A RESOLUTION DECLARING THE CITY COUNCIL'S INTENTION TO ESTABLISH CITY OF MODESTO COMMUNITY FACILITIES NO. 2005-1 (HETCH HETCHY) AND TO AUTHORIZE THE LEVY OF A SPECIAL TAX WITHIN SAID COMMUNITY FACILITIES DISTRICT

WHEREAS, Shelter Cove Community Church, Inc., (the "Owner"), the owner of not less than 10 percent of the area of land depicted on the map of the proposed community facilities district referred to below on file with the City Clerk (the "Property"), has filed a written petition with the City of Modesto (the "City") to establish the City of Modesto Community Facilities No. 2005-1 (Hetch Hetchy) (the "Community Facilities District") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the Government Code of the State of California (the "Act") in order to finance (i) the cost of purchasing, constructing, expanding, improving or rehabilitating the facilities listed in Appendix A hereto, and all appurtenances and appurtenant work associated therewith (collectively the "Facilities") and (ii) the incidental expenses to be incurred in connection with financing the Facilities, including costs associated with the creation of the Community Facilities District and the issuance of bonds, the establishment and replenishment of bond reserve and special reserve funds (the "Incidental Expenses") and to pay the cost of the services listed in Appendix A hereto (the "Services"); and

WHEREAS, the Owner has heretofore submitted to the City an application to form the Community Facilities District and has advanced to the City the deposit required pursuant to the City's Policies & Procedures for the Formation, Annexation, and Administration of...
Communities Facilities Districts Created Pursuant to the Provisions of the Mello-Roos Community Facilities Act of 1982 (the "City's CFD Policies and Procedures"); and

WHEREAS, the petition submitted by the Owner complies with the requirements of Section 53319 of the Act and the City's CFD Policies and Procedures; and

WHEREAS, subject to the satisfaction of all applicable requirements of law, it is the intention of this City Council to finance the Facilities and the Incidental Expenses and to pay for the Services through the formation of the Community Facilities District and the levy of a special tax and (in the case of the Facilities and the Incidental Expenses) the issuance of bonds, provided that the levy of the special tax and the issuance of the bonds are approved at an election to be held within the boundaries of the Community Facilities District;

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

SECTION 1. The above recitals are true and correct.

SECTION 2. The Community Facilities District is proposed to be established under the terms of the Act. It is further proposed that the boundaries of the Community Facilities District shall be as depicted on the map of the proposed Community Facilities District which is on file with the City Clerk. The City Clerk is hereby directed to sign the original map of the Community Facilities District and record it with all proper endorsements thereon with the County Recorder of the County of Stanislaus within fifteen days after the adoption of this resolution, all as required by Section 3111 of the Streets and Highways Code of the State of California.
SECTION 3. The name of the proposed Community Facilities District shall be “City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy).”

SECTION 4. The Facilities and Services proposed to be provided within the Community Facilities District are each facilities or services, as the case may be, which the City is authorized by law to construct, acquire, own and operate, or to provide. This City Council hereby finds and determines that the descriptions of the Facilities and the Services contained herein is sufficiently informative to allow taxpayers within the proposed Community Facilities District to understand what the funds of the Community Facilities District may be used to pay for. The Incidental Expenses expected to be incurred include the cost of planning and designing the Facilities, the costs of forming the Community Facilities District and levying and collecting a special tax within the Community Facilities District.

SECTION 5. Except where funds are otherwise available, it is the intention of this City Council to levy annually in accordance with the procedures contained in the Act a special tax, secured by recordation of a continuing lien against all non-exempt real property in the Community Facilities District, sufficient to pay for: (i) the Facilities, the Incidental Expenses and the Services and (ii) the principal of and interest on and other periodic costs with respect to the bonds issued to finance the Facilities and the Incidental Expenses, including the establishment and replenishment of any reserve funds deemed necessary by the Community Facilities District and any remarketing, credit enhancement and liquidity facility fees (including such fees for instruments which serve as the basis of a reserve fund in lieu of cash) in connection with the bonds. The Facilities may be financed on a direct payment basis or through the issuance of the bonds. The rate, method of apportionment and manner of collection of the special tax are described in detail in Appendix B attached hereto and incorporated herein as though set forth at
length (the “Rate and Method”). Appendix B allows each landowner and resident, if any, within the Community Facilities District to estimate the maximum amount that may be levied against each parcel.

If special taxes of the Community Facilities District are levied against any parcel used for private residential purposes, (i) such tax shall not be levied or collected to pay for Facilities or Incidental Expenses after the 2060-2061 tax year and (ii) under no circumstances will such special tax be increased as a consequence of delinquency or default by the owner of any other parcel or parcels within the Community Facilities District by more than ten percent (10%).

This City Council hereby determines the Rate and Method to be reasonable. The special tax is apportioned to each parcel on the basis of its tax zone, land use and area pursuant to Section 53325.3 of the Act; and such special tax is not on or based upon the value or ownership of real property. In the event that a portion of the property within the Community Facilities District shall become for any reason exempt, wholly or partially, from the levy of the special tax, this City Council shall, on behalf of the Community Facilities District, cause the levy to be increased, subject to the limitation of the maximum special tax for a parcel as set forth in the Rate and Method, to the extent necessary upon the remaining property within the Community Facilities District which is not delinquent or exempt in order to yield the special tax revenues required for the purposes described in this Section 5.

SECTION 6. A public hearing (the “Hearing”) on the establishment of the Community Facilities District and the proposed Rate and Method shall be held at 5:30 p.m., or as soon thereafter as practicable, on October 11, 2005, in the Modesto City Council Chamber, 1010 Tenth Street, Modesto, California 95353. Should this City Council determine to form the
Community Facilities District, a special election will be held to authorize the levy of the special tax in accordance with the procedures contained in Government Code Section 53326. If held, the proposed voting procedure at the election is expected to be a landowner vote with each landowner of record as of the close of the Hearing having one vote for each acre of land or portion thereof owned within the Community Facilities District. Ballots for the special election may be distributed by mail or by personal service.

SECTION 7. At the time and place set forth above for the Hearing, any interested person, including all persons owning lands or registered to vote within the proposed Community Facilities District, may appear and be heard.

SECTION 8. Each officer of the City who is or will be responsible for providing the Facilities or Services within the proposed Community Facilities District, if it is established, is hereby directed to study the proposed Community Facilities District and, at or before the time of the Hearing, file a report with this City Council containing a brief description of the Facilities or Services, as the case may be, which will in his or her opinion be required to meet adequately the needs of the proposed Community Facilities District and an estimate of the cost of providing those Facilities or Services and an estimate of the fair and reasonable cost of any Incidental Expenses to be incurred.

SECTION 9. The City may accept advances of funds or work-in-kind from any source, including, but not limited to, private persons or private entities, for any authorized purpose, including, but not limited to, paying any cost incurred by the City in creating the Community Facilities District. The City may enter into an agreement with the person or entity advancing the funds or work-in-kind, to repay all or a portion of the funds advanced, or to reimburse the person.
or entity for the value, or cost, whichever is less, of the work-in-kind, as determined by this City Council, with or without interest.

SECTION 10. The Clerk is hereby directed to publish a notice (the “Notice”) of the Hearing pursuant to Section 6061 of the Government Code in a newspaper of general circulation published in the area of the Community Facilities District. Such publication shall be completed at least seven days prior to the date of the Hearing. The Clerk is further directed to mail a copy of the Notice to each of the landowners and registered voters, if any, within the boundaries of the Community Facilities District at least 15 days prior to the Hearing. The Notice shall contain the text or a summary of this Resolution, the time and place of the Hearing, a statement that the testimony of all interested persons or taxpayers will be heard, a description of the protest rights of the registered voters and landowners in the proposed Community Facilities District and a description of the proposed voting procedure for the election required by the Act.

SECTION 11. Except to the extent limited in any bond resolution or trust indenture related to the issuance of bonds, the City Council hereby reserves to itself all rights and powers set forth in Section 53344.1 of the Act (relating to tenders in full or partial payment).
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
APPENDIX A

LIST OF FACILITIES

Water System:

Water system improvements include, but are not limited to, wells, distribution pipelines, wellhead treatment systems, surface water supply pipelines, tanks, booster pumps and land acquisition. The wellhead treatment system may be financed through acquisition, construction, lease, lease-purchase, or installment-purchase arrangement. A proposed lease, lease-purchase, or installment-purchase arrangement would be for commercial terms for a period not to exceed thirty (30) years.

Wastewater System:

Wastewater system improvements may include, but are not limited to, distribution pipelines, land acquisition, lift station(s) and force main(s).

Transportation System:

Transportation system improvements include, but are not limited to, land acquisition, arterials and collector streets and round-abouts.

Storm Drain System:

Storm drain system improvements include, but are not limited to, land acquisition, storm drainage facilities including pump station, dual-use basin and landscaping, fencing, lift stations, force mains and gravity lines.

Parks:

Parks improvements may include, but are not limited to, land acquisition and the construction of a community park, neighborhood parks, landscaped medians and/or parkways.

LIST OF SERVICES

Maintenance of parks, parkways and open space (including bike trails), storm drainage basins and related facilities and police and fire services

Administration:

The fees and expenses of the City in any way related to the establishment or administration of CFD No. 2005-1 and any bonds associated therewith, including, but not limited, administrative costs, contract management, accounting, supervision duties, design, engineering, construction management, inspection and other costs associated with construction or operation of the facilities.
APPENDIX B

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2005-1
(HETCH HETCHY)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

Special Taxes applicable to each Assessor’s Parcel in Community Facilities District No. 2005-1 (Hetch Hetchy) [herein “CFD No. 2005-1” or “the CFD”] shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2005-1, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2005-1 unless a separate Rate and Method of Apportionment is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

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

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

“Administrative Expenses” means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City carrying out its duties with respect to CFD No. 2005-1 and the Bonds, including, but not limited to, levying and collecting the Special Taxes, the fees and expenses of legal counsel, charges levied by the County Auditor’s Office, Tax Collector’s Office, and/or Treasurer’s Office, costs related to annexing property into the CFD, costs related to property owner inquiries regarding the Special Taxes, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Taxes, and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

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

“Annual Facilities Special Tax Requirement” means the amount necessary in any Fiscal Year to (i) pay principal and interest on Bonds, (ii) pay Administrative Expenses that have not been included in the Annual Maintenance Special Tax Requirement for the Fiscal Year, (iii) create or replenish reserve funds, (iv) cure any delinquencies in the payment of principal or interest on indebtedness of CFD No. 2005-1 which have occurred in the prior Fiscal Year or (based on delinquencies in the payment of the Annual Facilities Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected, and (v) construct or acquire Authorized Facilities. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by: (i) interest earnings on or surplus balances in funds and accounts for the Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to a Bond indenture, Bond resolution, or other legal document that sets forth these terms; (ii) proceeds received by CFD No. 2005-1 from the collection of penalties associated with delinquent Annual Facilities Special Taxes; and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

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

“Annual Maintenance Special Tax Requirement” means that amount necessary in any Fiscal Year to (i) pay for Authorized Services, (ii) pay Administrative Expenses that have not been included in the Annual Facilities Special Tax Requirement for the Fiscal Year, (iii) cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Maintenance Special Taxes which have already taken place) are expected to occur in the current Fiscal Year, and (iv) pay debt service on Bonds to the extent permitted in the Bond documents.

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

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

“Association Property” means any property within CFD No. 2005-1 that is owned by a homeowner association or property owner association, including any master or sub-association. Notwithstanding the foregoing, if a homeowner association owns the land area under the pad of a residential structure, the Administrator shall determine the Acreage under the pad of the building and such Acreage shall be categorized as Single Family Attached Property or Single Family Detached Property, as appropriate, and shall not be designated as Association Property.

“Authorized Facilities” means those facilities that are authorized to be funded by CFD No. 2005-1.

“Authorized Services” means those services that are authorized to be funded by CFD No. 2005-1.
"Bonds" means bonds or other debt (as defined in the Act), whether in one or more series, issued, insured or assumed by CFD No. 2005-1 related to Authorized Facilities.

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

"CFD Formation" means the date on which the Resolution of Formation to form CFD No. 2005-1 was adopted by the City Council.

"City" means the City of Modesto.

"City Council" means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2005-1.

"County" means the County of Stanislaus.

"Developed Property" means, in any Fiscal Year, the following:

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

- for Single Family Detached Property, all Parcels for which a Final Map was recorded prior to June 30 of the preceding Fiscal Year,

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

- for Other Property, all Parcels for which a building permit for new construction of a building structure was issued prior to June 30 of the preceding Fiscal Year. However, if a building permit is not required for the proposed use on a Parcel of Other Property, then such Parcel shall be considered Developed Property if a grading permit was issued prior to June 30 of the preceding Fiscal Year.

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

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

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

- for Other Property, all Parcels for which a building permit for new construction of a building structure was issued prior to June 30 of the preceding Fiscal Year.
However, if a building permit is not required for the proposed use on a Parcel of Other Property, then such Parcel shall be considered Developed Property if a grading permit was issued prior to June 30 of the preceding Fiscal Year.

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

“Final Map” means a final map, parcel map, or portion thereof, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots which do not need to be further subdivided prior to issuance of a building permit for a residential or non-residential structure.

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

“Improvement Area” means a geographic area that, upon annexation into CFD No. 2005-1, is identified as an improvement area as defined in the Act instead of a Tax Zone, as defined below. Special Taxes collected within an Improvement Area will be the sole security for Bonds issued for that Improvement Area.

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

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

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

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

“One-Time Facilities Special Tax” means a Special Tax, levied and collected in full by the City prior to a structural building permit being issued for new construction on Taxable Property or, for Other Property for which a building permit is not required, prior to a grading permit being issued.

“One-Time Facilities Special Tax Requirement” means the amount determined by the City and identified in Attachment 2 of this Rate and Method of Apportionment that is needed to pay facility costs authorized to be funded by CFD No. 2005-1, which will not be paid by the Bonds or Annual Facilities Special Tax.
“Original Parcel” means (i) an Assessor’s Parcel in CFD No. 2005-1 at the time of CFD Formation or added to the CFD upon annexation, as identified in Attachment 2 (which shall be updated after each annexation), (ii) a Successor Parcel that is being further subdivided for purposes of determining the Maximum Special Taxes pursuant to Section C below, or (iii) more than one Assessor’s Parcel proposed to be annexed into the CFD as part of a single annexation, the Maximum Special Taxes assigned to which will be aggregated and redistributed to land uses within such Assessor’s Parcels if such aggregation is requested by the developer processing the annexation and/or preferred at the sole discretion of the City.

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

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

“Public Property” means any property within the boundaries of CFD No. 2005-1 that is owned by the federal government, State of California, County, City, or other public agency.

“Shelter Cove Community Church Property” means that Parcel identified in Fiscal Year 2004-05 by Assessor’s Parcel number 082-005-003, owned by Shelter Cove Community Church, a California non-profit corporation, and designated in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Shelter Cove Community Church Property.

“Single Family Attached Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of a residential structure consisting of two or more Units that share common walls, including such residential structures that meet the statutory definition of a condominium contained in Civil Code Section 1351.

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

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

“Special Taxes” means, collectively, the One-Time Facilities Special Tax, the Annual Facilities Special Tax, and the Annual Maintenance Special Tax.
"Subdivision Map" means a Final Map, large lot subdivision map, or other map recorded with the County that results in the subdivision of an Original Parcel into two or more Successor Parcels.

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

"Taxable Property" means all of the Assessor's Parcels within the boundaries of CFD No. 2005-1 which are not exempt from the Special Tax pursuant to law or Section G below.

"Taxable Public Property" means, in any Fiscal Year, all Parcels of Public Property within CFD No. 2005-1 that, (i) based on a tentative map or other Development Plan, were expected to be Taxable Property and, (ii) based on this expectation, Maximum Special Taxes were assigned to the Parcels in a prior Fiscal Year. However, if Parcels designated as Public Property based on a tentative map or other Development Plan are relocated, the new Public Property will again become exempt. If such relocation occurs, the Acreage previously designated as Public Property will become Taxable Property and the Acreage that becomes Public Property will not be taxed. This trading of Acres of Public Property will be permitted to the extent that there is no net loss in Maximum Special Tax revenues. When such a trade occurs, the Administrator will recalculate the Maximum Special Taxes and revise Attachment 2.

"Tax Zone" means a mutually exclusive geographic area, within which particular Special Tax rates may be levied pursuant to this Rate and Method of Apportionment of Special Tax. Attachment 1 identifies the Tax Zone in CFD No. 2005-1 at CFD Formation; additional Tax Zones may be created when property is annexed into the CFD. Alternatively, additional Original Parcels may be added to a Tax Zone with assigned Maximum Special Taxes for each Original Parcel.

"Tax Zone #1" means the geographic area that was identified in Fiscal Year 2004-05 by Assessor's Parcel number 082-005-003 and is designated in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Tax Zone #1. Tax Zone #1 may be expanded to include additional Original Parcels that annex to CFD No. 2005-1;Attachments 1 and 2 will be updated each time such an annexation takes place.

"Undeveloped Property" means, in any Fiscal Year, all Parcels of Taxable Property within CFD No. 2005-1 that are not Developed Property.

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

B. DATA FOR ANNUAL ADMINISTRATION

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

For Single Family Attached Property, the number of Units shall be determined by referencing the relevant Development Plan. In any Fiscal Year, if it is determined that (i) a Final Map for a portion of property in CFD No. 2005-1 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the Final Map was recorded, the Assessor does not yet recognize the new Parcels created by the Final Map, and (iii) one or more of the newly-created Parcels meets the definition of Developed Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the Final Map by determining the Special Tax that applies separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Original Parcel or Successor Parcel that was subdivided by recordation of the Final Map.

C. CALCULATING MAXIMUM SPECIAL TAXES

The Administrator shall use the procedures set forth below to calculate the Maximum Special Taxes for each Parcel in CFD No. 2005-1 in each Fiscal Year, including the Maximum One-Time Facilities Special Tax, Maximum Annual Facilities Special Tax, and Maximum Annual Maintenance Special Tax. A separate method of calculating the Maximum Special Taxes may be identified for Tax Zones or Improvement Areas added to CFD No. 2005-1 as a result of future annexations.

1. Original Parcels

The Maximum Special Taxes for each Original Parcel in CFD No. 2005-1 as of CFD Formation are identified in Attachment 2. Attachment 2 will be updated by the Administrator as needed to reflect Original Parcels added to the CFD due to annexations.

2. Successor Parcels

a. All Successor Parcels are Single Family Detached Lots

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

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

b. No Successor Parcels are Single Family Detached Lots

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

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

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

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

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

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

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

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

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

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

Step 4: Divide the Maximum Special Taxes from Step 1 by the Acreage calculated in Step 2 to calculate Maximum Special Taxes per acre;
Step 5: Multiply the per-acre Maximum Special Taxes calculated in Step 4 by the Acreage of Single Family Detached Property calculated in Step 3 to determine the total Maximum Special Taxes to be assigned to the Single Family Detached Property created by the subdivision;

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

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

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

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

D. ESCALATION OF MAXIMUM SPECIAL TAXES

1. One-Time Facilities Special Tax

Beginning in January 2007 and each January thereafter, the Maximum One-Time Facilities Special Tax assigned to each Parcel shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum One-Time Facilities Special Tax shall become effective on the subsequent July 1.

2. Annual Facilities Special Tax

Beginning with Fiscal Year 2007-08, and each Fiscal Year thereafter, the Maximum Annual Facilities Special Tax assigned to each Parcel shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.
3. Annual Maintenance Special Tax

Beginning in January 2007 and each January thereafter, the Maximum Annual Maintenance Special Tax shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

E. METHOD OF LEVY OF THE SPECIAL TAX

1. One-Time Facilities Special Tax

The Maximum One-Time Facilities Special Tax determined pursuant to Sections C and D above shall be levied on all Taxable Property in CFD No. 2005-1 and shall be collected as set forth in Section F below.

2. Annual Facilities Special Tax

Commencing with Fiscal Year 2006-07 and for each following Fiscal Year, the Administrator shall determine the Annual Facilities Special Tax Requirement for that Fiscal Year. The Annual Facilities Special Tax shall then be levied on all Parcels of Taxable Property in CFD No. 2005-1 as follows:

Step 1: The Annual Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Facilities Special Tax for each Parcel for such Fiscal Year until the amount levied on Developed Property is equal to the Special Tax Requirement prior to applying any Capitalized Interest that is available in the CFD accounts;

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

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

Commencing with Fiscal Year 2006-07 and for each following Fiscal Year, the Administrator shall determine the Annual Maintenance Special Tax Requirement for that Fiscal Year. The Annual Maintenance Special Tax shall then be levied on all Parcels of Taxable Property as follows:

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

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

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

F. COLLECTION OF SPECIAL TAX

The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of any residential or non-residential structure on Taxable Property within CFD No. 2005-1 (or, for Other Property for which a building permit is not required, prior to a grading permit being issued), and shall be immediately delinquent if not so paid. In the case of Shelter Cove Community Church Property, the One-Time Facilities Special Tax shall be paid at the time additional property is annexed into the CFD or when a building permit is issued for new construction of a structure on Shelter Cove Community Church Property, whichever occurs later.

The Annual Facilities Special Tax and Annual Maintenance Special Tax for CFD No. 2005-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that prepayments are permitted as set forth in Section H below and provided further that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual Facilities Special Taxes and Annual Maintenance Special Taxes through foreclosure or other available methods.

The Annual Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring authorized facilities from Annual Facilities Special Tax proceeds have been paid, and all administrative expenses have been reimbursed. However, in no event shall an Annual Facilities Special Tax be levied after Fiscal Year 2060-2061. The Annual Maintenance Special Tax will continue to be levied and collected unless and until the
City determines that the Annual Maintenance Special Tax no longer needs to be levied to pay Authorized Services of the CFD and all Administrative Expenses have been reimbursed. Under no circumstances may the Annual Facilities Special Tax on one Parcel in the CFD be increased by more than ten percent (10%) as a consequence of delinquency or default in payment of the Annual Facilities Special Tax levied on another Parcel or Parcels in the CFD.

G. EXEMPTIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Taxes shall be levied on Association Property or Public Property, except Taxable Public Property, as defined herein. Special Taxes shall not be levied on Parcels that are owned by a public utility for an unmanned facility or on Parcels that are subject to an easement that precludes any other use on the Parcels. In addition, no Special Tax may be levied on Shelter Cove Community Church Property unless and until additional property is annexed into the CFD.

H. PREPAYMENT OF SPECIAL TAX

The following definitions apply to this Section H:

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

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

"Public Facilities Requirements" means either $1,740,000 in 2005 dollars, which shall increase on January 1, 2006, and on each January 1 thereafter by the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or such lower number as shall be determined by the City as sufficient to fund Authorized Facilities. The Public Facilities Requirements shown above may be adjusted or a separate Public Facilities Requirements identified each time property annexes into CFD No. 2005-1; at no time shall the added Public Facilities Requirement for that annexation area exceed the amount of public improvement costs that are expected to be supportable by the Maximum Annual Facilities Special Tax revenues generated within that annexation area.
“Remaining Facilities Costs” means the Public Facilities Requirements (as defined above), minus costs of Authorized Facilities funded by Outstanding Bonds (as defined above), developer equity, and/or any other source of funding.

The Annual Facilities Special Tax obligation applicable to an Assessor’s Parcel in the CFD may be prepaid and the obligation of the Assessor’s Parcel to pay the Annual Facilities Special Tax permanently satisfied as described herein, provided that a prepayment may be made only if there are no delinquent Annual Facilities Special Taxes with respect to such Assessor’s Parcel at the time of prepayment. The Annual Maintenance Special Tax may not be prepaid. An owner of an Assessor’s Parcel intending to prepay the Annual Facilities Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Assessor’s Parcel. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Annual Facilities Special Taxes. The Prepayment Amount shall be calculated as follows: (capitalized terms as defined below):

\[
\text{Prepayment Amount} = \text{Bond Redemption Amount} + \text{Remaining Facilities Amount}
\]

\[
+ \text{Redemption Premium}
\]

\[
+ \text{Defeasance Requirement}
\]

\[
+ \text{Administrative Fees and Expenses}
\]

\[
- \text{Reserve Fund Credit}
\]

\[
= \text{Prepayment Amount}
\]

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

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

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

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

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

**Step 5.** Multiply the quotient computed pursuant to Step 2 by the amount determined pursuant to Step 4 to compute the amount of Remaining Facilities Costs to be prepaid (the “Remaining Facilities Amount”).
Step 6. Multiply the Bond Redemption Amount computed pursuant to Step 3 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (the “Redemption Premium”).

Step 7. Compute the amount needed to pay interest on the Bond Redemption Amount starting with the first Bond interest payment date after which the prepayment has been received until the earliest redemption date for the Outstanding Bonds, which, depending on the Bond offering document, may be as early as the next interest payment date.

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

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

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

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

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

I. INTERPRETATION OF SPECIAL TAX FORMULA

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

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2005-1
(HETCH-HETCHY)
IDENTIFICATION OF TAX ZONES

Tax Zone #1
082-005-003
Shelter Cove Community Church Property

Claratina Avenue

Coffee Road

Hetch-Hetchy

082-004-014
082-006-018
082-004-016
082-007-007
082-004-020
082-005-001
082-005-002
082-005-026

200 0 200 400 Feet
ATTACHMENT 2

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2005-1
(HETCH HETCHY)

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

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1. Beginning in January 2007 and each January thereafter, the Maximum One-Time Facilities Special Tax shall be adjusted by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum One-Time Facilities Special Tax shall become effective on the subsequent July 1.

2. Beginning in Fiscal Year 2007-08 and each Fiscal Year thereafter, the Maximum Annual Facilities Special Tax shall escalate by 2.0% of the amount in effect in the prior Fiscal Year.

3. Beginning in January 2007 and each January thereafter, the Maximum Annual Maintenance Special Tax shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-422

A RESOLUTION DECLARING THE CITY COUNCIL'S INTENTION TO INCUR BONDED INDEBTEDNESS IN THE AMOUNT NOT TO EXCEED $150,000,000 WITHIN PROPOSED CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2005-1 (HETCH HETCHY)

WHEREAS, pursuant to a resolution adopted on the date hereof (the “Companion Resolution”), this City Council has instituted proceedings for the possible formation of the City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy) (the “Community Facilities District”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”) in order to finance (i) the cost of purchasing, constructing, expanding, improving or rehabilitating the facilities listed in Appendix A to the Companion Resolution, and all appurtenances and appurtenant work associated with the foregoing (collectively, the “Facilities”) and (ii) the incidental expenses to be incurred in connection with financing the Facilities, including costs associated with the creation of the Community Facilities District and the issuance of bonds, the establishment and replenishment of bond reserve and special reserve funds (the “Incidental Expenses”) and to pay the costs of the services listed in Appendix A to the Companion Resolution (collectively, the “Services”); and

WHEREAS, this City Council estimates that the amount of bond proceeds required to finance the Facilities and Incidental Expenses is approximately $150,000,000; and

WHEREAS, in order to finance the Facilities and Incidental Expenses, subject to the formation of the Community District and to the satisfaction of all applicable
requirements of law, this City Council intends to authorize the issuance of bonds in the maximum aggregate principal amount of $150,000,000, the repayment of which is to be secured by special taxes levied in accordance with the Act on all property in the Community Facilities District, other than those properties exempted from taxation in the rate and method of apportionment set forth in Appendix B to the Companion Resolution;

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

SECTION 1. The above recitals are true and correct.

SECTION 2. It is necessary to incur bonded indebtedness within the boundaries of the Community Facilities District in an amount not to exceed $150,000,000 to finance certain of the costs of the Facilities and Incidental Expenses, as permitted by the Act.

SECTION 3. The indebtedness will be incurred for the purpose of financing the costs of the Facilities and the Incidental Expenses, including, but not limited to, the funding of reserve funds for the bonds, the financing of costs associated with the issuance of the bonds and all other costs and expenses necessary to finance the Facilities which are permitted to be financed pursuant to the Act.

SECTION 4. It is the intent of this City Council to authorize the sale of bonds in one or more series, in the maximum aggregate principal amount specified in Section 2, and at a maximum interest rate not in excess of 12 percent per annum, or a higher rate not in excess of the maximum rate permitted by law at the time that the bonds are issued. The term of the bonds of each series shall be determined pursuant to a resolution of this
City Council authorizing the issuance of the bonds of such series, but such term shall in no event exceed 40 years from the date of issuance of the bonds of such series, or such longer term as is then permitted by law.

SECTION 5. A public hearing (the “Hearing”) on the proposed debt issue shall be held at 5:30 p.m., or as soon thereafter as practicable, on October 11, 2005, in the Modesto City Council Chamber, 1010 Tenth Street, Modesto, California 93535 and shall be combined with the public hearing called for in the Companion Resolution.

SECTION 6. At the time and place set forth in this Resolution for the Hearing, any interested persons, including all persons owning land or registered to vote within the Community Facilities District, may appear and be heard.

SECTION 7. The City Clerk is hereby directed to publish a notice (the “Notice”) of the Hearing pursuant to Section 6061 of the Government Code in a newspaper of general circulation published in the area of the Community Facilities District. Such publication shall be completed at least seven days prior to the date of the Hearing.
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. 2005-423

A RESOLUTION APPROVING AN ADVANCED FUNDING AGREEMENT BETWEEN THE CITY OF MODESTO AND SHELTER COVE COMMUNITY CHURCH, INC. FOR CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2005-1 (HETCH HETCHY), AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, Shelter Cove Community Church, Inc. (the “Developer”) has filed with this City Council a petition requesting the formation of a community facilities district and the issuance of bonds to finance and maintain certain infrastructure, and

WHEREAS, the Developer has agreed to advance all funds necessary to form the proposed community facilities district, and

WHEREAS, the parties agreed to enter into an Advanced Funding Agreement by and between the City and the Developer relating to advances made and to be made by the Developer to the City, and providing for potential reimbursement to the Developer if and when certain funds from the community facilities district becomes available, copy of which is attached as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Advanced Funding Agreement between the City of Modesto and Shelter Cove Community Church, Inc., is hereby approved and that the City Manager is hereby authorized to execute the Advanced Funding Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 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
ADVANCED FUNDING AGREEMENT
FOR THE CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2005-1
(HETCH HETCHY)

THIS ADVANCED FUNDING AGREEMENT FOR THE CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2005-1 (HETCH HETCHY) (this "Agreement"), dated as of ____________, 2005, is entered into by and between the CITY OF MODESTO, a municipal corporation (the "City"), and SHELTER COVE COMMUNITY CHURCH, a California non-profit corporation (the "Developer").

RECITALS:

A. The City has requested that the Developer fund the formation of a community facilities district to be known as "City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy)" (the "CFD") for the principal purpose of financing and maintaining various public facilities necessary or desirable in connection with the development of the Developer's project in the North Beyer Specific Plan Area.

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

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

AGREEMENT

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

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


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

   (b) Pursuant to the City's CFD Policies and Procedures, the Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein. In the event the Developer does not deliver the requested amount to the City within such ten (10) day period, the City will have no obligation to proceed with any activity relating to the formation of the CFD and/or the issuance of bonds. The Developer may notify the City at any time, in writing, of its intention to abandon the formation of the CFD or the issuance of bonds. The Developer agrees that it shall have no claim to, nor shall it assert any right in any reports, correspondence, plans, maps, drawings, news releases or any and all other documents or work product produced by the City's consultants. Developer understands that it will not be a third party beneficiary to City's contracts with the consultants. The Developer agrees that the City may
select other consultants to replace its current consultants and may do so without consulting with the Developer or obtaining the Developer’s approval.

3. **Developer to Cooperate with the City’s Consultants.** Developer agrees to cooperate in good faith with the City’s consultants. Developer agrees that it will instruct its agents, employees, consultants, contractors and attorneys to reasonably cooperate with the City’s consultants and to provide all necessary documents or information reasonably requested of them by the City’s consultants; provided, however, that the foregoing shall not require the disclosure of any documents or information of the Developer which by law is privileged, proprietary, confidential, or exempt from disclosure under the Public Records Act.

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

5. **Abandonment of Proposed CFD.** The Developer understands that, subject to the satisfaction of all applicable legal requirements, the decision to form the CFD and the decision to issue bonds shall be in the sole discretion of the City. No provision of this Agreement shall be construed as a promise, warranty or agreement by the City to form the CFD or to issue bonds. The City shall have no liability to Developer for a decision not to form the CFD or issue bonds.

6. **Indemnification and Hold Harmless.** The Developer hereby assumes the defense of, and indemnifies and saves harmless, the City and each of its officers, directors, agents, contractors, and employees, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of or arising out of any acts or omissions of the Developer or any of the Developer’s officers, employees, contractors and agents in connection with the proposed formation of the CFD or any work-in-kind provided by or on behalf of the Developer or its consultants, except for any action, damages, claims, losses or expenses arising out of the sole negligence or willful misconduct of the City, its officers, directors, employees or agents.

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

Developer:      Shelter Cove Community Church
                1620 N. Carpenter Road, Suite D-49
                Modesto, California 95351
                Attn: Dave Olsen, Facilities Development Manager

City:           City of Modesto
                1010 Tenth Street, Suite 6100
                Modesto, California 95353
                Attention: CFD Administrative Officer

8. Assignment. The Developer may not assign its interest in this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld. Any assignment or attempt to assign this Agreement without the prior written consent of CITY shall be deemed null and void as of the date of the purported assignment. All covenants, stipulations, and agreements in this Agreement shall bind any such representatives, successors and assigns.

9. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent permitted by law.

10. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters provided for herein. All previous proposals, offers and communications relative to this Agreement, whether oral or written, are hereby superseded except to the extent that they have been incorporated into this Agreement. No future waiver of or exception to any of the terms, conditions, and provisions of this Agreement shall be considered valid unless specifically agreed to in writing by all the parties.

11. Amendments. This Agreement may be amended or modified only by written instrument signed by all parties. Any amendment or addendum to this Agreement shall expressly refer to this Agreement.

12. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

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

14. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.
15. **Termination.** This Agreement shall terminate and be of no further force and effect on the first anniversary of the date of this Agreement unless expressly amended by the parties; provided, however, that the Developer's obligations under Section 5 shall survive the termination and the City's obligation to provide reimbursement in accordance with Section 3 for expenses incurred prior to the termination date shall also survive termination.

16. **Time is of the Essence.** Except as otherwise expressly stated, time is of the essence in the performance of each and every action required pursuant to this Agreement.

17. **Language Construction.** The language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Agreement.

18. **Representations of Authority.** Each party signing this Agreement on behalf of a party which is not a natural person hereby represents and warrants to the other party that all necessary legal prerequisites to that party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.

19. **Relationship of Parties.** Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between City and Owner or its agents, employees or contractors. Except as City may specify in writing, Owner shall have no authority to act as an agent of City or to bind City to any obligation.

20. **Title of Parts and Sections.** Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of Agreement's provisions.
IN WITNESS WHEREOF, the CITY OF MODESTO, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2005-, adopted by the Council of the City of Modesto on the ___ day of ____________, and SHELTER COVE COMMUNITY CHURCH, a California non-profit corporation, has caused this Agreement to be executed in duplicate, effective as of the date first written above.

CITY OF MODESTO, a municipal corporation
By: ____________________________
    GEORGE W. BRITTON, City Manager

ATTEST:
By: ____________________________
    JEAN ZAHR, City Clerk

APPROVED AS TO FORM:
MICHAEL D. MILICH, City Attorney

SHELTER COVE COMMUNITY CHURCH, a California non-profit corporation
By: ____________________________
    ____________________________
    ____________________________

Title: ____________________________

Name: ____________________________

Title: ____________________________

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

---

Signature Requirements

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

- Partnership: Signature of one partner

- Sole Proprietorship: Signature of proprietor
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-424

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. 9)

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; and 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; and 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; and 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; and 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.

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. 9 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 11, 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 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 Zahr
JEAN ZAHR, City Clerk
EXHIBIT A

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

Proposed Boundary Map
WHEREAS, a monthly financial analysis has been completed and it has been
determined that certain adjustments are required to the Annual Budget of the City of
Modesto for the Fiscal Year 2004-2005,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that appropriations, revenues, and transfers for the 2004-2005 budget have been adjusted
as shown in Schedule A.

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

The foregoing resolution was introduced at a regular meeting of the Council of the
City of Modesto held on the 6th day of 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 votes:

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: Mike Milich, City Attorney
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Vickey Dion  
Telephone No.: 571-5542  
Department: Public Works  
Fund Title: Pelandale Snyder (CFD)  

<table>
<thead>
<tr>
<th>Fund-Agency-Organizational-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/Decrease</th>
<th>Revised Budget</th>
<th>Description of Object</th>
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<tr>
<td>FROM</td>
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<td>TO</td>
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<td><strong>APPROPRIATIONS</strong></td>
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<tr>
<td>TO</td>
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<td>22,000</td>
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<td>46,000</td>
<td>Eng/Desn/Admin</td>
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</tbody>
</table>

COMMENTS/JUSTIFICATION

Snyder Ave. widening between Prescott and Carver
On June 28, 2005 City Council approved a reprioritization of remaining projects in the Carver-Bangs/Pelandale-Snyder CFD. This reprioritization included the shifting of funds from lower priority projects to higher priority projects that did not have sufficient funding. This project is a Priority 1 project and did not have sufficient funding. Additional money is needed to complete the design.

AUTHORIZATION (check if required)  
SIGNATURE  
DATE

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

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

CITY MANAGER  
(Transfers between Budgeted Activities of Departments within Funds)  
(Appropriation of Unbudgeted Dept Revenues)  
(Transfers into Personnel Services)

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

Contact Person: Vickey Dion
Telephone No.: 571-5542
Department: Public Works
Fund Title: Pelandale Snyder (CFD)

<table>
<thead>
<tr>
<th>Fund-Agency-Org-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/ (Decrease)</th>
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</table>

COMMENTS/JUSTIFICATION

Storm Drain Basin Pump Stations on Prescott Rd. at Pelandale

On June 28, 2005 City Council approved a reprioritization of remaining projects in the Carver-Bangs/Pelandale-Snyder CFD. This reprioritization included the shifting of funds from lower priority projects to higher priority projects that did not have sufficient funding. This project is a Priority 1 project. Improvement plans are nearly complete and the cost estimate was recently updated. This adjustment is needed to provide adequate funding to build this project.

DEPARTMENTAL REVENUES

FROM

TO

APPROPRIATIONS

FROM

TO

AUTHORIZATION (check if required) SIGNATURE DATE

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

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

CITY MANAGER
(Transfers between Budgeted Activities of Departments within Funds)
(Appropriation of Unbudgeted Dept Revenues)
(Transfers into Personnel Services)
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Debra Eggerman  
Telephone No.: 7-5394  
Department: Finance  
Project Title: Capital Improvement Support  
Fund Title: Capital Improvement Support

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

### DEPARTMENTAL REVENUES

FROM  
TO  
0100-120-1205-4909  
already budgeted during adoption

### APPROPRIATIONS

FROM  
0300-800-8000-8003  
$63,000  
$63,000  
Contingency Reserve  
TO  
0300-120-1240-0255  
1240C  
$63,000  
$63,000  
Service City Forces

### TRANSFERS BETWEEN FUNDS

FROM  
TO

Justification:
Budget Division CIP team is setting up an account to charge the Capital Improvement Support Fund for direct charges These charges will be recovered from the indirect charges approved annually by Caltrans Audit & Investigations Department.

<table>
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<tr>
<th>AUTHORIZATION (check if required)</th>
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<td>(All items requiring City Manager's Approval)</td>
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<td>CITY MANAGER</td>
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<td>(Transfers between Budgeted Activities of Departments within Funds)</td>
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<tr>
<td>(Appropriation of Unbudgeted Dept Revenues)</td>
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<tr>
<td>(Salary lines movement in or out)</td>
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</tbody>
</table>
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Yvette Ramos
Telephone No.: 75249
Department: Finance

Fund Title: Capital Grants
Briggsmore/99

Council Action Date: Resolutions Number:
FY: 05-06
Transfer No.

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<tr>
<th>Fund-Agcy-Org-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/ (Decrease)</th>
<th>Revised Budget</th>
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<td>$100,000</td>
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| **APPROPRIATIONS** FROM | | | | | |
| TO | | | | | |
| 06-2300-800-8000-8003 | 2300R | | $1,300,000 | | Reserve Contingency |

**COMMENTS/JUSTIFICATION**

Increase revenue due to grants coming in.
Budgeting in the revenue coming in.

**AUTHORIZATION (check if required)**

DEPUTY DIRECTOR (Public Works)
Authorized up to threshold of $50k w/o Director Approval

DEPUTY DIRECTOR (Public Works) *
Authorized up to threshold of $50k w/o Director Approval

* second signature required for movement of funds between CIF agts & line items controlled by different divisions (e.g. Water and E&T)

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

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

CFF/CFD ADMINISTRATOR

CITY MANAGER
(Transfers between Budgeted Activities of Departments within Funds)
(Appropriation of Unbudgeted Dept Revenues)
(Salary lines & payroll in scope)

**SIGNATURE**

**DATE**
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Yvette Ramos
Council Action Date: ____________________________
Telephone No.: 7-5249
Resolution Number: ____________________________
Department: Finance
FY: 05-06
Transfer No. ____________________________

**DEPARTMENTAL REVENUES**

<table>
<thead>
<tr>
<th>Fund-Agency-Obj-Unit</th>
<th>Current Budget</th>
<th>Increase/ (Decrease)</th>
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<th>Description of Object</th>
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<td>$237,000</td>
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<td>Prop 40 PC</td>
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**APPROPRIATIONS**

| FROM 06-2300-800-8000-8003 | 2300R | ($50,000) |
| TO 06-2300-800-8000-8003   | 2300R | $153,000  |

**COMMENTS/JUSTIFICATION**

Reduction of Prop 40 RZH
Increase of Prop 40 PC
Increase of Prop 12 RZH
The revenues are being switched because specific revenue sources have been found

**AUTHORIZATION (check if required)**

| DEPUTY DIRECTOR (Public Works) | Authorized up to threshold of $50k w/o Director Approval |
| DEPUTY DIRECTOR (Public Works) * | Authorized up to threshold of $50k w/o Director Approval |

* second signature required for movement of funds between CIP orgs & line items controlled by different divisions (e.g. Water and E&T)

| DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT |
| FINANCE DIRECTOR (Transfers to/from Internal Service Charges) |
| CFF/CFD ADMINISTRATOR |

| CITY MANAGER (Transfers between Budgeted Activities of Departments within Funds) |
| Application of Unbudgeted Dept Revenues |
| Salary lines movement in or out |

PW: AT Template 5/3/05 2300-M182.xls
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Yvette Ramos
Telephone No.: 7-3249
Department: Finance
Fund Title: Capital Grants
Maddux Youth Center

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

DEPARTMENTAL REVENUES
FROM

TO

APPROPRIATIONS
FROM
06-1190-800-8000-8003 | 1190R | ($103,000)

TO
06-2300-800-8000-8003 | 2300R | $103,000

TRANSFERS BETWEEN FUNDS
FROM
MY-2300-700-M182-7119 | $1,005,000 | ($103,000) | $902,000 | Capital Grants

TO
MY-1190-700-M182-9230 | $1,005,000 | ($103,000) | $902,000 | 108 Loan

COMMENTS/JUSTIFICATION
Reduction of the 108 Loan due to the increase of $ coming in from Prop 12 RZH.

AUTHORIZATION (check if required) SIGNATURE DATE

DEPUTY DIRECTOR (Public Works Dept)
Authorized up to threshold of $50k w/o Director Approval

DEPUTY DIRECTOR (Public Works) *
Authorized up to threshold of $50k w/o Director Approval

* second signature required for movement of funds between CIP orgs & line items controlled by different divisions (e.g. Water & E&T)

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

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

CFF/CFD ADMINISTRATOR
When necessary for CIP

CITY MANAGER
(Transfers between Budgeted Activities of Departments within Funds)
(Appropriation of Unbudgeted Dept Revenues)
(Transfers into Personnel Services)
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Yvette Ramos  
Telephone No.: 7-5249  
Department: Finance  

Fund Title: Special Fund for Capital Outlay  
Orville Wright Park  

<table>
<thead>
<tr>
<th>Fund-Agcy-Ore-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/ (Decrease)</th>
<th>Revised Budget</th>
<th>Description of Object</th>
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**DEPARTMENTAL REVENUES**

**FROM**

**TO**

MY-2300-310-M186-3215  
$36,276  
$36,276

**APPROPRIATIONS**

**FROM**

06-2300-800-8000-8003  
2300R  
($36,276)

**TO**

06-1400-800-8000-8003  
1400R  
$36,276

06-2300-800-8000-8003  
2300R  
$36,276

**TRANSFERS BETWEEN FUNDS**

**FROM**

MY-2300-700-M186-7140  
$55,344  
($36,276)  
$19,068

**TO**

MY-1400-700-M186-9230  
$55,344  
($36,276)  
$19,068

**COMMENTS/JUSTIFICATION**

Reduce transfer from 1400 due to increase in revenue from Land and Water Conservation Grant.  
Land and Water Conservation Grant is a more specific revenue source.

**AUTHORIZATION** (check if required)  

| DEPUTY DIRECTOR (Public Works Dept)  
Authorized up to threshold of $50k w/o Director Approval |
| DEPUTY DIRECTOR (Public Works)  
Authorized up to threshold of $50k w/o Director Approval |
| DEPARTMENT DIRECTOR/  
AUTHORIZED ASSISTANT  
(Allocation of Dept Appr to Line-Item Level) |
| FINANCE DIRECTOR  
(Transfers to/from Internal Service Charges)  
(All items requiring City Manager's Approval) |
| CFF/CFD ADMINISTRATOR  
When necessary for CIP |
| CITY MANAGER  
(Transfers between Budgeted Activities of Departments within Funds)  
(Appropriation of Unbudgeted Dept Revenues)  
(Transfers into Personnel Services) |

**SIGNATURE**  

**DATE**

PW: AT winterfund Template 5/3/05  
m186.xls
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Yvette Ramos
Telephone No.: 7-5249
Department: Finance

Fund Title: Special Fund for Capital Outlay
Neighborhood Center at Marshall Park

Council Action Date: 
Resolution Number: 
FY: 05-06

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<th>Current Budget</th>
<th>Increase/Decrease</th>
<th>Revised Budget</th>
<th>Description of Object</th>
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<tr>
<th>appropriations</th>
<th>FROM</th>
<th>TO</th>
</tr>
</thead>
<tbody>
<tr>
<td>06-1900-800-8000-8003</td>
<td>1190R</td>
<td>($103,000)</td>
</tr>
<tr>
<td>06-1300-800-8000-8003</td>
<td>1300R</td>
<td>$103,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Transfers between Funds</th>
<th>FROM</th>
<th>TO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1190-700-M163-7130</td>
<td>$3,495,000</td>
<td>$103,000</td>
</tr>
<tr>
<td>1300-700-M163-9119</td>
<td>$3,495,000</td>
<td>$103,000</td>
</tr>
</tbody>
</table>

Comments/Justification
Increase transfer from 1190(108 Loan). Changing revenue sources. This is a more specific revenue source for the project.

Authorization (check if required) 
Signature 
Date

Deputy Director (Public Works Dept)
Authorized up to threshold of $50k w/o Director Approval

Deputy Director (Public Works) *
Authorized up to threshold of $50k w/o Director Approval

* second signature required for movement of funds between CIP orgs & line items controlled by different divisions (e.g. Water & E&T)

Director or Authorized Assistant
(Allocation of Dept Appr to Line-Item Level)

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

CFI/CFD Administrator
When necessary for CIP

City Manager
(Transfers between Budgeted Activities of Departments within Funds)
(Appropriation of Unbudgeted Dept Revenues)
(Transfers into Personnel Services)
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Yvette Ramos  
Council Action Date:  
Telephone No.: 7-5249  
Resolution Number:  
Department: Finance  
Transfer No.:  
Fund Title: Special Fund for Capital Outlay  
Neighborhood Center at Marshall Park  
FY: 05-06  

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

**DEPARTMENTAL REVENUES**

**FROM**

**TO**

**APPROPRIATIONS**

**FROM**

06-1300-800-8000-8003 | 1300R | ($166,485) |  

**TO**

06-0100-800-8000-8003 | 0100R | $166,485 |  

**TRANSFERS BETWEEN FUNDS**

**FROM**

MY-0100-700-M163-7130 | $166,485 | ($166,485) |  

**TO**

MY-1300-700-M162-9010 | $166,485 | ($166,485) |  

**COMMENTS/JUSTIFICATION**

Reduce transfer from the General Fund. Changing revenue source to a more specific source.

**AUTHORIZATION (check if required)**

DEPUTY DIRECTOR (Public Works Dept)
Authorized up to threshold of $50k w/o Director Approval

DEPUTY DIRECTOR (Public Works) *
Authorized up to threshold of $50k w/o Director Approval

* second signature required for movement of funds between CIP的对象 & line items controlled by different divisions (e.g., Water and E&T)

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

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

CFP/CFD ADMINISTRATOR
When necessary for CIP

CITY MANAGER
(Transfers between Budgeted Activities of Departments within Funds)
(Appropriation of Unbudgeted Dept Revenues)
(Transfers into Personnel Services)
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Yvette Ramos
Telephone No.: 7-5249
Department: Finance

Fund Title: Special Fund for Capital Out
Neighborhood Center at Marshall Park

<table>
<thead>
<tr>
<th>Fund-Agency-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/Decrease</th>
<th>Revised Budget</th>
<th>Description of Object</th>
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<tbody>
<tr>
<td><strong>DEPARTMENTAL REVENUES</strong></td>
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<tr>
<td>FROM</td>
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<tr>
<td>TO MY-1300-310-M163-3191</td>
<td></td>
<td>$166,000</td>
<td></td>
<td>$166,485</td>
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<tr>
<td><strong>APPROPRIATIONS</strong></td>
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<td>FROM</td>
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<tr>
<td>MY-1300-310-M163-6040</td>
<td>M163</td>
<td>$3,516,965</td>
<td>($31,765)</td>
<td>$3,485,200</td>
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<td>MY-1300-310-M163-6060</td>
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<td>($30,120)</td>
<td>$269,280</td>
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<td>MY-1300-310-M163-6050</td>
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<td>$250,120</td>
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<td>$200,000</td>
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<tr>
<td>06-1300-800-8000-8003</td>
<td>1300R</td>
<td></td>
<td></td>
<td>$63,485</td>
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<td>TO</td>
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<td>MY-1300-310-M163-6010</td>
<td>M163</td>
<td>$274,000</td>
<td>$49,485</td>
<td>$323,485</td>
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</table>

**COMMENTS/JUSTIFICATION**
Increase JJBP Grant
Decrease expense budget (construction, construction administration, contingency)
Increase expense budget (design)
Balancing the expenses to the revenue

<table>
<thead>
<tr>
<th>AUTHORIZATION (check if required)</th>
<th>SIGNATURE</th>
<th>DATE</th>
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<tbody>
<tr>
<td>DEPUTY DIRECTOR (Public Works)</td>
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<tr>
<td>Authorized up to threshold of $50k w/o Director Approval</td>
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<td>DEPUTY DIRECTOR (Public Works)*</td>
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<td>* second signature required for movement of funds between CLP orgs &amp; line items controlled by different divisions (e.g. Water and E&amp;T)</td>
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<tr>
<td>DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT</td>
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<tr>
<td>(Allocation of Dept Appr to Line-Item Level)</td>
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<tr>
<td>FINANCE DIRECTOR</td>
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<tr>
<td>(Transfers to/from Internal Service Charges)</td>
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<td>(All items requiring City Manager's Approval)</td>
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<tr>
<td>CFF/CFD ADMINISTRATOR</td>
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<tr>
<td>CITY MANAGER</td>
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<tr>
<td>(Transfers between Budgeted Activities of Departments within Funds)</td>
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<tr>
<td>(Appropriation of Unbudgeted Dept Revenues)</td>
<td></td>
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<tr>
<td>(Salary lines movement in or out)</td>
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</tr>
</tbody>
</table>

PW: AT Temolate 5/3/05 m163.xls
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Gail Bailey
Telephone No.: x75378
Department: Finance

Council Action Date: 9-6-05
Resolution Number: ____________________________
FY: 05-06
Transfer No. ____________________

<table>
<thead>
<tr>
<th>Fund-Agency-Organization-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/ (Decrease)</th>
<th>Revised Budget</th>
<th>Description of Object</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>$3,240</td>
<td></td>
<td>Service Credit Revenue</td>
</tr>
</tbody>
</table>

DEPARTMENTAL REVENUES

FROM

TO


APPROPRIATIONS

FROM

6540-165-1672-0255

$3,240

Service Credit Expenditure

TO


TRANSFERS BETWEEN FUNDS

FROM

6540-700-1221-7010

$3,240

TO

0100-700-1221-9654

$3,240

COMMENTS/JUSTIFICATION

With the closure of CHATM, the Cashiering Div will assume responsibility of selling BART and ACE bus passes. Total service cost for FY06 will be $3,240 and will be paid by the Transit Fund.

<table>
<thead>
<tr>
<th>AUTHORIZATION (check if required)</th>
<th>SIGNATURE</th>
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<tr>
<td>DEPARTMENT DIRECTOR or</td>
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<tr>
<td>AUTHORIZED ASSISTANT</td>
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<td>(Allocation of Dept Appr to Line-Item Level)</td>
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<td>FINANCE DIRECTOR</td>
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<tr>
<td>(Transfers to/from Internal Service Charges)</td>
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<td>(All items requiring City Manager's Approval)</td>
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<tr>
<td>CITY MANAGER</td>
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<tr>
<td>(Transfers between Budgeted Activities of Departments within Funds)</td>
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<tr>
<td>(Appropriation of Unbudgeted Dept Revenues)</td>
<td></td>
<td></td>
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<tr>
<td>(Transfers in/out of Personnel Services)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Tracie Madison
Telephone No.: 1-3835
Department: Finance
Fund Title: BUS

Council Action Date: 
Resolution Number: 
FY: 05-06
Transfer No. 

<table>
<thead>
<tr>
<th>Monthly Adjustment</th>
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<tbody>
<tr>
<td>Fund-Agcy-Org-Object</td>
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<tr>
<td>---------------------</td>
</tr>
<tr>
<td>DEPARTMENTAL REVENUES</td>
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<tr>
<td>FROM</td>
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<tr>
<td>MY-6510-165-A044-3540</td>
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<tr>
<td>MY-6510-165-A044-3548</td>
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<tr>
<td>MY-6510-165-A044-3552</td>
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<tr>
<td>TO</td>
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<tr>
<td>APPROPRIATIONS</td>
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<td>FROM</td>
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<tr>
<td>06-6540-800-8000-8003</td>
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<tr>
<td>06-6510-800-8000-8003</td>
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<tr>
<td>TO</td>
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<tr>
<td>06-6510-800-8000-8003</td>
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<tr>
<td>MY-6510-165-A044-6070</td>
</tr>
<tr>
<td>TRANSFERS BETWEEN FUNDS</td>
</tr>
<tr>
<td>FROM</td>
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<tr>
<td>MY-6540-700-A044-7651</td>
</tr>
<tr>
<td>TO</td>
</tr>
<tr>
<td>MY-6510-700-A044-9654</td>
</tr>
</tbody>
</table>

COMMENTS/JUSTIFICATION
This monthly adjustment is to align this project with the three grants that are available from the FTA. Council had approved to consolidate the projects into one project for ease of accounting purposes. This adjustment places the correct revenues from grants and LTF match and increases the expense side of the project appropriately to take full advantage of available grant funding.

AUTHORIZATION (check if required) SIGNATURE DATE

DEPUTY DIRECTOR (Public Works Dept)
Authorized up to threshold of $50k w/o Director Approval

DEPUTY DIRECTOR (Public Works) *
Authorized up to threshold of $50k w/o Director Approval
* second signature required for movement of funds between CIP orgs & line items controlled by different divisions (e.g. Water and E&T)

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

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

CFF/CFD ADMINISTRATOR
When necessary for CIP

CITY MANAGER
(Transfers between Budgeted Activities of Departments within Funds)
(Appropriation of Unbudgeted Dept Revenues)
(Transfers into Personnel Services)

PV: AT winterfund Template 3/3/05 6510_A044.xls
MODESTO CITY COUNCIL  
RESOLUTION NO. 2005-426

A RESOLUTION AUTHORIZING THE PURCHASING SUPERVISOR TO SOLICIT FORMAL REQUEST FOR BIDS (RFB) FOR THE PRINTING OF MODESTO AREA EXPRESS (MAX) RIDE GUIDES FOR AN INITIAL TWO (2) YEAR PERIOD, WITH THREE (3) ONE-YEAR CONTRACT EXTENSION OPTIONS FOR A TOTAL ESTIMATED ANNUAL COST OF $34,858

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

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

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

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

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

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

WHEREAS, by soliciting competitive bids, the City will achieve the best value for printing of Modesto Area Express (MAX) Ride Guides and meet Modesto Municipal Code (MMC) requirements for formal bids, and

WHEREAS, the Modesto Municipal Code Section 8-3.203 requires all purchases which meet or exceed $50,000 for material and equipment or contractual services to be formally bid, and
WHEREAS, the City Council has appropriated funds for printing of Modesto Area Express (MAX) Ride Guides in account number 6540-165-1672-0205 (BUS FIXED ROUTE MAX OPERATIONS), and

WHEREAS, the Purchasing Division has coordinated the drafting of bid specifications for printing of Modesto Area Express (MAX) Ride Guides with the Public Works Department-Transit Division staff,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Purchasing Supervisor is hereby authorized to solicit formal Request for Bids for the printing of Modesto Area Express (MAX) Ride Guides as follows:

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

SECTION 2. After bids are opened, they shall be tabulated and analyzed and a report submitted to the Council.
The foregoing resolution was introduced at a special 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 Zahr, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-427

A RESOLUTION AUTHORIZING THE PURCHASING SUPERVISOR TO PURCHASE TWO (2) VAC-CON COMBINATION SEWER AND STORM DRAIN CLEANERS FROM MUNICIPAL MAINTENANCE EQUIPMENT OF SACRAMENTO, CALIFORNIA FOR AN ESTIMATED TOTAL Cost OF $551,709.72

WHEREAS, the Public Works Department-Fleet Services Division has requested the purchase of two (2) Vac-Con Combination Sewer Drain Cleaners (vacuum trucks) for use by the Wastewater Collections Division, and

WHEREAS, the two (2) Vac-Con units are used by the Wastewater Collections Division to clean and maintain sewer pipes, and

WHEREAS, routine maintenance and repairs performed by these trucks are part of the City’s program to comply with the Clean Air Act, and

WHEREAS, the new trucks will facilitate the use of newer technology for cleaning out roots and grease in sewer lines, and

WHEREAS, these units also act as backup units for flood control during storm events, and

WHEREAS, because these trucks are built to specifications, delivery of these trucks takes up to six (6) months, and

WHEREAS, this equipment is being purchased to replace existing vacuum trucks, which have become unreliable and costly to keep up due to maintenance and repair issues, and

WHEREAS, these units have met their life expectancy projections and are fully funded for replacement in the Fleet Replacement Fund, and
WHEREAS, the pricing offered to the City for this equipment is based on a competitively bid contract from the County of Sacramento, and

WHEREAS, by taking advantage of this pricing offer ("piggybacking"). the City will save approximately $52,782.00 off current bid pricing for these two (2) Vac-Con units, and

WHEREAS, the City will also save both the bidding and staff time involved in a formal bid process, and

WHEREAS, the Modesto Municipal Code (MMC) generally requires all purchases exceeding $50,000 for material and equipment of this type to be formally bid, and

WHEREAS, per MMC 8-3.204 (d) the Purchasing Supervisor may determine that a process other than the formal bid procedure set forth in MMC Section 8-3.203 will result in procurement for the City at the least possible cost commensurate with the desired quality, and

WHEREAS, by "piggybacking" off the County of Sacramento competitively bid pricing contract, the purchase of this equipment will conform to code, and

WHEREAS, the City Council has appropriated funds in accounts: 7210-480-5814-5275 and 7210-480-5814-5276 (FLEET EQUIPMENT, REPLACEMENT) for the purchase of two (2) Vac-Con units, and

WHEREAS, the Purchasing Division has coordinated the review of specifications for two (2) Vac-Con Combination Sewer Strom Drain Cleaners with the Public Works Department- Fleet Services Division, and
WHEREAS, the estimated total cost of this purchase is $551,709.72,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of purchase order for two (2) Vac-Con Combination Sewer & Storm Drain Cleaners to Municipal Maintenance Equipment of Sacramento, CA. in the approximate amount of $551,709.72.

BE IT FURTHER RESOLVED that the Purchasing Supervisor is hereby authorized to issue a purchase order for two (2) Vac-Con Combination Sewer & Storm Drain Cleaners, as set forth herein.

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. 2005-428

A RESOLUTION APPROVING AN AGREEMENT WITH ARCHITECTURE PLUS, INC. FOR PROFESSIONAL ARCHITECTURAL SERVICES TO PREPARE DESIGN DEVELOPMENT AND CONSTRUCTION DOCUMENTS FOR THE KING-KENNEDY MEMORIAL CENTER KITCHEN AND AUDITORIUM RENOVATION PROJECT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT

WHEREAS, the City of Modesto currently owns the King-Kennedy Memorial Center located in Mellis Park at 601 N. Martin Luther King Drive, and

WHEREAS, the center was constructed in the late 1960’s, and

WHEREAS, last year a project was completed that effectively brought the majority of the building up to current ADA Standards, and

WHEREAS, though some maintenance and ADA improvements have been made, the Kitchen and Auditorium still have many of the original elements from the late 1960’s, and

WHEREAS, the Kitchen and Auditorium are severely outdated and in need of renovation, and

WHEREAS, renovation of King-Kennedy Memorial Center is expected to begin in summer of 2006, and

WHEREAS, in order to be prepared to begin construction in summer of 2006, the Construction Documents must be completed by spring of 2006, and

WHEREAS, a RFP was distributed to ten (10) architectural service providers in December 2004 for this project; four (4) firms responded to the RFP and submitted a proposal by the January 12, 2005 deadline, and
WHEREAS, a panel of four (4) reviewed the proposals and determined that Architecture Plus, Inc. was the most qualified firm to complete this project, due to their vast experience in designing similar renovation projects, and

WHEREAS, Architecture Plus, Inc. has agreed to provide Design Development and Construction Documents at a cost not to exceed $48,000.00, and

WHEREAS, the Design Development will be developed using community input through public meetings and workshops, and

WHEREAS, funds are available in Capital Improvement Project 2330-310-P500,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the agreement with Architecture Plus, Inc. for professional architectural services to prepare Design Development and Construction Documents for King-Kennedy Memorial Center Kitchen and Auditorium Remodel for a cost not to exceed $48,000.00, a copy of which is attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the agreement.
The foregoing resolution was introduced at a regular meeting of the Council of

the City of Modesto held on the 6th day of 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
KING-KENNEDY MEMORIAL CENTER
KITCHEN AND AUDITORIUM RENOVATION
AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, made and entered into in the City of Modesto, State of California, effective as of this _____ day of __________, 2005 (“Effective Date”), by and between the CITY OF MODESTO, a municipal corporation of the State of California, hereinafter referred to as “City”, and ARCHITECTURE PLUS, INC., a California corporation, hereinafter referred to as “Consultant”.

This Agreement is made with regard to the following recitals:

1. The City has determined that Design Development and Construction Documents should be prepared for the King-Kennedy Memorial Center Kitchen and Auditorium Renovation Project.

2. Consultant represents that it is qualified, willing and able to provide the services to prepare said document(s).

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

1. **SCOPE OF SERVICES.**
   Consultant shall undertake and complete the requested services as set forth and described in the documents attached hereto and referred to as Exhibit “A” or “Project”. The Consultant shall complete the Project in a manner compatible with the standards of its profession, and shall produce a fully complete Project that is acceptable to City.

2. **TERM OF AGREEMENT.**
   This Agreement is effective as of the date first written above and will continue in effect until City’s acceptance of and payment for all services authorized by City and performed by Consultant, unless terminated earlier in accordance with the provision of the termination clause in this Agreement.

   City hereby gives Consultant notice to proceed with the Project, as of the effective date of this agreement. Consultant shall diligently proceed with the Project and agrees to
complete the Design Development and Construction Documents within 9 months from the Effective Date of this agreement.

3. **COMPENSATION.**

Consultant agrees to accept a sum not to exceed $48,000.00 as full remuneration for performing all services and furnishing all staffing and materials called for in the Project and for performance by Consultant of all of its duties and obligations under this Agreement.

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

a. Exhibit “A” provides a Total Cost for each Project Task. Consultant shall submit monthly invoices to City identifying the work performed and percentage of each Task that has been completed. City shall make payments on a monthly basis consistent with the percentage of Task(s) completed, until the City has paid a maximum of 90% of the Total Cost for each Task. The remaining 10% of the Total Cost for each Task will be paid by the City of Modesto upon completion of said Task. All work to be performed under this Agreement shall be billed at the hourly rates shown in Exhibit “B”.

b. Reimbursable Expenses: All reproduction, delivery and travel expenses will be billed at cost. The Total Cost for all reimbursable expenses for the Project shall not exceed $4,000.00. It is the responsibility of the Consultant to manage reimbursable expenses to ensure that they do not exceed this budget. Any reimbursable expenses that exceed this budget, without prior written approval from the Director of the Parks, Recreation and Neighborhoods Department, will not be reimbursed to the Consultant. Reimbursable expenses shall be invoiced to the City by monthly invoices and shall itemize the reimbursable expenses incurred during the preceding month and indicate the amount due.

c. Additional Services: Additional services may be authorized by the Director of the Parks, Recreation and Neighborhoods Department in an amount up to, but not to exceed, $4,000.00. In the event that additional services are deemed necessary, the Consultant shall provide a written request to the Director indicating the scope, fee and reason for additional work, prior to commencing such additional services. The Director shall provide a written response to the request, either approving or denying the additional expenditure. If additional services are requested and approved they will be billed at the hourly rates set forth in Exhibit “B” and may not exceed the amount requested and approved in writing by the Director. The Consultant will
not be reimbursed for any additional work that is not approved in writing by the Director. If additional services in excess of this budget are deemed necessary by City Staff, an amendment to this Agreement will be required and must be approved by the City Council prior to commencing the work, as provided in Paragraph 9 of this Agreement.

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

5. **PERFORMANCE BY KEY EMPLOYEE.**
Consultant has represented to City that Tim Fisher, President, will be the person primarily responsible for the performance of the services referred to in this Agreement. City has entered into this Agreement in reliance on that representation by Consultant. Consultant therefore agrees that thirty (30%) percent or more of the time to be devoted to the project that is the subject of this Agreement will be that of the above-named person.

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

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

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

All materials, documents, data or information obtained from the City data files or
any City medium furnished to Consultant in the performance of this Agreement will at all times
remain the property of the City. Such data or information may not be used or copied for direct or
indirect use by Consultant after termination of this Agreement without written consent of the
City.

7. NEWS AND INFORMATION RELEASE.

Consultant agrees that it will not issue any news releases in connection with either
the award of this Agreement, or any subsequent amendment of or efforts under this Agreement,
without first obtaining review and approval of said news releases from City through the City
Manager.

8. INTEREST OF CONTRACTOR.

Consultant warrants that it presently has no interest and shall not acquire any
interest, direct or indirect, which would conflict in any manner or degree with the performance of
services required to be performed under this Agreement. Consultant warrants that, in
performance of this Agreement, Consultant shall not employ any person having any such
interest. Consultant agrees to file a Statement of Economic Interests with the City Clerk at the
start and end of this contract as required by the City.

9. AMENDMENTS.

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

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

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

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

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

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

It is understood and agreed that as an independent contractor and not an employee of City neither the Consultant or Consultant’s assigned personnel shall have any entitlement as a City employee, right to act on behalf of the City in any capacity whatsoever as an agent, or to bind the City to any obligation whatsoever.
It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's personnel.

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

11. ASSIGNMENT.

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

12. PATENT/COPYRIGHT MATERIALS.

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

13. NOTICES.

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

FOR CONSULTANT:

Name: Architecture Plus, Inc.
Address: 1207 13th Street, Suite 6
          Modesto, CA 95354
Attention: Tim Fisher, President
Phone: (209) 577-4661
14. INSURANCE REQUIREMENTS.

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

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

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

(c) Automobile Liability insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and $100,000 for property damage or $1,000,000 combined single limit. This insurance shall cover scheduled, hired and non-owned automobiles for bodily injury and property damage.

(d) Errors and Omissions liability insurance with a minimum limit of $1,000,000 per claim and aggregate.

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

15. TERMINATION OF AGREEMENT.
Termination on Occurrence of Stated Events

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

Termination by City for Default of Consultant

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

**Termination by Consultant for Default of City**

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

**Termination by City for Lack of Budgeted Funds**

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

**Termination for Failure to Make Agreed-Upon Payments**

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

**Termination by City for Change of Consultant’s Tax Status**

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

**Voluntary Termination**

The parties may terminate this contract upon mutual written Agreement.

**In the Event of Termination**

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

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

16. INDEMNITY.

Consultant, its agents, officers and employees shall hold the City, its agents, officers, employees and volunteers, harmless from and save, defend and indemnify them against any and all claims, damages, losses, judgment and liabilities from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney’s fees, and all costs and expenses, arising directly or indirectly out of any act or omission of Consultant, whether or not the act or omission arises from the sole negligence or other liability of Consultant, or its agents, officers or employees relating to or during the performance of its obligations under this Agreement.

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

17. ENTIRE AGREEMENT.

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

18. **PARTIAL INVALIDITY.**

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

19. **WAIVER.**

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

20. **AUDIT.**

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

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

21. **GOVERNING LAW.**

This Agreement shall be governed according to the laws of the State of California.

22. **HEADINGS NOT CONTROLLING.**

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

23. **COMPLIANCE WITH LAWS.**

Consultant shall insure compliance with all safety and hourly requirements for employees, in accordance with federal, state, and county safety and health regulations and laws. Consultant shall fully comply with all applicable federal, state, and local laws, ordinances, regulations and permits. Consultant will have a City of Modesto business license.
24. LANGUAGE CONSTRUCTION.

The language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Agreement.

25. REPRESENTATIONS OF AUTHORITY.

Each party signing this Agreement on behalf of a party which is not a natural person hereby represents and warrants to the other party that all necessary legal prerequisites to that party’s execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.
IN WITNESS WHEREOF, the CITY OF MODESTO, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested by its City Clerk under authority of Resolution No. ____________, adopted by the Council of the City of Modesto on the ___ day of ______________, 2005, and CONSULTANT has caused this agreement to be duly executed.

CITY OF MODESTO, a municipal corporation

By

GEORGE W. BRITTON, City Manager

CONSULTANT*
ARCHITECTURE PLUS, INC.,
a California corporation

By

Tim Fisher, President

By

Frank Boots, Vice President

Consultants Federal ID# 770083774

ATTEST:

By

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:
MICHAEL D. MILICH, City Attorney

By

ALISON A. BARRATT-GREEN, Sr. Deputy City Attorney

APPROVED AS TO RISK MANAGEMENT FORM:

By

MARY AKIN, Risk Manager

*Corporations - signature of two (2) officers required or one (1) officer plus corporate seal. Partnership - signature of a partner required Sole Proprietorship - signature of proprietor required
EXHIBIT "A" or "Project"

Scope of Work
KING-KENNEDY MEMORIAL CENTER
KITCHEN AND AUDITORIUM RENOVATION

PROJECT DESCRIPTION:

The City of Modesto wishes to renovate the Kitchen and Auditorium area of the King-Kennedy Memorial Center (formerly known as Westside Neighborhood Center), which was originally built in 1969. The project site is located at 601 N. Martin Luther King Drive (formerly known as Franklin Street) in southwest Modesto.

The work to be accomplished consists of preparation of PS&E for the improvements of the King-Kennedy Memorial Center to upgrade and improve the Kitchen and Auditorium area of the building. This work will be a total remodel of the entire Kitchen and Auditorium areas, including unisex bathroom and storage areas in that portion of the building.

The consultant shall evaluate the existing structure and make recommendations in a wide range of design services including but not limited to: architectural, structural, civil, electrical and HVAC. The consultant shall obtain an asbestos-containing building materials (ACBM) and lead-based paint inspection identifying any contaminants.

The project will be funded with State administered Proposition 40 Grant Funds and possibly federal Community Development Block Grant funds. The consultant shall design the project in compliance with adopted local building codes (City of Modesto) and current ADA standards in order to obtain a City building permit.

The City anticipates a construction contract budget of approximately $350,000 for this project. Due to constraints on available funds, it is anticipated the construction could be phased in. The construction documents will be comprehensive, allowing for additive/deductive alternates and/or phasing. Working within the above construction budget it is anticipated that building improvements will include most of the following items:

- Removal of disturbed asbestos products during the construction.
- Demolition of existing items
- Remodel and possible reconfiguration of the Kitchen, including all new industrial appliances.
  - Refrigerator.
  - Stove and Oven.
  - Sinks.
  - Preparation and Serving Counters.
  - Dry Storage.
  - Microwave Oven
  - Other necessary items as determined by a committee of citizens and staff.
• Replacement of existing doors and windows, including frames.
• Repair of underground sewer system to the kitchen, which has collapsed.
• Remove and replace flooring in all areas
• Remove all wood paneling in the auditorium
• Renovate the ceiling in the auditorium
• Provide a new sound system to the auditorium, including a new sound booth
• Provide a new lighting system for the stage, auditorium and kitchen
• Provide additional storage in the area
• Refinish stage
• Paint entire area, walls and ceiling as needed.
• Remove room dividers in auditorium and replace if necessary
• Remove and replace stage curtain
• Also HVAC, Electrical, Plumbing, Sewer, etc. may need additional work, as needed

Based on the above, we have provided the following scope of services to be performed in chronological order.

**Professional Services to Include:**

**Task #1 – Design Development**

**Total Cost Not To Exceed $5,500.00**

1.01 Coordinate and obtain existing site and planning information from City records; prepare ‘site plan’ and ‘floor plan’ base sheets for the project.

1.02 Review physical limitations and opportunities of the existing site. Conduct site reconnaissance to visually review apparent features, utilities, and character of the site, verifying critical conditions.

1.03 Complete Haz-Mat study and present report to City. Report should identify specifically any asbestos or lead hazards in the proposed area of work.

1.04 Prepare and provide up to three (3) conceptual level design development plans for the project. The conceptual plans should depict alternate solutions to program needs. Prepare concept level cost estimate for each plan.

1.05 **Meeting #1** - Conduct work session with City staff and stakeholders to present the alternatives; develop consensus on the preferred option.

1.06 Refine the alternatives into a single preliminary plan for review and comment by City and stakeholders. Develop and color the preliminary plan and provide cost estimate as well as potential bidding options to City Staff and Stakeholders for final approval.

1.07 **Meeting #2** - Conduct work session with City staff and stakeholders to present the preliminary plan for review.
1.08 Prepare a Final Color Rendered Plan that reflects the consensus of Staff and stakeholders. Provide Color Rendered Plan (full size) to City. Also provide an Electronic Image of the Color Rendered Plan and final cost estimate on compact disc to City, which can be printed by the City in various sizes for public distribution and display.

Task #2 – Construction Documents Total Cost Not To Exceed $31,125.00

2.01 Based on approved plan, prepare preliminary (60% completion) construction plans, refined cost estimate and specifications. Deliver eight (8) sets of plans and specifications to City. City staff will require a minimum of two (2) weeks for review of 60% construction documents.

2.02 Provide sample finishes and colors, and cut sheets for all products proposed to be used for construction. In addition, a materials board with colors, finishes, materials, etc. should be provided at the end of this task.

2.03 Meeting #3 - Conduct an interdepartmental review session to review City comments.

2.04 Prepare 90% level construction plans, specifications and refined cost estimates. Deliver eight (8) sets of plans and specifications to City. Prepare detailed cost estimates for all improvements as per City recommendations. City staff will require a minimum of three (3) weeks for review of 90% construction documents.

2.05 Meeting #4 - Conduct an interdepartmental review session to review City comments.

2.06 Based on comments received prepare 100% level construction plans, specs, and estimate. Plans will be prepared to allow for deductive and additive alternates or phased construction as necessary. City staff may require a minimum of two (2) weeks for review of 100% construction documents.

2.07 Consultant shall provide architectural, mechanical and electrical design for renovation as needed and coordinate work between consulting engineers retained by them. HVAC, plumbing including gas, potable water and sewer, electrical, and minor structural calculations, framing plans, sections and details shall be provided as needed. Plans and Specifications shall be submitted for review to the local building department by the consultant. Civil engineering beyond 5’ of building and geo-technical engineering is not included.

The construction documents for the project will include, at a minimum (as applicable):

- title sheet
- existing conditions and demolition plan, including asbestos removal
- proposed floor plan
- enlarged plans and interior and exterior elevations, as needed
• room finish schedules
• HVAC plans, as needed
• plumbing plans, as needed
• electrical plans, as needed
• kitchen and auditorium accessories schedule
• details and specifications
• structural details, as needed
• technical specifications, including boiler plate specifications
• bid form

Submit for review and make necessary modifications as part of final submittal.

Present itemized final cost estimate for construction for review.

Provide one (1) set of final original plans and specifications for reproduction and one (1) AutoCAD version 2002 or earlier, drawing file. All final plans & specifications shall be stamped & signed by a registered professional (Architect or Engineer), as appropriate.

**Task #3 – Bidding and Construction Support**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Total Cost Not To Exceed $3,375.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assist City staff in bidding process as required, including answering</td>
<td></td>
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<tr>
<td>questions from bidders.</td>
<td></td>
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<tr>
<td>Attend pre-bid site introduction</td>
<td></td>
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<tr>
<td>Attend pre-construction conference (one (1) field meeting)</td>
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<tr>
<td>Review and process all shop drawings and submittals required by technical specifications.</td>
<td></td>
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<tr>
<td>Provide site reviews and prepare reports on construction progress and</td>
<td></td>
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<tr>
<td>quality with recommendations for correction of any deficiencies</td>
<td></td>
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<tr>
<td>(approximately six (6) field meetings).</td>
<td></td>
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<tr>
<td>Assist in determining and processing requests for information and change</td>
<td></td>
</tr>
<tr>
<td>orders.</td>
<td></td>
</tr>
<tr>
<td>Make final review and report on completed project (one (1) field meeting).</td>
<td></td>
</tr>
</tbody>
</table>
**Proposed Compensation**

The following fees are based on the scope of work described previously in Exhibit “A”. Payments will be made on a monthly basis when portions of the tasks are completed. The monthly billing should be completed as described in Paragraph 3 of the Agreement.

Task #1 – Design Development (not to exceed) $ 5,500.00
Task #2 – Construction Documents (not to exceed) $ 31,125.00
Task #3 – Bidding and Construction Support (not to exceed budget) $ 3,375.00
Reimbursable Expenses (not to exceed budget) $ 4,000.00
Additional Services (not to exceed budget) $ 4,000.00

Total Contract Amount Not to Exceed $ 48,000.00
Exhibit "B"

**Hourly Rates**
The following hourly rates will be used for billable hours within this Agreement and for additional work requested and approved:

<table>
<thead>
<tr>
<th>Company</th>
<th>Position</th>
<th>Hour Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Architecture Plus, Inc., Architects</td>
<td>Principal</td>
<td>$125/hour</td>
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<td></td>
<td>Associate Principal</td>
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<td>Project Manager</td>
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<td></td>
<td>Drafter/CADD Tech 1</td>
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<td>Drafter/CADD Tech 2</td>
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<td>Drafter/CADD Tech 3</td>
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<td></td>
<td>Administration</td>
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<tr>
<td>Pelton Engineering, Structural Engineer</td>
<td>Principal</td>
<td>$125/hour</td>
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<td></td>
<td>Senior Engineer</td>
<td>$100/hour</td>
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<td></td>
<td>Junior Engineer</td>
<td>$75/hour</td>
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<tr>
<td></td>
<td>Drafting &amp; Computer</td>
<td>$50-$75/hour</td>
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<td></td>
<td>Clerical</td>
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<td>HCS Engineering, Inc., Electrical Engineer</td>
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<td>Project Engineer</td>
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<td>Project Designer</td>
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<td>Project Support</td>
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<td>Alexander Scheflo and Associates, Inc.,</td>
<td>Principal</td>
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<td>Mechanical Engineer</td>
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<td>CM Pros, Cost Estimating</td>
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A RESOLUTION APPROVING THE ADDITION OF THE INTERNATIONAL CITY MANAGEMENT ASSOCIATION RETIREMENT CORPORATION (ICMA-RC) SIDECAR IRAS, AND THE 401/457 LOAN PROGRAM TO THE CITY’S DEFERRED COMPENSATION PROGRAM AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT

WHEREAS, the City of Modesto offers a deferred compensation program for its employees, and

WHEREAS, The International City Management Association Retirement Corporation (ICMA-RC) has worked with the City of Modesto to deliver excellent service, and

WHEREAS, the ICMA-RC has two other available programs, Sidecar IRAs and the 401/457 Loan Program, and

WHEREAS, the City of Modesto, at the behest of the City’s Deferred Compensation Committee, has agreed that these new offerings will allow City of Modesto employees to maximize their contributions, and allow them greater flexibility in financial planning, and

WHEREAS, to help offset City’s internal cost of plan administration, ICMA will pay City an administrative allowance in the amount of $20,000 per year in the first and second year of the Agreement and $35,000 per year in the third, fourth, and fifth year of the Agreement,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the approval of the implementation of these deferred compensation plan enhancements.
BE IT FURTHER RESOLVED that the Council hereby authorizes the City Manager, or his designee, to execute said agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of 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 ADDITION OF THE INTERNATIONAL CITY MANAGEMENT ASSOCIATION RETIREMENT CORPORATION (ICMA-RC) SIDECAR IRAS, AND THE 401/457 LOAN PROGRAM TO THE CITY'S DEFERRED COMPENSATION PROGRAM AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT

WHEREAS, the City of Modesto offers a deferred compensation program for its employees, and

WHEREAS, The International City Management Association Retirement Corporation (ICMA-RC) has worked with the City of Modesto to deliver excellent service, and

WHEREAS, the ICMA-RC has two other available programs, Sidecar IRAs and the 401/457 Loan Program, and

WHEREAS, the City of Modesto, at the behest of the City’s Deferred Compensation Committee, has agreed that these new offerings will allow City of Modesto employees to maximize their contributions, and allow them greater flexibility in financial planning, and

WHEREAS, to help offset City’s internal cost of plan administration, ICMA will pay City an administrative allowance in the amount of $20,000 per year in the first and second year of the Agreement and $35,000 per year in the third, fourth, and fifth year of the Agreement,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the approval of the implementation of these deferred compensation plan enhancements.
BE IT FURTHER RESOLVED that the Council hereby authorizes the City Manager, or his designee, to execute said agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of 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. 2005-431

A RESOLUTION APPROVING AN AGREEMENT WITH MODESTO CITY SCHOOLS FOR ONE FULL-TIME POLICE OFFICER WHO WILL SERVE AS A MEMBER OF THE HIGH RISK INTERVENTION TEAM, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, Modesto City School District has proposed a “High Risk Intervention Team” to work with, and facilitate resources for, at-risk juveniles, and

WHEREAS, these juveniles will be tracked and assisted by a Probation Officer, a Modesto Police Officer and a school official, and

WHEREAS, the Modesto Police Officer will handle scheduled in-office visits, home visits and facilitation of resources for juveniles and their parents, to offer them direction and any needed assistance, and

WHEREAS, Modesto City School District will pay for all costs of the Police Officer, salary, benefits and incentives, and will reimburse the City of Modesto for said costs estimated at $96,600, and

WHEREAS, the High Risk Intervention Team program is scheduled to begin on July 1, 2005, and will terminate on June 30, 2006, and

WHEREAS, the Safety and Communities committee, at its meeting of February 28, 2005, unanimously supported this action,

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Modesto, that it hereby approves the agreement with Modesto City Schools in the amount of $96,600.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of 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 NUMBER 2005-432

A RESOLUTION TO AMEND THE FISCAL YEAR 2005/06 BUDGET TO RECOGNIZE REVENUE AND APPROPRIATE FUNDS FOR ONE FULL-TIME POLICE OFFICER WHO WILL SERVE AS A MEMBER OF THE HIGH RISK INTERVENTION TEAM FOR MODESTO CITY SCHOOLS

WHEREAS, Modesto City School District has proposed a “High Risk Intervention Team” to work with, and facilitate resources for, at-risk juveniles, and

WHEREAS, these juveniles will be tracked and assisted by a Probation Officer, a Modesto Police Officer and a school official, and

WHEREAS, the Modesto Police Officer will handle scheduled in-office visits, home visits and facilitation of resources for juveniles and their parents, to offer them direction and any needed assistance, and

WHEREAS, Modesto City School District has entered into an agreement with the City and will pay for all costs of the Police Officer, salary, benefits and incentives, estimated at $96,600, and will reimburse the City of Modesto for said costs and

WHEREAS, by Resolution No. 2005-169 the Police Officer, salary, benefits and incentives, were estimated at $85,000 annually and has increased $11,600 to $96,600, and

WHEREAS, the High Risk Intervention Team program is scheduled to begin on July 1, 2005 and will terminate on June 30, 2006, and

WHEREAS, the Safety and Communities Committee, at its meeting of February 28, 2005, unanimously supported this action,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the 2005/06 Fiscal Year Budget is hereby amended as follows:
Appropriate:
To: 0100-190-191-0110 $85,000 Salaries and Benefits

Increase To:
0100-190-191-0110 $11,600 Salaries and Benefits

Revenue:
To: 0100-190-1921-3727 $96,600 School-PD
Reimbursement

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: 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. 2005-433

A RESOLUTION APPROVING AN AGREEMENT WITH MODESTO CITY SCHOOLS IN THE AMOUNT OF $324,502 FOR THE PROVISION OF SEVEN MODESTO POLICE OFFICERS/SCHOOL RESOURCE OFFICERS (SROs) TO PROVIDE CAMPUS SUPERVISOR TRAINING, IN SERVICES, AND CONSULTATIONS WITH SITE STAFF AND DISTRICT ADMINISTRATORS, AND LIAISON BETWEEN MODESTO POLICE DEPARTMENT AND MODESTO CITY SCHOOLS, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, Modesto City Schools requires seven Modesto Police Officers to provide prevention, intervention, and enforcement services to students, families and staff at Beyer, Davis, Downey, Johansen, and Modesto High Schools, and Elliott Alternative Education Center and Roosevelt Junior High School, and

WHEREAS, the Modesto Police Department can provide specially trained, uniformed police officers to provide Campus Supervisor training, in services, and consultations with site staff and District administrators, and

WHEREAS, the Modesto Police Officers can act as a liaison between Modesto Police Department and Modesto City Schools, and

WHEREAS, Police Officers can direct law enforcement action at the district school sites, if warranted, and

WHEREAS, the officers’ presence with the students provides mentoring and protection of youth in our community, and

WHEREAS, the term of this agreement is July 1, 2005, to June 30, 2006, and

WHEREAS, the City shall be compensated $324,502 for the services of seven Modesto Police Officers, one 12-month officer at $56,435 and six 9.5 month officers at $268,067,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the agreement with Modesto City Schools in the amount of $324,502 to provide seven Modesto Police Officers at Beyer, Davis, Downey, Johansen and Modesto High Schools, and Elliott Alternative Education Center and Roosevelt Junior High School.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of 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, Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-434

A RESOLUTION APPROVING AN AGREEMENT WITH MODESTO CITY SCHOOLS IN THE AMOUNT OF $129,430 FOR THE PROVISION OF FOUR MODESTO POLICE OFFICERS TO PROVIDE PREVENTION, INTERVENTION, AND ENFORCEMENT SERVICES TO STUDENTS, FAMILIES AND STAFF AT MARSHALL AND FRANKLIN ELEMENTARY SCHOOLS AND MARK TWAIN AND LA LOMA JUNIOR HIGH SCHOOLS, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, Modesto City Schools requires four Modesto Police Officers to provide prevention, intervention, and enforcement services to students, families, and staff at Marshall and Franklin Elementary Schools and Mark Twain and La Loma Junior High Schools, and

WHEREAS, the Modesto Police Department can provide specially trained, uniformed police officers to provide intervention programs and youth court programs and take any enforcement action at the district school sites, if warranted, and

WHEREAS, the officers’ presence with the students provides mentoring and protection of youth in our community, and

WHEREAS, the term of this agreement is July 1, 2005, to June 30, 2006, and

WHEREAS, the City shall be compensated $129,430 for the services of four Modesto Police Officers,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the agreement with Modesto City Schools in the amount of $129,430 for the provision of four Modesto Police Officers at Marshall and Franklin Elementary Schools and Mark Twain and La Loma Junior High Schools.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of 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. 2005-435

A RESOLUTION AUTHORIZING THE PURCHASE OF RETIRED CITY OF MODESTO POLICE CANINES BY THE ASSIGNED MODESTO POLICE DEPARTMENT CANINE HANDLER, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE AN AGREEMENT WITH EACH OFFICER FOR PURCHASE OF HIS POLICE CANINE

WHEREAS, the Police chief for the City of Modesto, from time to time, officially retires police canines from departmental service, and

WHEREAS, City of Modesto police canine handlers wish to purchase and assume possession of their assigned canine upon the dog’s official retirement, and

WHEREAS, it is necessary to adopt a resolution authorizing the purchase of City of Modesto police canines by their assigned department handler,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the agreements with Officer Jones and Officer DeAlba for the purchase of their retired police canines, in the amount of One Dollar ($1.00) each as more fully set forth in the Modesto Police Department Canine Transfer Contracts attached hereto as Exhibit “A” and Exhibit “B” and incorporated herein by this reference.

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

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<tr>
<th>AYES: Councilmembers</th>
<th>Dunbar, Hawn, Jackman, Keating, Marsh, O’Bryant, Mayor Ridenour</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOES: Councilmembers</td>
<td>None</td>
</tr>
<tr>
<td>ABSENT: Councilmembers</td>
<td>None</td>
</tr>
</tbody>
</table>

ATTEST: Jean Zahr
JEAN Zahr City Clerk

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
Exhibit A
Modesto Police Department Canine Transfer Contract – Officer Jones
MODESTO POLICE DEPARTMENT CANINE TRANSFER CONTRACT

This AGREEMENT, made and entered into in the City of Modesto, State of California, this 6th day of June, 2005, by and between the City of Modesto, a municipal corporation of the State of California, hereinafter referred to as “CITY”, and William Jones, canine handler for the Modesto Police Department, hereinafter referred to as “HANDLER”.

This AGREEMENT is made with regard to the following recitals:

A. HANDLER wishes to assume ownership and take possession of that certain retired City of Modesto police canine named “Victor”. HANDLER was previously the assigned canine handler for “Victor”.

B. HANDLER wishes to maintain ownership of the above-referenced dog, and the CITY wishes to divest itself of both ownership and vicarious or direct liability for the subject dog.

C. CITY does hereby agree to relinquish all of its right, title and ownership interest in said dog whatsoever, effective upon HANDLER’s execution and return of this document and payment of the sum of one and no/100ths dollars ($1.00) to the City of Modesto.

NOW, THEREFORE, in consideration of this AGREEMENT, the parties hereto agree as follows:

1. HANDLER does agree to assume ownership of the Modesto police canine named “Victor”, and to assume any and all risks, including, but not limited to, risk of injury or death to third persons, and to hold CITY, its police department, and its employees and/or agents or volunteers harmless from any and all liability, claims, administrative proceedings or other responsibility whatsoever arising from any injuries or damages that may occur on or after the
date ownership of the dog is transferred pursuant to this AGREEMENT. That date is hereby
fixed by agreement by and among the parties hereto as being June 6, 2005.

2. **HANDLER** further agrees to assume all liability for risks and dangers relating to
his/her ownership of the subject police dog on and after the aforementioned date, and to
indemnify and hold CITY harmless in the event that any legal or administrative action, whether
by claim, demand or otherwise, is made by any person or entity as a consequence of or arising
out of any event, act or disturbance involving the subject police dog on or after the date
ownership is transferred. These hold harmless provisions shall extend to any direct or vicarious
liability arising from any and all losses, liabilities, charges (including reasonable attorney fees
and court costs), and any other expenses whatsoever which may arise in any manner after the
new owners assumption of ownership on the date identified herein.

3. **HANDLER** must retain ownership of "Victor" for at least eighteen (18) months
prior to any sale of the aforementioned retired police canine.

4. The retired police canine "Victor" shall revert to CITY should the purchaser,
**HANDLER** determine he/she can no longer care for the aforementioned dog within the period of
time commencing on the date of this AGREEMENT and ending eighteen (18) months from the
date fixed by this AGREEMENT.

5. **HANDLER** acknowledges that he/she has read the foregoing AGREEMENT and
understands that it is contractual in nature and understands each of its provisions.
IN WITNESS WHEREOF, the CITY OF MODESTO, a municipal corporation, has caused this Agreement to be executed in duplicate by its City Manager and attested by its City Clerk under authority of Resolution No. 99-370 adopted by the City Council of the City of Modesto on the 20th day of July, 1999.

NEW OWNER

William Jones, Handler

CITY OF MODESTO

George Britton, City Manager

ATTEST:

By __________________________
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By __________________________
MICHAEL D. MILICH, City Attorney
Exhibit B

Modesto Police Department Canine Transfer Contract – Officer DeAlba
MODESTO POLICE DEPARTMENT CANINE TRANSFER CONTRACT.

This AGREEMENT, made and entered into in the City of Modesto, State of California, this 6th day of June, 2005, by and between the City of Modesto, a municipal corporation of the State of California, hereinafter referred to as "CITY", and Rigo DeAlba, canine handler for the Modesto Police Department, hereinafter referred to as "HANDLER".

This AGREEMENT is made with regard to the following recitals:

A. HANDLER wishes to assume ownership and take possession of that certain retired City of Modesto police canine named "Rex". HANDLER was previously the assigned canine handler for "Rex".

B. HANDLER wishes to maintain ownership of the above-referenced dog, and the CITY wishes to divest itself of both ownership and vicarious or direct liability for the subject dog.

C. CITY does hereby agree to relinquish all of its right, title and ownership interest in said dog whatsoever, effective upon HANDLER's execution and return of this document and payment of the sum of one and no/100ths dollars ($1.00) to the City of Modesto.

NOW, THEREFORE, in consideration of this AGREEMENT, the parties hereto agree as follows:

1. HANDLER does agree to assume ownership of the Modesto police canine named "Rex", and to assume any and all risks, including, but not limited to, risk of injury or death to third persons, and to hold CITY, its police department, and its employees and/or agents or volunteers harmless from any and all liability, claims, administrative proceedings or other responsibility whatsoever arising from any injuries or damages that may occur on or after the
date ownership of the dog is transferred pursuant to this AGREEMENT. That date is hereby fixed by agreement by and among the parties hereto as being **June 6, 2005**.

2. **HANDLER** further agrees to assume all liability for risks and dangers relating to his/her ownership of the subject police dog on and after the aforementioned date, and to indemnify and hold CITY harmless in the event that any legal or administrative action, whether by claim, demand or otherwise, is made by any person or entity as a consequence of or arising out of any event, act or disturbance involving the subject police dog on or after the date ownership is transferred. These hold harmless provisions shall extend to any direct or vicarious liability arising from any and all losses, liabilities, charges (including reasonable attorney fees and court costs), and any other expenses whatsoever which may arise in any manner after the new owners assumption of ownership on the date identified herein.

3. **HANDLER** must retain ownership of “Rex” for at least eighteen (18) months prior to any sale of the aforementioned retired police canine.

4. The retired police canine “Rex” shall revert to CITY should the purchaser, **HANDLER** determine he/she can no longer care for the aforementioned dog within the period of time commencing on the date of this AGREEMENT and ending eighteen (18) months from the date fixed by this AGREEMENT.

5. **HANDLER** acknowledges that he/she has read the foregoing AGREEMENT and understands that it is contractual in nature and understands each of its provisions.
IN WITNESS WHEREOF, the CITY OF MODESTO, a municipal corporation, has
cause this Agreement to be executed in duplicate by its City Manager and attested by its City
Clerk under authority of Resolution No. 99-370 adopted by the City Council of the City of
Modesto on the 20th day of July, 1999.

NEW OWNER

Rigo DeAlba, Handler

CITY OF MODESTO

George Britton, City Manager

ATTEST:

By ______________________________________
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By ______________________________________
MICHAEL D. MILICH, City Attorney

6/6/05
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-436

A RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ACCEPT FUNDING IN THE AMOUNT OF $13,793.43 FROM THE U.S. DEPARTMENT OF JUSTICE (DOJ), BULLETPROOF VEST PARTNERSHIP PROGRAM

WHEREAS, The City of Modesto Police Department desires to participate in the Bulletproof Vest Partnership (BVP) Program from the U.S. Department of Justice (hereeto referred to as DOJ), and

WHEREAS, the BVP program helps protect the lives of law enforcement officers by assisting local government equip their officers with armor vests, and

WHEREAS, the DOJ BVP program has awarded the City of Modesto funding in the amount of $13,793.43, to purchase armor vests for law enforcement officers in the Modesto Police Department, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager, or his designee, to accept the DOJ BVP program award of funding in the amount of $13,793.43 for the purchase of armor vests.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Bulletproof Vest Partnership Program award funding with DOJ, including any extensions or amendments thereof.
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: J. Zahr, City Clerk

APPROVED AS TO FORM:

By MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2005-437

A RESOLUTION AMENDING THE FISCAL YEAR 2005/06 BUDGET TO RECOGNIZE REVENUE FOR A ONE-YEAR BULLETPROOF VEST PARTNERSHIP PROGRAM FROM THE U.S. DEPARTMENT OF JUSTICE (DOJ) AND APPROPRIATE FUNDS FOR THE PURCHASE OF BULLETPROOF VESTS

WHEREAS, the City of Modesto Police Department was awarded funding in the sum of $13,793.43 from the U.S. Department of Justice (DOJ), Bulletproof Vest Partnership Program, and

WHEREAS, the federal award funds were made available for the purchase of armor vests for law enforcement officers, and

WHEREAS, the program pays up to 50% of the cost of vests purchased and requires that each applicant jurisdiction be responsible for matching the cost of each qualifying vest purchased, and

WHEREAS, the Council of the City of Modesto authorized the City Manager, or his designee, to accept the BVP program funding,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the 2005/06 Operating Budget is hereby amended as follows:

Revenue:

To: 0100-190-1921-3500
$13,793.43 Federal Participation Revenue

BE IT FURTHER RESOLVED that the Finance Director is hereby authorized to take the necessary steps to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of 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. 2005-438

A RESOLUTION REJECTING ALL BIDS FOR THE DEVELOPMENT AND IMPLEMENTATION OF A STORMWATER MANAGEMENT PROGRAM AND AUTHORIZING STAFF TO RE-ADVERTISE THE REQUEST FOR PROPOSALS

WHEREAS, the Environmental Protection Agency requires all municipalities with populations exceeding 100,000 to apply for a National Pollutant Discharge Elimination System (NPDES) Stormwater Permit, and

WHEREAS, the NPDES permit establishes the requirements for reducing pollutant runoff into the City’s storm drains, which eventually enters either rockwells and/or local waterways, and

WHEREAS, as part of the City’s current NPDES Stormwater Permit, the City was mandated to develop a Storm Water Management Plan (SWMP) and a Stormwater Management Program, and

WHEREAS, the City completed and adopted its SWMP in September 2003, and

WHEREAS, the City must conduct a monitoring program to characterize the runoff from the City and its impact on local waterways, and

WHEREAS, Stormwater Management Program consultant services provided by a firm with SWMP expertise are essential for the City to continue meeting the SWMP requirements, and

WHEREAS, the Economic Development Committee recommended support of this item at its meeting on March 7, 2005, and
WHEREAS, Council, by Resolution No. 2005-171, authorized the Public Works Department to solicit Request for Proposals (RFP) for the development and implementation of a Stormwater Management Program, and

WHEREAS, Staff solicited RFP from 84 firms and formally advertised the RFP, and

WHEREAS, six (6) proposals were received and one firm was disqualified for not following the instructions of the RFP, and

WHEREAS, proposals received were evaluated per evaluation criteria defined in the RFP, and

WHEREAS, a committee consisting of City staff from the Public Works Department evaluated the proposals, and

WHEREAS, after evaluations were made, the top two firms were interviewed by Public Works staff, and

WHEREAS, based on proposals, interviews and costs evaluations, initial award of contract was given to EOA, Inc., and

WHEREAS, on July 11, 2005 staff received a letter from Larry Walker Associates (LWA), the competitive finalist, disputing how the project was awarded, and

WHEREAS, the Public Works Director asked the Purchasing Division to review all documentation regarding this award of contract, and

WHEREAS, after reviewing documentation, Purchasing indicated that the values placed on the costs portion of the evaluation differed from that used by both their division and applied consistently as a standard throughout the City, and
WHEREAS, the appropriate cost methodology was then utilized and LWA became the most responsible bidder, and

WHEREAS, EOA, Inc. sent a letter dated July 21, 2005 to the City Manager expressing their dissatisfaction with the RFP process that led to the change of award, and

WHEREAS, due to the perceived irregularities in the proposal review process, it is necessary to reject all existing bids and issue a new RFP,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes rejecting the original bids for the development and implementation of the Stormwater Management Program and authorizes staff to re-advertise the Request for Proposals.

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:

BY: Michael D. Milich, City Attorney