from the site and at the end of each workday.

21. The City’s Noise Ordinance (Modesto Municipal Code Section 4-9.101) prohibits the “loud and raucous discharge into the open air of the steam of any steam equipment or exhaust from any stationary internal-combustion engine.”

The Noise Ordinance prohibits the loud and raucous operation or use of any of the following before 7:00 a.m. or after 9:00 p.m. daily (except Saturday and Sunday and State or Federal Holidays, when the prohibited time shall be before 9:00 a.m. and after 9:00 p.m.):

a. A hammer or any other device or implement used to pound or strike an object.

b. An impact wrench or other tool or equipment powered by compressed air.

c. A hand-powered saw.

d. Any tool or piece of equipment powered by an internal-combustion engine such as, but not limited to, chain saw, backpack blower, and lawn mower.

e. Any electrically powered (whether by alternating current electricity or by direct current electricity) tool or piece of equipment used for cutting, drilling, or shaping wood, plastic, metal, or other materials or objects, such as, but not limited to, a saw, drill, lathe, or router.

f. Any of the following: heavy equipment (such as but not limited to bulldozer, steam shovel, road grader, backhoe), ground drilling and boring equipment (such as but not limited to derrick or dredge), hydraulic crane and boom equipment, portable power generator or pump, pavement equipment (such as but not limited to pneumatic hammer, pavement breaker, tamper, compacting equipment), pile-driving equipment, vibrating roller, sand blaster, gunite machine, trencher, concrete truck, and hot kettle pump.
g. Any construction, demolition, excavation, erection, alteration, or repair activity. In the case of urgent necessity and in the interest of public health and safety, the Chief Building Official may issue a permit for exemption from these. Such period shall not exceed three (3) working days in length while the emergency continues but may be renewed for successive periods of three (3) days or less while the emergency continues. The Chief Building Official may limit such permit as to time of use and/or permitted action, depending upon the nature of the emergency and the type of action requested.

h. Construction equipment and vehicles should be equipped with properly operating mufflers according to the manufacturers' recommendations. Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields.

22. If archaeological resources are discovered at any time during construction, all activity shall cease until the site is surveyed by a qualified archaeologist. The survey shall include mitigation measures, which shall be implemented before construction resumes. The survey shall follow the criteria presented in Appendix K.

23. The developer shall implement pre- and post-construction best management practices (BMPs) to minimize pollutants entering the storm system.

SECTION 2. DEVELOPMENT SCHEDULE. The following development schedule is hereby approved for said Planned Development Zone, P-D(574):

The entire construction program be accomplished in one phase, construction to begin on or before September 13, 2007 and completion to be not later than September 13, 2008.

SECTION 3. CHANGES IN DEVELOPMENT PLAN. Any changes in the above approved development plan shall be made in accordance with the provisions of Section 10-2.1709 of the Modesto Municipal Code.
SECTION 4. COMPLIANCE WITH CODE PROVISIONS, ETC. In all other respects said planned development shall be accomplished in accordance with and in strict adherence to the provisions of Article 17 of Title 10 of the Modesto Municipal Code relating to Planned Development Zones and other applicable City laws, rules, regulations and procedures.

SECTION 5. EFFECTIVE DATE. This resolution shall not become effective unless and until the ordinance reclassifying the above-described property to Planned Development Zone, P-D(574), becomes effective.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of September 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, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, O'Bryant

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:
By: Michael D. Milich, City Attorney

APPROVED AS TO LEGAL DESCRIPTION
By: Community & Economic Development Department Planning Division