A RESOLUTION AWARDING THE BID FOR PERSONAL PROTECTIVE EQUIPMENT (GROUP 6A) TO JAECO FOR AN ESTIMATED ANNUAL AMOUNT OF $1,000.00.

WHEREAS, personal protective equipment is paramount to the well being of line personnel, and

WHEREAS, the equipment includes turnout pants and jackets, structure boots, hoods, helmets, gloves, etc., and

WHEREAS, the City provides personal protective equipment to line personnel at the time of hire, and

WHEREAS, that equipment is then replaced when it no longer meets standards for said equipment, and

WHEREAS, on December 12, 2006, Council approved, by Resolution No. 2006-769, the formal solicitation of bids for personal protective equipment, and

WHEREAS, bids were solicited from twenty-two (22) companies, and

WHEREAS, the bid specification was also posted on the City’s web site and formally advertised by the City Clerk’s office, and

WHEREAS, five (5) companies responded with valid bids, and

WHEREAS, a cost analysis was performed on the bids received, and

WHEREAS, it is recommended that the bids be awarded by grouping, and

WHEREAS, JAECO submitted the lowest responsive and responsible bid for Groups 6A of the Personal Protective Equipment bid for an estimated annual amount of $1,000.00,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the award to JAECO, Group 6A of the personal protective equipment bid, for an estimated annual amount of $1,000.00 is hereby approved.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of March, 2007, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Olsen, Mayor Ridenour

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-172

A RESOLUTION APPROVING CONTINUATION OF THE BLUE BAG RECYCLING PROGRAM, AND AUTHORIZING STAFF TO LAUNCH A PROMOTIONAL CAMPAIGN ENCOURAGING RESIDENTS TO PUT PAPER AND OTHER ORGANICS INTO THE GREEN CAN FOR COMPOSTING ONCE A NEW HORIZONTAL GRINDER HAS BEEN PURCHASED FOR THE COMPOST FACILITY.

WHEREAS, the passage of AB939 required all cities and counties to reduce the amount of garbage going to the landfills by 50% by the year 2000 through the implementation of waste reduction and recycling programs, and

WHEREAS, the City of Modesto has responded to this mandate by implementing a comprehensive waste reduction system including the collection of residential recyclables in bags, separate collection of green waste, food waste, and pruned refuse for composting, used motor oil recycling, CRT recycling, bulky item collection, waste tire recycling, and the operation of a waste-to-energy plant to further reduce disposal and generate electricity from materials which cannot be reduced, reused, recycled, or composted, and

WHEREAS, the City also actively promotes waste reuse, reduction, recycling, and composting through a wide array of educational programs and advertising campaigns, the annual Earth Day in the Park Festival and other community events, workshops on backyard composting, and by inviting citizen participation in the Citizen’s Advisory Committee on Recycling (CACOR), and

WHEREAS, by virtue of these significant efforts, the City of Modesto exceeded the state 50% waste reduction mandate, having attained a diversion rate of 54% in 2004, and remains committed to attaining further waste reduction while keeping garbage rates as low as possible, and
WHEREAS, the California Integrated Waste Management Board reports that organics make up 30% of all waste still going to the landfills statewide and thus has targeted the increased diversion of organics as a priority for waste reduction programs, and

WHEREAS, CACOR has conducted an assessment of the blue bag program and evaluated both the cost and effectiveness of other potential methods of residential recycling, and

WHEREAS, after evaluating other options and considering the potential cost to the ratepayers, CACOR has recommended that the City continue the blue bag program, and

WHEREAS, at its January 8, 2007, meeting, CACOR recommended that once the City’s Compost Facility has purchased its new horizontal grinder, which will be capable of processing mixed paper and other organics along with green waste, the City should conduct an aggressive public education campaign to encourage residents to put other organics such as food waste, newsprint, magazines, phone books, junk mail, computer paper, paper napkins and towels, and cardboard in the green waste container for composting,

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Modesto that it hereby approves continuation of the blue bag program.

BE IT FURTHER RESOLVED that the Council hereby authorizes staff to launch an aggressive promotional campaign encouraging residents to put other organics into their green waste container for composting once the Compost Facility has purchased the new horizontal grinder.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of March, 2007, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Olsen, Mayor Ridenour

ATTEST: Jean Morris
Jean Morris, City Clerk

(SEAL)
APPROVED AS TO FORM:

By SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING QUARTERLY FUEL ADJUSTMENTS TO THE MAXIMUM RATE SCHEDULE FOR CITY RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL SOLID WASTE COLLECTION SERVICES, AND RESCINDING RESOLUTION NO. 2006-579.

WHEREAS, with the adoption of Ordinance No. 3068-C.S. in November of 1997, the City no longer sets rates for the collection of garbage in Modesto, and instead performs a comprehensive review of cost information submitted by the contract garbage haulers, and

WHEREAS, the City sets a maximum rate that the haulers may charge for the various types of services provided under the contracts based on cost data provided by the lowest cost hauler, and

WHEREAS, Section f (2) of the City’s Service Agreements with its solid waste collectors requires that when the City makes adjustments to the collection services provided under the Agreements, any additional costs should be covered by adjustments to the maximum rates, and

WHEREAS, in addition, maximum rates for solid waste collection services are reviewed annually as requested by the City’s garbage collection companies, and

WHEREAS, the City conducted an analysis using the audited financial statements provided by the garbage haulers, supplemental data provided by the garbage haulers, and fuel price information and forecast prices developed by the United States Department of Energy, and

WHEREAS, new maximum rates were calculated, and a recommendation for a new maximum rate schedule was developed, which included a recommendation that quarterly adjustments to the fuel component of the maximum rates be made, and

WHEREAS, the Economic Development Committee met on June 12, 2006, and supported the recommendation to approve adjustments to the maximum rate schedule for City
solid waste collection services, including the recommendation for quarterly fuel adjustments to the maximum rates, and

WHEREAS a report dated June 13, 2006, from the Parks, Recreation and Neighborhoods Department, a copy of which is on file in the office of the City Clerk, set forth said recommendations, and

WHEREAS, said report was considered at a public hearing of the City Council on June 27, 2006, and

WHEREAS, during the public hearing on June 27, 2006, it was found and determined by the Council of the City of Modesto that the existing schedules of rates and charges for garbage service in the City of Modesto should be revised as recommended, and that quarterly adjustments to the fuel component of the maximum rates should be made, and

WHEREAS, staff has adjusted the fuel component of the maximum rates and has incorporated the fuel component adjustment into the schedule of Maximum Charges for Garbage Service attached hereto, marked Exhibit “1” and incorporated herein by reference,

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

1. The Maximum Charges for Garbage Service as attached hereto, marked Exhibit “1” and incorporated herein by reference are hereby approved.

2. Said Maximum Charges for Garbage Service include twice-a-year bulky item pickup for residential customers and all other residential services as stipulated in the Service Agreements.

3. Said Maximum Charges for Garbage Service shall become effective on April 1, 2007, and shall remain in effect until revised by Council.
BE IT FURTHER RESOLVED that any person who has prepaid garbage service charges for residential garbage service shall receive garbage service for the balance of said prepaid period at the prepaid rates.

BE IT FURTHER RESOLVED that Resolution No. 2006-579 is hereby rescinded, effective April 1, 2007.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of March, 2007, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Olsen, Mayor Ridenour

ATTEST: Jean Morris, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Susana Alcala Wood, City Attorney
MAXIMUM CHARGES FOR GARBAGE SERVICE

STANDARD CONTAINERS
Maximum Monthly Rates
(Once a Week Pickup Service)

Standard container service shall include the following:
- One, 96-gallon container for garbage/recyclables
- One, 96-gallon container for green waste
- Blue bag recycling
- Countertop container for kitchen scraps
- Drop-off of old TV and computer tubes
- Two bulky item collections per year by appointment

Standard container service customers may opt for smaller containers; however, maximum rates apply. Containers must be placed in a location set forth in Section 5-5.11 of the Municipal Code.

1. **Standard container service** –
   a. The maximum rate for new sign ups for service or changes in service that occur after July 1, 1996, shall be $19.64 per month regardless of size of container. **A fuel component of $0.88 per month is included in the maximum rate for the quarter beginning April 1, 2007 and ending June 30, 2007.** The fuel component may be adjusted quarterly.
   b. The maximum rate for each additional garbage container shall be $14.62 per month.

2. **60-gallon container service (grandfathered customers) –**
   a. The maximum rate for customers with 60-gallon containers who subscribed to service at an address prior to July 1, 1996 and who have not changed their service address shall be $16.59 per month. **A fuel component of $0.88 per month is included in the maximum rate for the quarter beginning April 1, 2007 and ending June 30, 2007.** The fuel component may be adjusted quarterly.
   b. The maximum rate for each additional garbage container shall be $14.62 per month.

3. **Fuel Component adjustments** - The fuel component shall be analyzed quarterly and adjustments shall be made as necessary. The adjustment shall be based on the average price of fuel for a preceding quarter as follows: July 1/January-March; October 1/April-June; January 1/July-September; April 1/October-December. Average prices shall be determined based on published prices for California from the Department of Energy, Energy Information Agency.
<table>
<thead>
<tr>
<th>Container Size</th>
<th>NUMBER OF COLLECTIONS PER WEEK</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td>1 CY</td>
<td>$33.37</td>
</tr>
<tr>
<td>1 1/2 CY</td>
<td>$44.84</td>
</tr>
<tr>
<td>2 CY</td>
<td>$56.25</td>
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<tr>
<td>3 CY</td>
<td>$79.10</td>
</tr>
<tr>
<td>4 CY</td>
<td>$101.97</td>
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<tr>
<td>5 CY</td>
<td>$124.84</td>
</tr>
<tr>
<td>6 CY</td>
<td>$147.71</td>
</tr>
</tbody>
</table>

* A detachable container rental rate of $10.00 per month is included in the above schedule.

1. **Weekly rental/Detachable Containers** - Shall not exceed the rate for 1 pickup per week for each size container.

2. **Fuel Component** - A fuel component of $0.18 per cubic yard ($0.77 per month for a 1 cubic yard container collected once a week) is included in the maximum rate for the quarter beginning April 1, 2007, and ending June 30, 2007. The fuel component shall be analyzed quarterly and adjustments shall be made as necessary. The adjustment shall be based on the average price of fuel for a preceding quarter as follows: July 1/January-March; October/April-June; January 1/July-September; April 1/October-December. Average prices shall be determined based on published prices for California from the Department of Energy.

**DROP BOX CONTAINERS**

1. **Pick up charge** - $202.10 per pick up
2. **Rental** - $0.85 per day up to 7 day maximum rental
   - $3.00 per day for boxes kept 7 or more days without servicing
   - $10 per day for boxes kept 21 or more days without servicing
3. **Disposal charge** - Actual charge to be paid by customer. Garbage company will provide up to 40 CY Drop Box containers for above stated charges subject only to load limit of transfer vehicle.
COMPACTORS
Maximum Monthly Rates

Front Loader Type:

<table>
<thead>
<tr>
<th>Compactor Size</th>
<th>NUMBER OF COLLECTIONS PER WEEK</th>
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<tbody>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td>3 CY</td>
<td>$152.12</td>
</tr>
<tr>
<td>4 CY</td>
<td>$201.72</td>
</tr>
</tbody>
</table>

Roll-Off Type:
1. 6 CY to 40 CY $202.10 per pickup
2. Medical waste compactors $265.00 per pickup
3. Washing compactor $30.00
4. Disposal Charge: Actual charge to be paid by customer

EXTRA PICKUPS
1. Standard containers or equivalent $3.50 plus $1.38/container
2. Detachable containers $12.00 plus $2.75/cubic yard

SPECIAL SERVICE CONDITIONS
In situations where none of the above maximum rates reasonably apply, the cost of service is to be negotiated between the garbage company and the customer.

DETACHABLE CONTAINER ONLY REPLACEMENT AND CLEANING SERVICE

<table>
<thead>
<tr>
<th>CY</th>
<th>1 CY</th>
<th>1½ CY</th>
<th>2 CY</th>
<th>3 CY</th>
<th>4 CY</th>
<th>5 CY</th>
<th>6 CY</th>
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</thead>
<tbody>
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<td></td>
<td>$10.12</td>
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<td>$12.10</td>
<td>$15.40</td>
<td>$20.24</td>
<td>$25.08</td>
<td>$29.92</td>
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</table>

NOTATIONS
1. The above maximum rates include a $0.25 per month per household recycling fee, a $0.05 per cubic yard commercial recycling fee, and a $0.25 per ton industrial recycling fee, payable to the City by the garbage company.
2. Pursuant to Section 11-6.16(c)(2) of the Modesto Municipal Code, the garbage company may require a deposit equivalent to two (2) months service charge from customers prior to beginning service.
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-174


WHEREAS, in March 2006, a group of employees, formerly represented by the Modesto City Employees Association (MCEA), petitioned to form a separate bargaining unit comprised of public safety non-sworn employees, entitled Modesto Police Non Sworn Association (MPNSA), which was recognized in June 2006 as the exclusive representative for the newly created bargaining unit, triggering an obligation to meet and confer with the newly established unit, and

WHEREAS, the City of Modesto and MPNSA have been operating under the terms and conditions of the Memorandum of Understanding for MCEA, and

WHEREAS, representatives of the CITY and MPNSA have met and conferred in good faith concerning wages, hours, terms and conditions of employment for employees in said bargaining unit, and

WHEREAS, pursuant to an Agenda Report dated February 26, 2007, a copy of which report is on file in the office of the City Clerk, the CITY and MPNSA have reached agreement on a new MOU which, upon execution, shall replace the MCEA MOU and shall be attached hereto and made a part hereof, and

WHEREAS, the MOU provides as follows:

SECTION 1. SALARY INCREASE. An across-the-board salary increase of 2.5% was effective February 20, 2007 as provided in the MCEA MOU.
SECTION 2. HEALTH, DENTAL AND VISION BENEFITS. The City’s contribution to employees’ Health, Dental and Vision coverage shall remain as follows:

<table>
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<tr>
<td>Family</td>
<td>$812</td>
</tr>
<tr>
<td>Single</td>
<td>$445</td>
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<tr>
<td>Opt Out</td>
<td>$375</td>
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</table>

SECTION 3. AGENCY SHOP. By separate ballot, the bargaining unit voted to implement an agency shop agreement.

SECTION 4. ADDITIONAL CHANGES. Other negotiated additions, deletions or amendments to the text of the Memorandum of Understanding deal with retiree court overtime, Field Training pay, uniform allowance, witness pay, employee assistance plan, renegotiations, full understanding and waiver, and elimination of language specific to MCEA, and

WHEREAS, the Council considered this matter at its meeting of March 13, 2007,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Memorandum of Understanding (MOU) between the City of Modesto and the Modesto Police Non Sworn Association (MPNSA), which covers a term from March 13, 2007 through July 23, 2007, and upon execution of same, a copy of the MOU will be on file in the office of the City Clerk.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of March, 2007, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Olsen, Mayor Ridenour

Attest: Jean Morris

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Susana Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-175


WHEREAS, on March 13, 2007, the City Council adopted Resolution No. 2007-174 approving the Memorandum of Understanding (MOU) between the City of Modesto and the Modesto Police Non Sworn Association (MPNSA) and setting forth salary schedules for public safety non-sworn classes, and

WHEREAS, Council desires to establish a Class Range Table for said classes,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the Class Range Table for Public Safety Non-Sworn Classes, entitled “City of Modesto Class Range Table Public Safety Non-Sworn Classes Effective March 13, 2007” which is attached hereto as Exhibit “A” and made a part hereof as though set forth in full herein.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of March, 2007, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Olsen, Mayor Ridenour

Attest: Jean Morris

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Susana Wood, City Attorney
<table>
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<td>107</td>
<td>Police Clerk I</td>
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<td>111</td>
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<td>113</td>
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<tr>
<td>114</td>
<td>Animal Control Officer I</td>
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<td>Evidence and Property Specialist</td>
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<tr>
<td>115</td>
<td>Community Service Officer I</td>
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<tr>
<td>116</td>
<td>Fire Prevention Technician I</td>
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<tr>
<td>118</td>
<td>Animal Control Officer II</td>
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<tr>
<td></td>
<td>Community Service Officer II</td>
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Exhibit "A"
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<tr>
<td>120</td>
<td>Fire Prevention Technician II</td>
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<tr>
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<tr>
<td>122</td>
<td>Law Enforcement Academy Recruit</td>
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<tr>
<td>123</td>
<td>Identification Technician I</td>
</tr>
<tr>
<td>124</td>
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</tr>
<tr>
<td>125</td>
<td>Crime Analyst</td>
</tr>
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<tr>
<td>127</td>
<td>Identification Technician II</td>
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<td>128</td>
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<td>133</td>
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</tr>
<tr>
<td>134</td>
<td>Deputy Fire Marshal</td>
</tr>
</tbody>
</table>

Exhibit "A"
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-176

A RESOLUTION ACCEPTING THE WORK BY GEORGE REED, INC., FOR THE PROJECT TITLED "PELANDALE INTERSECTION IMPROVEMENTS PROJECT" AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE STANISLAUS COUNTY RECORDER, AND AUTHORIZING PAYMENTS OF AMOUNTS TOTALING $3,455,926.77.

WHEREAS, a report has been filed by the Public Works Director that the project titled "Pelandale Intersection Improvements Project" has been completed by George Reed Inc., in accordance with the contract agreement dated July 12, 2005,

NOW, THEREFORE, BE IT RESOLVED by the Council that the project titled "Pelandale Intersection Improvements Project" is hereby accepted as complete from said contractor, George Reed, Inc., that the City Clerk is authorized to file a Notice of Completion with the Stanislaus County Recorder, and that payment of amounts totaling $3,455,926.77, is authorized as provided in the contract.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of March, 2007, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Olsen, Mayor Ridenour

ATTEST: Jean Morris, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-177

A RESOLUTION ACCEPTING THE FLOYD AVENUE IMPROVEMENT PROJECT BETWEEN FINE AVENUE AND CLAUS ROAD RELATED TO THE FALLING LEAF SUBDIVISION AND AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION

WHEREAS, William Lyon Homes, Inc., a California corporation ("DEVELOPER"), is the developer of the Falling Leaf Subdivision ("DEVELOPMENT"), and

WHEREAS, as a condition of DEVELOPMENT, DEVELOPER was to construct Floyd Avenue between Fine Avenue and Claus Road ("IMPROVEMENTS") located adjacent to the DEVELOPMENT, and

WHEREAS, the City Engineer, in a memorandum to staff, indicates that said IMPROVEMENTS, included in the Acquisition and Shortfall Agreement ("AGREEMENT") between the City of Modesto Community Facilities District No. 2004-1 (Village One #2), a District created pursuant to the provision of the California Government Code Section 53311.5 et. seq. ("DISTRICT") and the DEVELOPER, has been completed to the satisfaction of the Public Works Department, and

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

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

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Floyd Avenue Improvement Project, between Fine Avenue and Claus Road, is hereby accepted and the City Clerk is hereby authorized to record a Notice of Completion for said improvements.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of March, 2007, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Olsen, Mayor Ridenour

ATTEST:  

APPROVED AS TO FORM:

By ____________________________
SUSANA ALCALA WOOD, City Attorney
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO CERTIFYING THE FINAL MASTER ENVIRONMENTAL IMPACT REPORT FOR THE CITY OF MODESTO WASTEWATER MASTER PLAN UPDATE (SCH No. 2006052076) IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND MAKING CERTAIN FINDINGS CONCERNING ENVIRONMENTAL IMPACTS, MITIGATION MEASURES, AND ALTERNATIVES TO THE PROJECT, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, IN CONNECTION WITH APPROVAL OF THE PROJECT CONTEMPLATED BY THE FINAL MASTER ENVIRONMENTAL IMPACT REPORT

WHEREAS, in 1997, the City of Modesto ("City") prepared a Wastewater Master Plan ("WWMP") to provide for major rehabilitation of the treatment plan, separation of cannery waste from conventional treatment, improvement to the existing collection system and extension of sewer facilities into areas of new urban development; and,

WHEREAS, in May 1997, the City certified a Master Environmental Impact Report ("MEIR") for the WWMP (SCH No. 96042009) in accordance with the California Environmental Quality Act, Public Resources Section 21000, et seq ("CEQA"); and,

WHEREAS, the City has prepared a WWMP Update to guide the improvement and expansion of its wastewater collection, treatment, and disposal facilities, and operation and maintenance of those facilities over the next 30 years ("Project"); and

WHEREAS, based on the nature of the proposed Project, the potential for new significant impacts as a result of the proposed Project and the potential for changed conditions since the certification of the 1997 MEIR for the WWMP, the City determined
that a Master Environmental Impact Report ("MEIR") was required for the proposed Project;

WHEREAS, on May 12, 2006, the City, as the lead agency, published a Notice of Preparation of a MEIR ("NOP") for the proposed Project; and

WHEREAS, the NOP provided notice of the City's determination, and solicited public input on the proposed scope and content of the MEIR for the proposed Project; and

WHEREAS, on December 21, 2006, the City published and distributed a Draft MEIR for the proposed Project, which was available for public review and comment for a period of 45 days as required by Section 21091 of CEQA; and

WHEREAS, during the 45-day public comment period the City received five letters commenting on the Draft MEIR; and

WHEREAS, the City prepared written responses to all written comments received on the Draft MEIR, said responses being contained in a Final Master Environmental Impact Report ("Final MEIR") for the proposed Project, which Final MEIR was prepared pursuant to Section 15089 of the CEQA Guidelines; and

WHEREAS, the Final MEIR was published and distributed on March 2, 2007, and consists of the Draft MEIR, a list of commentors, copies of all written comments received, responses to those comments that raise environmental issues, and any revisions to the text of the Draft MEIR made in response to the comments or as staff-initiated text changes, as required by Section 15132 of the CEQA Guidelines; and

WHEREAS, the City proposes to approve and adopt the Project as analyzed by the Final MEIR; and,
WHEREAS, certification of the Final MEIR and approval of the proposed Project were scheduled for hearing by the City Council to be held on March 13, 2007, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time evidence both oral and documentary was received and considered by the Council, and

WHEREAS, the City Council has received and considered the Final MEIR for the proposed WWMP Update (SCH No. 2006052076) which analyzes the potential environmental effects of the proposed Project; and

WHEREAS, CEQA requires that, in connection with the certification of a Final MEIR, the decision-making agency make certain written findings.

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

1. The foregoing recitals are true and correct.

2. The Final MEIR has been completed in compliance with CEQA; and

3. The Final MEIR has been presented to the City Council and the Council has reviewed and analyzed the Final MEIR and other information in the record and has considered the information contained therein, including the written and oral comments received at the public hearings on the Final MEIR; and

4. That all significant effects of the Project on the environment have been eliminated or substantially eliminated where feasible.

5. That the Findings set forth in Exhibit “A” and incorporated by this reference are hereby adopted as the City’s findings under the California Environmental Quality Act (“CEQA”), Public Resources Code Sections 21000, et seq., and the CEQA guidelines, Cal. Code Regs., Title 13, sec. 15000, et seq., relating to the Project. The Findings provide the written analysis and conclusions of the Council regarding the Project’s environmental impacts, mitigation measures and alternatives to the Project.
6. That pursuant to Public Resources Code Section 21091 and CEQA Guidelines Sections 15091, et seq., the City Council hereby adopts and makes the Statement of Overriding Considerations as set forth in Section V of Exhibit A attached hereto and incorporated by this reference, regarding the remaining significant and unavoidable impacts of the Project and the anticipated environmental, economic, legal, social, technological, and other benefits of the Project. The significant and unavoidable impacts identified in the Final MEIR cannot be avoided or substantially reduced by feasible changes or alterations to the Project, other than the changes or alterations already adopted.

7. The Mitigation Monitoring and Reporting Program for the Final MEIR (“MMRP”) is contained in the Final MEIR and is attached to this resolution as Exhibit “B”, incorporated by this reference. The MMRP identifies impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action. The Council hereby adopts the MMRP, with the exception of Mitigation Measure B.1.

8. The Final MEIR contains additions, clarifications, modifications and other information in its responses to comments on the Draft MEIR for the Project and also incorporates information obtained by the City since the Draft MEIR was issued. This Council hereby finds and determines that such changes and additional information are not significant new information as that term is defined under the provisions of the CEQA, because such changes and additional information do not indicate that any new significant environmental impacts not already evaluated would result from the proposed Project and do not reflect any substantial increase in the severity of any environmental impact; no feasible mitigation measures considerably different from those previously analyzed in the Draft MEIR have been proposed that would lessen significant environmental impacts of the Project; and no feasible alternatives considerably different from those analyzed in the Draft MEIR have been proposed that would lessen significant environmental impacts of the proposed Project. Accordingly, this Council hereby finds and determines that recirculation of the Final MEIR for further public review and comment is not warranted; and

9. The City Council does hereby designate Rich Ulm, Deputy Director of Public Works, for the City of Modesto, at his office at 1010 Tenth Street, Suite 4100, Modesto, California 95354 as the custodian of documents and record of proceedings on which this decision is based; and

10. The City Council does hereby make the foregoing findings with the stipulations that all information in these findings is intended as a summary of the full administrative record supporting certification
of the Final MEIR, which full administrative record should be consulted for the full details supporting these findings, and that any mitigation measures and/or alternatives that were suggested by commentors to the Draft MEIR and were not certified as part of the Final MEIR are hereby expressly rejected for the reasons stated in the responses to the comments set forth in the Final MEIR and elsewhere in the record.

11. The Final MEIR and all findings contained herein represent the independent judgment of the City of Modesto; and

BE IT FURTHER RESOLVED by the Council that it hereby certifies the Final Master Environmental Impact Report for the WWMP Update (SCH No. 2006052076), a copy of which is available in the City Clerk’s Office.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of March 2007, by Councilmember O’Bryant, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Olsen, Mayor Ridenour

ATTEST  
JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
CITY OF MODESTO WASTEWATER MASTER PLAN UPDATE
ENVIRONMENTAL IMPACT REPORT (SCH# 2006052076)

FINDINGS AND STATEMENTS REQUIRED UNDER THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT
(Public Resources Code, Section 21000 et seq.)

I. Introduction

On behalf of the City of Modesto (the “City”), and pursuant to the California Environmental Quality Act (“CEQA”), Turnstone Consulting has prepared a Final Environmental Impact Report (the “FEIR”) for the City of Modesto Wastewater Master Plan Update and other related approvals described below (collectively, the “Project”). The City is the lead agency for the FEIR.

To support its certification of the FEIR and approval of the Project, the City Council of the City of Modesto (the “City Council”) makes the following findings of fact and statements of overriding considerations (collectively, the “Findings”). These Findings contain the City Council’s written analysis and conclusions regarding the Project’s environmental effects, mitigation measures, alternatives to the proposed Project, and the overriding considerations which, in the City Council’s view, justify the approval of the Project despite its potential environmental effects. These Findings are based upon the entire record of proceedings for the FEIR, as described below.

The Wastewater Master Plan Update proposes a program of facility improvements to be funded by proposed increases in wastewater rates and charges, including collection system and treatment plant improvements, as well as operation and maintenance of the existing and proposed wastewater facilities. The wastewater collection system and Primary Plant improvements will be made within the City’s wastewater service area. The City is located in Stanislaus County, California in the central San Joaquin Valley, and the City’s wastewater service area includes all of the incorporated City of Modesto, a portion of north Ceres, the unincorporated community of Empire, and unincorporated “islands” in the County within the City that are served by agreement. The Primary Plant is located in the southwestern portion of the City adjacent to the north bank of the Tuolumne River. The Secondary Plant is outside the City limits, and is located approximately 6.5 miles southwest of the City, on the east side of the San Joaquin River. A 60-inch Primary Effluent Outfall pipeline and a Cannery Segregation Line (Outfall) follow a generally diagonal route, carrying primary treated effluent and wastewater from wet industries between the Primary Plant and the Secondary Plant.

The approvals necessary for implementation of the Wastewater Master Plan Update include: approval by the City Council of the Master Plan Update, new wastewater rates and capacity charges to fund construction of facilities identified in the Plan, and subsequent approval documents for individual projects; approval by the State Department of Fish and Game of a lake/streambed Alteration Agreement; approval of encroachment
permits by the State Reclamation Board and the California Department of Transportation; approval of 401 Water Quality Certification and a National Pollutant Discharge Elimination System by the Regional Water Quality Control Board for the Central Valley Region; approval by Stanislaus County of the construction of wastewater collection facilities and new Outfall in County road rights-of-way; granting of permission to cross canals by the Modesto Irrigation District and the Turlock Irrigation District; approval of permits for emergency generators by the San Joaquin Valley Air Pollution Control District; and approval of a Section 404 permit by the U.S. Army Corps of Engineers ("USACE").

II. General Findings and Overview

A. Record of Proceedings and Custodian of Record

The record of proceedings for the City's findings and determinations is available for review by responsible agencies and interested members of the public during normal business hours at 1010 Tenth Street, Suite 4600, Modesto, California. The custodian of these documents is Richard Ulm, Deputy Director of Public Works.

B. Preparation and Consideration of the FEIR and Independent Judgment Findings

The City Council finds, with respect to the City's preparation, review and consideration of the FEIR, that:

- The City retained the independent firm of Turnstone Consulting ("Turnstone") to prepare the FEIR, and Turnstone prepared the FEIR under the supervision and at the direction of the City of Modesto Public Works Department.
- The City circulated the DEIR for review by responsible agencies and the public and submitted it to the State Clearinghouse for review and comment by state agencies.
- The FEIR has been completed in compliance with CEQA.
- The Project will have significant, unavoidable impacts as described and discussed in the FEIR.
- The FEIR is adequate under CEQA to address the potential environmental impacts of the Project.
- The FEIR has been presented to the City Council, and the City Council has independently reviewed and considered information contained in the FEIR.
- The FEIR reflects the independent judgment of the City.
By these Findings, the City Council ratifies, adopts and incorporates the analyses, explanations, findings, responses to comments, and conclusions of the FEIR, except as specifically described in these Findings.

C. Findings Regarding Less-Than-Significant Impacts.

By these Findings, the City Council ratifies and adopts the FEIR’s conclusions for the following potential environmental impacts which, based on the analyses in the FEIR, the City Council determines to be less than significant:

1. Land Use

   • Impact A.1 – Proposed improvements to the wastewater collection system in the vicinity of established or planned land uses could create land use compatibility conflicts.

   • Impact A.2 – The proposed project includes the construction and/or rehabilitation of portions of sewer lines under the watercourses or near the banks of the Tuolumne River and Dry Creek that could conflict with land use plans and policies.

   • Impact A.3 – Proposed improvements to the Primary Plant in the vicinity of established or planned land uses could create land use compatibility conflicts.

   • Impact A.4 – Proposed improvements in the Secondary Plant and Ranch could result in land use compatibility conflicts.

   • Impact A.5 – Proposed improvements in the wastewater collection and treatment system could conflict with applicable land use plans and policies.
2. Agricultural Resources

- Impact B.1 – Construction of Collection System Improvements would not result in the permanent loss of Prime Farmland.

3. Parks and Recreation

- Impact C.1 – The Beard Brook Reliability project could result in an increase in localized noise and dust, and restrict access and enjoyment of Beard Brook Park.

- Impact C.2 – Construction of a pipeline near the Dryden Municipal Golf Course could result in an increase in localized noise and dust, and restrict access and enjoyment of this recreational facility.

- Impact C.3 – The rehabilitation of the Primary Effluent Outfall could result in a temporary increase in localized noise and dust, and could temporarily impair access and enjoyment of a park facility at the southwest corner of West Hatch Road and Rancho Encantado Lane.

4. Water Quality and Hydrology

- Impact D.6 – The proposed increase in application of wastewater and biosolids to land would not significantly affect regional groundwater quality.

- Impact D.7 – Implementation of the project would not result in depletion of groundwater resources.

5. Biological Resources

- Impact E.9 – Construction activities could affect the habitat for Western Pond Turtles, the nesting and foraging habitat for Loggerhead Shrikes, and foraging habitat for Short-eared Owls, Northern Harriers, and Tricolored Blackbirds.

- Impact E.10 – Construction of a new diffuser in the San Joaquin River, and additional discharges of treated wastewater to the San Joaquin River from the Secondary Plant could affect the spawning habitat or affect the health of the Sacramento Splittail.

6. Transportation

- Impact F.1 – Temporary reduction in roadway capacity and increased traffic delays.

- Impact F.2 – Short-term traffic increases on roadways due to construction-related vehicle trips.
• Impact F.3 – Increased potential for traffic safety hazards for vehicles, bicyclists, and pedestrians on public roadways during construction.

• Impact F.4 – Increases in vehicle trips to and from the facility sites for operation and maintenance.

7. Air Quality

• Impact G.3 – Emissions during project operation could cause sensitive receptors to be exposed to toxic air contaminants.

• Impact G.4 – Emissions of objectionable odors could occur during project operation.

8. Noise

• Impact H.2 – Operation of new stationary sources of noise at the Primary and Secondary Plants associated with the proposed project could generate noise.

• Impact H.3 – Increased trips by Public Works Department employees could cause noise increases for existing sensitive receptors in the project vicinity.

9. Visual Resources

• Impact I.1 – The proposed aboveground structures associated with wastewater collection would impact the visual quality of their surroundings.

• Impact I.2 – At the Primary and Secondary Plants, the proposed new aboveground structures and alterations to existing aboveground structures could impact the visual quality of their surroundings.

• Impact I.3 – The proposed area of fill, and the berm around the perimeter of the fill at the Primary Plant would impact visual quality in the vicinity of the project when viewed from surrounding public streets and parks.


• Impact J.1 – Hazardous materials use, storage, and transportation during construction would cause potential hazards to the public and the environment.

• Impact J.2 – Hazardous materials use, storage, and transportation during the operation of the wastewater collection and treatment system would cause potential hazards to the public and the environment.
• Impact J.3 – Increased use of chlorine and sulfur dioxide at the Secondary Plant could expose workers and the public to accidental release of toxic gases.

• Impact J.4 – Construction and operation of the wastewater collection and treatment facilities would increase the amount of hazardous waste generated at the facilities, resulting in increased hazards to the public and the environment.

• Impact J.5 – The project would involve increased use and transport of hazardous waste materials and hazardous wastes within California.

III. Findings and Recommendations Regarding Significant Environmental Impacts

A detailed analysis of the potential environmental impacts and the proposed mitigation measures for the City of Modesto Wastewater Master Plan Update is set forth in Chapter IV of the DEIR, as incorporated into the FEIR. The City Council concurs with the conclusions in the DEIR, as incorporated into the FEIR, that: (i) changes or alterations have been required, or incorporated into, the project which avoid or substantially lessen many of the significant environmental effects identified in the DEIR; and (ii) specific economic, legal, social, technological, or other considerations make it infeasible to substantially lessen or avoid the remaining significant impacts, as further described in the Statement of Overriding Considerations below.

Chapter IV.B. Agricultural Resources

Impact B.2. Construction of the Phase IA tertiary treatment facilities at the Secondary Plant would directly result in the permanent loss of Prime Farmland.

a) Potential Impact. The agricultural resources impact identified above is described and discussed on pages IV.B.8 and IV.B.9 of the DEIR.

b) Alternatives. As discussed in Section IV(B)(2) below, the City is adopting Alternative B to the project as proposed.

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that the adoption of Alternative B will avoid the proposed project’s impact to Prime Farmland. Because the City is adopting Alternative B, there is no reason to adopt Mitigation Measure B.2. The Mitigation Monitoring and Reporting Program is hereby amended to delete Mitigation Measure B.2.

Impact B.3. Construction of the proposed project components within the Planned Urbanizing Area would result in the cumulative loss of Prime Farmland.
a) **Potential Impact.** The agricultural resources impact identified above is described and discussed on pages IV.B.9 and IV.B.10 of the DEIR.

b) **Mitigation Measures.** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring Program:

FEIR Mitigation Measure B.3 (p. IV.B.11 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

(i) **Effects of Mitigation.** Implementation of Mitigation Measure B.3 would partially mitigate the impact identified above by requiring that future development projects contribute to the California Farmland Conservancy fund, or an equivalent program, to fund farmland preservation project in Stanislaus County. However, preservation of Prime Farmland through agricultural easements or acquisition of other interests in such land, would not mitigate the indirect loss of Prime Farmland to a less-than-significant level. As explained in the DEIR (p. IV.B.11), it is not feasible to fully mitigate this impact, which will remain significant even with mitigation.

(ii) **Remaining Impacts.** As explained above, although implementation of Mitigation Measure B.3 will reduce the impact identified above, such impact would remain significant even with mitigation. Because there are no feasible measures available to further mitigate this significant impact, it is considered significant and unavoidable.

(iii) **Overriding Considerations.** The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the impact identified above, as set forth in the Statement of Overriding Considerations below.

IV.D. Water Quality and Hydrology

**Impact D.1.** Excavation and construction activities could cause erosion and/or result in chemical releases causing degradation of water quality in nearby surface water and/or groundwater bodies.

a) **Potential Impact.** The water quality and hydrology impact identified above is described and discussed on pages IV.D.26 through IV.D.28 of the DEIR.
b) Mitigation Measures. The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure D.1 (pp. IV.D.28 through IV.D.30 of the DEIR as amended in the FEIR pursuant to a staff-initiated text clarification).

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that: Mitigation Measure D.1 requires the City to prepare a SWPPP to reduce potential impacts to surface water quality through the construction period and identifies specific elements to be included in the SWPPP, including Best Management Practices to mitigate construction-related pollutants and reduce erosion of exposed soil, protocols to educate on-site personnel about the importance of stormwater quality protection, an on-site monitoring program to include both dry and wet weather inspections, and other specific measures that, together, will mitigate potential impacts to water quality resulting from Project-related excavation and construction activities. Implementation of Mitigation Measure D.1 therefore will substantially lessen or avoid the impact identified above.

Impact D.2. Elimination of the cross-connections between the stormwater drainage system and the wastewater collections system could result in localized flooding.

a) Potential Impact. The water quality and hydrology impact identified above is described and discussed on pages IV.D.30 and IV.D.31 of the DEIR.

b) Mitigation Measures. The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure D.2 (p. IV.D.31 of the DEIR, as amended in the FEIR in response to Comment C-3).

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that: Implementation of Mitigation Measure D.2, as amended in the Final EIR, will substantially lessen or avoid the impact identified above by requiring that prior to approval of each proposed cross-connection elimination project, its design be reviewed by the City Public Works Department specifically to ensure that it will not exacerbate existing flooding problems and will otherwise be fully compliant with City standards for stormwater conveyance.
Impact D.3. Implementation of the proposed project at a rate that does not match projected growth may result in an incremental increase in operation-period surface water quality degradation due to the deficient effluent disposal system.

a) Potential Impact. The water quality and hydrology impact identified above is described and discussed on pages IV.D.31 and IV.D.32 of the DEIR.

b) Mitigation Measures. The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure D.3 (p. IV.D.32 of the DEIR).

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that:

(i) Effects of Mitigation. Mitigation Measure D.3 directs the City to continue to investigate the feasibility of several potential near-term solutions to the deficiencies of the existing effluent system. Implementation of the Wastewater Master Plan as proposed will mitigate the potential impact over time. However, as explained in the DEIR (p. IV.D.32), no feasible mitigation has been identified which can be implemented immediately in order to fully mitigate this impact at this time. Therefore, the impact will remain significant even with mitigation.

(ii) Remaining Impacts. Because there are no feasible measures available to further mitigate this significant impact, it is considered significant and unavoidable.

(iii) Overriding Considerations. The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the impact identified above, as set forth in the Statement of Overriding Considerations below.

Impact D.4. Implementation of the proposed project may result in operation-period surface water quality degradation due to pollutant loading associated with treated wastewater discharges.

a) Potential Impact. The water quality and hydrology impact identified above is described and discussed on pages IV.D.33 through IV.D.35 of the DEIR.
b) **Mitigation Measures.** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure D.4 (p. IV.D.35 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

(i) **Effects of Mitigation.** Mitigation Measure D.4 directs the City to prepare a study in accordance with applicable State and Federal antidegradation policy standards to demonstrate that any expansion in river discharge capacity will not negatively impact water quality. The DEIR analysis concludes that based on current regulatory requirements, it is likely that implementation of this mitigation measure will mitigate the water quality and hydrology impact identified above to a less-than-significant level. However, as explained in the DEIR (p. IV.D.35), because several permit renewal cycles will occur over the life of the Project, there may be unforeseeable changes in regulatory policies and requirements. For this reason, the City cannot assure that implementation of currently available and identified mitigation measures will be adequate to fully mitigate such impacts identified in the future.

(ii) **Remaining Impacts.** Because there are no feasible measures available to further mitigate this significant impact, it is considered significant and unavoidable.

(iii) **Overriding Considerations.** The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the impact identified above, as set forth in the Statement of Overriding Considerations below.

**Impact D.5.** Implementation of the proposed project may result in operation-period surface water quality degradation during daily operations and/or during flooding of the Primary Plant and sludge drying area.

a) **Potential Impact.** The water quality and hydrology impact identified above is described and discussed on pages IV.D.35 and IV.D.36 of the DEIR.
b) **Mitigation Measures.** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure D.5(a) (p. IV.D.37 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

(i) **Effects of Mitigation.** Mitigation Measure D.5(a) requires the City to retain a qualified registered civil engineer to conduct floodplain studies to determine whether the proposed floodplain encroachments could be constructed without increasing base flood elevations upstream or downstream of the Primary Plant. If such studies indicate that the encroachments can be constructed without impacts to base flood elevations, Mitigation Measure D.5(a) directs the City to work with relevant regulatory agencies to ensure that the design of such encroachments is appropriate. However, if such studies indicate that construction of the flood wall and levee system would increase base flood elevations, the mitigation measure directs the City to consider feasible options to offset such increases. Implementation of these mitigation measures would substantially lessen or avoid this water quality and hydrology impact. However, if no feasible options are available, the proposed fill placement and flood walls would not be constructed, and the impact to water quality would be significant and unavoidable.

(ii) **Remaining Impacts.** Because there are no feasible measures available to further mitigate this significant impact, it is considered significant and unavoidable.

(iii) **Overriding Considerations.** The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the impact identified above, as set forth in the Statement of Overriding Considerations below.

**Impact. D.8.** The project would include construction activities within the San Joaquin River channel and on nearby levees and would include placement of a permanent structure in the San Joaquin River channel. These activities could affect river flow patterns and degrade water quality.
a) Potential Impact. The water quality and hydrology impact identified above is described and discussed on page IV.D.41 of the DEIR.

b) Mitigation Measures. The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure D.8 (p. IV.D.41 of the DEIR).

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that Implementation of Mitigation Measure D.8 will substantially lessen or avoid the impact identified above by requiring that all instream excavation and construction activities be conducted during low flow conditions in the river and that work within the wetted channel be avoided, by requiring compliance with applicable State and Federal regulatory requirements, and by directing that the design of the new outfall pipeline and diffuser minimize interference with water flow and water quality.

Chapter IV.E. BIOLOGICAL RESOURCES

Impact E.1. Construction of project facilities along the Tuolumne River adjacent to the Primary Plant, or in other riparian areas, could damage the habitat of the valley elderberry longhorn beetle.

a) Potential Impact. The biological resources impact identified above is described and discussed on page IV.E.25 of the DEIR.

b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures E.1.1 and E.1.2a through E.1.2c (pp. IV.E.25 through IV.E.28 of the DEIR, as amended in the FEIR in response to Comment A-1).

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that: Mitigation Measure E.1.1 requires that the project area and surrounding area be surveyed and mapped by a qualified biologist for the presence of the valley elderberry longhorn beetle and its elderberry host species plant. In the event that elderberry plants are discovered, Mitigation Measures E.1.2a through E.1.2c establish protocols for the City and its contractors to follow to ensure that the mitigation measure above is mitigated to a less than significant level. Specifically, these measures call for consultation and coordination with the US Fish and Wildlife Service and Army Corps of Engineers, implementation of avoidance mitigations where possible and transplantation of elderberry plants if necessary for the project.
Taken together, implementation of these mitigation measures will substantially lessen or avoid the biological resources impact identified above.

Impact E.2. **Construction of project facilities could cause loss of occupied Burrowing Owl habitat.**

a) **Potential Impact.** The biological resources impact identified above is described and discussed on pages IV.E.28 through IV.E.29 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures E.2.1 and E.2.2 (pp. IV.E.29 and IV.E.30 of the DEIR, as amended in the FEIR in response to Comment A-1).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Mitigation Measure E.2.1 requires completion of a pre-construction survey for Burrowing Owls in accordance with State and Federal regulations and establishes protocols to ensure that if breeding or resident owls are discovered, the City and its contractors act to protect their habitat from disruption during the nesting season. In the event that avoiding construction in occupied areas is not feasible, Mitigation Measure E.2.2 establishes standards for mitigation through the acquisition and preservation of offsite habitat. Together, implementation of these mitigation measures will substantially lessen or avoid the biological resources impact identified above.

Impact E.3. **Construction of project facilities could cause disturbance of nesting raptors.**

a) **Potential Impact.** The biological resources impact identified above is described and discussed on page IV.E.30 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures E.3.1 and E.3.2 (pp. IV.E.30 and IV.E.31 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Implementation of Mitigation Measures E.3.1 and E.3.2 will substantially lessen or avoid the biological resources impact identified above by ensuring that to the extent
practicable, construction shall be scheduled to avoid the nesting season, and where such avoidance mitigation is not feasible, pre-construction surveys for nesting raptors shall be conducted to ensure that no active raptor nest is disturbed by construction activities.

Impact E.4. **Construction of the project facilities could cause impacts to biological resources and regulated habitats of Dry Creek (Beard Brook) and of the Tuolumne River.**

a) **Potential Impact.** The biological resources impact identified above is described and discussed on page IV.E.31 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measures E.4.1 and E.4.2 (pp. IV.E.31 and IV.E.32 of the DEIR, as amended in the FEIR in response to Comment A-1).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Mitigation Measure E.4.1 requires that pre-construction surveys be conducted prior to project-related activities that would impact the resources of Dry Creek or the Tuolumne River. If such surveys identify potentially significant impacts, the measure requires that the City consult with State and Federal regulatory agencies to ensure that appropriate protocols are followed to mitigate any such impacts. Mitigation Measure E.4.2 additionally requires the City to implement standard avoidance and minimization mitigations in consultation with relevant regulatory agencies in the event that special-status species are identified in the project area. Implementation of Mitigation Measures E.4.1 and E.4.2 will substantially lessen or avoid the biological resources impact identified above by ensuring that the City implement standard protocols for avoiding impacts to special-status species and their habitat.

Impact E.5. **Construction of project facilities or development facilitated by construction of project facilities could cause loss of Swainson's Hawk foraging habitat.**

a) **Potential Impact.** The biological resources impact identified above is described and discussed on page IV.E.32 of the DEIR.

b) **Mitigation Measures.** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:
FEIR Mitigation Measure E.5 (pp. IV.E.31 and IV.E.32 of the DEIR, as amended in the FEIR in response to Comment A-I).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: In the event that project facilities are constructed on lands identified as potential foraging habitat for Swainson's Hawks, implementation of Mitigation Measure E.5 will substantially lessen or avoid such impacts by requiring that the City offset such loss of habitat by providing offsite “Habitat Management” lands as provided in California Department of Fish and Game (“CDFG”) standard protocols.

**Impact E.6.** Construction during the Swainson's Hawk breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment.

a) **Potential Impact.** The biological resources impact identified above is described and discussed on page IV.E.33 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

   FEIR Mitigation Measure E.6a and E.6b (pp. IV.E.33 and IV.E.34 of the DEIR, as amended in the FEIR in response to Comment A-I).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Implementation of Mitigation Measures E.6a and E.6b will substantially lessen or avoid the biological resources impact identified above by requiring that: (1) a qualified ornithologist conduct pre-construction surveys at the Jennings Plant site, in developing areas where collection system extensions are being constructed and within one-mile of previously undeveloped properties that could have trees with active nests; (2) if a nest site is found, the City consult with CDFG to ensure that the project will not result in nest disturbance; and (3) if it is not feasible to avoid active nest sites, that they be removed in accordance with standard protocols to ensure that any impacts of such removal are mitigated.

**Impact E.7.** Construction of improvements to the Secondary Plant may cause impacts to regulated habitats.

a) **Potential Impact.** The biological resources impact identified above is described and discussed on page IV.E.34 of the DEIR.

b) **Mitigation Measures.** The following mitigation measure is hereby
adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure E.7 (pp. IV.E.34 and IV.E.35 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Implementation of Mitigation Measure E.7, which requires prior consultation with the USACE and/or CDFG if project facilities are to be constructed on or adjacent to wetland areas or other areas potentially under these agencies' regulatory jurisdiction, will substantially lessen or avoid the biological resources impact identified above, because those agencies will require adequate measures to offset impacts to riparian and aquatic resources.

Impact E.8. Microtunneling could cause impacts to riparian habitats under the jurisdiction of the California Department of Fish and Game and/or the U.S. Army Corps of Engineers.

a) **Potential Impact.** The biological resources impact identified above is described and discussed on page IV.E.35 of the DEIR.

b) **Mitigation Measures.** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure E.8 (p. IV.E.35 of the DEIR, as amended in the FEIR in response to Comment A-1).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Implementation of Mitigation Measure E.8 will substantially lessen or avoid the biological resources impact identified above by requiring that prior to initiating microtunneling in a riparian area, a survey shall be conducted to determine whether special status species or habitat are present on or immediately adjacent to the construction area; the identification of such species or habitat will trigger consultation and coordination with CDFG and USACE, which will require appropriate avoidance steps or detailed mitigation measures before construction can proceed.

Impact E.11. Growth facilitated by the project would result in cumulative loss of Swainson's Hawk and Burrowing Owl habitat.

a) **Potential Impact.** The biological resources impact identified above is described and discussed on page IV.E.37 of the DEIR.

b) **Mitigation Measures.** The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:
Mitigation Measures E.2, E.5 and E.6 (pp. IV.E.29 and IV.E.30, IV.E.31 and IV.E.32, and IV.E.33 and IV.E.34 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Implementation of Mitigation Measures E.2, E.5 and E.6, as more fully discussed above, will substantially lessen or avoid the Project's impacts to Swainson's Hawk and Burrowing Owl habitat, and in so doing, will substantially lessen or avoid the Project's contribution to the cumulative impact identified above.

**Chapter IV.F. Transportation**

Impact F.1. The Wastewater Master Plan Update would accommodate growth that would cause direct and cumulatively considerable traffic impacts identified in the Urban Area General Plan.

a) **Potential Impact.** The transportation impacts identified above are described and discussed on pages IV.F.12 of the DEIR.

b) **Mitigation Measures.** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure F.1 (p. IV.F.12 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

(i) **Effects of Mitigation.** Mitigation Measure F.1 incorporates by reference the mitigation measures related to traffic from the EIR for the City's Urban Area General Plan Update adopted in 2003. Nonetheless, implementation of the Wastewater Master Plan will remove an obstacle to further growth in Modesto and the wastewater service area, and as further discussed in the DEIR (p. IV.F.12), it is not feasible to fully mitigate the cumulatively considerable traffic impacts identified above.

(ii) **Remaining Impacts.** Because there are no feasible measures available to further mitigate these significant impacts, they are considered significant and unavoidable.
(iii) **Overriding Considerations.** The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the impact identified above, as set forth in the Statement of Overriding Considerations below.

Chapter IV.G. **Air Quality**

**Impact G.1.** Emissions of criteria pollutants during construction of wastewater system improvements would contribute to existing violations of the ambient air quality standards in the region.

a) **Potential Impact.** The air quality impact identified above is described and discussed on pages IV.G.16 and IV.G.17 of the DEIR.

b) **Mitigation Measures.** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure G.1 (pp. IV.G.17 and IV.G.18 of the DEIR).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

(i) **Effects of Mitigation.** Mitigation Measure G.1 requires implementation of a set of mitigation measures developed by the San Joaquin Valley Air Pollution Control District ("SJVAPCD") to mitigate the air quality impacts of construction activities. Implementation of these measures will reduce but not eliminate the emissions of construction-related PM$_{10}$ and ozone precursors. Because such increases in emissions cannot be avoided entirely, and because City standards treat any net increase as a significant impact, it is not feasible to fully mitigate the air quality impact identified above.

(ii) **Remaining Impacts.** Because there are no feasible measures available to further mitigate this significant impact, it is considered significant and unavoidable.

(iii) **Overriding Considerations.** The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the impact identified above, as set forth in the Statement of Overriding Considerations below.
Impact G.2. Emissions of criteria pollutants during operation of the proposed wastewater system improvements would contribute to existing violations of the ambient air quality standards in the region.

a) Potential Impact. The air quality impact identified above is described and discussed on pages IV.G.19 through IV.G.24 of the DEIR.

b) Mitigation Measures. The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure G.2 (pp. IV.G.24 and IV.G.25 of the DEIR, as amended in the FEIR in response to Comment D-1).

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that:

(i) Effects of Mitigation. Mitigation Measure G.2 requires the City to abide by permit limits and other requirements imposed by the SIVAPCD to reduce pollutant emissions from diesel-powered engines for emergency power generation and any other sources. Implementation of this mitigation measure will reduce but not eliminate the emissions of criteria pollutants during operation of the wastewater system improvements. Because such increases in emissions cannot be avoided entirely, and because City standards treat any net increase as a significant impact, it is not feasible to fully mitigate the air quality impact identified above.

(ii) Remaining Impacts. Because there are no feasible measures available to further mitigate this significant impact, it is considered significant and unavoidable.

(iii) Overriding Considerations. The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the impact identified above, as set forth in the Statement of Overriding Considerations below.

Impact G.5. The Wastewater Master Plan Update would accommodate growth that would cause direct and cumulatively considerable air quality impacts identified in the Urban Area General Plan.

a) Potential Impact. The air quality impacts identified above are described and discussed on page IV.G.27 of the DEIR.
b) **Mitigation Measures.** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure G.5 (pp. IV.G.27 and IV.G.28 of the DEIR, as amended in the FEIR pursuant to a staff-initiated text correction).

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

   (i) **Effects of Mitigation.** Mitigation Measure G.5 incorporates by reference the mitigation measures related to traffic and energy use (and related to carbon monoxide and particulate matter in particular) from the City's 2003 Urban Area General Plan Final MEIR. However, even with implementation of such measures, the City Council found that the 2003 General Plan would result in significant and unavoidable impacts to air quality. Similarly here, although implementation of the mitigation measures identified in the earlier MEIR will reduce the cumulatively considerable air quality impacts identified above, it is not feasible to fully mitigate such impacts.

   (ii) **Remaining Impacts.** Because there are no feasible measures available to further mitigate these significant cumulative impacts, it is considered significant and unavoidable.

   (iii) **Overriding Considerations.** The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the impact identified above, as set forth in the Statement of Overriding Considerations below.

**Impact G.6.** The wastewater treatment facilities would cause a cumulatively considerable net increase of pollutants for which the San Joaquin Valley is designated as nonattainment.

a) **Potential Impact.** The air quality impact identified above is described and discussed on page IV.G.28 of the DEIR.

b) **Mitigation Measures.** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring Program:

FEIR Mitigation Measure G.6 (p. IV.G.28 of the DEIR).
c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

(i) **Effects of Mitigation.** Mitigation Measure G.6 incorporates by reference Mitigation Measures G.1 and G.2. Mitigation Measure G.1 requires implementation of a set of mitigation measures developed by the San Joaquin Valley Air Pollution Control District ("SJVAPCD") to mitigate the air quality impacts of construction activities. Mitigation Measure G.2 requires the City to abide by permit limits and other requirements imposed by the SJVAPCD to reduce pollutant emissions from diesel-powered engines for emergency power generation and any other sources. Implementation of these measures will reduce but not eliminate the emissions of PM$_{10}$ and ozone precursors during construction and other criteria pollutants during operation of the improvements. Because such increases in emissions cannot be avoided entirely, and because City standards treat any net increase as a significant impact, it is not feasible to fully mitigate the air quality impact identified above.

(ii) **Remaining Impacts.** Because there are no feasible measures available to further mitigate this significant impact, it is considered significant and unavoidable.

(iii) **Overriding Considerations.** The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the impact identified above, as set forth in the Statement of Overriding Considerations below.

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**Chapter IV.H. Noise**

**Impact H.1.** Construction of the proposed project facilities could cause substantial, though intermittent and short-term, increases in noise levels, which would add to noise levels predicted by the City’s General Plan MEIR and the County General Plan.

a) **Potential Impact.** The noise impact identified above is described and discussed on pages IV.H.9 and IV.H.10 of the DEIR.

b) **Mitigation Measures.** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:
c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that: Implementation of Mitigation Measure H.1 will substantially lessen or avoid the noise impact identified above by requiring that City contractors implement a set of best practices to ensure the protection of sensitive receptors from excessive construction noise. These best practices include limiting construction activities to daytime, ensuring that construction equipment and vehicles be equipped with properly operating mufflers, and requiring that stationary noise sources, construction staging areas, and construction vehicle routes be located to minimize their impact on sensitive land uses.

Impact H.4. The proposed project would support cumulative development that could increase noise levels in areas where noise levels exceed, or would exceed, the noise and land use compatibility guidelines adopted by the City of Modesto and Stanislaus County, or the noise performance standards set by the City and County.

a) **Potential Impact.** The noise impacts identified above is described and discussed on pages IV.H.12 and IV.H.13 of the DEIR.

b) **Mitigation Measures.** The following mitigation measure is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

There are no feasible measures to further mitigate the noise impact identified above.

c) **Findings.** Based on the FEIR and the entire record before the City, the City Council finds that:

(i) **Effects of Mitigation.** It is not feasible to further mitigate the impact identified above.

(ii) **Remaining Impacts.** Because there are no feasible measures available to further mitigate this significant impact, it is considered significant and unavoidable.

(iii) **Overriding Considerations.** The environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project relating to the impact identified above, as set forth in the Statement of Overriding Considerations below.
Impact K.1. Excavation for installation of wastewater system improvements could encounter contaminated soil and/or groundwater and expose workers and the public to hazardous substances.

a) Potential Impact. The public health and safety impact identified above is described and discussed on pages IV.K.9 through IV.K.13 of the DEIR.

b) Mitigation Measures. The following mitigation measures are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program:

FEIR Mitigation Measure K.1a through K.1f (pp. IV.K.11 through IV.K.13 of the DEIR).

c) Findings. Based on the FEIR and the entire record before the City, the City Council finds that: Mitigation Measures K.1a through K.1f establish a set of protocols to ensure that the impact identified above is substantially lessened or avoided. Mitigation Measure K.1a requires the City to use reasonable means (e.g., soil gas surveys, soil or groundwater sampling, and/or a Phase I Environmental Assessment) to determine the presence of soil or groundwater contamination prior to initiation of activities involving soil disturbance. If the presence of such contamination is detected, Mitigation Measure K.1b requires preparation of a Soil and/or Groundwater Investigation in accordance with state and local guidelines and regulations to assess the presence and extent of contamination and potential risk to human health and public safety. If the Soil and/or Groundwater Investigation indicates that a Site Remediation Plan is appropriate, Mitigation Measure K.1c requires its preparation and requires that groundbreaking activities in the areas of potential hazard not proceed until the Site Remediation Plan has been reviewed and approved by the County and is on file with the City. Mitigation Measure K.1d requires preparation of a project-specific Health and Safety Plan (detailing provisions for worker health and safety, monitoring, training for workers, identification of protective equipment and emergency response procedures and designating personnel responsible for Plan implementation) prior to any site work on a contaminated site or a site suspected to be contaminated. Mitigation Measure K.1e requires preparation of a Waste Disposal and Hazardous Materials Transportation Plan (including a description of analytical methods for characterizing wastes, handling methods required to minimize the potential for exposure, and protocols for safe storage, transport and disposal of contaminated materials) prior to construction activities where
hazardous wastes or materials requiring off-site disposal would be
generated. Mitigation Measure K.1f establishes procedures for
construction personnel to follow in the event that previously
unidentified contamination is encountered during construction.
Implementation of these mitigation measures will substantially lessen
or avoid the public health and safety impact identified above by
ensuring adequate planning and an appropriate response to the risks of
hazardous exposure.

Impact K.2. Pipe bursting methods could release potentially
hazardous material contaminants into soil and groundwater, causing
health effects to construction workers and the public, and
environmental degradation.

a) Potential Impact. The public health and safety impact identified
above is described and discussed on page IV.K.14 of the DEIR.

b) Mitigation Measures. The following mitigation measure is hereby
adopted and will be implemented as provided by the Mitigation
Monitoring and Reporting Program:

FEIR Mitigation Measure K.2 (p. IV.K.14 of the DEIR).

c) Findings. Based on the FEIR and the entire record before the City,
the City Council finds that: Implementation of Mitigation Measure K.2
will substantially lessen or avoid the impact identified above by
requiring that the contractor submit for City review a procedure to
ensure that pipes are emptied of their contents and providing for the
safe disposal of such contents prior to commencing pipe bursting
activities.

Impact K.3. Construction activities involving demolition or
modification of structures may result in the exposure of construction
workers and the general public to added health risk.

a) Potential Impact. The public health and safety impact identified
above is described and discussed on pages IV.K.14 through IV.K.15 of
the DEIR.

b) Mitigation Measures. The following mitigation measures are hereby
adopted and will be implemented as provided by the Mitigation
Monitoring and Reporting Program:

FEIR Mitigation Measure K.3 (p. IV.K.15 of the DEIR).

c) Findings. Based on the FEIR and the entire record before the City,
the City Council finds that: Mitigation Measure K.3 requires that a
qualified environmental professional perform a lead-based paint and asbestos-containing survey as a condition of approval for any demolition permit for a structure or facility potentially containing lead or asbestos and for any major modification to structures built before 1980. Mitigation Measure K.3 further provides that all loose and peeling lead-based paint and identified asbestos hazards be abated in accordance with local, state, and federal requirements and that other hazardous materials and wastes generated during demolition or renovation activities be managed and disposed of in accordance with applicable regulations. Implementation of this mitigation measure will substantially lessen or avoid the impact identified above by ensuring that potentially hazardous materials are identified prior to commencement of demolition or renovation activities and by ensuring that such materials are abated in accordance with standard protocols.

IV. Findings Regarding Project Alternatives.

A. Identification of Project Objectives.

The CEQA Guidelines state that the “range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects” of the Project. CEQA Guidelines § 15126(d)(2). Thus, an evaluation of the Project objectives is key to determining which alternatives should be assessed in the EIR.

The DEIR lists fifteen specific objectives for the Project (pages III.2 and III.3):

For the Project as a whole:
1. Implement the City’s economic goals and Urban Area General Plan by planning for, and providing, sewer infrastructure in a timely and cost-effective manner to serve new and existing development.

2. Continue the City’s policy of providing affordable and attractive wastewater rates.

3. Repair and replace aging wastewater infrastructure.

4. Ensure adequate wastewater infrastructure and services are available to serve new growth within the City’s Sphere of Influence.

5. Provide an adequate funding mechanism to pay for necessary improvements.

6. Require new development to pay for infrastructure necessary to serve it.

7. Plan for state-of-the-art facilities that reliably and economically meet the changing regulatory requirements.

For the collection system improvements:

8. To increase sewer capacity to convey peak wet weather flows for a 10-year storm event, and, where required, to serve future customers.

9. To reduce wet weather flow volumes by removing cross connections with stormwater sewers.

10. To extend service to new customers.

11. To replace, repair, or rehabilitate existing trunk sewers (by lining or coating the interior walls), and to reduce infiltration and inflow of stormwater into the sanitary sewers.

12. To improve sewer collection reliability by providing new and redundant infrastructure improvements, including sewer trunk lines and lift stations, in known deficient areas at critical areas within the existing system.
For the treatment plant improvements:

13. To increase capacity at the primary treatment plant to convey peak wet weather flows.

14. To increase the capacity of the outfall connecting the primary and secondary treatment plants, and to provide increased reliability for the existing outfall.

15. To increase effluent disposal capacity by upgrading from secondary treatment to tertiary treatment, and enabling the City to dispose of treated effluent to the San Joaquin River year-round.

B. Alternatives Analyzed in the FEIR.

The CEQA Guidelines state that the "range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects of the Project. The City evaluated the alternatives listed below.

   
   a. Findings. Alternative A is described on pages VI.2 through VI.5 of the DEIR. This alternative is rejected, because it would not feasibly achieve the objectives of the Project.
   
   b. Explanation. Although the No Project Alternative would avoid the Project's significant impacts, it would not further the City's Project Objectives to provide for much needed repair and replacement of aging wastewater infrastructure, provide an adequate funding mechanism to pay for the infrastructure necessary to serve the City, address changing regulatory requirements or address issues related to peak wet weather flow conditions. In addition, Alternative A would not further growth planning policies established in its General Plan. Indeed, it would achieve none of the Project objectives identified above.

2. Alternative B: Alternate Location for Phase 1A Tertiary Facilities.
   
   a. Findings. Alternative B is described on pages VI.5 through VI.7 of the DEIR. Under Alternative B, rather than locate the Phase 1A tertiary facilities at the Secondary Plant, south of the chlorination channel on agricultural land, the City would build the Phase 1A tertiary facilities north of the chlorination channel. This alternative is accepted as a feasible alternative because it would avoid any significant and unavoidable agricultural impacts while feasibly achieving the Project objectives.
b. **Explanation.** As set forth in the DEIR, Alternative B would result in impacts which are almost identical to those of the proposed Project. Because the Phase IA tertiary treatment facilities would still be constructed at the Secondary Plant, in close proximity to the location identified in the proposed Project, Alternative B would feasibly achieve the Project objectives. By moving the Phase IA tertiary treatment facilities as identified in Alternative B, the significant and unavoidable impacts on agricultural resources would be eliminated.

### 3. Alternative C: Reduced Size Alternative for Tertiary Treatment.

a. **Findings.** Alternative C is described on pages VI.7 through VI.12 of the DEIR. Under Alternative C, rather than build tertiary treatment capacity sufficient to accommodate both the existing population and population growth, the City would build only enough tertiary treatment capacity to serve the existing population. This alternative is rejected, because it would not feasibly achieve the objectives of the Project.

b. **Explanation.** Although Alternative C would avoid Project impacts related to population growth, and is identified in the DEIR as the Environmentally Superior Alternative, it would not further the City’s economic goals or General Plan policies related to growth, nor would it meet the other Project objectives of ensuring adequate wastewater infrastructure and services to serve new growth in the City’s Sphere of Influence, extending service to new customers, or increasing effluent disposal capacity by upgrading from secondary treatment to tertiary treatment, and enabling the City to dispose of treated effluent to the San Joaquin River year-round.

### 4. Alternative D: Build Certain Primary Treatment Facilities at the Secondary Plant.

a. **Findings.** Alternative D is described on pages VI.12 through VI.18 of the DEIR. Under Alternative D, the City would address the flood risk at the Primary Plant by moving some of the primary treatment facilities to the Secondary Plant. The existing Primary Plant site would still retain the headworks, pump stations, and portions of the outfall pipelines to convey the wastewater flow to the Secondary Plant. This alternative is rejected, because it would result in an increase in significant and unavoidable impacts and would not feasibly achieve the objectives of the Project.

b. **Explanation.** Although Alternative D would avoid Project water quality and hydrology impacts related to flooding, it would result in new significant and unavoidable impacts related to the direct loss of Prime Farmland at the Secondary Plant and air quality impacts due to increased construction activity. As noted in the proposed Wastewater
Master Plan and related Engineer's Report, the engineer's estimate for constructing Alternative D is approximately $113M, more than twice the estimated cost of the proposed Project. This alternative would not further the Project objectives of providing affordable and attractive wastewater rates, economically meeting changing regulatory requirements or ensuring adequate funding to ensure the Project objectives will be feasibly attained.

5. Alternative E: Build Flood Protection Levee at Primary Plant.

a. Findings. Alternative E is described on pages VI.18 through VI.25 of the DEIR. Under Alternative E, the City would address the flood risk at the Primary Plant by constructing a flood protection levee around the entire Primary Plant. This alternative is rejected, because it would not feasibly achieve the Project's objectives.

b. Explanation. Although Alternative E would address the risk of flooding at the primary treatment facilities, it would significantly alter drainage patterns and increase offsite flooding hazards along the Tuolumne River. Additional floodplain studies would be needed to determine the possible upstream and downstream impacts of the levee. Without these potentially substantial studies, including an evaluation of the potential mitigation measures necessary to address these impacts and any secondary impacts created thereby, this alternative is not feasible. In addition, Alternative E could have greater impacts than the Project in other areas, including parks and recreation impacts and visual impacts. Indeed, the FEIR's analysis of this alternative concludes that its potential flooding impacts would be greater than the Project's. Moreover, due to the unknown and potentially significant costs associated with mitigation of offsite flooding impacts, Alternative E would not meet the Project objectives of providing affordable and attractive wastewater rates, economically meeting changing regulatory requirements or ensuring adequate funding to ensure the Project objectives will be feasibly attained.

V. Statement of Overriding Considerations.

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Section 15093, this City Council adopts and makes the following Statement of Overriding Considerations regarding the remaining significant unavoidable impacts of the Project, as discussed above, and the anticipated economic, legal, social and other benefits of the Project.

The City finds and determines that: (i) the majority of the significant impacts of the Project will be substantially lessened or avoided by the mitigation measures required by these Findings; (ii) the City's approval of the Project as proposed will result in certain significant adverse environmental effects that cannot be avoided even with the
incorporation of all feasible mitigation measures into the Project; and (iii) there are no other feasible mitigation measures or other feasible Project alternatives that would further mitigate or avoid the remaining significant environmental effects. The significant effects that have not been mitigated to a less-than-significant level and are therefore considered significant and unavoidable are:

- B.3 – Agricultural Resources – Construction of the proposed project components within the Planned Urbanizing Area would result in the cumulative loss of Prime Farmland.

- D.3 – Water Quality and Hydrology – Implementation of the proposed project at a rate that does not match projected growth may result in an incremental increase in operation-period surface water quality degradation due to the deficient effluent disposal system.

- D.4 – Water Quality and Hydrology – Implementation of the proposed project may result in operation-period surface water quality degradation due to pollutant loading associated with treated water discharges.

- D.5 – Water Quality and Hydrology – Implementation of the proposed project may result in operation-period surface water quality degradation during daily operations and/or during flooding of the Primary Plant and sludge drying area.

- F.5 – Transportation – The Wastewater Master Plan Update would accommodate growth that would cause direct and cumulatively considerable traffic impacts identified in the Urban Area General Plan.

- G.1 – Air Quality – Emissions of criteria pollutants during construction of wastewater system improvements would contribute to existing violations of the ambient air quality standards in the region.

- G.2 – Air Quality – Emissions of criteria pollutants during operation of the proposed wastewater system improvements would contribute to existing violations of the ambient air quality standards in the region.

- G.5 – Air Quality – The Wastewater Master Plan Update would accommodate growth that would cause direct and cumulatively considerable air quality impacts identified in the Urban Area General Plan.

- G.6 – Air Quality – The wastewater treatment facilities would cause a cumulatively considerable net increase of pollutants for which the San Joaquin Valley is designated as nonattainment.

- H.4 – Noise – The proposed project would support cumulative development that could increase noise levels in areas where noise levels exceed, or would exceed, the noise and land use compatibility guidelines
adopted by the City of Modesto and Stanislaus County, or the noise performance standards set by the City and County.

The following statement identifies the reasons why, in the City’s judgment, the benefits of the Project outweigh the significant and unavoidable effects. The substantial evidence supporting the enumerated benefits of the Project can be found in the record of proceedings as described in Section IIA. Each of the overriding considerations set forth below constitutes a separate and independent ground for finding that the benefits of the Project outweigh its significant adverse environmental effects and is an overriding consideration warranting approval.

The City finds that the Project would have the following economic, legal, social, technological, and environmental benefits:

1. **Wastewater Collection and Treatment Needs.** The City has grown rapidly and faces a number of challenges regarding its current wastewater collection and treatment facilities. Its 1980 population of 106,600 grew to 206,200 in 2004, putting pressure on an aging sewer system. The City currently lacks sufficient hydraulic capacity at the Primary Plant and has limited disposal options for the Secondary Plant’s effluent. Portions of the system do not have capacity to convey peak wet weather flows, potentially causing wastewater surcharges or overflows. Portions of the City’s collection system are very old and in significant need of repair and rehabilitation. In addition, portions of the collection system are undersized even for infill development. The Project will allow the City to more efficiently meet its wastewater collection and treatment needs, assuring water quality and addressing flooding and public health and safety concerns.

2. **Environmental Benefits of Tertiary Treatment.** The Project will significantly improve the quality of the City’s treated wastewater effluent by upgrading to tertiary treatment and ensuring the City’s ability to meet changing regulatory requirements. This upgrade will improve water quality.

3. **Growth Consistent With General Plan.** The City’s General Plan provides a framework for the City’s growth but has identified the City’s wastewater treatment facilities as a potential constraint on desired growth. By removing this constraint, the Project will allow development consistent with the City’s General Plan.

4. **Liability.** Without improvements to its wastewater infrastructure, the City runs the risk of violating existing State and Federal discharge requirements. Furthermore, the City anticipates that its discharge permitting conditions may become more stringent in the future, as they have become more stringent for other cities in the San Joaquin Valley. The Project will allow the City to meet its current and future discharge obligations and avoid liability for illegal discharges.
### Agricultural Resources: Mitigation Measures

#### B.2. Compensation for loss of farmland

The loss of Prime Farmland on the Secondary Plant and Ranch site directly resulting from the proposed project could be partially mitigated through the creation of a farmland conservation easement at an alternate location on the City Ranch or other City of Modesto property. The City could also partially mitigate the loss of Prime Farmland on the project site through contribution to the Farmland Conservancy Fund, or to an equivalent program for funding farmland preservation in Stanislaus County. The mitigation would conserve one acre of farmland for each acre developed.

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<th>Responsibility</th>
<th>Action(s)</th>
<th>Timing</th>
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<tbody>
<tr>
<td>Public Works Department</td>
<td>Create farmland conservation easement, contribute to Farmland Conservancy Fund, or contribute to an equivalent fund to preserve existing prime farmland in Stanislaus County.</td>
<td>Prior to grading at the Secondary Plant and Ranch.</td>
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</tbody>
</table>

#### B.3. Each development project’s contribution to the cumulative loss of farmland in Stanislaus County could be partially mitigated through contribution to the Farmland Conservancy Fund or an equivalent farmland preservation program, as a condition precedent to the issuance of building permits for projects within the City’s Planned Urbanizing Area.

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<th>Responsibility</th>
<th>Action(s)</th>
<th>Timing</th>
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<tbody>
<tr>
<td>Community &amp; Economic Development Dept.</td>
<td>Implement mitigation measures for loss of agricultural land as identified in the 2003 Urban Area General Plan Master EIR by imposing as conditions of approval for development projects</td>
<td>As part of approval of each development project warranting mitigation under the 2003 Urban Area General Plan.</td>
</tr>
</tbody>
</table>
D.1. The City shall prepare a SWPPP designed to reduce potential impacts to surface water quality through the construction period of all of the project components (whether or not the particular portion of the project disturbs more than one acre). The SWPPP shall emphasize measures designed to minimize erosion and off-site sedimentation during improvements to the collection system and installation of the new outfall.

It is not required that the SWPPP be submitted to the RWQCB, but must be maintained on-site and made available to RWQCB staff upon request. The SWPPP shall include:

- Specific and detailed BMPs designed to mitigate construction-related pollutants. At a minimum, BMPs shall include practices to minimize the contact of construction materials, equipment, and maintenance supplies (e.g., fuels, lubricants, paints, solvents, adhesives) with stormwater. The SWPPP shall specify properly designed, centralized storage areas that keep these materials out of the rain.

- To educate on-site personnel and maintain awareness of the importance of stormwater quality protection, site supervisors shall conduct regular tailgate meetings to discuss pollution prevention. The frequency of the meetings and required personnel attendance list shall be specified in the SWPPP.

- A monitoring program that would be implemented by the construction site supervisor which will include both dry and wet weather inspections. In addition, in accordance with State Water Resources Control Board Resolution No. 2001-046, monitoring would be required during the construction period for pollutants that may be present in the runoff that are "not visually detectable in runoff."

- BMPs designed to reduce erosion of exposed soil may include, but are not limited to soil stabilization controls, watering for dust control, perimeter silt fences, placement of hay bales, and sediment basins. Efforts should be made to keep the length of open trench and stockpile volumes to a minimum. The potential for erosion is generally increased if grading is performed during the rainy season as disturbed soil can be exposed to rainfall and storm runoff. If
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<tr>
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<th>Action(s)</th>
<th>Timing</th>
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<tr>
<td>Grading must be conducted during the rainy season, the primary BMPs selected shall focus on erosion control, that is, keeping sediment on the site. End-of-pipe sediment control measures (e.g., basins and traps) shall be used only as secondary measures. Entry and egress from the excavation area shall be carefully controlled to minimize off-site tracking of sediment. Vehicle and equipment wash-down facilities shall be designed to be accessible and functional during both dry and wet conditions.</td>
<td>Public Works Department and Construction Contractor Representative</td>
<td>Prepare site drainage plan or require construction contractor to prepare plan; Implement plan</td>
<td>Plan shall be prepared prior to grading of sludge drying area and shall be implemented during grading and construction.</td>
</tr>
<tr>
<td>A drainage plan shall be prepared for the proposed sludge drying area at the Secondary Plant which specifies that the working surface will be lined with a cement-soil or concrete (to minimize infiltration) and runoff from all portions of the sludge drying area will be contained and treated prior to discharge. Treatment can occur in an appropriately designed detention basin or by filtration. The drainage plan shall consider reuse of stormwater for dust control. The drainage plan shall be reviewed and approved by the Department of Public Works prior to commencement of operations.</td>
<td>Public Works Department and Construction Contractor Representative</td>
<td>Prepare monitoring and contingency plan for micro-tunneling or require construction contractor to prepare plan; Implement plan</td>
<td>Plan shall be prepared prior to commencement of micro-tunneling under a riparian area or other identified wetland, and shall be implemented during micro-tunneling.</td>
</tr>
<tr>
<td>A monitoring and contingency plan for microtunneling that specifies how the likelihood of frac-out [tunnel collapse or the rupture of drilling mud to the surface, EIR p. IV.D.27] would be reduced and response actions should frac-out occur. The risk of frac-outs can be reduced through proper design, careful monitoring, and having appropriate equipment and response plans ready in the event of a frac-out. The monitoring and contingency plan shall specify that:</td>
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<td>On-site briefings be conducted for the workers to identify and locate sensitive resources at the site.</td>
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<td>All field personnel be fully briefed and understand their responsibility for timely reporting of frac-outs.</td>
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<td>When excavating around existing rock wells, the inlet to the rock well will be sealed during the excavation activity so that sediment and pollutants cannot be discharged into the rock well in runoff or wash water.</td>
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<td>Response equipment be maintained on-site or at a readily accessible location and in good working order.</td>
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<tr>
<td>Should a frac-out occur, the plan should specify that:</td>
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<tr>
<td>A qualified biologist would be retained to evaluate the potential for impacts to biotic resources and specify response actions, as appropriate.</td>
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### WATER QUALITY AND HYDROLOGY: Mitigation Measures

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<th>Responsibility</th>
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<tr>
<td>Contractor Representative</td>
<td>contractor to prepare plan;</td>
<td>areas and shall be implemented during</td>
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<td></td>
<td>Implement plan</td>
<td>micro-tunneling.</td>
</tr>
<tr>
<td>Public Works Department</td>
<td>Review monitoring plan for</td>
<td>Prior to commencement of each micro-tunneling</td>
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<td></td>
<td>drilling.</td>
<td>project.</td>
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The drilling and response plan shall be reviewed and approved by the City of Modesto Department of Public Works prior to implementation of the drilling activities.

D.2. Each proposed cross-connection elimination project shall be carefully designed to ensure that existing flooding problems are not exacerbated. If the proposed solution (either temporary or permanent) is not fully compliant with the City standards for stormwater conveyance, then it shall be demonstrated through detailed hydraulic analysis that the proposed solution does not make existing flooding problems worse. The designers of the new stormwater conveyance and treatment structures should consider a wide range of solutions when designing the temporary and permanent solutions, including: 1) positive connections to existing trunk lines, 2) construction of new trunk lines and laterals, 3) detention and retention basins, 4) rock wells, 5) onsite improvements to reduce discharge flows, and 6) positive connections to MID laterals. Each proposed cross-connection elimination design shall be reviewed for compliance with this performance standard by the City Public Works Department prior to approval of the project. In the event the City considers
WATER QUALITY AND HYDROLOGY: Mitigation Measures

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<tr>
<th>Elimination of a cross-connection by connecting to an MID lateral, the City will consult with MID at the earliest possible stage in the process.</th>
<th>Public Works Department</th>
<th>If the Wastewater Master Plan is not implemented as proposed, investigate feasibility of other methods of effluent disposal.</th>
<th>Upon a determination that the Wastewater Master Plan will not be implemented as proposed.</th>
</tr>
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</table>

D.3 The City should continue to investigate the feasibility of near-term solutions: 1) additional land application of effluent, 2) expansion of storage capacity, and 3) conservation measures. However, under the existing conditions and with the project as proposed, the deficient effluent disposal system could result in significant water quality impacts and no feasible mitigation has currently been identified that could be implemented promptly. This impact is significant and unavoidable.

D.4. To mitigate the potential impacts to San Joaquin River water quality associated with the expansion of treated wastewater capacity, the City shall conduct an anti-degradation study as set forth above. The study shall be conducted in accordance with all applicable State and Federal anti-degradation policy standards. The City shall implement all feasible and necessary mitigation measures. Based on current RWQCB requirements, it is likely that the implementation of this mitigation measure will reduce operation-period surface water quality degradation due to pollutant loading associated with treated wastewater discharges to a less-than-significant level.

The anti-degradation study is a requirement of NPDES permit renewals when additional river discharge capacity is requested and will be defined based on the permit provisions. However, because several permit renewal cycles will occur over the course of the project horizon, the City cannot determine the future requirements at this time and therefore cannot assure that the potential impacts will be fully mitigated. In addition, it is possible that State and Federal anti-degradation policies may change over time to a point where the potential impacts associated with a Project phase can no longer be fully mitigated.

D.5. D.5(a). To mitigate the potential impacts to local flooding conditions associated with placement of fill and construction of the flood walls proposed by the project, the City shall retain a qualified registered civil engineer or licensed architect to conduct the appropriate floodplain studies to determine whether the proposed

| Public Works Department | Conduct anti-degradation study and implement all feasible and necessary mitigation measures as directed by the RWQCB. | The study shall be conducted prior to issuance of an NPDES permit for tertiary treatment and shall be implemented prior to or concurrent with construction. | Retain qualified registered civil engineer to conduct floodplain studies. | Prior to completion of final design documents and commencement of construction. |
WATER QUALITY AND HYDROLOGY: Mitigation Measures

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<td>If determined feasible, work with FEMA, Reclamation Board, and other agencies as necessary to secure appropriate permits and abide by all permit conditions, or pursue alternative design.</td>
<td>If determined feasible, work with FEMA, Reclamation Board, and other agencies as necessary to secure appropriate permits and abide by all permit conditions, or pursue alternative design.</td>
<td>Obtain permits prior to commencement of construction; Comply with all permit conditions during construction.</td>
</tr>
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</table>

**D.8** To the extent feasible, all instream excavation and construction activities shall be conducted during low flow conditions in the river and work within the wetted channel will be avoided. As specified in the Biology section of this DEIR, the project sponsor will acquire all necessary permits from the US Army Corps of Engineers and California Department of Fish and Game (the provisions of these permits will include measures to protect water quality). In addition, the design of the new outfall and diffuser shall avoid, to the extent feasible, permanent features that extend above the active streambed that could cause flow disruption and scour.

Public Works Department

Acquire all necessary permits from the US Army Corps and the California Dept of Fish & Game, and abide by all permit conditions.
### BIOLOGICAL RESOURCES: Mitigation Measures

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<tr>
<th>E.1.1. Pre-Construction Surveys:</th>
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<th>Timing</th>
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<tr>
<td>The project area and immediately adjacent area shall be surveyed and mapped by a qualified biologist for the presence of the valley elderberry longhorn beetle and its elderberry host species plant. Mitigation is not required for plants with no stems measuring 1.0 inch (2.5 cm) or greater in diameter at ground level and surveys are valid for a period of two years. If plants larger than these are identified in the survey, Measures E.1.2a through E.1.2c shall be implemented.</td>
<td>Public Works Department and Project Biologist</td>
<td>Retain a qualified biologist and conduct pre-construction surveys for construction projects located along Tuolumne River or other riparian areas.</td>
<td>Conduct surveys prior to issuance of any construction contract.</td>
</tr>
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</table>

| E.1.2a. Agency Coordination and Consultation: | Public Works Department and Project Biologist | Consult with USACE and USFWS. | Prior to issuance of any construction contract. |

| E.1.2b. Avoidance: | Public Works Department, Project biologist and Construction | Designate avoidance areas along Tuolumne River near Primary Plant or other riparian areas proposed for construction of wastewater facilities and provide | Establish buffer areas prior to commencement of construction and monitor throughout construction. |

**Turnstone Consulting, T185**  
**Proposed Final Master EIR**  
**V.8**  
**Modesto Wastewater Master Plan Update**  
**March 1, 2007**
BIOLOGICAL RESOURCES: Mitigation Measures

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<td>Contractor Representative</td>
<td>fencing, education of workers, signs, and implement restoration and maintenance activities.</td>
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Core avoidance areas include all areas within 20 feet of the dripline of any elderberry plant with a stem measuring 1.0 inch (2.5 cm) or greater in diameter at ground level. Such core areas shall not be disturbed during construction. Buffer avoidance areas include all the area within 100 feet (30.5 m) of any elderberry plant with a stem measuring 1.0 inch (2.5 cm) or greater at ground level. If complete avoidance within a 100-foot (30.5 m) buffer cannot be provided, the USFWS must be consulted before any disturbances within the buffer area are considered. In addition, the USFWS must be provided with a map identifying the avoidance areas and written details describing the avoidance and protective measures. Protective measures include:

- Temporary construction fencing shall be constructed to provide a minimum setback of at least 20 feet from the dripline of each potential host elderberry plant.
- A tailgate education program on the valley elderberry longhorn beetle shall be given to each construction worker and all personnel working within the project area to avoid adverse effects on the beetle.
- Signs every 50 feet (15.2 m) along the edge of the fence shall be placed along the exclusion fence to help identify the area as a protected area for the valley elderberry longhorn beetle for the duration of construction.

Restoration and maintenance activities shall be implemented if activities occur within the 100-foot (30.5 m) buffer zone. Restoration and maintenance activities include:

- Restore any damage done to the buffer area (area within 100 feet of elderberry plants) during construction. Provide erosion control and re-vegetate with appropriate native plants.
- Buffer areas must continue to be protected after construction. Measures such as fencing, signs, weeding, and trash removal are usually appropriate.
- No insecticides, herbicides, fertilizers, or other chemicals that might harm the beetle or its host plant shall be used in the buffer areas, or within 100 feet of any elderberry plant with one or more stems measuring 1.0 inch or greater in diameter at ground level.
- The applicant must provide a written description of how the buffer areas are to be restored, protected, and maintained after construction is completed.
### BIOLOGICAL RESOURCES: Mitigation Measures

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<tr>
<td>Public Works Department, Project Biologist and Construction Contractor Representative</td>
<td>Retain qualified biologist; Identify and monitor elderberry plants and implement USFWS procedures for transplanting elderberry plants.</td>
<td>Prior to authorizing construction near affected areas</td>
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**E.1.2c. Transplantation of Elderberry Plants:** If elderberry shrubs cannot be avoided, elderberry plants with one or more stems measuring 1.0 inch (2.5 cm) or greater in diameter at ground level shall be transplanted to a mitigation area. The following guidelines will be followed:

- A qualified biologist shall monitor the project and mitigation sites for the duration of the transplanting to ensure no unauthorized take or loss of individuals occurs.
- Elderberry plants will be transplanted after shrubs have lost their leaves and are dormant, usually from November through the first two weeks in February.
- Transplanting shall be conducted according to standard procedures set forth by the USFWS, which includes planting additional seedlings or cuttings at various ratios for plants removed for translocating.
- A mitigation area set aside for translocated plants shall provide habitat for the beetle in perpetuity. The mitigation area shall provide at least 1,800 square feet for each transplanted elderberry shrub and follow USFWS guidelines for other associated native plants to be planted within the area. This mitigation area shall be weeded by mechanical means (no herbicides) once a year.
- The mitigation area will be monitored for the general condition of the mitigation area, the condition of the elderberry plants, and the associated native plants, for a period of 10 consecutive years with surveys and reports every year, or for 15 years of monitoring with surveys and reports on years 1, 2, 3, 5, 7, 10, and 15. Reports shall be provided to the USFWS.

**E.2.1. Burrowing Owl Avoidance:** In conformance with Federal and State regulations regarding the protection of raptors, a pre-construction survey for Burrowing Owls shall be completed, in conformance with CDFG guidelines, prior to the start of construction within suitable habitat. If no Burrowing Owls are located during these surveys, no additional action would be warranted. However, if breeding or resident owls are located on, or immediately adjacent to, the site, the Public Works Department and Project Biologist shall conduct a pre-construction survey for breeding or resident burrowing owls in pastures, fallow fields, canal rights of way and establish a construction schedule and buffer area prior to issuance of any construction permit.
Following mitigation measures shall be implemented:

- No burrowing owls would be evicted from burrows during the nesting season (February 1 through August 31). Eviction outside the nesting season may be permitted pending evaluation of eviction plans and receipt of formal written approval from the CDFG authorizing the eviction.
- A 250-foot buffer, within which no new activity would be permissible, would be maintained between project activities and nesting burrowing owls. This protected area would remain in effect until August 31, or at the CDFG's discretion and based upon monitoring evidence, until the young owls are foraging independently.
- If accidental take (disturbance, injury, or death of owls) occurs, the CDFG would be notified immediately.

### E.2.2. Compensation for loss of Burrowing Owl habitat

If a pre-construction survey finds that Burrowing Owls occupy the project site and avoiding construction in occupied areas is not feasible, then habitat compensation on off-site mitigation lands shall be implemented. Habitat Management lands comprising existing Burrowing Owl foraging and breeding habitat shall be acquired and preserved. An area of 6.5 acres (2.6 ha) (the amount of land found to be necessary to sustain a pair or an individual owl) shall be secured for each pair of owls, or individual in the case of an odd number of birds. As part of an agreement with the CDFG, the project applicant shall secure the performance of its mitigation duties by providing the CDFG with security in the form of funds that would:

- Allow for the acquisition and/or preservation of 6.5 acres (2.6 ha) of Habitat Management lands.
- Provide initial protection and enhancement activities on the Habitat Management lands, potentially including but not limited to such measures as fencing, trash clean-up, artificial burrow creation, grazing or mowing, and any habitat restoration deemed necessary by CDFG.
- Establish an endowment for the long-term management of the Habitat Management lands.
- Reimburse the CDFG for reasonable expenses incurred as a result of the approval and implementation of this agreement.

Pending CDFG approval, Habitat Management lands providing foraging habitat...
### BIOLOGICAL RESOURCES: Mitigation Measures

For Swainson's Hawks (see "Loss of Swainson's Hawk Foraging Habitat" below) may also be used to mitigate impacts to Burrowing Owls provided the Habitat Management lands provide existing Burrowing Owl foraging and breeding habitat.

<table>
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<tr>
<th><strong>E.3.1. Avoidance of Nesting Raptors:</strong> To the extent practicable, construction shall be scheduled to avoid the nesting season, which extends from January through August.</th>
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<tr>
<td><strong>E.3.2. Pre-construction Surveys:</strong> If it is not possible to schedule construction between August and January, then one of the following options shall be implemented:</td>
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<td>• With the approval of the CDFG, trees containing known or potential raptor nest sites may be removed to discourage future nesting attempts on the condition that no raptor pair is currently utilizing the site; or,</td>
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<tr>
<td>• Pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist or wildlife biologist to ensure that no raptor nests would be disturbed during project implementation. A pre-construction survey shall be conducted prior to the initiation of demolition/construction activities during the early part of the breeding season (January through April) and prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the qualified person shall inspect all trees in and immediately adjacent to the impact areas for raptor nests. If an active raptor nest is found close enough to the construction area to be disturbed by these activities, the ornithologist, in consultation with CDFG, shall determine the extent of a construction-free buffer zone to be established around the nest.</td>
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|**E.4.1. Pre-Construction Surveys of sensitive riparian habitats, and Agency Coordination:** Pre-construction surveys shall be conducted prior to project-related activities that would impact the resources of Dry Creek or the Tuolumne River in order to identify potentially significant impacts. If Dry Creek, the Tuolumne River, or their tributaries are impacted by project activities, USACE permits and a Streambed Alteration Agreement from CDFG may be required. If regulated habitats are impacted by project activities, USACE permits and a Streambed Alteration Agreement from CDFG may be required. |

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<tr>
<td>Public Works Department</td>
<td>To the extent practicable, limit construction periods to Sept. through December in or near nesting raptor habitat.</td>
<td>Prior to issuance of any construction contract</td>
</tr>
<tr>
<td>Public Works Department and Project Ornithologist</td>
<td>Retain qualified ornithologist to conduct pre-construction surveys for nesting raptors and determine extent of construction-free buffer zone to be established.</td>
<td>Prior to issuance of any construction contract</td>
</tr>
<tr>
<td>Public Works Department and Project Biologist</td>
<td>Retain qualified biologist to conduct pre-construction surveys for projects that would impact Dry Creek and Tuolumne River and obtain USACE permit and Streambed Alteration</td>
<td>Prior to issuance of any construction contract</td>
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**BIOLOGICAL RESOURCES: Mitigation Measures**

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<tr>
<th>Alteration Agreement from CDFG would be required. Early consultation with the USACE and CDFG is recommended to determine adequate protocols, as project modification and/or mitigation measures may be necessary and would require agency approval.</th>
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<tr>
<td>Public Works Department and Project Biologist.</td>
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<tr>
<td>Agreement from CDFG, as necessary.</td>
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<tr>
<td>Conduct pre-construction survey and identify mitigation prior to issuance of any construction contract. Implement mitigation measures throughout construction.</td>
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**E.4.2. Mitigation for Species of Special Status:** If construction activities would result in impacts to any of the special-status species identified as possibly occurring in the project area, mitigation measures for that species shall be implemented. If surveys indicate that impacts would result to a special-status species not identified as possibly occurring in the project area, or for which mitigation measures are not described in this report, avoidance and minimization measures to reduce project impacts to less-than-significant levels shall be determined through coordination with the City of Modesto, CDFG, and USFWS.

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<tr>
<td>Public Works Department and Project Biologist.</td>
<td>Retain qualified biologist to conduct pre-construction surveys for special-status species occurring within a project area; Identify and implement mitigation measures.</td>
<td>Conduct pre-construction survey and identify mitigation prior to issuance of any construction contract. Implement mitigation measures throughout construction.</td>
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**E.5. Compensation for loss of Swainson’s Hawk foraging habitat:** If project facilities are constructed on lands identified as potential foraging habitat for Swainson’s Hawks then the impacts shall be mitigated by providing offsite Habitat Management lands as described in the CDFG protocol.

The final acreage of offsite management lands to be provided would depend on the distance between the project area and the nearest active nest site. Prior to grading of any site with potential foraging habitat, protocol-level surveys shall be conducted to determine the nearest active nest, if an active nest is not known within one mile of the site. The 1994 CDFG staff report states (HM = Habitat Management in the following paragraphs):

- Projects within one mile of an active nest tree shall provide:
  - One acre of HM land (at least 10% of the HM land requirements shall be met by fee title acquisition or a conservation easement allowing for the active management of the habitat, with the remaining 90% of the HM lands protected by a conservation easement [acceptable to the Department] on agricultural lands or other suitable habitats that provide foraging habitat for Swainson’s Hawk) for each acre of development authorized (1:1 ratio); or

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<tr>
<td>Public Works Department and Project Biologist.</td>
<td>Retain qualified ornithologist to conduct pre-construction surveys of project site in areas such as pasture, alfalfa, fallow fields, low-growing crops or field crops, rice land, and cereal grain crops to identify potential foraging habitat and active nests of Swainson’s Hawks. If suitable foraging habitat is found, implement mitigation in accordance with CDFG requirements.</td>
<td>Prior to issuance of any construction contract.</td>
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BIOLOGICAL RESOURCES: Mitigation Measures

- One-half acre of HM land (all of the HM land requirements shall be met by fee title acquisition or a conservation easement [acceptable to the Department] which allows for the active management of the habitat for prey production on the HM lands) for each acre of development authorized (0.5:1 ratio).

- Projects within 5 miles of an active nest tree but greater than 1 mile from the nest tree shall provide 0.75 acres of HM land for each acre of urban development authorized (0.75:1 ratio). All HM lands protected under this requirement may be protected through fee title acquisition or conservation easement (acceptable to the Department) on agricultural lands or other suitable habitats that provide foraging habitat for Swainson’s Hawks.

- Projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree shall provide 0.5 acres of HM land for each acre of urban development authorized (0.5:1 ratio). All HM lands protected under this requirement may be protected through fee title acquisition or conservation easement (acceptable to the Department) on agricultural lands or other suitable habitats that provide foraging habitat for Swainson’s Hawks.

- Management Authorization holders/project sponsors shall provide for the long-term management of the HM lands by funding a management endowment (the interest on which shall be used for managing the HM lands) at the rate of $400 per HM acre (adjusted annually for inflation and varying interest rates).

E.6a. Pre-construction surveys for nesting Swainson’s Hawks: In order to assure that nesting Swainson’s Hawks will not be disturbed by construction activities at the Jennings Plant site, in developing areas where collection system extensions are being constructed on or within one mile of undeveloped properties that could have trees with active nests, a qualified ornithologist shall conduct pre-construction surveys of the project site and adjacent areas within one mile of the project site. Survey Period I occurs from January 1 to March 20, Period II from March 20 to April 5, Period III from April 5 to April 20, Period IV from April 21 to June 10 (surveys not recommended during this period because identification is difficult as the adults tend to remain within the nest for longer periods of time), and Period V from June 10 to July 30. No fewer than three surveys shall be completed, in at least each of the two survey periods immediately prior to project initiation. If a

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<td>Public Works Department and Qualified ornithologist</td>
<td>Retain qualified ornithologist to conduct pre-construction surveys of project site and adjacent areas within one mile of project site during at least two of the survey periods identified. Identify and implement appropriate mitigation measures.</td>
<td>Prior to issuance of any construction contract.</td>
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**BIOLOGICAL RESOURCES: Mitigation Measures**

**nest site is found**, consultation with CDFG shall be required to ensure project initiation will not result in nest disturbance.

**E.6b. Removal of Swainson's Hawk Nest Trees:** Nest trees on the project site(s) shall not be removed unless avoidance measures are determined to be infeasible. If a nest tree must be removed, a Management Authorization (including conditions to off-set the loss of the nest tree) must be obtained. The Management Authorization will specify the tree removal period, generally between October 1 – February 1. If construction or other project related activities which may cause nest abandonment or forced fledging are necessary within the buffer zone, monitoring of the nest site by a qualified biologist shall be required to determine if the nest is abandoned. If it is abandoned, and if the nestlings are still alive, the City shall fund the recovery and hacking (controlled release of captive reared young) of nestling(s).

**E.7. Pre-Construction Surveys for Jurisdictional Wetlands near Secondary Treatment Plant, and Agency Coordination:** If project facilities are constructed on or adjacent to wetland areas and those areas potentially under the jurisdiction of the USACE and/or CDFG, pre-construction surveys shall be conducted. If these areas would be impacted by project activities, USACE permits and a Streambed Alteration Agreement from CDFG would be required. These agencies would request adequate measures to offset impacts to riparian and aquatic resources. Early consultation with the USACE and CDFG is recommended to determine adequate protocol, as project modification and/or mitigation measures may be necessary and would require agency approval.

**E.8. Pre-construction Surveys near microtunneling areas and Agency Coordination:** Prior to initiating microtunneling in a riparian area, a survey shall be conducted to determine whether special status species or habitats are present on or immediately adjacent to the construction area. If it is determined that such species or habitats are present, and if the temporary impacts are determined to be significant, coordination with CDFG and USACE shall occur to determine appropriate avoidance steps or detailed mitigation measures to carry out prior to and during construction. These measures could include establishing a riparian buffer between the construction area and the identified resource or habitat, and monitoring during construction by appropriately qualified scientist(s).
**TRANSPORTATION: Mitigation Measures**

| F.1. | Implement the Urban Area General Plan 2003 Final Master EIR’s mitigation measures related to traffic. This would reduce the significant cumulative impacts of growth accommodated by the Wastewater Master Plan, but not to less-than-significant levels. |
| Responsibility | Action(s) | Timing |
| Community and Economic Development Department | Implement mitigation measures for traffic as identified in the 2003 Urban Area General Plan Master EIR by imposing as conditions of approval on development projects | As part of approval of each development project warranting mitigation under the Urban Area General Plan |
AIR QUALITY: Mitigation Measures

G.1: The construction plans for each group of building permits for wastewater system improvements shall incorporate the following recommendations from the San Joaquin Valley Air Pollution Control District to minimize emissions during construction phases:

- The City or its contractor(s) shall review Regulation VIII of the San Joaquin Valley Air Pollution Control District regulations and prepare a compliance plan prior to commencing any phase of construction. The compliance plan must demonstrate that the current requirements of Regulation VIII will be implemented.
- Prior to the issuance of construction contracts, the City or its contractor(s) shall perform a review of new technology, as it relates to heavy-duty equipment, to determine what, if any, advances in emissions reduction are available for use. It is anticipated that in the near future both NOx and PM10 control equipment will be available. The San Joaquin Valley Air Pollution Control District should be consulted during this process.
- The City or its contractor(s) shall limit traffic speed on unpaved roads to 15 miles per hour.
- The City or its contractor(s) shall install sandbags or other control measures to prevent silt runoff to public roadways from sites with a slope greater than 1 percent.
- The City or its contractor(s) shall install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site, to prevent track-out of soil to public roadways.
- The City or its contractor(s) shall install windbreaks at windward sides of construction areas, if necessary to prevent wind-blown dust.
- The City or its contractor(s) shall suspend excavation and grading activity when winds exceed 20 miles per hour.
- The City or its contractor(s) shall limit the area subject to excavation, grading, and other construction activity at any one time.
- The City or its contractor(s) shall ensure that the accumulation of mud

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<th>Responsibility</th>
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<tbody>
<tr>
<td>Public Works Department and Construction Contractor Representative</td>
<td>Prepare a dust control compliance plan.</td>
<td>Prepare plans and review new technologies prior to commencement of construction;</td>
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<td>Review new emission control technologies in consultation with the SJVAPCD</td>
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<td>Implement these 4 dust control measures.</td>
<td>Implement and monitor compliance with dust and emission control measures throughout construction</td>
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<td>Limit or suspend grading when winds exceed 20 mph.</td>
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<td>Limit area of disturbance</td>
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<td>Implement street sweeping</td>
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or dirt is expeditiously removed from adjacent public streets at least once every 24 hours when construction activities are occurring (the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions).

- The City or its contractor(s) shall use alternative-fuel construction equipment, where feasible.
- The City or its contractor(s) shall minimize idling time (e.g., to a 10-minute maximum).
- The City or its contractor(s) shall limit the hours of operation of heavy-duty equipment and/or the amount of equipment in use to the minimum practical.
- The City or its contractor(s) shall replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via a portable generator set), where feasible.
- The City or its contractor(s) shall take steps to curtail construction activity during periods of high ambient pollutant concentrations; this may include reducing construction activity during the peak hour of vehicular traffic on adjacent roadways or ceasing construction activity during days declared as Spare the Air days by the San Joaquin Valley Air Pollution Control District.
- The City or its contractor(s) shall implement activity management to reduce cumulative short-term impacts.

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<th>AIR QUALITY: Mitigation Measures</th>
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<td><strong>Responsibility</strong></td>
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<tr>
<td>Public Works Department</td>
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G.2: The City shall abide by permit limits imposed by the SJVAPCD to reduce pollutant emissions from diesel-powered engines for emergency power generation and any other sources requiring permits. The City shall abide by permit limits imposed by the SJVAPCD on operation of digester-gas burning equipment at the Primary Plant.
### AIR QUALITY: Mitigation Measures

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<tr>
<td>Community &amp; Economic Development Department</td>
<td>Implement air quality mitigation measures as identified in the 2003 Urban Area General Plan Master EIR by imposing as conditions of approval on development projects</td>
<td>As part of approval of each development project warranting mitigation under the Urban Area General Plan</td>
</tr>
</tbody>
</table>

G.5: With implementation of the *Urban Area General Plan's* mitigation measures related to traffic and energy use (and related to carbon monoxide and particulate matter, in particular), the significant cumulative impacts of growth accommodated by the project would be reduced, but not to less-than-significant levels.
H.1. Protection of sensitive receptors from excessive construction noise: In areas where there are sensitive receptors, the City shall ensure that contractors implement the following practices:

- To the extent feasible, construction activities shall be restricted to the hours between 7:00 a.m. and 9:00 p.m., Monday through Friday, and between 9:00 a.m. and 9:00 p.m., Saturday and Sunday and state or federal holidays; minor construction equipment servicing and maintenance shall be excepted from this restriction.
- Construction equipment and vehicles should be equipped with properly operating mufflers according to the manufacturers' recommendations.
- Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields.
- Stationary noise sources and construction staging areas shall be located as far as possible from existing residences, hospitals, schools, churches, and parks (preferably at least 200 feet), or contractors shall be required to provide additional noise-reducing engine enclosures (with the goal of achieving approximately 10 dBA of reduction compared to uncontrolled engines).
- Construction vehicle access routes shall be designed to minimize the impact on sensitive land uses such as schools and residential areas.

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<th>NOISE: Mitigation Measures</th>
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<tr>
<td>H.1. Protection of sensitive receptors from excessive construction noise</td>
<td>Public Works Department and Construction Contractor Representative</td>
<td>Determine whether construction would occur near sensitive receptors; if so, require noise-reduction measures in construction contracts. Implement construction noise control measures.</td>
<td>Make determinations prior to issuing construction contracts Implement and monitor noise-reduction measures during all phases of site preparation and exterior construction activities.</td>
</tr>
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Turnstone Consulting, T185
Proposed Final Master EIR

Modesto Wastewater Master Plan Update
March 1, 2007
**PUBLIC HEALTH AND SAFETY: CONTAMINATED SOILS AND DEMOLITION: Mitigation Measures**

<table>
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<tr>
<th>K.1a. Prior to activities involving soil disturbance for the improvements to the wastewater collection and treatment systems, the City shall use reasonable means to determine the presence of soil or groundwater contamination. Those reasonable means may consist of soil gas surveys, soil or groundwater sampling, and/or a Phase I Environmental Site Assessment conducted by a qualified professional (e.g., a California-registered environmental assessor, Professional Geologist, or Professional Engineer). Any Phase I environmental site assessment shall be performed in conformance with the most recent standard adopted by ASTM International for Phase I site assessments, and shall present recommendations for further investigation of the site, if necessary (see Mitigation Measure K.1b below for details).</th>
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<tr>
<td>Public Works Department and, if appropriate, Environmental professional</td>
<td>Use reasonable means to determine presence of soil or groundwater contamination and retain environmental professional, if appropriate. Report findings and recommendations to the City.</td>
<td>Prior to commencement of grading or construction</td>
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<tr>
<td>K.1b. If warranted, conduct soil and groundwater sampling and analysis. If the investigation activities in Mitigation Measure K.1a (e.g., soil gas surveys, sampling, and/or preparation of a Phase I environmental site assessment) were to indicate that a release of hazardous materials could have affected the location(s) where soil disturbance would occur, a Soil and/or Groundwater Investigation shall be conducted prior to soil disturbance by a qualified environmental professional (e.g., Professional Geologist, Professional Engineer) to assess the presence and extent of contamination at the site and the potential risk to human health and public safety from the contamination (if any). The Soil and/or Groundwater Investigation shall be conducted in accordance with state and local guidelines and regulations, and the most recent ASTM International Standard for Phase II Environmental Site Assessments, with oversight from a regulatory agency (e.g., Stanislaus County Environmental Resources Department). The findings of the investigation shall be documented in a written report and submitted to the regulatory agency and the City.</td>
<td>Public Works Department and Environmental professional</td>
<td>Conduct soil and groundwater sampling and analysis if warranted. Report findings to City.</td>
<td>Prior to commencement of grading or construction</td>
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<tr>
<td>K.1c. If warranted, prepare a site remediation plan and health and safety plan. If the results of the subsurface investigation(s) (described in Mitigation Measure K.1b) indicate the presence of hazardous materials, the Stanislaus County Department of Environmental Resources shall be notified, and site remediation may be required by the applicable state or regulatory agency or the County Department of Environmental Resources Site Mitigation Unit. Specific remedies would depend on the extent and</td>
<td>Public Works Department, Environmental professional and Construction Contractor</td>
<td>If warranted by results of implementing Measure K.1b, prepare site remediation plan and site health and safety plan and implement site</td>
<td>Prior to commencement of grading or construction</td>
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<td>PUBLIC HEALTH AND SAFETY: CONTAMINATED SOILS AND DEMOLITION: Mitigation Measures</td>
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<td>Representative</td>
<td>remediation plan</td>
<td>During any excavation, grading or other soil disturbance. At early stage of construction contract, prior to any soil-disturbing activities.</td>
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<td></td>
<td>Public Works Department, Construction Contractor’s Representative and Environmental Professional</td>
<td>If soil-disturbing activities would be in known or suspected contaminated areas, prepare site health and safety plan for City review and approval.</td>
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<tr>
<td>K.1d. Where any activity would be performed at a contaminated site or where hazardous materials are suspected, the City's contractor shall prepare a project-specific Health and Safety Plan prior to any site work. The Health and Safety Plan shall be prepared by the contractor(s) filed with the City and regulatory agencies (as required). The Plan shall include required worker health and safety provisions for all workers potentially exposed to contaminated materials at the site, identification of hazardous materials present, monitoring to be performed during site activities (as appropriate), required training for workers, identification of appropriate personal protective equipment and emergency response procedures, and designation of personnel responsible for Plan implementation.</td>
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<td>Public Works Department, Construction Contractor’s Representative and Environmental Professional</td>
<td>Where hazardous wastes or materials requiring off-site disposal would be generated, prepare Waste Disposal and Hazardous Materials Transportation Plan for City review and approval.</td>
<td>At early stage of construction contract, prior to construction activities that would transport hazardous materials or hazardous wastes off site.</td>
</tr>
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</table>
PUBLIC HEALTH AND SAFETY: CONTAMINATED SOILS AND DEMOLITION: Mitigation Measures

site shall be indicated in the Plan. The Plan shall also identify specific routes to be used for transport of hazardous materials and waste to and from the project site, or specific routes to be avoided during transport. Routes shall be selected to minimize proximity to sensitive receptors to the greatest practical degree. Elements of the Plan regarding transportation of hazardous materials and wastes shall be reviewed and approved by the City Fire Department.

K.1f. In the event that previously unidentified contamination is encountered (e.g., identified by odor or visual staining) during soil disturbance activities, or any underground storage tanks, abandoned drums, or other hazardous materials or wastes are encountered during construction, the contractor(s) shall immediately notify the City, and the City shall then notify the County. The contractor(s) shall have prepared a Contingency Plan for Sampling and Analysis of potentially hazardous substances and coordination with appropriate regulatory agencies. The Plan shall be submitted to the City prior to project activities involving soil disturbance. Any site investigations or remedial activities shall be performed in accordance with applicable laws under the direction of a regulatory agency and the City, in accordance with Mitigation Measures K.1c through K.1e above.

K.2. The contractor(s) shall prepare a procedure for review by the City for emptying pipes of their contents before pipe bursting begins. Once accepted by the City, with revisions if requested, the contractor shall implement the procedure prior to carrying out any pipe bursting. The purpose of this measure is to avoid the migration of any potentially hazardous materials in the pipes that may be released during pipe bursting into soil and groundwater, and to ensure the health and safety of construction workers and the public by reducing potential exposure. Material removed from the pipes before pipe bursting shall be characterized, handled, stored, and disposed of in accordance with the requirements of Mitigation Measure K.1e, above.

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<tr>
<td>Public Works Department, Construction Contractor's Representative and Environmental professional</td>
<td>Prepare contingency plan for sampling and analysis of unidentified potentially hazardous substances.</td>
<td>Prior to commencement of grading or construction or any other soil disturbing activities.</td>
</tr>
<tr>
<td>Construction Contractor and/or its environmental professional; Public Works Department</td>
<td>Prepare procedure for emptying and testing pipe contents for City review and approval. Once approved, implement procedure</td>
<td>Prior to commencing pipe bursting procedure</td>
</tr>
</tbody>
</table>

Turnstone Consulting, T185 Proposed Final Master EIR

Modesto Wastewater Master Plan Update March 1, 2007
**PUBLIC HEALTH AND SAFETY: CONTAMINATED SOILS AND DEMOLITION: Mitigation Measures**

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<td>Public Works Department, Construction Contractor's Representative and Environmental professional</td>
<td>Retain environmental professional to conduct pre-demolition surveys and report findings to City. Implement abatement as required by environmental professional.</td>
<td>Conduct survey prior to issuance of any construction contract and implement abatement prior to demolition of the structure.</td>
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K.3. As a condition of approval for any demolition permit for a structure or facility potentially containing lead or asbestos under the proposed project, a lead-based paint and asbestos-containing survey shall be performed at the structure or facility by a qualified environmental professional. Also, any major modification to structures constructed prior to 1980 shall require a similar lead and asbestos survey for those portions of the structure to be modified. Based on the findings of the survey, all loose and peeling lead-based paint and identified asbestos hazards shall be abated by a certified contractor in accordance with local, state, and federal requirements. The findings of the survey shall be submitted to the City.

Other hazardous materials and wastes generated during demolition or renovation activities, such as fluorescent light tubes and mercury switches, shall be managed and disposed of in accordance with applicable universal and hazardous waste regulations. Federal and state construction worker health and safety regulations shall apply to demolition activities, and any required worker health and safety procedures shall be incorporated into the contractor's specifications for the project. The requirements of Mitigation Measures K.1c through K.1f shall also apply.
MODESTO CITY COUNCIL  
RESOLUTION NO. 2007-179  

A RESOLUTION APPROVING THE 2007 WASTEWATER MASTER PLAN, WITH ADDENDA (PHASE 1 - COLLECTION SYSTEM AND PHASE 2 - TREATMENT SYSTEM) AS COMPLETE  

WHEREAS, Council had approved contracts with Carollo Engineers to update the City’s Wastewater Master Plan (WWMP), and  

WHEREAS, the WWMP was divided into two major components with Phase 1 focusing on the Wastewater Collection System and Phase 2 concentrating on the Wastewater Treatment and Disposal System, and  

WHEREAS, the WWMP serves as a roadmap in identifying wastewater infrastructure needed to serve both existing and future users via build-out of the City’s planned sewer service area, and  

WHEREAS, having a current and comprehensive WWMP is a critical step in keeping ahead of the replacement requirements of an aging infrastructure system and the pressures of expanding urban growth, and  

WHEREAS, WWMP has identified a Capital Improvement Program for both Wastewater Collection and Treatment Facilities that will be required for the build-out of the City’s Sewer Service Area, and  

WHEREAS, Carollo Engineers has completed the 2007 Wastewater Master Plan, with Addenda,  

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the 2007 Wastewater Treatment Master Plan, with Addenda (Phase 1 - Collection System and Phase 2 - Treatment System) as complete.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of March, 2007, by Councilmember O’Bryant, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Olsen, Mayor Ridenour

ATTEST:  
JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By  
SUSANA ALCALA WOOD, City Attorney
WHEREAS, Sections 8-1.904 of the Modesto Municipal Codes authorizes the Council by resolution to establish Capital Facilities Fees ("CFF"), and

WHEREAS, since the inception of the CFF Program, multiple fee rate programs and policies relating to the administration of CFF have been established, and

WHEREAS, on January 24, 2006, the Council adopted Resolution No. 2006-61 combining the policies mentioned above and general CFF administrative guidelines into one document, called Capital Facilities Fees Policies and Procedures ("CFF Policies and Procedures"), and

WHEREAS, it may be necessary and beneficial to revise or modify the CFF Policies and Procedures from time to time, and

WHEREAS, current CFF exemption policy for replacement and reconstruction of non-residential and multi-family residential use structures permits applicants to expand square footage by no more than ten percent (10%) to receive a CFF exemption, and

WHEREAS, current CFF exemption policy for replacement and reconstruction of non-residential and multi-family residential use structures requires applicants expanding square footage by more than ten percent (10%) to pay full CFF based on the square footage of the entire structure, and

WHEREAS, it is recommended that the CFF exemption policies for the replacement and reconstruction of all non-residential and multi-family residential use
structures be modified to require CFF payment to be made on the incremental difference in total square footage of new construction,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby amends the CFF Policies and Procedures as follows and incorporated herein by reference:

Section 3.D.2.h. of the CFF Policies and Procedures read as follows:

For new developments, when a structure is demolished and a new structure is built, an exemption is appropriate for the structure that was destroyed provided:

Residential exemption: Any replacement or reconstruction of a residential structure that has been destroyed or demolished, provided that the building permit for reconstruction is obtained within two (2) years after the building was destroyed or demolished except to the extent that additional units are created and replacement or reconstruction is limited to residential use only.

Multi-family Residential: The payment of CFF will be exempt for the rebuilding of any multi-family residential structure that has been destroyed or demolished if both of the following conditions are met:

1. The square footage of the rebuilt structure is equal to or less than the square footage of the destroyed or demolished structure, and
2. The number of residential units in the rebuilt structure is equal to or less than the residential units that were contained in the destroyed or demolished structure.

Non-residential exemption: The payment of CFF will be exempt for the rebuilding of any non-residential structure that has been destroyed or demolished if both of the following conditions are met:

1. The square footage of the rebuilt structure is equal to or less than the square footage of the destroyed or demolished structure, and
2. The use of the rebuilt structure is the same as the destroyed or demolished structure.

If Condition #2 is met, and the square footage increases, then CFF shall be paid on only the incremental square footage increase.

BE IT FURTHER RESOLVED that Section 3.D.2.h. of Resolution No. 2006-61 is hereby amended effective upon adoption of this resolution, and all other provisions of
Resolution No. 2006-61 not in conflict with this resolution shall remain in full force and effect.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of March, 2007, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Olsen, Mayor Ridenour

ATTEST: ____________________________

JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ____________________________

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-181

A RESOLUTION APPROVING AN AMENDED ADVANCED FUNDING AGREEMENT FOR THE TIVOLI SPECIFIC PLAN AREA BETWEEN THE CITY OF MODESTO, ON THE ONE HAND, AND RUSSELL A. NEWMAN, PROFESSIONAL LAW CORPORATION, TOM TROMBETTA, AND SHERRY TROMBETTA, ON THE OTHER HAND, FOR THE PREPARATION OF A FACILITIES MASTER PLAN, INFRASTRUCTURE FINANCE PLAN, AND FOR FORMATION OF A COMMUNITY FACILITIES DISTRICT FOR THE TIVOLI SPECIFIC PLAN AREA, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDED AGREEMENT

WHEREAS, Russell A. Newman, Professional Law Corporation, Tom Trombetta, an Individual, and Sherry Trombetta, an Individual ("Applicant"), have agreed to advance funds necessary to prepare a Facilities Master Plan ("FMP") and Infrastructure Finance Plan ("IFP"), and for formation of a Community Facilities District ("CFD") for the Tivoli Specific Plan Area, and

WHEREAS, the parties agreed to enter into an Amended Advanced Funding Agreement for the Tivoli Specific Plan Area by and between the City and the Applicant relating to advances made and to be made by the Applicant to the City, and providing for potential reimbursement to the Applicant if and when certain funds from the Tivoli CFD become available, a copy of which is attached as Exhibit A,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Amended Advanced Funding Agreement for the Tivoli Specific Plan Area between the City of Modesto, on the one hand, and Russell A. Newman, Professional Law Corporation, Tom Trombetta, and Sherry Trombetta, on the other hand, is hereby approved.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Amended Advanced Funding Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
AMENDED ADVANCED FUNDING AGREEMENT
FOR THE TIVOLI SPECIFIC PLAN AREA

THIS AMENDED ADVANCED FUNDING AGREEMENT FOR THE TIVOLI SPECIFIC PLAN AREA (this “Agreement”), dated as of _________, 2007 (“Effective Date”), is entered into by and between the CITY OF MODESTO, a municipal corporation of the State of California (“City”), on the one hand, and RUSSELL A. NEWMAN, a Professional Law Corporation, and TOM TROMBETTA, an individual and SHERRY TROMBETTA, and individual (collectively the “Applicants”), on the other hand.

RECITALS:

A. Applicants have legal interests in real property located within the Tivoli Specific Plan Area (“Specific Plan”) shown in Exhibit A attached hereto and incorporated herein by this reference, and are interested in pursuing development of properties in the Specific Plan.

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

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

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

E. Collectively applicants are prepared to deposit with the City the amounts needed to fund as set forth in the Scope plus 30% for staff time and expenses in order to provide the City with an initial source of funds with which to pay expenses expected to be incurred in connection with the Project. Additional deposits will be provided by Applicants, as required by the City. Applicants desire to share in said costs in order to facilitate Applicants’ ability to secure development entitlements for and annexation of Applicants’ properties.

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

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

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

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. Applicants agree to pay all costs of preparing, processing and approving the FMP/IFP.

   b. On or about January 9, 2007, Applicant Russell A. Newman, PLC (“Newman”) executed an Advanced Funding Agreement with the City. On or about December 5, 2006, Newman deposited an initial deposit of $300,000 to fund Task 1 as identified in the Scope (“Initial Deposit”). On or about January 10, 2007 City issued a Notice to Proceed to its Consultant to proceed with Task 1 on a time and materials basis. The Initial Deposit will be held in trust by the City and used solely for the purposes set forth in this Agreement.

   c. Prior to Council consideration of this Agreement, Applicants shall deposit with the City their proportionate shares of the remainder of the Estimated Costs, excluding costs for formation of the CFD, based on the percentages and in the amounts shown on Exhibit C attached hereto (“Supplemental Deposit”). The Supplemental Deposit includes 30% for staff time and expenses. The Supplemental Deposit will be held in trust by the City and used solely for the purposes set forth in this Agreement. Upon receipt by the City of the Supplemental Deposit and all documents deemed necessary by the City to proceed with the Project, the City will commence work on the Project on a time and materials basis and will provide a Notice to Proceed to its Consultant to...
proceed with all remaining Tasks. In connection therewith, the City has either retained, or will retain, the consultants that the City determines necessary or convenient to assist it with the Project and, if the City determines to proceed with the formation of the CFD, to assist it in connection therewith and with the possible issuance of bonds.

After the Initial Deposit and Supplemental Deposit have been expended on the Project, Applicants shall make additional advances to the City as provided by subparagraph (e), below, until the Project has been completed or terminated, and all costs associated with the Project have been fully paid.

d. The consultants shall submit invoices to the City for payments based on work completed. Such invoices will be promptly sent by the City to the Applicants, who will have five (5) business days to challenge the work performed. The City will in good faith consider the position of the Applicants prior to approving payment for the invoice. Applicants understand and agree that City shall have the right, in its sole discretion, to approve and pay all such consultant invoices, and may do so without obtaining Applicants' approval.

Applicants shall make additional advances to the City within ten (10) business days following receipt from the City of a request for an additional advance to the cover the costs referred to herein. Any additional advances shall be made by Applicants based on the proportionate share that each party paid toward the original deposits ("Additional Advances"). The percentage shares for purposes of making additional advances are set forth in Exhibit C. In the event that any Applicant does not deliver its share of the Additional Advances to the City within this ten (10) business day period, the City will notify the other Applicant and offer the other Applicant the opportunity to deposit an amount equal to the missing share of the Additional Advances, then the reimbursement percentages will be adjusted accordingly. If no Applicant provides the Additional Advance, then City will have no obligation to proceed with any activity relating to the Project.

An Applicant may notify the City at any time, in writing, of its intention to abandon the Project. Within ten (10) business days of such notice City shall instruct its consultants to cease work immediately unless within that ten (10) business day period another Applicant offers to and does pay all funding costs which would have been paid by the Applicant who withdraws. The Applicants shall be responsible for all costs and expenses incurred by the City or any City consultant or advisors relating to the Project until City issues this cease work notice.

c. Within 60 calendar days after issuance of a cease work notice, City agrees to return to Applicants all unexpended amounts of the Initial Deposit, Supplemental Deposit and any subsequent deposits which exceed all costs and expenses incurred by City relating to the Project.

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

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


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

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

c. Pursuant to the City’s CFD Policies and Procedures, the Applicants 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 Applicants do 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 Applicants may notify the City at any time, in writing, of their intention to abandon the formation of the CFD or the issuance of bonds. Upon receipt of such notice, the City shall instruct its consultants to cease work as soon as practicable. The Applicants shall be responsible for all costs and expenses incurred by the City or any City consultant or advisor relating to the proposed formation of the CFD and/or bond issuance until work with respect to the proposed formation or bond issuance ceases following the receipt of the Applicants’ notice of abandonment. Within 60 calendar days after receipt of the Applicants’ notice of
abandonment, City agrees to return to Applicants all unexpended amounts of any advances which exceed all costs and expenses incurred by City relating to the Project.

4. **Reimbursement Procedure.** If the CFD is formed and bonds are issued, bond proceeds in excess of the amount determined by the City’s District Administrator to be required in order to administer the CFD, and 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 Applicants for the amounts that the Applicants have advanced to the City in connection with this Agreement.

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 Applicants 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 Applicants are insufficient to fully reimburse the City for all of its direct and indirect costs, the Applicants shall promptly pay to the City the amount of the deficiency in accordance with the percentages set forth in Exhibit C.

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 Applicants, and the City shall not be required to pay interest on any amount required to be refunded pursuant to this Agreement. The City shall issue refunds or reimbursements, if any, in accordance with the percentages set forth in Exhibit C.

5. **Abandonment of the Project.** Applicants understand that, subject to the satisfaction of all applicable legal requirements, the decision to review, process, prepare or approve the proposed Project, shall be each in the sole discretion of the City. No provision of this Agreement shall be construed as a promise, warranty or agreement by the City to review, process, prepare or approve the proposed Project. The City shall have no liability to Applicants for a decision not to review, process, prepare or approve the proposed Project.

6. **Abandonment of Proposed CFD.** Applicants understand that, subject to the satisfaction of all applicable legal requirements, the decision to form the CFD and the decision to issue bonds shall be each in the sole discretion of the City. No provision of this Agreement shall be construed as a promise, warranty or agreement by the City to form the CFD or to issue bonds. Should the proceedings to form the CFD be abandoned for any reason, the City shall provide written notification of such abandonment to Applicants and shall return to Applicants all unexpended amounts of the Initial Deposit (and any subsequent deposits) which exceed all costs and expenses incurred by the City relating to formation of the CFD. Said monies shall be returned within 60 days of the issuance of the written notice of abandonment. Except for such reimbursement, the City shall have no liability to Applicants for a decision not to form the CFD or issue bonds.

7. **Indemnification and Hold Harmless.** Applicants hereby assume the defense of, and indemnify and save harmless, the City and each of its officers, directors and employees, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of or arising out of any acts or omissions of Applicants or any of the Applicants’ 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 Applicants or their
consultants, except for any action, damages, claims, losses or expenses arising out of the sole
negligence or willful misconduct of the City, its officers, directors, employees or agents.

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

Applicant: RUSSELL A. NEWMAN, Professional Law Corporation
1020 Tenth Street
Modesto, CA 95354
Attention: Dave Romano
Phone: (209) 521-9521
Facsimile: (209) 521-4968

and

Cal-Pacific
c/o Reininga Corporation
456 Montgomery Street, Suite 1000
San Francisco, CA 94104

and

Tom Trombetta and Sherry Trombetta
3941 Roselle Avenue
Modesto, CA 95355
Phone: (209) 551-5555
Facsimile: (209) 551-8868

City: City of Modesto
1010 Tenth Street, Suite 6100
Modesto, California 95354
Attention: IFP Administrative Officer
Phone: 209-577-5211
Facsimile: 209-571-5128

Each party may change its address for delivery of notice by delivering written notice of such
change of address to the other party.

9. Assignment. The Applicants may not assign their interests in this Agreement without
the prior written consent of the City, which consent shall not be unreasonably withheld. Any
assignment or attempt to assign this Agreement without the prior written consent of City shall be
deemed null and void as of the date of the purported assignment. All covenants, stipulations, and
agreements in this Agreement shall bind any such representatives, successors and assigns.
10. **Severability.** If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent permitted by law.

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

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

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

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

15. **Singular and Plural; Gender.** As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

16. **Termination.** This Agreement shall terminate and be of no further force and effect on the third anniversary of the date of this Agreement unless expressly amended by the parties; provided, however, that the Applicants’ obligations under Section 7 shall survive the termination and the City’s obligation to provide reimbursement in accordance with Section 4 for expenses incurred prior to the termination date shall also survive termination.

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

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

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

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

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

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

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

24. **Prior Agreement.** The parties acknowledge that on or about January 9, 2007, City and Newman entered into a contract for the same or similar work as contemplated by this Agreement (“Prior Agreement”). As of the Effective Date of this Agreement, this Agreement shall supersede the Prior Agreement and said Prior Agreement shall be automatically terminated. The parties further agree that to the extent any conflict exists between this Agreement and the Prior Agreement, the terms and conditions of this Agreement control.
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. 2007-____, adopted by the Council of the City of Modesto on the ____ day of ________________, 2007, and Russell A. Newman, PLC, Tom Trombetta and Sherry Trombetta have caused this Agreement to be executed in duplicate, as of the Effective Date first written above.

CITY OF MODESTO, a municipal corporation

By: ________________________________
    GEORGE W. BRITTON, City Manager

ATTEST:

By: ________________________________
    JEAN MORRIS, City Clerk

APPROVED AS TO FORM:
SUSANA ALCALÁ WOOD, City Attorney

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

RUSSELL A. NEWMAN, Professional Law Corporation

By: ________________________________

Name: ______________________________

Title: ______________________________

By: ________________________________

Name: ______________________________

Title: ______________________________

TOM TROMBETTA, an individual

By: ________________________________

Name: ______________________________

Title: ______________________________

SHERRY TROMBETTA, an individual

By: ________________________________

Name: ______________________________

Title: ______________________________
Exhibit "B"

Harris & Associates
Scope of Work
For Task Order No. 4
Tivoli Development Project
Preparation of the Facilities Master Plan
and Infrastructure Financing Plan
December 27, 2006

The following describes Harris and Associates' (Harris) approach and level of effort for this scope of work. There are four sub consultants on this project; West Yost and Associates for Water; Carollo Engineers for Wastewater; Omni Means for Traffic; and Stantec for Storm Drainage. The scopes of work for each of the sub consultants are shown in Exhibits A through D. The cost estimate for Harris' hours and the sub-consultants are summarized in Exhibit E. Harris' hourly rates are shown in Exhibit F. In addition, Goodwin Consulting Group will prepare the necessary documents for the Community Facilities District. That fee is included in Exhibit D.

The following work will be performed on a time and materials (four sub-tasks):

- Task 4.1 reviews the technical studies associated with the project's Final EIR and defines the obligation (benefit and burden) that each acre of land within the development will have for infrastructure improvements;
- Task 4.2 produces the infrastructure financing plan for the build out of the Tivoli development and specifically sets the financing for the Capital Improvement Projects that are triggered by the development and anticipated during the first 10 years. The City and developer will define the phasing of development and the costs as identified in Task 4.1;
- Task 4.3 prepares of the Facilities Master Plan for the proposed development.
- Task 4.4 establishes the Community Facilities District formation.

Task 4.1 – Preparation of a Benefit and Burden Analysis

The City will provide all of the technical studies prepared for the project's Final EIR, and Harris will review the required data on land uses that are anticipated in the Tivoli Specific Plan Area. Harris will collect from the developer, with the City's help, this land use data in electronic format. The land use data will include the development layout, irrigation areas (potable water demand), land uses, acreage, dwelling units, square footage of non-residential building space, pavement areas, and planned layout of the arterial streets and internal street network, which will be the responsibility of the project on and off-site infrastructure, as outlined in the project's Specific Plan and Draft EIR. Harris will also review the Draft Environmental Impact Report to determine all recommended mitigation measures.

Harris will describe each type of capital facility that has been and will need to be constructed to serve the Tivoli Specific Plan Area. This data will be given to each of the sub-consultants to prepare the necessary reports to support the development of the Infrastructure Finance Plan.
These sub-consultants’ reports will tier off the work completed for the Draft EIR by the City, and will include conceptual layouts and cost estimates of the infrastructure needed to support build-out of the development.

Based on the existing technical studies for the EIR and the new studies to support the IFP, Harris will prepare a Benefit and Burden Analysis. This analysis will define the infrastructure and cost burden that each land use will receive from the infrastructure that will be included in the IFP and detailed in the Facilities Master Plan (FMP). It will also identify the cost burden that each acre of land will have towards public facility improvements, by land use, at build-out of the development area. The benefit and burden analysis will also identify those projects that will need to be funded up-front by the developer in order to allow the development to proceed regardless of how the developer chooses to phase the construction of the project. This analysis will not define how these costs will be paid for. The analysis will be prepared for the entire development at build-out. As the project is further defined, if a phased Benefit and Burden Analysis is proposed, additional scope and consultant fees will be required.

**Traffic Assessment – Omni-Means, Ltd.**
Based on provided traffic model updated by Downling and Associates, Omni-Means will perform a “select link” analysis to identify traffic improvements required to mitigate the Tivoli development impact. These improvements will be determined based on existing deficiencies and the proportion of total improvements needed for new development phasing. Omni-Means will also prepare cost estimates for these mitigation projects, including cost per square foot for right-of-way acquisition. The traffic fee will be developed and applied on a cost per trip generation rate for each land use. Additionally, possible alternative funding sources will be reviewed and evaluated.

**Water Capacity Study – West Yost associates (WYA)**
Based on provided information regarding land use, roadway alignments, etc. WYA will model the proposed water system for project build-out. WYA will modify the existing water system hydraulic model to be representative of the new water demands of the project. This model will then be used to evaluate the potential hydraulic impacts of adding the new water demands required to serve the project on the City’s existing water system. If the City’s existing water system cannot meet the City’s minimum water system design criteria with the increased demands, then WYA will make recommendations for whatever new water supply sources and/or water system infrastructure facilities will be required to mitigate the hydraulic impacts of the Project for both build-out and project phasing. WYA will prepare an estimate of the probable construction costs for the infrastructure required to provide adequate supply.

**Wastewater – Carollo Engineers**
Based on provided land use information, Carollo will update the hydraulic model to reflect changes in planning assumptions that have occurred since they completed the 2005 Final Wastewater Capacity Study. Carollo will revise needed sewer improvements to reflect changes in planning assumptions. The collection system and WWTP improvements will also be revised as necessary to accommodate growth based on revisions to the hydraulic model and updates to the WWTP Master Plan currently being prepared by Carollo. Carollo will develop probable construction cost estimates to reflect changes in the Capacity Study.
Storm Drain - Stantec

Based on provided land use information, existing studies, and Developer provided grading plans and detention basin plans and inverts, Stantec will define drainage sub-basin areas and perform hydrologic evaluations to determine 10-year and 100-year discharges that will be generated by the development at build-out. Stantec will additionally provide peer review of the proposed dual use detention basin to access conformance to existing City guidelines.

Harris will participate in one (1) City Council presentation associated with this task, as well as three (3) meetings with staff and the developer. Harris will also set and attend meetings related to each infrastructure analysis with the sub consultants and various City departments as necessary. The Benefit and Burden analysis will define water, sewer, traffic, park, storm drainage and public and government facilities impacts.

Harris will provide ten (10) copies of the Draft Benefit and Burden Analysis for review by the City staff. Once written comments have been received, at the City’s direction, a final draft will be prepared for review by the developers. At this point, Harris will try to reach consensus among the parties in order to proceed with a facility cost summary that all agree is appropriate. Twenty (20) final copies, including 1 electronic copy, will be provided to the City once all final comments have been received and incorporated.

Harris will assist the City in the preparation of the City Council staff report associated with the presentation of the Tivoli Development Benefit and Burden Analysis.

Estimated Level of Effort and Costs for Task 4.1:

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<th>Hours</th>
<th>Costs</th>
<th>Meetings in Scope</th>
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<td>460</td>
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<td>180</td>
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Deliverables for Task 4.1

10 copies of the draft Benefit and Burden Analysis
10 copies of a final draft of the Benefit and Burden Analysis
20 copies of the final Benefit and Burden Analysis
1 electronic copy of the final Benefit and Burden Analysis.
Task 4.2 – Infrastructure Finance Plan

After the Benefit and Burden analysis is completed and prior to beginning the Infrastructure Finance Plan or Facilities Master Plan, Harris will meet with the developer and the City to determine how all of the infrastructure project costs will be paid. These payment methods include: 1) Developer “build and dedicate”, 2) condition of approval on the development mapping, 3) defined points within a development agreement, 4) part of a land secure financing district and/or 5) paid for by the development impact fees for the Tivoli development.

Harris will meet with the developer(s) to set project phasing. Harris, the sub-consultants and the City will build upon the Benefit and Burden analysis, and shall meet with and proceed with the coordination of all Finance Plan Consultants, including City CFD staff, the Appraiser, and Bond Counsel (assumed to have separate contracts with the City) regarding assumptions upon which the Tivoli Development Project IFP shall be performed.

The purpose of the IFP will be to clearly describe what is expected to occur with regard to land uses, infrastructure costs and financing. This is an iterative process that will require consensus building among all of the stakeholders. Harris will play an integral role in generating this consensus.

The IFP will define the financing details related to water, sewer, storm drainage, traffic, public facilities and parks. For those portions of the infrastructure that are associated with impact fees being prepared by Harris or the CFD being prepared by the City, a cash flow analysis will be provided defining when each project is anticipated and can be funded.

Harris will prepare a Draft Infrastructure Finance Plan based on the Technical Analyses performed by the Sub-consultants to include for each program: a project detail sheet; the project description, the itemized project costs, the capital improvement program (CIP) numbers; a priority list of projects, and cash flow projections based upon estimated revenue from fees and debt financing.

Upon approval of the draft plan, Harris will assist City staff in two (2) City Council presentations for the IFP. The first presentation will be a public meeting to present the IFP and receive comments. The second presentation will adopt the IFP and associated Development Impact Fees for Tivoli.

Harris will assist the City in the preparation of all required City Council staff reports, resolutions and public notices associated with the adoption of the IFP.

Harris will provide ten (10) copies for City staff review. At the City’s direction, Harris will complete a final draft to be presented to stakeholders.
Estimated Level of Effort and Costs for Task 4.2:

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Deliverables for Task 4.2

10 copies of the draft Infrastructure Finance Plan
10 copies of a final draft of the Infrastructure Finance Plan
20 copies of the final Infrastructure Finance Plan
1 electronic copy of the final Infrastructure Finance Plan.

Task 4.3 - Facilities Master Plan

Harris will prepare the Facilities Master Plan, which includes the following:

- Introduction
- Sanitary Sewer System
- Storm Drainage System
- Construction Phasing
- Opinion of Probable Cost (shown in iFP)
- Circulation System
- Potable Water System
- Parks (provided by City)

Harris will prepare the "Tivoli Facilities Master Plan". It will incorporate all of the information provided by the Sub-consultants related to infrastructure requirements. This task assumes that no aerial or field surveying is required but will be available from the other work being completed by the developer. If survey information is not available, then an additional task to provide this service will be needed.

The document will also include:

- Mitigation Measures from the EIR for Tivoli Specific Plan.
- Implementation and Funding
- Amendment Process.

This scope of work assumes that thirty (30) sheets of drawings will be created during this process.
Harris assumes that the adoption of the FMP will occur as part of the IFP process discussed in Task 4.2.

Ten (10) copies of the 30% design level drawings will be submitted to the City for review. The 30% submission would include all drawings anticipated to be submitted and would include alignments and planned locations of all facilities. Once the City has submitted written comments to Harris, 90% drawings will be completed. Ten (10) copies of the 90% drawings will be submitted to the City for final review. The 90% submission would include all alignments for roads and pipes including face of curb, edge of pavement, existing right-of-way, future right-of-way, and existing buildings, profiles for all roads and pipes including slopes, and elevation call-outs, cross-section of roads including lane widths, landscaping widths and sidewalk widths, intersection details including lengths of turn lanes, lane configurations, face of curb, edge of pavement, existing right-of-way, future right-of-way, and any existing buildings and location of any planned detention basins, parks, schools, and any other pertinent facilities. The 90% would also include all notes, all call-outs, any details that are to be incorporated such as curb and gutter, sidewalk, etc. or reference to the City's design standards.

Twenty (20) copies of the final drawings, including an electronic copy, will be provided to the City when all comments have been addressed.

Task 4.3 assumes 4 meetings with the City and/or developers to discuss the drawings.

**Estimated Level of Effort and Costs for Task 4.3:**

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**Deliverables for Task 4.3**

10 copies of the 30% level drawings of the Facilities Master Plan
10 copies of a 90% level drawings of the Facilities Master Plan
20 copies of the final Facilities Master Plan
1 electronic copy of the final Facilities Master Plan

**Task 4.4 - Community Facilities District**

Harris will manage the formation of the Community Facilities District.
A. Goodwin Consulting Group, Inc. (GCG) will serve as special tax consultant to assist the City of Modesto (City) in the formation of a Mello-Roos Community Facilities District (CFD) that will fund public improvements and public services required to serve the Tivoli project. GCG will meet with City staff, property owners, the City’s financial advisor, bond counsel and other members of the financing team to compile data, and to discuss the structure and components of the Mello-Roos cash flow analysis.

This task will include:

(i) Determining the initial boundaries of the CFD and future annexation areas both inside and outside existing City limits
(ii) Identifying proposed land uses, public facilities to be financed, annual storm drain and landscape maintenance costs, anticipated absorption rates, and timing and number of bond issues
(iii) Discussing assumptions to be used for the initial allocation of special taxes to land uses within the CFD and reviewing the advantages and disadvantages associated with various allocation methods
(iv) Evaluating the potential for separate CFDs, improvement areas or tax zones based on the objectives of the City and developers, and
(v) Coordinating with the financial advisor regarding the anticipated bond structure, including special tax/debt service escalator, bond interest rate, short-term reinvestment rate, capitalized interest, reserve fund, and other features that may affect the size of bond issues and the corresponding annual debt service.

B. Mello-Roos Cash Flow Analysis: GCG will use the information compiled to prepare an analysis of the annual cash flow of the CFD. The analysis will identify the maximum special tax that will be needed to maintain required debt service coverage on bonded indebtedness issued on behalf of the CFD.

In addition, the cash flow analysis will

(i) Estimate the special tax burden on undeveloped property based on a given absorption scenario
(ii) Determine the size of the initial and subsequent bond sales taking into consideration minimum value-to-lien requirements set forth in state law and City policy, and
(iii) Evaluate the increased bonding capacity that is created from an escalating special tax and debt service or other unique bond structure.

GCG will present the cash flow analysis at a second meeting and discuss alternatives that the working group would like analyzed. Subsequent iterations of the analysis will be prepared based on feedback from City staff, affected property owners, the financial advisor, bond counsel and other members of the working group. Ultimately, through review and discussion of each alternative, the team will select a special tax structure, which GCG will incorporate in the Rate and Method of Apportionment of Special Tax outlined below.

C. Rate and Method of Apportionment of Special Tax: Based on the special tax structure selected pursuant to Task B-2 above, GCG will prepare the Rate and Method of
Apportionment of Special Tax (RMA), which will serve as the official special tax formula for the CFD. The RMA will provide detail and direction as to how the special tax should be levied in future years to ensure adequate revenues are available for timely repayment of debt service on bonded indebtedness issued by the CFD. The RMA will be included as an exhibit to the Resolution of Intention to Form the CFD, which will be adopted by the City Council as part of the first set of actions taken towards forming the CFD.

In addition to providing guidance relative to the annual levy of special taxes in the CFD, the RMA will provide some or all of the following items:

- Identification of the maximum special tax for each special tax category, including each category of developed and undeveloped property
- Provision for a back-up special tax or alternate mechanism to be used to maintain maximum special tax revenues in the event that land uses change in future years
- A detailed prepayment formula that will provide flexibility for a property owner to prepay all or a portion of the special tax obligation after some or all bonds have been issued for the CFD
- If additional property is expected to annex into the CFD, a description of the “catch-up tax” that will apply to annexing parcels to equalize the cumulative special tax burdens (if applicable)

D. **Contributions and Review of Other CFD Formation Documents:** In coordination with Harris, the City, and Stakeholders, GCG will review, prepare and contribute to other documents required in the CFD formation proceedings. Specifically, GCG will prepare the CFD Report required, pursuant to Section 53321.5 of the Government Code, to be filed with the City Clerk prior to the public hearing. GCG will also review all CFD formation documents and, based on results of the cash flow analysis, assist in calculating the maximum bond authorization and appropriations limit for the CFD. GCG will also ensure that the CFD boundary map is consistent with the areas expected to be included in the CFD when the maximum special tax and/or bonding capacity is calculated.

E. In preparation for the issuance of bonds, GCG will review the bond purchase agreement, fiscal agent agreement and/or bond indenture to assure that the flow of special tax revenues and interest earnings as set forth in these documents are consistent with assumptions used in the Mello-Roos cash flow analysis.

In addition, GCG will review the preliminary official statement and, at the request of the financial advisor or underwriter, prepare one or more of the following:

- A table demonstrating special tax coverage based on the projected stream of revenues compared to annual debt service on the bonds
- If multiple landowners/developers are included within the CFD, a table showing diversification of special tax burdens among the major participants
- Incorporating information provided in the appraisal, a table identifying the value-to-lien ratios for each assessor parcel or major property owner
• A table summarizing a sample tax bill for individual residential units within each tax category to demonstrate compliance with City policy pertaining to the total effective tax rate
• Any other tables requested by the financial advisor and/or underwriter to assist in disclosure related to the special tax formula

F. Certification of Special Tax Revenues and Acceptance of Associated Liability: GCG will execute the Certificate of Special Tax Consultant, which commits to bond buyers that the minimum debt service coverage will be maintained by application of GCG’s tax formula regardless of land use changes that occur within the CFD in future years.

Task 4.4 assumes 4 meetings with the City and/or developers.

Estimated Level of Effort and Costs for Task 4.4:

<table>
<thead>
<tr>
<th>Firm</th>
<th>Hours</th>
<th>Costs</th>
<th>Meetings in Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harris - PM</td>
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<td>$24,780</td>
<td>4 w/staff</td>
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<tr>
<td>Goodwin Consult Grp</td>
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<td>$45,000</td>
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<td>Mark-ups on Subs</td>
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<td>$4,500</td>
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<tr>
<td>Totals</td>
<td>212</td>
<td>$74,280</td>
<td></td>
</tr>
</tbody>
</table>

Deliverables for Task 4.4

See items A through E above.
December 13, 2006

Mr. Jim Bissell, P.E.
Program Manager
Harris & Associates
2850 North Tracy Blvd., Suite 200
Tracy, CA 95376


Dear Jim:

As requested, the following is West Yost Associates’ (WYA) revised Scope of Work to provide Harris and Associates (HA) with limited engineering services related to evaluating the potential hydraulic impacts of the approximately 480 acre, Tivoli Development Project (Project) on the City of Modesto’s (City’s) existing water system. As part of these engineering services, we will provide HA with support services during preparation of the Facilities Master Plan (FMP), and provide HA with input during their preparation of the Infrastructure Financing Plan (IFP) and water system design, as limited and defined in our proposed Scope of Work.

Through our discussions with HA, it is understood that WYA will begin work on this Project after the Draft EIR has been publicly issued. Therefore, WYA has based the proposed scope and corresponding work efforts on the proposed land uses, acreages, roadway alignments, and other Project components as defined in the Draft EIR and Specific Plan. If any component in the Draft EIR or Specific Plan are modified, this will be considered a change in scope, and will require additional analysis and a budget augmentation prior to the completion of any related work products. WYA’s proposed Scope of Work is as follows:

**BASIC SCOPE OF WORK**

**Task 1: Update the Hydraulic Model and Hydraulically Analyze the System Demands of the Proposed Project (provides input to HA Task 4.1)**

Based on the complete buildout of the Project water system defined in the Draft EIR (no Project phasing will be evaluated in this task), WYA will model the proposed Project water system, and modify the City’s existing water system hydraulic model to be representative of the new water demands of the proposed Project. These hydraulic model system modifications will include planned distribution system pipelines and other water facilities, and the major connections to the City’s existing water system necessary to meet the Project’s demands. Projected demands will be distributed throughout the appropriate Project area, according to the projected land use demands.
Using this modified hydraulic model of the City's existing water system, WYA will evaluate the potential hydraulic impacts of the increased water demands and various fire flow analyses from the Project on the City's existing water system. The potential hydraulic impacts of adding the new water demands required to serve the Project on the City's existing water system will be evaluated for such criteria as, supply availability, delivery pressure, maximum water velocity and head loss in pipelines under various demand conditions (including fire flows), system pressures and system redundancy/reliability. If the City's existing water system cannot meet the City's minimum water system design criteria with the increased demands of the Project, then WYA will make recommendations for whatever new water supply sources and/or water system infrastructure facilities (consistent with the previously identified capital facilities required to serve buildout of the City's Sphere of Influence), that will be required to mitigate the hydraulic impacts of the Project. Such water facilities could include any or all of the following: new wells, water storage tanks, booster pump station, additional and/or up-sized connections into the existing City system and additional transmission pipelines, distribution and/or looping pipelines. No Project phasing will be evaluated in this task.

This initial analysis of the hydraulic impacts on the City's existing water system will then be provided to HA for review and integration with the initial technical evaluations of the other utility consultants (storm water, wastewater and transportation). Based on HA's overall Project review, there may be slight infrastructure alignments or other modifications that will be required of the recommended water system to accommodate the Project's overall infrastructure utility needs. If required, these minor water system modifications will be made, the water system re-analyzed, and infrastructure recommendations modified, if appropriate. A budget of 16 hours has been allocated to make changes requested by HA. If for whatever reasons HA's requested changes will require WYA to expend an effort beyond the 16 hour budget, a budget augmentation will be required and must be approved by HA prior to the commencement of any work efforts beyond the 16 hours.

WYA will also prepare an estimate of the probable construction cost for the water system infrastructure required to provide adequate supply, system pressures and storage at buildout of the Project to connect to the City's existing water system. This cost estimate will be tied to the San Francisco Construction Cost ENR Index.

Work Product: A 10 to 15 page Technical Memorandum (TM) describing the water system evaluation criteria, planned sources of supply, and the conceptual water system infrastructure layouts and facilities required to provide water service for buildout of the proposed Project and/or to mitigate the hydraulic system impacts of the proposed Project on the City's existing water system, will be prepared as the work product of this task (design of these facilities is outside the scope of these provided services). WYA will provide HA with a PDF electronic copy of both the draft and final TMs. Three (3) hard copies of the Draft TM, and three (3) hard copies of the Final TM will also be provided to HA for distribution to the City. WYA will also meet once with HA or the City to receive comments to the draft TM before the final TM is issued.

This technical work is intended to provide the City with an analysis of the ability of the City's existing water system to continue to provide water at adequate pressure and flow to existing customers, with the incremental additional system demands of the entire proposed Project. It does not include an evaluation of water supply availability or reliability in response to SB 610 or 221.
Task 2: Hydraulic Modeling Refinements, Project Phasing and Infrastructure Financing (provides input to HA Task 4.2)

Similar to the hydraulic analysis conducted for Project buildout as described in Task 1 above, if required, each individual Project Phase will be hydraulically evaluated to identify the water system infrastructure required to serve each Project Phase. For budgetary purposes, WYA has assumed that this Project will be evaluated in three phases which are to be specifically identified and provided to WYA by HA. Additional hydraulic analyses beyond the three initial Phasing plans provided to WYA by HA can be evaluated if a budget augmentation and schedule extension is authorized and provided in writing to WYA.

Based on our hydraulic analysis conducted in this task, WYA will prepare a short TM to address the Mitigation Fee Act (Government Code sections 6600, et seq., AB 1600), and provide the specific facts required to support the Infrastructure Finance Plan (IFP, to be prepared by HA). If requested by HA, WYA will also conduct additional hydraulic analyses up to the limited budget assumed for this task. For budgetary purposes, WYA has budgeted a total of 200 hours of engineering effort to conduct the Project phasing analysis, prepare the TM, respond to HA’s comments on submitted work products and/or conduct additional, requested hydraulic modeling. Any work efforts beyond the budgeted 200 hours will only be performed after a budget augmentation has been approved by HA.

Work Product: WYA will provide HA with a PDF electronic copy of both the draft and final TMs. Three (3) hard copies of the Draft TM, and three (3) hard copies of the Final TM will also be provided to HA for distribution to the City. WYA will also meet once with HA or the City to receive comments to the draft TM before the final TM is issued.

Task 3: Provide Design Level Support (provides input to HA Task 4.3)

If requested by HA, WYA will provide additional Facilities Master Plan engineering services beyond the conceptual system layouts provided in Tasks 1 and 2, to supplement the water pipeline and water facility design efforts of HA. Because the level of required engineering support is unclear at this time, we have set aside a budget of $17,500 for a senior water systems design engineer to assist HA on an “as-needed” basis. This budget corresponds to a total of approximately 80 hours of engineering effort. Any work efforts beyond the 80 hours of budgeted time will require a budget augmentation to be approved prior to any work being conducted.

Compensation

WYA will perform the Basic Scope of Work described in Tasks 1 through 3 on a time and materials basis, at the billing rates set forth in WYA’s Billing Rate Schedule, for a not-to-exceed budget of $75,000. The estimated level of effort and costs associated with performing each task are summarized below.
Table 1. Estimated Level of Effort and Associated Costs

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
<th>Labor, hours</th>
<th>Estimated Costs, dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Update Model and Analyze Buildout System</td>
<td>180</td>
<td>28,000</td>
</tr>
<tr>
<td>2</td>
<td>Hydraulic Modeling Refinements, Phasing Plan and Infrastructure Financing</td>
<td>200</td>
<td>29,500</td>
</tr>
<tr>
<td>3</td>
<td>Provide Limited Water System Design Support</td>
<td>80</td>
<td>17,500</td>
</tr>
<tr>
<td></td>
<td>Project Contingency (@ 0%)</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Total Basic Scope of Work (Tasks 1-3)</td>
<td>460</td>
<td>$75,000</td>
</tr>
</tbody>
</table>

Any additional services not included in this Scope of Work will be performed only after receiving written authorization from HA and a corresponding budget augmentation.

Please do not hesitate to call me if you have any questions or need additional information.

Sincerely,

WEST YOST ASSOCIATES

Gerry Nakano, P.E.
Project Manager

Attachment: 2007 Billing Rate Schedule
# 2007 Billing Rate Schedule

**(Effective January 6, 2007 through December 31, 2007)**

<table>
<thead>
<tr>
<th>Position</th>
<th>Labor Charges (dollars per hr)</th>
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<tbody>
<tr>
<td>Principal/Vice President</td>
<td>198</td>
</tr>
<tr>
<td>Engineering Manager</td>
<td>187</td>
</tr>
<tr>
<td>Principal Engineer/Scientist</td>
<td>171</td>
</tr>
<tr>
<td>Senior Engineer/Scientist</td>
<td>154</td>
</tr>
<tr>
<td>Associate Engineer/Scientist</td>
<td>138</td>
</tr>
<tr>
<td>GIS Analyst</td>
<td>138</td>
</tr>
<tr>
<td>Engineer II/Scientist II</td>
<td>121</td>
</tr>
<tr>
<td>Engineer I/Scientist I</td>
<td>105</td>
</tr>
<tr>
<td>Construction Manager III</td>
<td>149</td>
</tr>
<tr>
<td>Construction Manager II</td>
<td>138</td>
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<tr>
<td>Construction Manager I</td>
<td>127</td>
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<tr>
<td>Resident Inspector III</td>
<td>116</td>
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<tr>
<td>Resident Inspector II</td>
<td>107</td>
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<tr>
<td>Resident Inspector I</td>
<td>94</td>
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<tr>
<td>Sr. Designer/Sr. CAD Operator</td>
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<tr>
<td>Designer/CAD Operator</td>
<td>88</td>
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<tr>
<td>Technical Specialist II</td>
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<tr>
<td>Technical Specialist I</td>
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<td>Engineering Aide</td>
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<td>Administrative IV</td>
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<tr>
<td>Administrative II</td>
<td>66</td>
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<tr>
<td>Administrative I</td>
<td>55</td>
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</tbody>
</table>

Hourly labor rates include Direct Costs such as general computers, system charges, telephone, fax, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.

Outside Services such as vendor reproductions, prints, shipping, and major WYA reproduction efforts, as well as Engineering Supplies, Travel, etc. will be billed at actual cost plus 15%.

Mileage will be billed at the current Federal Rate.

Subconsultants will be billed at actual cost plus 10%.

Computers are billed at $25 per hour for specialty models and AutoCAD.

A Finance Charge of 1.5 percent per month (an Annual Rate of 18 percent) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

Billing rates apply to all computers and equipment, whether owned or rented by WYA, and to all employment categories including regular full-time, part-time, limited term and contract personnel as defined in WYA's Employee Handbook.

*This schedule will be updated annually*
(Effective January 6, 2007 through December 31, 2007)*

SURVEYING AND EQUIPMENT CHARGES

<table>
<thead>
<tr>
<th>Position</th>
<th>Labor Charges (dollars per hr)</th>
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<tbody>
<tr>
<td>GPS, 3-Person</td>
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<tr>
<td>GPS, 2-Person</td>
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<tr>
<td>GPS, 1-Person</td>
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<tr>
<td>Survey Crew, 2-Person</td>
<td>221</td>
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<tr>
<td>Survey Crew, 1-Person</td>
<td>165</td>
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</table>

EQUIPMENT CHARGES

<table>
<thead>
<tr>
<th>Equipment</th>
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</thead>
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<tr>
<td>pH Meter</td>
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<tr>
<td>Automatic Sampler</td>
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<td>600</td>
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<tr>
<td>Transducer/Data Logger</td>
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<td>173</td>
</tr>
<tr>
<td>Hydrant Pressure Gage</td>
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<td>43</td>
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<tr>
<td>Hydrant Pressure Recorder (HPR)</td>
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<td>173</td>
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<tr>
<td>Hydrant Wrench</td>
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<td>27</td>
</tr>
<tr>
<td>Pitot Diffuser</td>
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<td>113</td>
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<tr>
<td>Well Sounder</td>
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<td>113</td>
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<tr>
<td>Water Quality Multimeter</td>
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<tr>
<td>Thickness Gage</td>
<td>—</td>
<td>60</td>
</tr>
</tbody>
</table>

*This schedule will be updated annually
March 15, 2006

Harris & Associates
2850 North Tracy Boulevard, Suite 200
Tracy, California 95376

Attention: Mr. Miller

Subject: Tivoli Proposal for Engineering Services

Dear Mr. Miller:

Below is Carollo Engineers, P.C. (Carollo) scope of work to evaluate the City of Modesto's (City) Collection System and Wastewater Treatment Plant (WWTP) impacts resulting from the 480 acre Tivoli development.

SCOPE OF WORK

Task 1: Engineering Support during the Environmental Impact Report (EIR) Process

Carollo will provide the EIR consultant with information related to the collection system or WWTP improvements required to support the Tivoli development. For budgetary purposes, a total of 60 hours of engineering effort has been assumed, including attendance at up to two meetings with the EIR consultant. Work beyond the budget for 60 hours of engineering effort will only be performed after receiving written approval of a budget augmentation.

Task 2: Revise Hydraulic Model and Analyze Collection System and Wastewater Treatment Plant Impacts

Carollo completed the 2005 Final Wastewater Capacity Study for the Proposed Tivoli Development Project (Capacity Study). This work is supplemental to previously completed work and assumes that the City of Modesto or Harris & Associates (HA) will provide the necessary development layout and land use data to complete this revision to the Capacity Study. The Capacity Study developed sewer improvements to serve the proposed project. The study also identified improvements in the collection system and at the WWTP necessary to serve future growth, including the Tivoli development. This task includes:

- Update the hydraulic model to reflect changes in planning assumptions that have occurred since the completion of the Capacity Study.
- Revise sewer and lift station improvements to reflect changes in planning assumptions
- Revise conceptual sewer layout.
- Revise the collection system and WWTP improvements necessary to accommodate growth based on revisions to the hydraulic model and updates to the WWTP Master Plan currently being prepared by Carollo.
- Update probable construction cost estimates to reflect changes in the Capacity Study.
- Evaluate the impacts to existing facilities if the Tivoli development is constructed in phases. It is assumed that HA will provide Carollo with timelines for constructing the different phases of the Tivoli development. Carollo will evaluate and propose timelines for building sewer facilities.

Consistent with the master plan, revisions to the hydraulic model will not include modeling sewer mains smaller than 10-inches in diameter. Design, including development of plan/profile drawings is
outside the scope of these services. It is assumed that HA will provide available ground elevations of the development and areas north of Claratina Avenue.

Attend meetings with HA, the City and project applicant. Carollo assumed attendance by the project manager and an engineer at up to two (2) meetings and one (1) City Council or Finance Committee meeting.

Task 3: Park Fee

Not applicable to this scope of work.

Task 4: Infrastructure Finance Plan

Provide calculations to support HA’s completion of the Infrastructure Finance Plan (IFP). Information will include project summary table, project descriptions, costs, and prioritization of projects. Provide input during preparation of the IFP and comment on draft IFP. Prepare for and attend meetings with HA, the City and project applicant. Carollo assumed attendance by the project manager and an engineer at up to two (2) meetings. For budgetary purposes, Carollo budgeted a total of 128 hours of engineering effort for assisting in the preparation of the IFP and attending meetings.

Task 5: Facilities Master Plan Review

Review Facilities Master Plan prepared by others. For budgetary purposes, Carollo budgeted a total of 24 hours of engineering effort for reviewing the wastewater collection system and treatment plant component of the Facilities Master Plan.

DELIVERABLE

Carollo will provide HA with a draft, final draft, and final report summarizing Tasks 1, 2 and 4. This report will be brief and serve as an amendment to the Capacity Study. Five (5) hard copies and a ‘pdf’ file of each submittal will be provided.

ESTIMATED FEE

The fee estimate to complete Tasks 1 through 5 is attached.

Should you need additional information, or have questions regarding this proposal, please do not hesitate to call us.

Sincerely,

CAROLLO ENGINEERS, P.C.

Mike J. Britten, P.E. Tony A. Akel, P.E.
Partner Associate

Enclosures: Fee Estimate
City of Modesto

Tivoli Development Facility Master Plan

Fee Estimate for TO No. 1

<table>
<thead>
<tr>
<th>Task Description</th>
<th>Hours by Classification</th>
<th>Costs</th>
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<tbody>
<tr>
<td></td>
<td>Senior Professional</td>
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<tr>
<td></td>
<td>Lead Project Professional</td>
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<td></td>
<td>Project Professional</td>
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<tr>
<td></td>
<td>Assistant Professional</td>
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<td></td>
<td>Senior Technician</td>
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<tr>
<td></td>
<td>Support Staff</td>
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<tr>
<td></td>
<td>Total Hours</td>
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<td></td>
<td>Labor Costs</td>
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<td></td>
<td>Total Cost</td>
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<td>Task 1   EIR Engineering Support</td>
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<tr>
<td>Task 2   Revis Improvements</td>
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<td>$34,879</td>
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<td>Task 3   Park Fee (Not Applicable)</td>
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<td>$0</td>
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<tr>
<td>Task 4   Infrastructure Finance Plan</td>
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<td>$22,850</td>
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<td>Task 5   Facilities Master Plan Review</td>
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<tr>
<td>Total</td>
<td>90  80  142  66  16  18  412</td>
<td>$75,150</td>
</tr>
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</table>
December 7, 2006

Jim Bissell
Harris and Associates
2850 North Tracy Boulevard, Suite 200
Tracy, CA 95376


Dear Jim:

In response to your request, OMNI-MEANS is pleased to submit this proposal to assist Harris and Associates in the preparation of the traffic element of the Tivoli Facilities Master Plan and Infrastructure Financing Plan. We have reviewed your overall scope of work for the project as well as the Traffic Impact Assessment for the Tivoli Specific Plan and understand your overall goals for this project.

The attached presents our Project Understanding, Scope of Work, schedule and budget.

Thank you for the opportunity to be a part of the Harris team and we look forward to working with you and the other team members on this key development project in the City of Modesto.

Sincerely,

OMNI-MEANS, Ltd.
Engineers & Planners

Martin R. Inouye
Senior Vice President

MRI/SAM
P3570scp005.doc
PROJECT UNDERSTANDING

Upon review of the Tivoli Specific Plan, its EIR and its traffic assessment, OMNI-MEANS has an understanding of the proposed development project and its off-site traffic impacts and required transportation mitigation measures. In review of the traffic assessment, in addition to the identification of needed phased on-site transportation infrastructure, much off-site improvements will likely be needed as well. Over 60 intersections and many roadway segments were studied in the traffic assessment identifying many traffic impacts requiring mitigation. Additionally, with a study of interim conditions in 2012 and 2017, traffic impacts on phased project conditions are also understood such that improvement phasing and financing can better be planned.

Our prior experience in updating the “Street Projects Fee” for the Capital Facilities Fee Program of the City of Modesto will also be an immense help in identifying preliminary designs of required mitigation improvements and in the preparation of the cost estimates. Already 15 of the 60 intersections understudy for the Tivoli project have been studied within the Citywide traffic fee update.

To prepare the benefit and burden traffic analysis, the Citywide traffic model updated by Dowling and Associates is required and will need to be provided to OMNI-MEANS. From the updated traffic model, through “select link” analysis, the portion of Tivoli traffic on the area street system can be identified as well as its proportion to the total increase in new development traffic. Connecting this analysis with the associated costs for transportation improvements, a preliminary fee can then be estimated.

Once the benefit and burden of the Tivoli project has been determined from the above analysis, using the development phasing analysis, a transportation finance plan can then be determined. Through the project phasing and the estimation of the generation of traffic fees, one can then determine the adequacy of funds from the fee program to timely fund and construct improvements when they are in fact needed. If sufficient funds cannot be generated prior to the need of all of the required transportation and other infrastructure improvements, then a menu of other financing options, like assessment district or CFD financing, need to be explored, studied and negotiated to finalize a specific finance plan.
SCOPE OF WORK

TASK 1  PROJECT COORDINATION, ENVIRONMENTAL ASSISTANCE AND MEETINGS.

1.1  Project Management Services.
OMNI-MEANS will perform the following project coordination services:

- OMNI-MEANS will attend four (4) Staff/Steering Committee meetings, including the Project Initiation Meeting and two (2) hearings total before either Planning Commission and/or City Council, as required.

- Coordinate and monitor progress of the study and design elements for conformance with City and State standards with other infrastructure elements of the Facilities Master Plan and Financing Plan.

- Prepare and present study progress and findings at Staff/Steering Committee, Task Force and/or hearings throughout the project, including final adoption public hearings before the Planning Commission and City Council.

- Participate in, as directed, Staff/Steering Committee (SC) meetings, composed of representatives of City officials, staff and project developers. These meetings with staff and the SC will occur on a regular basis throughout the study process.

TASK 2  DATA COLLECTION AND PROJECT IDENTIFICATION

2.1  Data Collection.
The following data collection effort relative to the preparation of the facilities master plan and financing plan will be conducted to obtain a firm understanding of the current traffic fees that are collected within the City.

- Obtain the updated Citywide traffic model prepared by Dowling and Associates associated with the preparation of the traffic impact assessment for the Tivoli Specific Plan and EIR.

- Review assumptions utilized in the City's traffic model, such as trip generation rates for various types of land uses and Levels of Service for City roadway facilities.

- Review any updates to City design standards for the preparation of the preliminary improvement plans and their associated cost estimates.
2.2 Existing Deficiencies and Transportation Mitigation Improvement Requirements.
Based on the Traffic Impact Assessment prepared by Dowling and Associates, OMNI-MEANS will use the traffic impact analysis to determine existing deficiencies and required phased transportation mitigation improvements. Therefore, required improvements will be identified for existing, 2012, 2017 and 2025 traffic conditions.

TASK 3 PROJECT COST ESTIMATES, TRAFFIC MODELING AND FEE CALCULATION.

3.1 Preliminary Cost Estimates of Mitigation Improvements.
Opinions of cost for required mitigation improvements identified in Task 2.2 will be developed using current local unit costs. For the mitigation improvements, available aerial photography will be used to identify major features that could drastically influence the cost estimates. Right-of-way cost estimates will also be developed based on the City’s experience with right-of-way acquisition and rough estimates of needed right-of-way. Right-of-way costs will be estimated from assessor information on per square foot basis and not on the basis of property appraisals.

These unit cost estimates are intended to provide only a “ballpark” cost that can be reasonably used for capital improvement programming, but should not be considered detailed cost estimates based on engineering design.

3.2 Review Alternative Funding Sources, including the CFF Fee.
Within this task, OMNI-MEANS will review and evaluate with the City the issue of fee credit for mitigation improvements already in the City’s CFF fee program and the likelihood of obtaining Federal and/or State transportation funding assistance for these proposed improvement projects. Based on this review and discussion with SunCOG, the City will provide OMNI-MEANS direction, identifying the allocation of cost that will be funded through other sources, including the Capital Facilities Fee for Street Projects and other State and Federal sources, if any. Understanding the presumption of use of other funding sources, this task will identify the net balance of transportation improvement cost needing to be covered by the Tivoli financing plan.

3.3 Calculate Tivoli Traffic Fee.
Based on the analyses conducted in Tasks 3.1 through 3.2, an appropriate cost allocation methodology for the mitigation improvements list will be determined and calculated. OMNI-MEANS would use and run, as required, the (Dowling) updated traffic model to document projected deficient LOS locations throughout the City transportation system and establish benefit/burden of the Tivoli project through the use of the “select-link” module of the Citywide traffic model. Through the use of this “select link” analysis, the benefit/burden of mitigation improvements assigned to the Tivoli project as a proportion of the projected overall increase in traffic can be calculated. Upon identification of a per trip cost, a Tivoli traffic fee for each land use category will be calculated by applying the cost per trip determined above to the assigned trip generation rate (DUE) for each land use.

3.4 Tivoli Development Financing Plan, including Phasing of Capital Improvement Needs.
Preparing the Tivoli traffic facilities improvements program is critical to the successful implementation of needed circulation improvements. Our approach is to identify the improvement cost estimates for the entire plan area, including the anticipated threshold of need and timing, and then meet with the City Finance Department to review anticipated revenues over time. This will provide the ability to identify potential surpluses and shortfalls over time through the development of the project. Once this is completed we will then determine the overall economics and feasibility of funding the required facilities with the available resources within the fiscal constraints and recommended financing options. With Tivoli development
phasing information, adequacy of fee funding can be determined during the interim phasing years of 2012 and 2017. If Tivoli traffic fee generation does not keep ahead or at minimum, keep pace to fully fund needed transportation improvements, other funding options will be explored, including community facility district (CFD) or assessment district financing.

TASK 4 - TECHNICAL REPORT DOCUMENTATION, INCLUDING MITIGATION IMPROVEMENTS, BENEFIT/BURDEN ANALYSIS AND FEE CALCULATION, AND APPROVAL HEARINGS.

This Technical Report will present and document all transportation improvements needs, associated costs, prioritized list of improvements and the traffic impact fee methodology. The report will provide a clear discussion of how the fees were calculated, the facilities and costs included in the calculation, and the use of other funding sources, if any.

For the preliminary cost estimates, at minimum, the following documentation will be provided:

- Project description
- Project location map
- Assumptions
- ROW requirements
- Estimate with the following information:
  - Line item description
  - Unit of measure
  - Quantity
  - Unit price
  - Total item price
  - Contingency
  - Design costs
  - Construction administration costs

The report will also identify the cost allocation methodology used to determine the fee amounts. Detailed display maps will be prepared graphically illustrating this data. All appropriate revisions obtained, as a part of previous Staff/SC meetings will be incorporated into the final version of this comprehensive Technical Report Documentation that will fully document the entire process. The report will be submitted as a part of the overall Tivoli Facilities Master Plan and Infrastructure Financing Plan to City staff for their review and comment prior to presentations to the Planning Commission and City Council.

4.2 Public Approval Hearings.
To enact the Tivoli Facilities Master Plan and Infrastructure Financing Plan, City Council must vote for their adoption. Up to two (2) public hearings have been budgeted. Presentations will be in support of Harris and Associates to City Council and will be as directed by City staff and Harris and Associates. If needed, OMNI-MEANS will be available to participate in additional public hearings and/or meetings as directed and additionally authorized in writing.
SCHEDULE AND BUDGET

OMNI-MEANS is prepared to work within a six month project schedule to achieve a draft technical documentation report. Beyond the preparation of the draft report, OMNI-MEANS will work within a schedule as set forth to meet and finalize the Facilities Master Plan and Infrastructure Financing Plan.

Our budget for the above scope of work is estimated at $83,460. Beyond the four (4) City staff/Steering Committee meetings and the two (2) public hearings, any additional meetings or analysis not defined in our scope of work are considered additional and will require additional written authorization and budget to be performed.

Proposal Worksheet

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Total Budget: $83,460
EXHIBIT D-1

SCOPE OF WORK
FOR ASSISTANCE WITH THE
TIVOLI STORM DRAINAGE FACILITY PLAN

The Consultant will assist Harris and Associates by preparing the storm drainage element of the Tivoli Facility Plan. The Tivoli Specific Plan area consists of approximately 480 acres located in the Roselle/Clarabel Comprehensive Planning District in northeast Modesto. Stantec has been working with the City of Modesto to prepare other documents that will be valuable resources in completing the Facility Plan. The documents include:

- Draft Storm Drainage Master Plan, July 2003
- Draft Northeast Area Offsite Watershed Storm Drainage Evaluation, March 2005
- Tivoli Specific Plan Storm Drainage Assessment, January 2006

A significant amount of background data has been collected and is included in these documents. However, the documents have all been prepared at a broader level for the overall Tivoli Specific Plan area, with no breakdown of the project into smaller storm drainage components or areas. It will be important for the Facility Plan to incorporate additional onsite detail to ensure that each sub-area within the Tivoli Specific Plan will be served by the overall storm drainage system and provide a complete listing and cost for trunk storm drainage facilities. Services to be provided by the Consultant as a part of the Storm Drainage Facility Plan include the tasks outlined below.

Task 1 Data Collection
The majority of the field reconnaissance and data collection has already been completed as a part of the reports listed above. However, the following information will be needed from the developer to lay out a drainage infrastructure plan: grading plan and detention basin grades and inverts.

Task 2 Hydrologic Evaluations
Initial definition of drainage sub-basin areas will be performed based on land use areas, grading plan, topographic mapping, and the current site plan dated November 16, 2005. A combination of empirical calculations (Rational Equation) and hydrologic modeling (HEC-HMS) will be completed to determine 10-year and 100-year discharges that will be generated by development of the overall Specific Plan Area at buildout.

Task 3 Drainage Infrastructure Plan
A storm drainage infrastructure plan will be formulated for the overall Specific Plan Area, with storm drains being sized to convey a 10-year storm discharge and detention basins being sized for a 100-year routed storm volume. According to the draft Storm Drainage Master Plan (SDMP) prepared by Stantec dated October 2006, the Specific Plan Area is coincident with Sub-basin 98. The terminal elements of the storm drainage facilities that may serve this sub-basin have been initially formulated and include a single detention basin, a pump station, and a force main discharge to the MID Lateral No. 6 to the north per the draft SDMP.

Tivoli Storm Drainage Facility Plan
December 8, 2006
The drainage infrastructure developed as part of the Facility Plan will replace the infrastructure identified in the Draft SDMP. This is likely to include additional detention facilities in order for gravity systems to be used to drain to them, though additional pumping facilities will also be needed to serve additional detention basins. One or more of the detention basins that will be proposed to serve the Specific Plan Area are expected to be dual use facilities. The drainage infrastructure plan prepared for the Specific Plan Area will include storm drainage provisions to serve each land use parcel; however, onsite storm drainage infrastructure for individual parcels will not be developed and are assumed to be the responsibility of individual developers to design and construct. Unique requirements associated with the storm drainage solutions (such as the execution of a drainage agreement with MID) will be identified. Stantec will work with MID staff to determine if they have any special requirements that should be factored into the cost of storm drainage infrastructure.

The storm drainage system will also need to include the elements of an initial phase of the offsite improvements recommended in the Northeast Area Offsite Watershed Storm Drainage Evaluation (March 2005). Interim provisions to accommodate offsite runoff derived from the remaining undeveloped portion of the Roselle/Clarabel Comprehensive Planning District and offsite runoff derived from areas east of the railroad (in the absence of a constructed initial phase of offsite improvements) will not be included in the drainage infrastructure plan and are considered to be an onsite cost.

The Drainage Infrastructure Plan will include a conceptual storm drainage system. The conceptual layout will include pipe and detention pond locations and sizes. It is assumed that the developer's engineer will provide a grading plan. Through the program manager, the Consultant will adjust alignments of storm drainage facilities to better conform with other infrastructure elements. This scope of work includes the initial infrastructure plan and one revision. Additional revisions will be provided under a separate scope of work.

Should there be significant land use modifications that result in changes to the site hydrology, additional technical analysis will be required under a separate scope of work.

Task 4 Preliminary Opinion of Probable Cost
A preliminary opinion of probable cost will be prepared for the construction of the storm drainage elements contained in the drainage infrastructure plan. The preliminary opinion of probable cost will include quantity take-offs and costs for individual items of construction and estimated costs for required right-of-way, drainage easements, and drainage agreements. Markups of these costs will also be included to accommodate requirements for design and planning, construction management, program implementation and contingency.

Task 5 Phase 1 Analysis
A Phase 1 task is included to determine the storm drainage requirements associated with the possible development of a portion of the Specific Plan Area as a first phase of implementation. The elements of the drainage infrastructure plan for the overall Specific Plan Area that will need to be constructed or provided for the Phase 1 development will be identified, as well as any requirements that are unique to Phase 1 implementation.
Task 6 Impact Fee Calculations
Storm drainage impact fees will be calculated for the overall Specific Plan Area on a “per acre” basis for the applicable land use categories based on a “percent impervious” approach that relates proportional funding responsibility to runoff production characteristics. The impact fees will allocate the overall cost of implementation of the drainage infrastructure plan to the various land uses and areas represented on the Specific Plan based on their weighted runoff production characteristics.

Task 7 AB 1600 Assessment (Mitigation Fee Act)
Findings relevant to compliance with provisions of the Mitigation Fee Act will be prepared to support the proposed impact fees.

Task 8 Technical Report
The results of work associated with completing all of the above tasks will be summarized in a Technical Report that will provide written descriptions, maps and calculations that represent and support the elements of the drainage infrastructure plan for the overall Specific Plan Area. The Technical Report will be submitted at initial Draft, Final Draft, and Final stages of completion. It is anticipated that two months will be needed to complete the Initial Draft Technical Report. The Final Draft and Final Technical Reports will be completed within three weeks of receiving comments.

Task 9 Coordination
Extensive coordination is expected to be required as a component of preparing the Technical Report. Coordination is assumed to include participation in formal meetings with the City and stakeholders scheduled by Harris and Associates and a City Council presentation. Separate meetings with MID staff or Stanislaus County staff may also be needed if they are not included in the stakeholder meetings. A total of six meetings are included in this scope of work.

Task 10 FIP Support
Additional technical support will be provided to the City and Harris and Associates to interpret storm drainage conclusions and priorities to assist the Harris and Associates in preparing a Financing and Implementation Plan for required Specific Plan Area infrastructure.

Task 11 Environmental Impact Report Assistance
The draft Environmental Impact Report (EIR) has been completed by the City’s Environmental Consultant. The Consultant will assist the City and their Environmental Consultant with responding to comments on the hydrology and water quality section of the draft EIR as requested.

Task 12 Dual Use Detention Basin Peer Review
The Consultant will perform a peer review of the proposed dual use detention basin(s) to assess overall conformance with the City’s Dual Use Detention Basin guidelines. This peer review will consist of a memorandum containing specific comments and participation in a meeting, if appropriate.
Fee Estimate
Work described herein will be completed on a time and materials basis for a not-to-exceed fee of $84,000 in conformance with the Billing Rate Schedule provided on Exhibit B.
## Exhibit D-2
Estimated Fees For Harris and Associates
Twinll Storm Drainage Facility Plan

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### Harris & Associates Estimation of Man-hours and Costs for Task 4 of the Modesto Tivoli Development Project

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<td>114</td>
<td>13</td>
<td>72</td>
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<th>Steve</th>
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<th>Alison</th>
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| Totals Tasks 1-4                        |       |     |        |        |         |       | 704,043|

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a Stantec's optional task 5 has been included in these totals
b West Yost Optional Task 6 has been included in this number
c West Yost Optional Task 7 has been included in this number
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EXHIBIT F

Harris & Associates

RANGE OF HOURLY RATES:
DESIGN AND PUBLIC WORKS SERVICE GROUPS

Effective January 1 – December 31, 2006

<table>
<thead>
<tr>
<th>ENGINEERING DESIGN AND PUBLIC WORKS SERVICES GROUPS</th>
<th>HOURLY RATE</th>
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</thead>
<tbody>
<tr>
<td>Jim Bissell, P.E.</td>
<td>$190</td>
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<tr>
<td>Steve Roberts, P.E.</td>
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<tr>
<td>Dennis Anderson, P.E.</td>
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</tr>
<tr>
<td>Alison Bouley, P.E.</td>
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<td>Project Directors</td>
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<td>Project Managers</td>
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<td>Project Engineers</td>
<td>$80-160</td>
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<td>Construction Manager</td>
<td>$120-190</td>
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<tr>
<td>Administration</td>
<td>$50-90</td>
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</table>

Notes:

1. These individuals include professionals and support personnel who might work on Harris projects. Support personnel include technicians and administrative staff.
2. Rates are subject to adjustment due to promotions during the effective period of this schedule. A new rate schedule will become effective and apply to this contract on January 1, 2007.
3. Unless otherwise indicated in the agreement, hourly rates include most direct costs such as vehicle usage and mileage, equipment usage (including computer and telephone), and printing and copying (except large quantities such as construction documents for bidding purposes).
4. Billing rates for independent contractors and hourly employees are determined on a case-by-case basis.
Exhibit "C"

### Anticipated Expenses

<table>
<thead>
<tr>
<th>Benefit Burden</th>
<th>Harris</th>
<th>30% staff time</th>
<th>Subtotal</th>
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<td>4.1 Analysis</td>
<td>$209,428</td>
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<td>4.2 IFP</td>
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<td>4.4 CFD</td>
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<td>$22,284.00</td>
<td>To be funded at a later date</td>
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### Received

<table>
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<tr>
<th>Date</th>
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<th>% of overall expenses</th>
<th>Expenses</th>
<th>Remaining</th>
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<tr>
<td>12/06</td>
<td>37.5%</td>
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3/07 Trombetta | 62.5% | $500,000 |

100% TOTAL FUNDED $800,000

Remaining Unfunded staff time* $18,693

* Note: This is a time and materials contract with Harris which includes an anticipated 30% for staff time. If the additional $18,693 is needed, the applicants will need to then advance additional funds, per the terms of the agreement and the percentages shall be adjusted accordingly.

Updated: 3/20/2007
A RESOLUTION APPROVING AMENDMENT NO. 4 TO THE AGREEMENT BETWEEN THE CITY OF MODESTO AND TURNSTONE CONSULTING CORPORATION FOR THE RESPONSES TO COMMENTS AND THE PREPARATION OF THE FINAL ENVIRONMENTAL IMPACT REPORT AND FOR ADDITIONAL WORK PERFORMED ON THE PREPARATION OF THE DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE TIVOLI SPECIFIC PLAN (FORMERLY ROSELLE NEIGHBORHOOD), AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT IN AN AMOUNT NOT TO EXCEED $202,497

WHEREAS, Dave Romano, P.E/AICP, of Russell A. Newman P.L.C., has applied for a specific plan, referred to as the Tivoli (formerly Roselle Neighborhood) Specific Plan, to allow for the orderly and future development within the approximate 454-acre planning area bounded by Sylvan Avenue on the south, the extension of Claratina Avenue on the north, Roselle Avenue on the east and Oakdale Road on the west, and

WHEREAS, the Tivoli Specific Plan will also involve the following associated entitlements: prezoning to a Specific Plan-Overlay (SP-O) Zone; Annexation of the project site into the City of Modesto including approval by the Local Agency Formation Commission; adoption of a specific plan; a General Plan Amendment to 1) reclassify two sites consisting of approximately 67 acres from Village Residential to Regional Commercial, 2) allow Village Residential designation in TSP to exceed the recommended 5.1 units per gross acre, 3) allow commercial development for the Village Residential designation in TSP to exceed the recommended 4%, 4) allow for the TSP neighborhood center focus that combines a neighborhood park and elementary school, 5) reclassify Claratina Avenue from Oakdale Road to Roselle Avenue from a four-lane Expressway to a Principal Arterial with a Class I bike path, 6) reclassify Sylvan Avenue from east of
Oakdale Road to Roselle Avenue from a Principal Arterial to a Minor Arterial, 7) amend Oakdale Road from Sylvan Avenue to Claribel Avenue as a Principal Arterial to include Class 2 Bike Lanes, one lane on each side of the street; adoption of a Facilities Master Plan and a Infrastructure Finance Plan for the Tivoli Specific Plan area; formation of a Community Facilities District to fund the construction of “backbone” public infrastructure, maintenance of applicable public facilities, and applicable public services; approval of a Development Agreement to guide development within the Tivoli Specific Plan area; and subsequent entitlements, including abandonment of a portion of Mable Avenue, approval of Area Plans, Final Development Plans, tentative maps, Conditional Use Permits, and other City entitlement approvals, and

WHEREAS, Section 21080.1 of the California Public Resources Code requires the City of Modesto, as lead agency, to make a determination of whether an environmental impact report is required for projects, and

WHEREAS, the City has determined that an environmental impact report is required for the proposed Tivoli Specific Plan project and related applications, and

WHEREAS, by Resolution No. 2002-622, adopted on December 10, 2002, the City Council approved a list of environmental service providers, including the firm of Turnstone Consulting Corporation, to assist with the preparation of environmental impact reports and other environmental documents, and

WHEREAS, City staff selected Turnstone Consulting Corporation to prepare the environmental impact report for the Tivoli Specific Plan because of their extensive experience on similar projects in other jurisdictions, and
WHEREAS, the City Council adopted Resolution Number 2005-014 on January 4, 2005, approving an agreement with Turnstone Consulting Corporation for the preliminary work on the Environmental Impact Report for the Tivoli Specific Plan, and

WHEREAS, the City Council adopted Resolution Number 2005-184 on April 26, 2005, approving Amendment No. 1 to the agreement with Turnstone Consulting Corporation for the Biological Study and Traffic Study for the Tivoli Specific Plan, and

WHEREAS, the City Council adopted Resolution Number 2005-502 on October 11, 2005, approving Amendment No. 2 to the agreement with Turnstone Consulting Corporation for the preparation of the Draft Environmental Impact Report on the Tivoli Specific Plan, and

WHEREAS, the City Council adopted Resolution Number 2006-156 on March 28, 2006, approving Amendment No. 3 to the agreement with Turnstone Consulting Corporation for the preparation of a market analysis on the proposed regional commercial development for the Tivoli Specific Plan Environmental Impact Report, and

WHEREAS, City staff has negotiated a scope of work for a fourth amendment to the contract, to provide the responses to comments and the preparation of the Final Environmental Impact Report for the Tivoli Specific Plan in an amount not to exceed $162,797.

WHEREAS, during preparation of the Draft EIR issues arose that required additional analysis and services beyond the scope of Amendment No. 2 to the Agreement, requiring a further amendment to the Agreement for additional work performed on the Draft EIR in the amount of $33,200.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves Amendment No. 4 to the Agreement between the City of Modesto and Turnstone Consulting Corporation to provide the responses to comments and the preparation of the Final Environmental Impact Report for the Tivoli Specific Plan in an amount not to exceed $169,297 and for additional tasks performed related to the preparation of the Draft EIR for the Tivoli Specific Plan, in the amount of $33,200 for a total of $202,497, copies of which are on file in the City Clerk’s office.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute Amendment No. 4 to the Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST Jean Morris

JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: Susana Alcala Wood, City Attorney
A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PURCHASE OF LIQUID CHLORINE AND LIQUID SODIUM HYPOCHLORITE TO PIONEER AMERICAS, LLC OF WALNUT CREEK, CA FOR A TWO (2) YEAR AGREEMENT, WITH THREE (3) ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY, FOR A TOTAL ESTIMATED ANNUAL COST OF $25,205.20.

WHEREAS, the Public Works Department-Water Quality Control (WQC) Division has requested the purchase of liquid chlorine, and

WHEREAS, the Public Works Department-Water Division has requested the purchase of liquid sodium hypochlorite, and

WHEREAS, WQC uses liquid chlorine (CL2) during river discharge season from October 1st through May 31st, and

WHEREAS, liquid chlorine is utilized at the Jennings Road facility to chlorinate and disinfect the City’s final effluent to the San Joaquin River, as required in the City’s permit, and

WHEREAS, the Water Division uses liquid sodium hypochlorite to disinfect the domestic water supply as specified by water purveyors permit issued by the California Department of Health Services, and

WHEREAS, on October 24, 2006, Council approved Resolution No. 2006-662 authorizing the Purchasing Manger to issue a Request for Bid (RFB) for the purchase of liquid chlorine and liquid sodium hypochlorite for the Public Works Department-Water Division and
the Water Quality Control Division for a two (2) year agreement, with three (3) one-year extension options, at the sole discretion of the City, and

WHEREAS, on January 12, 2007, the Purchasing Division issued Request for Bid No. 0607-08 for the purchase of liquid chlorine and liquid sodium hypochlorite to six (6) prospective bidders, of which none were local companies, posted the bid on the City’s web site, and formally advertised as required by law, and

WHEREAS, on February 13, 2007, bids were formally opened in the City Clerk’s office, and six (6) prospective bidders, three (3) chose to respond to the RFB, and

WHEREAS, based on being deemed the lowest responsive and responsible bidder, City staff recommends the award of bid and contract for liquid chlorine and liquid sodium hypochlorite to Pioneer Americas, LLC of Walnut Creek, CA for a two (2) year agreement, with three (3) one-year extension options, at the sole discretion of the City, and

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

WHEREAS, the award of bid and contract for the purchase of liquid chlorine and liquid sodium hypochlorite conforms to the Modesto Municipal Code,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and contract for the purchase of liquid chlorine
and liquid sodium hypochlorite to Pioneer Americas, LLC of Walnut Creek, CA for a two (2) year agreement, with three (3) one-year extension options, at the sole discretion of the City, for a total estimated annual cost of $25,205.20.

BE IT FURTHER RESOLVED that the Purchasing Manager is hereby authorized to issue purchase agreements for the purchase of liquid chlorine and liquid sodium hypochlorite to Pioneer Americas, LLC of Walnut Creek, CA for a two (2) year agreement, with three (3) one-year extension options, at the sole discretion of the City, for a total estimated annual cost of $25,205.20.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

BY: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-184

A RESOLUTION REJECTING ALL BIDS AND AUTHORIZING THE PURCHASING MANAGER TO RE-ISSUE FORMAL REQUEST FOR BIDS (RFB) FOR THE PURCHASE OF WATER QUALITY CONTROL LABORATORY EQUIPMENT (PHASE 1) FOR THE PUBLIC WORKS DEPARTMENT, WATER QUALITY CONTROL DIVISION, AT AN ESTIMATED TOTAL COST OF $342,750

WHEREAS, currently, the Public Works Department, Water Division brings drinking water samples to the Water Quality Control-Lab for testing, and

WHEREAS, the Water Quality Control-Lab also analyzes stormwater and NPDES samples (wastewater and river waters) per permit regulations, and

WHEREAS, some of these samples are sent to an outside lab for analysis, and

WHEREAS, by purchasing new equipment, most of these tests will be performed in-house, reducing expenditures and response time for the Water Division and the Water Quality Control-Lab, and

WHEREAS, the following is a list of equipment that the Water Quality Control Lab plans to purchase during Phase 1:

- Benchtop Gas Chromatograph/Mass Spectrometer (GC/MS)
- Gas Chromatograph
- Inductively Coupled Plasma Mass Spectrometer
- AutoSampler-AutoInjector, and

WHEREAS, with the addition of this equipment and after certification by the Department of Health, staff anticipates future revenues from an increased ability to perform additional tests in-house for other outside divisions, agencies, and cities, and
WHEREAS, on May 2, 2006, Council approved Resolution No. 2006-270 authorizing the Purchasing Manager to issue formal Request for Bids (RFB) for the purchase of water quality control laboratory equipment (Phase 1) for the Public Works Department, Water Quality Control Division, and

WHEREAS, on June 13, 2006, the Purchasing Division issued Request for Bid No. 0506-28 for the purchase of water quality control laboratory equipment, and

WHEREAS, on July 18, 2006, RFB's were formally opened in the City Clerk's office, and

WHEREAS, two (2) companies chose to respond, and

WHEREAS, one company did not include the Bid Acknowledgement, Exhibit A, with their bid submittal, which is a requirement, and

WHEREAS, the company’s bid was disqualified and received no consideration, and

WHEREAS, the second company did not submit pricing using the Addenda Pricing Schedule, Exhibit “B”, and

WHEREAS, the equipment bid was not representative of the laboratory equipment described in the RFB Addenda, and

WHEREAS, the company’s bid was disqualified and received no consideration, and

WHEREAS, staff determined both bids were non-responsive and non-responsible and recommends both bids be rejected, and

WHEREAS, staff recommends the Purchasing Manager be allowed to re-issue a formal RFB for the purchase of water quality control laboratory equipment (phase 1) for
the Public Works Department Water Quality Control Division, at an estimated total cost of $342,750, and

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

WHEREAS, the issuance of a formal Request for Bid for the purchase of water quality control laboratory equipment conforms to code,

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

SECTION 1. The two bids received for the purchase of water quality control laboratory equipment are hereby rejected.

SECTION 2. The Purchasing Manager is hereby authorized to re-issue a formal Request for Bid for the purchase of water quality control laboratory equipment.

SECTION 3. The City Clerk is hereby authorized to call for public competitive sealed bids for the purchase of water quality control laboratory equipment, to be opened in the office of the City Clerk, 1010 Tenth Street, in the City of Modesto. The City Clerk shall be directed to give notice inviting such sealed bids in the time, form, and manner provided by law.

SECTION 4. After the sealed bids are opened, they shall be tabulated and analyzed by the Purchasing Division and a report submitted to Council.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

APPROVED AS TO FORM:

By: ________________________________
Susana Alcala Wood, City Attorney

ATTEST: __________________________
Jean Morris, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-185

A RESOLUTION AMENDING THE FISCAL YEAR 2006-2007 ANNUAL BUDGET

WHEREAS, a monthly financial analysis has been completed and it has been determined that certain adjustments are required to the Annual Budget of the City of Modesto for the Fiscal Year 2006-2007,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that appropriations, revenues, and transfers for the 2006-2007 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 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following votes:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: 

JEAN MORRIS, City Clerk

(seal)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
## Schedule A

### Personnel Department

**Airport Fund Reimbursement**

<table>
<thead>
<tr>
<th>From: General Liability Reserve Acct #7330-800-8000-8003</th>
<th>To: Airport Reserve Acct #6310-800-8000-8003</th>
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### City Manager's Office

**Charter Review**

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<th>From: General Fund Reserve Account #0100-800-8000-8003</th>
<th>To: City Manager Account #0100-020-0201-0235</th>
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### Community Facilities District

**CFD #1998-2/Storm Drain**

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<tr>
<th>From: Contingency Reserve Acct #2670-800-8000-8003</th>
<th>To: CFD Landscape Services Acct #2670-020-0203-0231</th>
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<td></td>
<td>CFD City Services Acct #2670-020-0203-0255</td>
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### Public Works Department

**Project #X549/Reimbursement to Developer**

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<thead>
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<th>From: Project Acct #2691-020-X744-6052</th>
<th>To: Project Acct #2691-020-X549-6030</th>
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A RESOLUTION APPROVING THE PURCHASE OF A BUILDING PERMIT MODULE FOR THE CITY’S INTERACTIVE VOICE RESPONSE (IVR) SYSTEM FROM SELECTRON TECHNOLOGIES OF PORTLAND, OREGON FOR A TOTAL ESTIMATED COST OF $95,000.

WHEREAS, on July 1, 2003, the City Council by Resolution No. 2003-336 authorized the award of bid to Selectron Technologies for an Interactive Voice Response (IVR) System, and

WHEREAS, the Building and Development Services Division of the Community and Economic Development Department and the Information Technology Department are seeking to add a building permits module to the City’s existing Interactive Voice Response (IVR) System, and

WHEREAS, the Building and Development Services Division of the Community and Economic Development Department, the Information Technology Department, and the Purchasing Division of the Finance Department have evaluated a price quote from Selectron Technologies for the building permit module, and

WHEREAS, funds were originally budgeted in 2001 in the Building and Development Services Division operating budget, and then transferred to the reserve fund to allow for the purchase, upgrade and training costs for the Tidemark and IVR systems, and

WHEREAS, funds for the purchase of the IVR system are held in the Information Technology Fund reserve,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the purchase of the Building Permit Module for the City’s
Interactive Voice Response (IVR) System from Selectron Technologies of Portland, Oregon for a total estimated cost of $95,000.

BE IT FURTHER RESOLVED by the Council that the City Manager, or his designee, is hereby authorized to execute a purchase agreement for the purchase of a Building Permit Module for the City’s Interactive Voice Response System from Selectron Technologies of Portland, Oregon for a total estimated cost of $95,000.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-187

A RESOLUTION AMENDING THE FY 2006-2007 OPERATING BUDGET TO TRANSFER $95,000 FROM ACCOUNT NUMBER 7130-800-8000-8003 TO ACCOUNT NUMBER 7130-070-0742-5400 FOR THE PURCHASE OF A BUILDING PERMIT MODULE FOR THE INTERACTIVE VOICE RESPONSE SYSTEM.

WHEREAS, on July 1, 2003, the City Council by Resolution No. 2003-336 authorized the award of bid to Selectron Technologies for an Interactive Voice Response (IVR) System, and

WHEREAS, the Building and Development Services Division of the Community and Economic Development Department and the Information Technology Department are seeking to add a building permits module to the City’s existing Interactive Voice Response (IVR) System, and

WHEREAS, the Building and Development Services Division of the Community and Economic Development Department, the Information Technology Department, and the Purchasing Division of the Finance Department have evaluated a price quote from Selectron Technologies for the building permit module, and

WHEREAS, funds were originally budgeted in 2001 in the Building and Development Services Division operating budget, and then transferred to the reserve fund to allow for the purchase, upgrade and training costs for the Tidemark and IVR systems, and

WHEREAS, funds for the purchase of the IVR system are held in the Information Technology Fund reserve,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby amends the Fiscal Year 2006-2007 operating budget to transfer $95,000 from account number 7130-800-8000-8003 to account number 7130-070-0742-5400.

BE IT FURTHER RESOLVED that the Finance Director, or 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 27th day of March 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By

SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-188

A RESOLUTION AMENDING THE 2006/2007 BUDGET TO APPROPRIATE $23,578 FROM THE PD RECORDS AND SUPPORT DIVISION 0100-190-1921-0110 TO THE INFORMATION TECHNOLOGY NETWORK DIVISION 7130-070-0743-0110 TO FULLY FUND THE REALLOCATION OF ONE SOFTWARE ANALYST II/III

WHEREAS, a Software Analyst II position resides in PD Records and Support Div. (Org. 1921), and

WHEREAS, this position is dedicated to support the Modesto Police Department (MPD) for information technology needs, and

WHEREAS, the request has been made to reallocate one Software Analyst I/II (434) in the PD Records and Support Division (Org. 1921) to one Software Analyst I/II/III (438) in the Information & Technology Department Network Division (Org. 0743)s, and

WHEREAS, this request was reviewed and approved by Police Department management staff, and

WHEREAS, this reallocation request is made based upon departmental needs and changing workload demands, and

WHEREAS, this reallocation request will centralize and standardize Information Technology Department resources, assist in meeting the growing support requirements for the City, and provide the opportunity for career growth for staff assigned to this function, and

WHEREAS, annualized salary and benefits for the Software Analyst II position (Range 434) are currently budgeted in the amount of $98,264 in the PD Records and
Support Division (Org. 1921) and are requested to be transferred to the Information Technology Network Division (Org. 0743) for FY 07-08,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes amending the 2006/2007 budget to appropriate $23,578 from the PD Records and Support Division 0100-190-1921-0110 to the Information Technology Network Division 7130-070-0743-0110 to fully fund the reallocation of one Software Analyst II/II.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-189

ADOPT A RESOLUTION APPROVING A NEW SCHEDULE “A” AGREEMENT TO THE MUNICIPAL MASTER LEASE WITH DELL MARKETING L.P., FOR INFORMATION TECHNOLOGY HARDWARE PRODUCTS AND SERVICES FOR A PERIOD OF 48 MONTHS FOR THE ESTIMATED AMOUNT OF $40,019.88 PER YEAR, AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE, TO EXECUTE THE NEW SCHEDULE “A” AGREEMENT. THE TOTAL AMOUNT OF THE LEASE AGREEMENT IS ESTIMATED AT $160,079.52

WHEREAS, in 1998 the City established a Technology and Equipment Replacement Fund (TERF) for the purpose of replacing obsolete technology equipment, and

WHEREAS, in 1999 the City went through a formal bid process to establish a computer standard throughout the city, and

WHEREAS, Dell Marketing was the lowest responsive and responsible bidder to the formal bid process, and

WHEREAS, in March 2003 the City entered into a Municipal Master Lease Agreement with Dell Marketing L.P. for Information Technology (IT) Hardware Products and Services, and

WHEREAS, in August 2006 the City approved a new Schedule “A” Agreement to the Municipal Master Lease with Dell Marketing L.P. extending the term of the Lease for 48 months, and

WHEREAS, IT views this program as a cost effective measure for the City, emphasizing reduction of the Total Cost of Ownership (TCO) for the City’s technology equipment and helping streamline the City’s technology refresh program that affects all departments, and

WHEREAS, Dell Marketing has been providing personal computers to the City for the past seven years, and

WHEREAS, during that time the City has received Dell contractual pricing by taking advantage of the Western States Contracting Alliance (WSCA) pricing, and

WHEREAS, WSCA is a coalition of fifteen western states which was formed as a means by which participating states could join together to receive cost effective pricing on personal computers based on economies of scale, and
WHEREAS, the City routinely requires replacements, acquisitions and upgrades
to existing city computer equipment inventory, and

WHEREAS, the funding for said computer equipment is approved and budgeted
in the Technology and Equipment Replacement Fund (TERF), and

WHEREAS, the City is desirous of continuing to acquire computer equipment
using the existing Municipal Master Lease Agreement with Dell Marketing L.P. for
Information Technology Hardware Products and Services,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves a new Schedule “A” Agreement to the Municipal Master Lease
Agreement with Dell Marketing L.P. and authorizes the City Manager, or his designee, to
execute a new Schedule “A” Agreement to the Municipal Master Lease Agreement with
Dell Marketing L.P. for Information Technology hardware products and services for a
period of 48 months at an estimated cost of $160,079.52.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who
moved its adoption, which motion being duly seconded by Councilmember Dunbar, was
upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST:  
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

BY:  
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-190

A RESOLUTION APPROVING A REQUEST FROM EVENT PRODUCTIONS AND PUBLICATIONS FOR AMPLIFIED MUSIC AT MANCINI BOWL FOR AN INTERNATIONAL WEDDING FESTIVAL, TO BE HELD ON AUGUST 5, 2007, FROM 11:00 A.M. TO 7:00 P.M.

WHEREAS, staff from the Parks, Recreation and Neighborhoods Department has received a request Event Productions and Publications for amplified music at Mancini Bowl for an International Wedding Festival, to be held on August 5, 2007, from 11:00 a.m. to 7:00 p.m., and

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

WHEREAS, at its March 5, 2007, meeting, the Safety and Communities Committee supported approval of this request,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a request from Event Productions and Publications for amplified music at Mancini Bowl for an International Wedding Festival, to be held on August 5, 2007, from 11:00 a.m. to 7:00 p.m.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

Attest: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
A RESOLUTION APPROVING A REQUEST FROM JOHN BLACK OF JB SPECIAL EVENTS AND PROMOTIONS FOR AMPLIFIED MUSIC AT MANCINI BOWL FOR A MODESTO BLUES FESTIVAL EVENT TO BE HELD ON JUNE 23, 2007, FROM 11:00 A.M. TO 7:00 P.M.

WHEREAS, staff from the Parks, Recreation and Neighborhoods Department has received a request from John Black of JB Special Events and Promotions for amplified music at Mancini Bowl for a Modesto Blues Festival event to be held on June 23, 2007, from 11:00 a.m. to 7:00 p.m., and

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

WHEREAS, at its March 5, 2007, meeting, the Safety and Communities Committee supported approval of this request,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a request from John Black of JB Special Events and Promotions for amplified music at Mancini Bowl for a Modesto Blues Festival event to be held on June 23, 2007, from 11:00 a.m. to 7:00 p.m.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

Attest: 

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING A REQUEST FROM STANISLAUS PRIDE CENTER FOR AMPLIFIED MUSIC AT MANCINI BOWL FOR A STANISLAUS PRIDE DAY, TO BE HELD ON JUNE 30, 2007, FROM 2:00 P.M. TO 8:00 P.M.

WHEREAS, staff from the Parks, Recreation and Neighborhoods Department has received a request from Stanislaus PRIDE Center for amplified music at Mancini Bowl for a Stanislaus PRIDE Day, to be held on June 30, 2007, from 2:00 p.m. to 8:00 p.m., and

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

WHEREAS, at its March 5, 2007, meeting, the Safety and Communities Committee supported approval of this request,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a request from Stanislaus PRIDE Center for amplified music at Mancini Bowl for a Stanislaus PRIDE Day, to be held on June 30, 2007, from 2:00 p.m. to 8:00 p.m.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

Attest: Jean Morris, City Clerk

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-193

A RESOLUTION AUTHORIZING THE PURCHASING MANAGER TO CONDUCT A SOLE-SOURCE PROCUREMENT FOR LEASE/PURCHASE OF A DIAMOND Z 5000 HORIZONTAL GRINDER, WITH PREVENTIVE MAINTENANCE, FOR CITY OF MODESTO COMPOST FACILITY

WHEREAS, the City of Modesto operates a Compost Facility at 7007 Jennings Road, and

    WHEREAS, the operation of the Compost Facility is a critical component of the City’s AB 939 plan, which mandates the reduction of disposal and requires the City to divert 50% or more of its waste from disposal, and

    WHEREAS, a grinder is an essential piece of equipment in producing compost, and

    WHEREAS, the grinder currently used at the Compost Facility has met its life expectancy, is dangerous to operate, cannot process large quantities of mixed paper, and the engine recently failed, and

    WHEREAS, on April 4, 2006, by Resolution No. 2006-193, the City Council authorized the Purchasing Division to issue a Request for Bids (RFB) for the lease/purchase of a horizontal grinder to replace the current tub grinder at the City’s Composting Facility that has become unreliable and costly to keep operational, and

    WHEREAS, based on the observation of various grinders under field conditions, staff developed bid specifications for the RFB, including: a downward turning mill; feed roller that lifts out 90 degrees and locks in place allowing the employees to work without
crouching and eliminating the danger posed by working below the feed roller; and fluid
coupler power transfer system, and

WHEREAS, following the issuance of the RFB and the bidders conference,
Purchasing and Solid Waste staff determined that only one manufacturer, Diamond Z,
could meet these safety/ergonomics and performance specifications in addition to the
other bid specifications, and

WHEREAS, replacement of the existing grinder is critical to compost operations,
and

WHEREAS, funds are budgeted in the FY 2006-2007 Compost Facility Budget
($104,000 in account number 6290-355-5222-0451, Principal Retirement, and $24,000 in
account number 6290-355-5222-0452, Interest Expense) for this purpose, and
WHEREAS, the Citizen’s Advisory Committee on Recycling has recommended that
once the City’s Compost Facility has purchased its new horizontal grinder, which will be
capable of processing mixed paper and other organics along with green waste, the City
should conduct an aggressive public education campaign to encourage residents to put
other organics such as food waste, newsprint, magazines, phone books, junk mail,
computer paper, paper napkins and towels, and cardboard in the green waste container for
composting,

NOW, THEREFORE BE IT RESOLVED, by the Council of the City of Modesto
that the Council hereby authorizes the Purchasing Manager to conduct a sole-source
procurement for lease/purchase of a Diamond Z 5000 horizontal grinder, with
preventative maintenance, for City of Modesto Compost Facility, for a total estimated
cost over 5 years of $600,000.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

(SEAL)
APPROVED AS TO FORM:

By Susana Alcala Wood, City Attorney
A RESOLUTION AMENDING THE FY 06-07 CAPITAL IMPROVEMENT PROGRAM (CIP) TO: REDUCE EXPENDITURES IN PROJECT 8910-310-N441 BY $2,000,000 AND INCREASE EXPENDITURES IN PROJECT 8910-310-P844 BY $2,000,000 FOR CONSTRUCTION OF PHASE 1.2 IN THE TUOLUMNE RIVER REGIONAL PARK GATEWAY PARCEL

WHEREAS, the Parks, Recreation and Neighborhoods Department, on behalf of the Tuolumne River Regional Park Joint Powers Authority began a project to plan for the future development of the Tuolumne River Regional Park (TRRP) when the Joint Powers Authority of the City of Modesto, City of Ceres and Stanislaus County adopted the TRRP Master Plan in December 2001, and

WHEREAS, the Gateway Parcel is one of six planning areas addressed in the TRRP Master Plan, and

WHEREAS, the TRRP Commission envisions the Gateway Parcel to be a high-profile public gathering place close to the commercial centers of Modesto and Ceres and accessible to the rest of the region along major arterial streets and State Route (SR) 99, as defined in the TRRP Master Plan, and

WHEREAS, On February 13, 2007, the Modesto City Council adopted Resolution No. 2007-109 allocating $1,000,000 of Park Funds for the TRRP Gateway Parcel Phase 1.2, and

WHEREAS, on February 13, 2007, the County of Stanislaus also authorized the amount of $1,000,000 to be used for the TRRP Gateway Parcel Phase 1.2, and

WHEREAS, the funding was allocated to project 8910-310-N441, and in order to better reflect the current project account, the monies should be allocated to project 8910-310-P844,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves amending the FY 06-076 Capital Improvement Program (CIP) to reduce expenditures in Project 8910-310-N441 by $2 million and increase expenditures in Project 8910-310-P844 by $2 million.

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 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

Attest: Jean Morris

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-195

A RESOLUTION PRE-AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE AN AGREEMENT FOR CONSULTANT SERVICES WITH MERCER HEALTH AND BENEFITS LLC IN THE AMOUNT OF $48,000.

WHEREAS, the City desires to obtain the services of Mercer Health and Benefits LLC (Mercer) to provide retiree health program design and analysis, and

WHEREAS, the City desires to enter into an Agreement for Consultant Services with Mercer in the total amount of $48,000 which includes professional fees and expenses, and

WHEREAS, Mercer is specially trained, experienced and competent to provide retiree health program consulting for the City, and

WHEREAS, the public interest, economy and general welfare will be served by this agreement,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby pre-authorizes the City Manager or his designee to execute an "Agreement For Consultant Services" with the firm of Mercer Health and Benefits LLC in the amount of $48,000 with respect to providing retiree health program design services.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that said Agreement may be amended, if needed, by mutual consent of the parties, provided that total fees and expenses do not exceed $75,000.
The foregoing resolution was introduced in a regular meeting of the Council of the City of Modesto held on the 27th of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

By Susana Alcala Wood, City Attorney
A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDED EMPLOYMENT AGREEMENT WITH JUDITH E. RAY TO CONTINUE TO SERVE AS DEPUTY CITY MANAGER.

WHEREAS, Judith E. Ray and the City of Modesto entered into an employment agreement on June 7, 2005, under authority of Resolution No. 2005-285, and

WHEREAS, Judith E. Ray has been serving as Deputy City Manager since June 7, 2005, and

WHEREAS, Section 900 of the City's Charter provides that the City Manager of Modesto, California, shall appoint the Deputy City Manager, in the Unclassified Service, to serve at the pleasure of the City Manager for an indefinite term, and may remove the Deputy City Manager at his pleasure, and

WHEREAS, the City desires to enter into an amended employment agreement with Judith E. Ray to continue to serve as Deputy City Manager of the City of Modesto and to provide the terms and conditions by which City shall continue to retain the service of Judith E. Ray at an annual salary of $144,552.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager to sign an amended employment agreement with Judith E. Ray to continue to serve as Deputy City Manager of the City of Modesto. Said amended employment agreement is attached hereto as Exhibit A and incorporated herein by this reference.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

Attest: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
AMENDED EMPLOYMENT AGREEMENT

This Amended Employment Agreement, made and entered into this 27th day of March, 2007 by and between the CITY OF MODESTO, State of California, a municipal corporation, hereinafter called, “CITY” and JUDITH E. RAY, hereinafter referred to as “EMPLOYEE,” both of whom understand as follows:

RE C I T A L S:

WHEREAS, EMPLOYEE and CITY entered into an employment agreement on June 7, 2005 under authority of Resolution No. 2005-285, and

WHEREAS, EMPLOYEE has been serving as Deputy City Manager since June 7, 2005, and

WHEREAS, Section 900 of the CITY’s Charter provides that the City Manager of Modesto, California, shall appoint the Deputy City Manager, in the Unclassified Service, to serve at the pleasure of the City Manager for an indefinite term, and may remove the Deputy City Manager at his pleasure, and

WHEREAS, it is the desire of the parties hereto to provide the terms and conditions by which CITY shall retain the service of EMPLOYEE and to provide for her to remain in such employment, and

WHEREAS, it is the desire of the parties hereto to amend the employment agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree to amend the previous agreement in its entirety as follows:

Section 1. Duties

CITY hereby agrees to employ said Judith E. Ray as Deputy City Manager of said CITY to perform the functions and duties specified in the attached job description.

Section 2. Term

   a. Effective March 27, 2007, EMPLOYEE shall continue employment as Deputy City Manager in the Unclassified Service, at the salary set forth herein and shall serve in this capacity until such time as EMPLOYEE terminates or resigns from the position of Deputy City Manager.

   b. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Manager to terminate the services of EMPLOYEE at any time, subject only to the provisions set forth in Section 3, below.

   c. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from her position as Deputy City Manager, subject only to the provisions set forth in Section 3, below.
Section 3. **Termination**

a. Notwithstanding any contrary provision of the Modesto Municipal Code and/or Personnel Rules of the City of Modesto, in the event the City Manager elects to terminate this agreement on or before October 7, 2007, said EMPLOYEE shall have reinstatement rights to the classification of Deputy Director of Public Works, provided that such termination is for reasons other than good cause.

b. In the event EMPLOYEE voluntarily resigns from the position of Deputy City Manager on or before October 7, 2007, EMPLOYEE shall have reinstatement rights to the classification of Deputy Director of Public Works.

c. Termination of this agreement by either party after October 7, 2007 shall not provide for reinstatement to the classification of Deputy Director of Public Works or to any other position in the Classified Service.

Section 4. **Salary and Benefits**

a. CITY agrees to pay EMPLOYEE for her services rendered pursuant to this agreement a monthly base salary of $12,046.00, payable in the installments at the same time as other employees of the CITY are paid. In addition, EMPLOYEE shall be granted salary increases within the salary range established by the City Council, based on merit and fitness as determined by the City Manager.

b. EMPLOYEE shall be eligible for all benefits currently authorized by the City Council for non-sworn Executive employees, and as such benefits may be amended from time to time by Council.

Section 5. **Notices**

Notices pursuant to this agreement shall be given by deposit in the custody of the United States Postal Service, postage pre-paid, addressed as follows, or as such address may be changed from time to time upon notice to the other:

**CITY:**
City Manager  
City of Modesto  
1010 Tenth Street  
P. O. Box 642  
Modesto, CA  95353

**EMPLOYEE:**
Judith E. Ray  
924 Gina Court  
Escalon, CA  95320

Alternatively, notices required pursuant to this agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed
given as of the date of the personal service or as of the date of deposit of such written notice in the course of transmission in the United State Postal Service.

Section 6. General Provisions

a. The text herein shall constitute the entire agreement between the parties.

b. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.

c. This agreement shall become effective commencing the 27th day of March, 2007.

d. If any provision, or any portion thereof, contained in this agreement is held unconstitutional, invalid or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

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. 2007-196, adopted by the Council of the City of Modesto on the 27th day of March, 2007, and EMPLOYEE has caused this Agreement to be duly executed.

CITY OF MODESTO

By: GEORGE W. BRITTON
City Manager

ATTEST:

By: JEAN MORRIS
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD
SUSANA ALCALA WOOD, City Attorney

EMPLOYEE:

JUDITH E. RAY
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-197

A RESOLUTION AUTHORIZING THE CITY MANAGER, UPON THE RECOMMENDATION OF THE POLICE CHIEF, TO USE UNCLAIMED BICYCLES, IN THE POSSESSION OF THE MODESTO POLICE DEPARTMENT, TO BE REFURBISHED BY THE PLEASANT VALLEY STATE PRISON IN COALINGA, CALIFORNIA AND RETURNED TO THE DONATING ORGANIZATION, FRIENDS OF MODESTO POLICE YOUTH ASSOCIATION (FMPYA), FOR DISTRIBUTION TO UNDERPRIVILEGED CHILDREN AND CHILDREN AT RISK FOR JUVENILE DELINQUENCY.

WHEREAS, Pleasant Valley State Prison in Coalinga, California offers a program of bicycle refurbishing, and

WHEREAS, Modesto Municipal Code Section 2-7.06 authorizes the City Manager to have unclaimed bicycles repaired and turned over to any charitable or nonprofit organization to participate in a program or activity designed to prevent juvenile delinquency, and

WHEREAS, the bicycles are to be returned to the Friends of Modesto Police Youth Association (FMPYA), a 501c3 (non-profit) organization, for distribution to underprivileged children and children at risk for juvenile delinquency, and

WHEREAS, the Modesto Police Department feels that by providing refurbished recycled bicycles to at risk children, via FMPYA, the program is able to meet its primary objective, which is to reduce juvenile delinquency in our community, and

WHEREAS, the benefit to the children far outweighs the potential revenue of the bicycles if they were sold at auction, and

WHEREAS, based upon the successful first test of the program, FMPYA and the Police Department are seeking recommendation to continue the program indefinitely, and

WHEREAS, staff will prepare an annual report to the Safety and Communities Committee on the status of the bicycle refurbishing/donation program, and

03/27/07/Police/KRabb/item21 1 2007-197
WHEREAS the fiscal impact of the bicycles not sold at auction would be a minimal loss of revenue to the City and the benefit to the children far outweighs the potential revenue of the bicycles if they were sold at auction, and

WHEREAS at its March 5, 2007 meeting, the Safety and Communities Committee approved the recommendation,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the City Manager, upon the recommendation of the Police Chief, to use unclaimed bicycles, in the possession of the Modesto Police Department, to be refurbished by the Pleasant Valley State Prison in Coalinga, California and returned to the donating organization, Friends of Modesto Police Youth Association (FMPYA), for distribution to underprivileged children and children at risk for juvenile delinquency.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

ATTEST: Jean Morris
JEAN MORRIS, City Clerk
(SEAL)
APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
A RESOLUTION APPROVING AN AGREEMENT FOR THE PURCHASE OF RETIRED CITY OF MODESTO POLICE CANINE BY THE ASSIGNED MODESTO POLICE DEPARTMENT CANINE HANDLER, OFFICER BONGIORNO, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE AN AGREEMENT WITH THE 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 handler, Officer Bongiorno, wishes to purchase and assume possession of his assigned canine, Randy, 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 agreement with Officer Bongiorno for the purchase of his retired police canine, Randy, in the amount of One Dollar ($1.00) as more fully set forth in the Modesto Police Department Canine Transfer Contract attached hereto as Exhibit “A” and incorporated herein by this reference.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Susana Alcala Wood, City Attorney
MODESTO POLICE DEPARTMENT CANINE TRANSFER CONTRACT

This AGREEMENT, made and entered into in the City of Modesto, State of California, this 27th day of March, 2007, by and between the City of Modesto, a municipal corporation of the State of California, hereinafter referred to as “CITY”, and Bradly Bongiorno, canine handler for the Modesto Police Department, hereinafter referred to as “HANDLER”.

Facts:

Canine “Randy” has been with the Modesto Police Department since September of 2001. “Randy” has served the city for over five years. “Randy” was born in 1999 and will be eight years old in 2007. “Randy” has had a long and distinguished career as a narcotic detection dog. “Randy” has been unable to work for over six months and has reached an age where he is slowing down. It would not be feasible to retrain and recertify him. His ability to continue to do police work is diminishing and it is my recommendation he be retired from service.

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 “Randy”. HANDLER was previously the assigned canine handler for “Randy”.

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 “Randy”, 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 **March 27, 2007**.

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 “Randy” for at least eighteen (18) months prior to any sale of the aforementioned retired police canine.

4. The retired police canine “Randy” 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. 07-____ adopted by the City Council of the City of Modesto on the 27th day of March, 2007.

NEW OWNER

____________________________________
Bradly Bongiorno, Handler

CITY OF MODESTO

____________________________________
George W. Britton, City Manager

ATTEST:

By  
Jean Morris, City Clerk

APPROVED AS TO FORM:

By  
Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-199

A RESOLUTION APPROVING THE PROJECT, INCLUDING PLANS AND SPECIFICATIONS FOR THE PROJECT TITLED “2006 ADA CURB RAMP CONSTRUCTION”, ACCEPTING THE LOW BID AND APPROVING A $175,936.00 CONTRACT WITH BDS CONSTRUCTION, INC., AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the project titled “2006 ADA Curb Ramp Construction” and City staff recommends approval by the City Council, and

WHEREAS, the bids received for “2006 ADA Curb Ramp Construction” were opened at 11:00 a.m. on February 27, 2007, and later tabulated by the Public Works Director for the consideration of the Council, and

WHEREAS, the Public Works Director has recommended that the bid of $175,936.00 received from BDS Construction, Inc., be accepted as the lowest responsible bid and the contract be awarded to BDS Construction, Inc.,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for said project, and accepts the bid of BDS Construction, Inc., in the amount of $175,936.00, and hereby awards BDS Construction, Inc., the contract titled “2006 ADA Curb Ramp Construction.”

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: Jean Morris

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By __________________________

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING A CONTRACT WITH HOLDREGE & KULL FOR THE PROJECT TITLED “GEOTECHNICAL STUDY AT CHLORINATION FACILITY,” LOCATED AT THE JENNINGS ROAD SECONDARY TREATMENT PLANT IN AN AMOUNT NOT TO EXCEED $70,000, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE CONTRACT.

WHEREAS, the Secondary Treatment Facilities, located at Jennings Road, utilizes chlorine gas to disinfect the treated wastewater effluent prior to dechlorination and discharge to the San Joaquin River, and

WHEREAS, disinfection of the effluent is required as a condition of the City’s wastewater discharge permit and is necessary to ensure that no potentially disease-causing microorganisms are in the water being discharged to the river, and

WHEREAS, during the spring floods of 2006, staff observed the ground sinking (subsidence) at the equipment pad for the Chlorination Facility at the Jennings Treatment Plant, and

WHEREAS, numerous sand boils and seeps occurred due to the 2006 San Joaquin River spring storm flows, and

WHEREAS, the sloping ground supporting an exposed portion of the 48” diameter loop pipeline is prone to seepage and small slides in the area have occurred in the past, and

WHEREAS, City staff requests a geotechnical study at the Chlorination Facility be performed for the following:

1) Evaluate the likely cause of the sand boils and ground subsidence,
2) Evaluate stability of the levee,
3) Assess subsurface conditions in the vicinity of the exposed section of loop pipeline, and
4) Develop mitigation measures for ground subsidence and for long-term stabilization of the levee,

WHEREAS, this project was approved as part of the FY 06-07 Capital Improvement Program, CIP #B824 Geotechnical Study at Chlorination Facility with a funding amount of $83,000, and

WHEREAS, a request for bids was sent to seven (7) Geotechnical Consultants for this project, and three bids were received, and

WHEREAS, after evaluating all three proposals, staff has determined that the proposal from Holdrege & Kull demonstrates the greatest understanding of conditions and potential corrective measures, and

WHEREAS, funds are budgeted in CIP Account 6210-480-B824-6010 Geotechnical Study at Chlorination Facility,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the contract with Holdrege & Kull for the project titled “Geotechnical Study at Chlorination Facility,” located at the Jennings Road Secondary Treatment Plant in an amount not to exceed $70,000.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the contract.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: Jean Morris, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-201

A RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE PROJECT TITLED, “LEFT-TURN LANE EXTENSION ON BRIGGSMORE AVENUE AT MCHENRY AVENUE,” ACCEPTING THE BID, AND APPROVING A $124,966.20 CONSTRUCTION CONTRACT WITH TEICHERT CONSTRUCTION FOR THE PROJECT, AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE CONTRACT

WHEREAS, plans and specifications have been prepared for the “Left-turn Lane Extension on Briggsmore Avenue at McHenry Avenue,” project and City staff recommends approval to the City Council, and

WHEREAS, in fiscal year 2005 Congestion Mitigation and Air Quality (CMAQ) grants became available to reduce pollution and improve air quality, and

WHEREAS, the “Left-turn Lane Extension on Briggsmore Avenue at McHenry Avenue” project along with other projects are eligible for the CMAQ funds, and

WHEREAS, this project will add extra storage capacity for the left-turn lane to help prevent motorists turning left from blocking through motorists, and

WHEREAS, the bids received for this project were opened on January 9, 2007, and later tabulated by the Public Works Director for consideration of the Council, and

WHEREAS, the Public Works Director recommends the bid of $124,966.20 received from Teichert Construction be accepted as the lowest responsible bid and the contract be awarded to Teichert Construction,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the plans and specifications for the project titled, “Left-turn Lane Extension on Briggsmore Avenue at McHenry Avenue,” accepts the bid of Teichert
Construction in the amount of $124,966.20 and hereby awards Teichert Construction the contract titled, “Left-turn Lane Extension on Briggsmore Avenue at McHenry Avenue.”

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

Attest: Jean Morris

JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2007-202

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE MODESTO IRRIGATION DISTRICT (MID) AND THE CITY OF MODESTO TO GRANT A 10' BY 10' EASEMENT FOR THE NEW POLE LOCATION AND RELOCATE AND MODIFY TWO EXISTING UTILITY POLES AT A COST NOT TO EXCEED $65,700 TO ACCOMMODATE THE PROJECT, AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE AGREEMENT

WHEREAS, in fiscal year 2005 Congestion Mitigation and Air Quality (CMAQ) grants became available to reduce pollution and improve air quality, and

WHEREAS, the “Left-turn Lane Extension on Briggsmore Avenue at McHenry Avenue” project along with other projects were eligible for the CMAQ funds, and

WHEREAS, an existing MID utility pole is located within the proposed left-turn lane and needs to be relocated, and

WHEREAS, this utility pole carries the 124KV to the sub-station for distribution, and

WHEREAS, the two utility poles on either side of the relocated utility pole need to be modified to accommodate additional strain,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement between the Modesto Irrigation District (MID) and the City of Modesto to grant a 10’ by 10’ easement for the new pole location and relocate and modify existing utility poles at a cost not to exceed $65,700 to accommodate the project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Agreement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

Attest: 

JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

SUSANA ALCALA WOOD, City Attorney
A RESOLUTION APPROVING A CONSULTANT AGREEMENT WITH DAVID EVANS AND ASSOCIATES, INC., FOR ENGINEERING DESIGN SERVICES IN THE NOT-TO-EXCEED AMOUNT OF $234,186, FOR THE “CONSTRUCTION OF THREE DEDICATED RIGHT-TURN LANES AT: 1) SISK ROAD ONTO CARPENTER ROAD OVERPASS, 2) CARPENTER ROAD OVERPASS ONTO NORTHBOUND ROUTE 99 ON-RAMP, 3) ORANGEBURG AVENUE ONTO BRIGGSMORE AVENUE” PROJECT, AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE AGREEMENT

WHEREAS, the City sent a Request For Qualifications (RFQ) for Engineering Design services to Civil Engineering firms that had previously indicated an interest in providing services to the City, and

WHEREAS, eight consulting firms were asked to provide a proposal on various projects and were interviewed by City staff, and

WHEREAS, David Evans and Associates, Inc., was considered to be the most qualified for engineering design services for the project “Construction of Three Dedicated Right-turn Lanes at: 1) Sisk Road Onto Carpenter Road Overpass, 2) Carpenter Road Overpass Onto Northbound Route 99 On-ramp, 3) Orangeburg Avenue Onto Briggsmore Avenue,” in accordance with Administrative Directive 3.1, and

WHEREAS, the Public Works Director recommended that David Evans and Associates, Inc., be accepted as the most qualified Engineering Consulting firm for Engineering Design services for the project “Construction of Three Dedicated Right-turn Lanes at: 1) Sisk Road Onto Carpenter Road Overpass, 2) Carpenter Road Overpass Onto Northbound Route 99 On-ramp, 3) Orangeburg Avenue Onto Briggsmore Avenue,” and
WHEREAS, the Public Works Director recommended accepting the proposal of David Evans and Associates, Inc., in an amount not-to-exceed $234,186,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement between the City of Modesto Public Works Department and David Evans and Associates, Inc., for Engineering Design services for the project “Construction of Three Dedicated Right-turn Lanes at: 1) Sisk Road Onto Carpenter Road Overpass, 2) Carpenter Road Overpass Onto Northbound Route 99 On-ramp, 3) Orangeburg Avenue Onto Briggsmore Avenue,” in the not-to-exceed amount of $234,186.

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 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

Attest: [Signature]
JEAN MORRIS, City Clerk
(SEAL)

APPROVED AS TO FORM:

By: [Signature]
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-204

A RESOLUTION APPROVING THE ENGINEER’S REPORT, WITH ADDENDA - JUSTIFICATION AND COST ALLOCATION FOR PROPOSED WASTEWATER COLLECTION SYSTEM AND TREATMENT PLANT IMPROVEMENTS AS COMPLETE

WHEREAS, on June 7, 2005, by Resolution No. 2005-303, the Council approved a contract with Carollo Engineers to produce an Engineer’s Report, Justification and Cost Allocation for Proposed Wastewater Collection System and Treatment Improvements (Engineer’s Report), and

WHEREAS, the Engineer’s Report essentially summarizes the master plans and is a key source document for the ongoing Utility Rate and Capacity Charge Analysis and specifically details the justification for the various improvement projects identified in the WWMP, and

WHEREAS, the Engineer’s Report provides the rationale for determining the cost allocations of new improvements between the existing ratepayers and future users, and

WHEREAS, Carollo Engineers has completed the Engineer’s Report, with Addenda,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Engineer’s Report, with Addenda - Justification and Cost Allocation for Proposed Wastewater Collection System and Treatment Plant Improvements as complete.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: [Signature]
JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By [Signature]
SUSANA ALCALA WOOD, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-205

A RESOLUTION CONDITIONALLY VACATING AND ABANDONING A PORTION OF THE CHANDON DRIVE RIGHT-OF-WAY IMMEDIATELY WEST OF MONTORRA DRIVE (SILVER OAK COMMUNITIES, LLC)

WHEREAS, Silver Oak Communities, LLC has filed an application to vacate and abandon a portion of the Chandon Drive right-of-way immediately west of Montorra Drive ("Proposed Abandonment"), and

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

WHEREAS, a title report was submitted by Silver Oak Communities, LLC with the abandonment request which shows that fee title to the property underlying the proposed abandonment belongs to the adjacent land owner who is a proponent of the abandonment, and

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

WHEREAS, Government Code Section 65402(a) requires that prior to abandoning a public right-of-way, the Planning Commission shall make a determination as to whether the abandonment is consistent with the General Plan, and

WHEREAS, a hearing was held by the Planning Commission on January 22, 2007, in the Tenth Street Chambers, located at 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered regarding whether the proposed vacation and abandonment conforms to the City’s Urban Area General Plan, and
WHEREAS, by Planning Commission Resolution No. 2007-03, the Planning Commission rendered a report finding that the proposed abandonment is in conformance with the Modesto Urban Area General Plan, and

WHEREAS, a duly noticed public hearing was held by the Council of the City of Modesto on Tuesday, March 27, 2007, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, and

WHEREAS, three notices were posted along the line of the proposed right-of-way to be abandoned for two successive weeks prior to the hearing, and notice was published in the Modesto Bee for two successive weeks prior to the hearing, per Streets & Highways Code Sections 8323 and 8322, respectively, and,

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

WHEREAS, the Proposed Abandonment should be conditioned on the construction of needed improvements and the reservation of the necessary utility easements to ensure that the abandoned right-of-way functions in a manner which is not detrimental to the public health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto finds and determines as follows:
1. That the portion of Chandon Drive to be abandoned is unnecessary for present or future vehicular use, because the street now dead ends at the Village One Commercial Center and is no longer needed for through traffic circulation in the area.

2. That Environmental Assessment No. EA C&ED 2007-02 determined that the potential environmental effects of the subdivision are adequately addressed within the context of the previously adopted Village One Program EIR.

3. Approving the abandonment of Chandon Drive is consistent with the Village One Specific Plan, because it would facilitate pedestrian oriented movements while discouraging through traffic, as called for in Chapter II-C(1) of the Village One Specific Plan.

BE IT FURTHER RESOLVED that the Council hereby orders and declares the vacation and abandonment of a portion of the Chandon Drive right-of-way immediately west of Montorra Drive be subject to the following conditions:

1. No later than March 27, 2009, the applicant shall construct or enter into an agreement securing the construction of the following improvements prior to issuance of any building permits for the property known as APN 085-040-063:

   a. A 10-foot-wide Class One bicycle/pedestrian path from Montorra Drive west to the Village One Commercial Center, to the satisfaction of the Parks, Recreation and Neighborhoods Director or designee.

   b. Decorative lighting for the length of the path, to the satisfaction of Parks, Recreation and Neighborhoods Director or designee.

   c. Demolition and removal of the pavement and concrete of the abandoned Chandon Drive to the satisfaction of the Public Works Director or designee.

   d. The closure of Chandon Drive shall be in accordance with the City approved improvement plans and to the satisfaction of the Public Works and Parks, Recreation and Neighborhood Directors or designees.
2. Prior to recordation of the abandonment, a landscaping, lighting and irrigation plan for all public area landscaping shall be approved by the Parks, Recreation and Neighborhoods Director or designee. Landscaping, lighting and the irrigation system shall be installed and maintained in accordance with the approved plan.

Said right-of-way to be vacated and abandoned is more particularly described in Exhibit “A” attached hereto, and by this reference made a part hereof as though set forth in full herein.

BE IT FURTHER RESOLVED that in the event two (2) years lapse from the date of this conditional approval without all required conditions having been fulfilled, the conditional right-of-way abandonment shall expire and Chandon Drive shall remain as a public right-of-way.

BE IT FURTHER RESOLVED that the City Clerk shall not record this Resolution of abandonment until conditions 1 and 2 above have been fully satisfied to the satisfaction of the City’s Public Works and Parks, Recreation and Neighborhoods Directors or designees. Within ten (10) working days after said conditions have been fully satisfied, the City Clerk shall cause a certified copy of this Resolution, attested under seal of the City, to be recorded in the Office of the County Recorder of Stanislaus County.
Chandon Drive Right-of-Way to be Abandon
Davante Villas, Unit No. 3

DESCRIPTION

All that certain real property situate in a portion of the Northwest Quarter of Section 13, Township 3 South, Range 9 East, Mount Diablo Base and Meridian in the City of Modesto, County of Stanislaus, State of California described as follows:

Commencing on the north line of Chandon Drive, at the southwest corner of the 5.36 acre remainder parcel as shown on map of Davante Villas Unit No. 3 recorded in Volume 39 of Maps, at Page 82 Stanislaus County Records being on a curve to which a radial line bears North 0°31'36" West from the center; thence easterly 18.23 feet along said north line and said curve to a point to which a radial line bears North 0°29'28" East from the center, said point being the Point of Beginning of this description; thence South 37°55'39" East 33.46 feet to a point on the centerline of said Chandon Drive, being on a curve to which a radial line bears North 1°40'57" East from the center, thence easterly 130.43 feet along said centerline and said curve being concave to the south, having a radius of 1,000.00 feet and a central angle of 7°28'22" to a point of reverse curve to which a radial line bears North 9°09'19" East from the center; thence easterly 167.95 feet along said centerline and said reverse curve being concave to the north having a radius of 1,000.00 feet and a central angle of 9°37'22"; thence North 89°31'57" East 22.59 feet along said centerline being a tangent line to a point on a curve to which a radial line bears North 69°58'49" West from the center; thence northeasterly 48.53 feet along said curve being concave to the southeast having a radius of 40.00 feet and a central angle of 69°30'46" to a point of cusp with said north line of Chandon Drive; thence South 89°31'57" West 60.06 feet along said north line of Chandon Drive to a point on a tangent curve to which a radial line bears South 0°28'03" East from the center; thence westerly 163.58 feet along said north line of Chandon Drive and said tangent curve being concave to the north, having a radius of 974.00 feet and a central angle of 9°37'22" to a point of reverse curve to which a radial line bears South 9°09'19" West from the center; thence westerly 155.15 feet along said north line of Chandon Drive and said reverse curve being concave to the south and having a radius of 1,026.00 feet and a central angle of 8°39'51" to the Point of Beginning.

Containing: 8,876 SF (0.2038 Acres)
CHANDON DRIVE
ABANDONMENT EXHIBIT

LYING IN THE EAST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4
OF SECTION 13, T3 S., R9 E., M.D.B. & M.,
COUNTY OF STANISLAUS, STATE OF CALIFORNIA
NOVEMBER, 2005

CITY OF MODESTO,
SCALE: 1" = 60'

POINT OF COMMENCEMENT

DAVANTE SENIOR VILLAS

P.O.B.

D=1°0'04"  R=1026.00'  L=10.23'

D=8°34'51"  R=1026.00'  L=155.15'

D=7°28'22"  R=1000.00'  L=130.43'

D=9°31'22"  R=974.00'  L=163.58'

D=9°31'22"  R=1000.00'  L=167.45'

S 89°31'57" W

60.06'

8876.47 SF

0.2036 AC

89°31'57" E

22.59'

DAVANTE VILLAS

UNIT 3

NOVEMBER, 2005

DAVANTE SENIOR VILLAS

REMAINDER (3'1-1'1-82)

5.36 ACRES

TO BE ABANDONED

PREPARED BY,

DELMARE-FULTZ

ENGINEERING AND SURVEYING

3421 TULLY ROAD SUITE J MODESTO, CA. 95350

TELEPHONE (209) 529-7450

SIGNED,

THOMAS H. DELAMARE

L.S. 3407

(EXPIRES 6-30-08)

LICENSED LAND SURVEYOR

THOMAS H. DELAMARE

No. 3407

Exp. 6-30-08

STATE OF CALIFORNIA

2-27-07
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO LEGAL DESCRIPTION

By: Community & Economic Development Department Planning Division
MODESTO CITY COUNCIL
RESOLUTION NO. 2007-206

A RESOLUTION FINDING THAT THE FOLLOWING PROJECT IS WITHIN THE SCOPE OF THE VILLAGE ONE PROGRAM ENVIRONMENTAL IMPACT REPORT (SCH NO. 90020181), AS AMENDED BY THE SUPPLEMENTAL EIR: APPLICATION TO ABANDON A PORTION CHANDON DRIVE IMMEDIATELY WEST OF MONTORRA DRIVE, (SILVER OAK COMMUNITIES, LLC)

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

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

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

WHEREAS, an application has been filed by Silver Oak Communities, LLC to abandon a portion of Chandon Drive immediately west of Montorra Drive, and

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

WHEREAS, City staff has prepared a Written Checklist, Environmental Assessment No. EA/C&ED 2007-02, which concluded that the proposed Project is within the
scope of the Village One Program EIR (SCH No. 90020181), as amended by the Village One Supplemental EIR, and the addendum to Village One Specific Plan Program Environmental Impact Report for the Village One Facilities Master Plan, and

WHEREAS, by Planning Commission Resolution No. 2007-03, the Planning Commission rendered a report finding that the Proposed Abandonment is in conformance with the Modesto Urban Area General Plan and recommended that the Council vacate and abandon the portion of Chandon Drive Avenue right-of-way, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on March 27, 2007, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council has reviewed and considered the Written Checklist, Environmental Assessment No. EA/C&ED 2007-02, entitled “Determination: Project within the Scope of the Village One Specific Plan Program Environmental Impact Report Initial Study EA/C&ED No. 2007-02 For the proposed abandonment of Chandon Drive immediately west of Montorra Drive, and the Council hereby makes the following findings:

1. The proposed abandonment is consistent with the Village One Specific Plan and Modesto Urban Area General Plan, and

2. As per Section 15168 of the California Environmental Quality Act (“CEQA”) Guidelines, this project is within the scope of the projects covered by the Program EIR, and no new environmental document or findings are required by CEQA, and

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

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

5. There is no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence when the Program EIR was adopted which shows any of the following:

a. One or more significant effects which are not discussed in the Program EIR; or,

b. Significant effects which were previously examined will be substantially more severe than previously shown; or,

c. Previously infeasible mitigation measures or alternatives are now feasible and would substantially reduce one or more significant effects of the project, but the Project proponents decline to adopt the mitigation measure or alternative; or,

d. Mitigation measures or alternatives which are considerably different from those analyzed in the Program EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

6. The Written Checklist, Environmental Assessment No. EA/C&ED 2007-02, provides the substantial evidence to support findings 3-5, noted above.


BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Community & Economic Development Director is hereby authorized and directed to file a notice of determination within five (5) business days with the Stanislaus County Clerk pursuant to Section 21152 of the Public Resources Code.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of March, 2007, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Susana Alcala Wood, City Attorney
Determination:
Project within the Scope of the
Village One Specific Plan
Program Environmental Impact Report for
Chandon Drive Abandonment

Prepared for:
City of Modesto
P.O. Box 642
Modesto, CA 95353
Contact: David Wage
209/577-5302

Prepared by:
David Wage, Assistant Planner
City of Modesto
Community & Economic Development Department
209/577-5302

January 22, 2007
EA/C&ED No. 2007-02

I. PURPOSE

This written checklist, pursuant to CEQA Guidelines Section 15168 (C) (4), serves to make a determination where subsequent activities of a Program EIR involve site-specific operations, based on evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR. Based on a review of the project and Section 15162(a), this determination would permit the lead agency (City of Modesto) to approve the activity as being within the scope of the project covered by the Program EIR. This determination includes whether any new environmental document is required beyond the adopted Village One Specific Plan Program EIR (SCH# 90020181) for the proposed Chandon Drive Abandonment (project).

The 1994 Supplemental EIR that amended and superseded the 1990 Program EIR is the document reviewed for projects within the Village One Specific Plan area. A summary of significant impacts and their mitigation measures from the 1994 Supplemental EIR is attached as Exhibit "A." Where appropriate those feasible mitigation measures developed in the Supplement to the program EIR shall be incorporated into the proposed project.

II. PROJECT INFORMATION

1. Project Title: Chandon Drive Abandonment

2. Lead Agency Name and Address: City of Modesto

3. Contact Person and Phone Number: David Wage, Assistant Planner
   Modesto Community & Economic Development Department
   209/571-5540

4. Project Location: Chandon Drive, west of Montorra Drive
5. Project Sponsor's Name and Address: Silver Oak Communities
7600 N. Ingram Suite 131
Fresno, Ca. 93711


7. Zoning: Specific Plan Overlay (SP-O)

8. Description of Project: Pursuant to the Village One Specific Plan, Precise Plan No. 20, and the Final Development Plan for the Village One Commercial Center, the applicant is proposing the vacation and abandonment of a portion of Chandon Drive, west of Montorra. In accordance with the closure plan, the applicant is proposing to abandon the northernmost 26' of the Chandon Drive right-of-way from Montorra Drive, west to the Village Commercial Center. The remaining 26' is proposed to be developed into a bicycle and pedestrian connection to the commercial center and surrounding residential uses. A six-foot wrought iron fence will be constructed along the property line to separate the bike path from the proposed land to be abandoned included in the Devante Senior Villas Development.

9. Surrounding Land Uses and Setting: The Village One Specific Plan Area is over half built, as planned and approved by the 1990 Village One Specific Plan. The project area is bounded by Floyd Avenue to the north, The Village Commercial Center to the West, single-family homes to the west and south.

10. Other Public Agencies whose Approval Is Required: None.
III. DETERMINATION:

Based on the analysis contained in this document, staff finds that pursuant to Guidelines Section 15162 the following is true for the proposed project:

(1) Major revisions to the Village One Program EIR as amended by the 1994 Supplement, are not required because the project will not involve new significant environmental effects or increase severity of effects previously identified, and

(2) Major revisions to the Village One Program EIR as amended by the 1994 Supplement, are not required because no substantial changes to circumstances have occurred that involve new significant environmental effects or increase severity of effects previously identified, and

(3) No new information of substantial importance that was not known has become available that shows:
   a. one or more significant effects is not discussed in the Village One Program EIR as amended by the 1994 Supplement,
   b. identified significant effects will be more severe,
   c. previously infeasible mitigation measures are now feasible,
   d. project proponents have declined to adopt mitigation measures that would substantially reduce significant effects.

(4) Because no new significant effects have been identified and no new mitigation is required for the project, the environmental effects of the operation of the proposed project were covered by the Village One Program EIR as updated by the 1994 Supplement. Therefore, pursuant to CEQA Section 15168 (C) (4) no new environmental document is required.

(5) Therefore, the project known as Merle Avenue Abandonment is within the scope of the Village One Program EIR.

[Signature]
Project Manager

Date
3/5/07
IV. PROJECT EVALUATION:

The following written Checklist based on Appendix G of the CEQA Guidelines serves to document the evaluation of the site and activity of the proposed project pursuant to CEQA Guidelines Section 15168 (c) (4) to determine whether the environmental effects of the operation were covered in the Program EIR.

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<tr>
<th>Potentially Significant Impact</th>
<th>Less than Significant Mitigation Incorporated</th>
<th>Less-than-Significant Impact</th>
<th>No Impact</th>
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I. AESTHETICS. Would the project:

a. Have a substantial adverse effect on a scenic vista?

b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings along a scenic highway?

c. Substantially degrade the existing visual character or quality of the site and its surroundings?

d. Create a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area?

Aesthetic and visual impacts are analyzed on pages III-100 through III-101 of the 1994 Supplement.

Responses to Checklist Questions

a. The Village One Specific Plan program EIR found that as the Specific Plan area is developed, it will eliminate views of the valley and the distant mountains from adjacent areas and reduce the area's visual open space. However, the program EIR found the effects of buildout of Village One on scenic vistas to be less than significant because views from the project area are minimal. The proposed abandonment would not change the extent or nature of construction in the Specific Plan area, or cause any other changes in the project area. Impacts on scenic vistas would therefore remain the same as those identified in the program EIR. There would be no additional impact. No mitigation is required.
b. The Village One Specific Plan program EIR found that there are no scenic resources in the project area, and that development within the Specific Plan area would therefore not result in significant impacts on scenic resources. This finding would not be affected by the proposed abandonment. There would be no impact. No mitigation is required.

c. The Village One Specific Plan program EIR found that the development within the Specific Plan area would have a less-than-significant impact on the visual character of the area. The proposed abandonment would not change the design or layout of the development proposed within the Village One Specific Plan. It is called for by the Specific Plan. For this reason, impacts on the visual character of the area would remain the same as those identified in the program EIR. There would be no additional impact. No mitigation is required.

d. The proposed abandonment is consistent with the Village One Specific Plan. For this reason, impacts associated with additional light and glare would remain the same as those identified in the program EIR. There would be no additional impact. No mitigation is required.

II. AGRICULTURAL RESOURCES. In determining whether impacts on agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation. Would the project:

a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? ☐ ☐ ☐ ☑

b. Conflict with existing zoning for agricultural use or conflict with a Williamson Act contract? ☐ ☐ ☑ ☑

c. Involve other changes in the existing environment that, due to their location or nature, could result in conversion of Farmland to non-agricultural use? ☐ ☐ ☑ ☑

Impacts on agricultural resources are analyzed on pages III-80 through III-94 of the 1994 Supplement.
Responses to Checklist Questions

a. The Village One Specific Plan program EIR found that land designated as Prime Farmland would be lost as a result of development in the Village One Specific Plan area. This impact was determined to be significant and not mitigable. The proposed abandonment would not affect this finding because the project area would remain the same. There would be no additional impact. No mitigation is required.

b. The Village One Specific Plan program EIR presented information showing that any Williamson Act contracts in the Village One Specific Plan area would be automatically cancelled on annexation of the land to the City of Modesto, which has occurred, or would expire within 10 years of the time the original program EIR was prepared. The last Williamson Act contract covering land in the Village One Specific Plan area expired in 2001. There are no lands in the project area under Williamson Act contract. The Village One Specific Plan area has also been rezoned consistent with the specific plan, and no lands in the project area are now zoned for agricultural use. There would be no additional impact. No mitigation is required.

c. The Village One Specific Plan program EIR identified a potential land use conflict between new residential uses in the specific plan area and adjacent agricultural uses. Such conflicts can lead to conversion of adjacent farmlands to other uses. The program EIR proposed mitigation measures for this potential impact that would reduce the impact’s significance, although the EIR noted that the mitigation measure might not fully mitigate the impact. No additional mitigation measures are available for this impact. This finding would not be affected by the proposed project because the project area and proposed land uses would remain the same. There would be no additional impact. No mitigation is required.

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<th>Less than Significant with Mitigation Incorporated</th>
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III. AIR QUALITY. When available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

a. Conflict with or obstruct implementation of the applicable air quality plan? ☐ ☐ ☐ ☑

b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation? ☐ ☐ ☐ ☑
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is a nonattainment area for an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?

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<th>Potentially Less than Significant Impact</th>
<th>Less than Significant with Mitigation Incorporated</th>
<th>Less-than-Significant Impact</th>
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d. Expose sensitive receptors to substantial pollutant concentrations?

| ☐ | ☐ | ☐ | ☑ |

e. Create objectionable odors affecting a substantial number of people?

| ☐ | ☐ | ☐ | ☑ |

Impacts on air quality are analyzed on pages III-45 through III-54 of the 1994 Supplement.

**Responses to Checklist Questions**

a. / b. The Village One Specific Plan program EIR found that air pollution from project-related construction traffic and fireplaces & wood stoves in planned residential areas would violate air quality standards and contribute to an existing air quality violation. Construction traffic emissions would contribute to violation of the state and federal 8-hour carbon monoxide (CO) and particulate matter (PM10) standards and the federal ozone standard in the Modesto Urban Area and the San Joaquin Valley Air Basin. Urban traffic pollution would contribute to violations of the state ozone, CO, and PM10 standards in the Modesto Urban Area and San Joaquin Valley Air Basin. Residential pollution would contribute to violations of the pollutant standard index in the Modesto Urban Area. Partial mitigation for these impacts is included in the program EIR (Mitigation Measures 3–5), and the City of Modesto adopted a statement of overriding consideration for each impact. The proposed abandonment would not change the amount of development and construction in the project area, so trips generated by the project would not be affected and the types of land uses would not change. There would be no additional impact. No mitigation is required.

c. The Village One Specific Plan program EIR found that air pollutant emissions associated with traffic at buildout of Village One would exacerbate the existing ozone, PM10, and CO violations in the Modesto area and cause a significant cumulative impact. Partial mitigation for these emissions is included in the program EIR (Mitigation Measures 4.5.3[a] and 4.5.3[b]), and the City of Modesto made a statement of overriding consideration for each impact. The proposed abandonment would not change the amount of traffic associated with buildout of Village One or the types of land uses, so trips generated by the project would not be affected. There would be no additional impact. No mitigation is required.
d. The Village One Specific Plan program EIR found that PM10 generated during construction would aggravate the respiratory problems of people living and working nearby, therefore exposing sensitive receptors in the area to pollutant concentrations and causing a significant impact. However, the program EIR outlines mitigation measures that will be implemented to reduce the impact to an acceptable level (Mitigation Measure 40). The proposed abandonment would not change the level of construction emissions. There would be no additional impact. No mitigation is required.

e. The proposed abandonment would not create odors. There would be no impact. No mitigation is required.

IV. BIOLOGICAL RESOURCES. Would the project:

a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? □ □ □ □

b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? □ □ □ □

c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marshes, vernal pools, coastal wetlands, etc.) through direct removal, filling, hydrological interruption, or other means? □ □ □ □

d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? □ □ □ □
e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

- Potentially Less than Significant Impact
- Less than Significant Impact with Mitigation Incorporated
- No Impact

f. Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan?

- Potentially Less than Significant Impact
- Less than Significant Impact with Mitigation Incorporated
- No Impact

Impacts on biological resources are analyzed on pages III-68 through III-79 of the 1994 Supplement.

Responses to Checklist Questions

a. The Village One Specific Plan program EIR found that the buildout could result in the loss of foraging habitat for Swainson's Hawk, a state-listed threatened species. However, this project is the abandonment of a paved roadway, which is not useful as foraging habitat. The development of the project site would result in a less than significant impact to foraging habitat for Swainson's Hawk. Therefore, no mitigation is required.

b. The Village One Specific Plan program EIR did not find that any riparian habitat or other designated sensitive natural community was present in the project area, and so found that the project would have a less-than-significant impact. The proposed abandonment would not change the boundaries of the Specific Plan area. There would be no impact. No mitigation is required.

c. The Village One Specific Plan program EIR found that buildout of the Village One Specific Plan area would result in the loss of lands that might be classified as wetlands by the U.S. Army Corps of Engineers, but that, with mitigation, the impact would be less than significant. The proposed abandonment would not change the Specific Plan area boundaries or the areas that would be disturbed. There would be no additional impact. No mitigation is required.

d. The Village One Specific Plan program EIR did not identify any migratory corridors in the project area, nor did it find that the project would interfere with the movement of any species. The proposed abandonment would not change the Specific Plan area boundaries. There would be no impact. No mitigation is required.

e. / f. No local biological resource protection policies, ordinances, habitat conservation plans, or natural community conservation plans apply to the Village One Specific Plan area. There would be no impact. No mitigation is required.
V. CULTURAL RESOURCES. Would the project:

a. Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5?

b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?

c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

d. Disturb any human remains, including those interred outside of formal cemeteries?

Responses to Checklist Questions

a.-d. Impacts on cultural resources resulting from the buildout of Village One (e.g., from construction of associated infrastructure) are addressed in the Opportunities/Constraints Report prepared for the Modesto Planning Commission (December 1, 1989). The report concluded that there are no known historic, archaeological, or paleontological resources in the Village One Specific Plan area. Based on the results of this report, (Cultural and Historic Resources Report, page 3) it was determined that the likelihood that the proposed abandonment would change or disturb human remains or significant historic, archaeological, or paleontological resources was low.

The proposed project would not change the locations or types of construction in the project area nor the boundaries of the project area. Development of the proposed project will not result in effects on scattered existing structures. A Cultural Resources Assessment was prepared to determine if any of these affected structures are considered historic resources. The Cultural Resources Assessment is attached to this document as Appendix A. No historic structures are located within the project area boundaries. Therefore, no mitigation measures are necessary.

Since no archaeological, or paleontological resources were found in the previous document to be located in the project area, and since the proposed project would not have a significant impact on historic structures, there would be no impact. No mitigation is required.
VI. GEOLOGY AND SOILS. Would the project:

a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

1. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.

2. Strong seismic ground shaking?

3. Seismic-related ground failure, including liquefaction?

4. Landslides?

b. Result in substantial soil erosion or the loss of topsoil?

c. Be located on a geologic unit or soil that is unstable or that would become unstable as a result of the project and potentially result in an onsite or offsite landslide, lateral spreading, subsidence, liquefaction, or collapse?

d. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?

e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems in areas where sewers are not available for the disposal of wastewater?

Impacts associated with geology and soils are analyzed on pages III-105 through III-108 of the 1994 Supplement.
Responses to Checklist Questions

a.-d. The program EIR, as supplemented, found that the project area is not subject to geologic or soil-related hazards that cannot be adequately mitigated through the implementation of existing city regulations, such as the building code. No significant impacts were identified, and no mitigation measures were required. The proposed abandonment would not change the locations or types of construction in the project area nor the boundaries of the project area. There would be no additional impact. No mitigation is required.

e. The Village One Specific Plan included provisions for the project to be served by public sewers. No septic tanks or alternative wastewater systems were proposed. The proposed abandonment would not change the proposed method of wastewater disposal. There would be no impact. No mitigation is required.

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VII. HAZARDS AND HAZARDOUS MATERIALS.
Would the project:

a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

c. Emit hazardous emissions or involve handling hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

d. Be located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

e. Be located within an airport land use plan area or, where such a plan has not been adopted, be within two miles of a public airport or public use airport, and result in a safety hazard for people residing or working in the project area?
f. Be located within the vicinity of a private airstrip and result in a safety hazard for people residing or working in the project area?

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g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

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h. Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

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Impacts associated with hazards and hazardous materials are analyzed on pages III-80 through III-94 and III-109 through III-119 of the 1994 Supplement.

Responses to Checklist Questions

a.-c. The Village One Specific Plan does not allow any land uses that would use hazardous materials. The proposed abandonment would not change land uses contemplated by the Specific Plan. There would be no impact. No mitigation is required.

d. The Village One Specific Plan program EIR, as supplemented, found no hazardous materials were stored at or near the project site. No significant impacts were identified, and no mitigation measures were required. There would be no additional impact. No mitigation is required.

e. The Village One Specific Plan area is not located in an airport land use plan area or within 2 miles of a public airport. There would be no impact. No mitigation is required.

f. The Village One Specific Plan program EIR found that a private airstrip, the Eastside Mosquito Abatement District Airstrip, is located to the east of the Village One Specific Plan area. However, take-offs and landings were found to take place parallel to and outside the Specific Plan area boundaries, and flight patterns are generally situated to the east of the Specific Plan area. There would be no additional impact. No mitigation is required.
g. Since the adoption of the Village One Specific Plan, the Modesto General Plan has been updated to include development of Village One consistent with the specific plan. City emergency plans are developed with the assumption that the Village One Specific Plan will be implemented. The proposed abandonment would not change construction, land use, or other physical attributes of the Right-of-Way Acquisition. There would be no additional impact. No mitigation is required.

h. The project site is located in an area of the City of Modesto planned for buildout of an urban neighborhood. Approximately 50% of the project area remains undeveloped, with a covering of dry brush and vegetation. The potential for wildland fires is low, and this potential will decrease further as buildout continues. There would be no additional impact. No mitigation is required.

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<td>a. Violate any water quality standards or waste discharge requirements?</td>
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<td>b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge, resulting in a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level that would not support existing land uses or planned uses for which permits have been granted)?</td>
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<td>c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation onsite or offsite?</td>
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<td>d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding onsite or offsite?</td>
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<td>e.</td>
<td>Create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?</td>
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<td>f.</td>
<td>Otherwise substantially degrade water quality?</td>
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<td>g.</td>
<td>Place housing within a 100-year flood hazard area, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?</td>
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<td>h.</td>
<td>Place within a 100-year flood hazard area structures that would impede or redirect floodflows?</td>
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<td>i.</td>
<td>Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam?</td>
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<td>j.</td>
<td>Contribute to inundation by seiche, tsunami, or mudflow?</td>
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Impacts associated with hydrology are analyzed on pages III-109 through III-119 of the 1994 Supplement.

**Responses to Checklist Questions**

a. The Village One Specific Plan program EIR did not find that buildout of the plan would violate any water quality standards or waste discharge requirements. The proposed project is consistent with the Village One Specific Plan, so there would be no additional impacts. No mitigation is required.

b. The Village One Specific Plan program EIR found that buildout of the Village One Specific Plan area might interfere with local groundwater recharge. However, the impact was found to be less than significant because the Specific Plan area is not a major groundwater recharge area and it includes a recharge/discharge plan for disposal of stormwater runoff and recharge of groundwater. The proposed project would not change the amount of impervious surface in the Specific Plan area or the proposed storm drain facilities. There would be no additional impact. No mitigation is required.
c.-e. The Village One Specific Plan program EIR found that development will substantially alter the existing drainage pattern of the area but, because the project will incorporate an urban storm drain system, will not result in any erosion impacts. The proposed project would not change the amount of impervious surface or the proposed storm drain facilities. There would be no additional impact. No mitigation is required.

f. The Village One Specific Plan program EIR did not find that development would substantially degrade water quality. The proposed project would not change water use or discharge associated with the buildout of the Village One Specific Plan area. There would be no additional impact. No mitigation is required.

g.-i. According to the Village One Specific Plan program EIR, the project site is not situated in a 100-year flood hazard area or downstream from a levee or dam. There would be no impact. No mitigation is required.

j. The project site is located in a flat, inland area not susceptible to seiche, tsunami, or mudflow. There would be no impact. No mitigation is required.

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IX. LAND USE AND PLANNING. Would the project:

a. Physically divide an established community?

b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, a general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

c. Conflict with any applicable habitat conservation plan or natural community conservation plan?

Impacts associated with land use and planning are analyzed on pages III-80 through III-94 of the 1994 Supplement.
Responses to Checklist Questions

a. The proposed project would not result in any physical changes to the environment beyond those described in the Village One Specific Plan. Village One would continue to be developed as a planned community; therefore, the project would not divide an established community. There would be no impact, and no mitigation is required.

b., c. The Village One Specific Plan has been adopted by the City of Modesto and has been incorporated into the Modesto General Plan. The proposed project would be consistent with the Village One Specific Plan. There are no other applicable land use or conservation plans for the project area. There would be no impact. No mitigation is required.

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X. MINERAL RESOURCES. Would the project:

a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

   ☐ ☐ ☐ ☒

b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?

   ☐ ☐ ☐ ☒

Responses to Checklist Questions

a., b. No known mineral resources or important recovery sites are located in the Village One Specific Plan Area. There would be no impact. No mitigation is required.
XI. **NOISE.** Would the project:

c. Result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?

   - Potentially Significant Impact: 
   - Less than Significant Impact with Mitigation: 
   - Less-than-Significant Impact: 
   - No Impact: 

   - Impact Level: 

   - Mitigation: 

   - Additional Impact: 

   - Mitigation Required:

   - Impacts associated with noise are analyzed on pages III-55 through III-67 of the 1994 Supplement.

   a., c. The Village One Specific Plan program EIR found that proposed residential housing in the project area would be exposed to noise levels exceeding general plan thresholds, but mitigation measures were incorporated to reduce the impact to a less-than-significant level. The proposed project would not change project-related noise-generating activities. There would be no additional impact. No mitigation is required.

   b. The Village One Specific Plan program EIR found that the buildout of Village One would not expose people to, or generate excessive, groundborne vibration or groundborne noise levels. There would be no impact. No mitigation is required.

   d. The Village One Specific Plan program EIR found that construction of the proposed project would result in a substantial temporary increase in ambient noise levels for residential housing. However, mitigation measures were incorporated into the program EIR to reduce the impact to a less-than-significant level. The proposed project would not change construction activities. There would be no additional impact. No mitigation is required.

   e. The Village One Specific Plan program EIR found that the Village One Specific Plan area is not located in an airport land use plan area or within 2 miles of a public airport. There would be no impact. No mitigation is required.
f. The Village One Specific Plan program EIR found that a private airstrip, the Eastside Mosquito Abatement District Airstrip, is located east of the Village One Specific Plan area. However, take-offs and landings take place parallel to and outside the Specific Plan boundaries, and flight patterns are generally situated east of the project area. There would be no additional impact. No mitigation is required.

XII. POPULATION AND HOUSING. Would the project:

a. Induce substantial population growth in an area, either directly (e.g., by proposing new homes and businesses) or indirectly (e.g., through extension of roads or other infrastructure)?

b. Displace a substantial number of existing housing units, necessitating the construction of replacement housing elsewhere?

c. Displace a substantial number of people, necessitating the construction of replacement housing elsewhere?

Impacts on population and housing are analyzed on pages III-95 through III-99 of the 1994 Supplement.

Responses to Checklist Questions

a.–c. The Village One Specific Plan program EIR found that buildout of the Village One Specific Plan area would not result in significant adverse impacts on population and housing units. No mitigation is required.
XIII. PUBLIC SERVICES. Would the project:

a. Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or a need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the following public services:

- Fire protection? ☑
- Police protection? ☑
- Schools? ☑
- Parks? ☑
- Other public facilities? ☑

Impacts on public services are analyzed on pages III-120 through III-158 of the 1994 Supplement.

Responses to Checklist Questions

a. The Village One Specific Plan program EIR found that the only significant impact that buildout of the Village One Specific Plan area would have on public services would be in the areas of fire protection and law enforcement. Mitigation measures were identified in the program EIR to reduce the level of this impact to a less-than-significant level. No other significant impacts on public services were identified. The proposed abandonment would not change the provision of public services. There would be no additional impact. No mitigation is required.
XIV. **RECREATION.** Would the project:

a. Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?  

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b. Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?

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Impacts on recreation are analyzed on pages III-120 through III-158 of the 1994 Supplement.

**Responses to Checklist Questions**

a., b. No significant impacts on recreation were identified in the program EIR. The proposed project would not change the provision of parks and recreation facilities. There would be no additional impact. No mitigation is required.

XV. **TRANSPORTATION/TRAFFIC.** Would the project:

a. Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?

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b. Cause, either individually or cumulatively, exceedance of a level-of-service standard established by the county congestion management agency for designated roads or highways?

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c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?

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d. Substantially increase hazards because of a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? | ☐ | ☐ | ☒ | ☐
e. Result in inadequate emergency access? | ☐ | ☐ | ☐ | ☒
f. Result in inadequate parking capacity? | ☐ | ☐ | ☐ | ☒
g. Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? | ☐ | ☐ | ☐ | ☒

Impacts on transportation and traffic are analyzed on pages III-40 – III-44 of the 1994 Supplement.

Responses to Checklist Questions

a., b. The Village One Specific Plan program EIR found that buildout of the Village One Specific Plan area would cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system and would affect level of service at several intersections. Mitigation measures identified in the program EIR were identified to reduce impacts to a less-than-significant level for all intersections except the Briggsmore Avenue/Oakdale Avenue intersection. For that intersection, the impact was determined to be significant and not mitigable. The City of Modesto made a statement of overriding considerations for that impact at the time it certified the 1994 Supplement. The proposed abandonment would not alter traffic patterns in the Specific Plan area or result in additional trips. The abandonment is required by the Specific Plan. There would be no additional impact. No mitigation is required.

c. The Village One Specific Plan program EIR did not find that buildout of the Village One Specific Plan area would result in a change in air traffic patterns. The proposed project does not include any elements that would affect air traffic patterns. There would be no impact. No mitigation is required.

d. The Village One Specific Plan program EIR did not find that buildout of the Village One Specific Plan area included any hazardous design features or increased any incompatible uses for roads in the project area. Therefore, the abandonment will have a less than significant effect on increasing hazards due to a design feature. No mitigation is required.
c. The Village One Specific Plan program EIR did not find that buildout of the Village One Specific Plan area would result in inadequate emergency access in the Specific Plan area. The Specific Plan includes provision of adequate roadways to serve the Village One development. The Specific Plan calls for the abandonment of Merle Avenue as proposed by this project, and the City has delayed the abandonment pending the connection of Floyd Avenue to Claus Road to provide an alternative for east and west bound traffic. The connection of Floyd Avenue to Claus Road has been made. Therefore, the impact on emergency service access is less than significant. No mitigation is required.

f. The Village One Specific Plan program EIR did not find that buildout of the Village One Specific Plan area would result in inadequate parking capacity in the Specific Plan area. There would be no impact. No mitigation is required.

g. The proposed project does not include any changes related to transportation policies, and would have no impact. No mitigation is required.

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XVI. UTILITIES AND SERVICE SYSTEMS.

Would the project:

a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?

b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

c. Require or result in the construction of new stormwater drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or would new or expanded entitlements be needed?

e. Result in a determination by the wastewater treatment provider that serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?
f. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?

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g. Comply with federal, state, and local statutes and regulations related to solid waste?

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Impacts on utilities and service systems are analyzed on pages III-120 through III-158 of the 1994 Supplement.

Responses to Checklist Questions

a. The City provides sewer services to the Village One area. All wastewater would be directed to city wastewater treatment facilities. No wastewater discharges would occur in the project area. The proposed abandonment would not increase the amount of wastewater that will be generated at buildout of the Specific Plan area. There would be no additional impact. No mitigation is required.

b., e. The Village One Specific Plan program EIR discusses the changes and new facilities that will be needed to accommodate buildout of the Village One Specific Plan area. The EIR found that, with mitigation, there would be no significant impact on water or wastewater infrastructure. There would be no additional impact as a result of the proposed project. No mitigation is required.

c. The Village One Specific Plan program EIR discusses the changes and new facilities that will be needed in order to accommodate buildout of the Village One Specific Plan area. The EIR found that, with mitigation, there would be no significant impact on stormwater drainage facilities. An update to the Storm Drainage Master Plan has been prepared and is under consideration by the City. An addendum to the Village One program EIR for the Storm Drainage Master Plan has also been prepared and is under consideration by the City. The project would not result in any additional impacts or the need for any additional mitigation beyond that assessed in the Addendum to the Village One Program EIR for the Storm Drainage Master Plan.

d. The Village One Specific Plan program EIR found that, with mitigation, the effects of buildout of the Village One Specific Plan area on water supply would be less than significant. There would be no additional impact resulting from the proposed project. No mitigation is required.

f., g. The Village One Specific Plan program EIR found that the area's landfills have sufficient permitted capacity to accommodate the project's solid waste disposal needs. The proposed project would not result in any physical changes in the environment or the generation of any additional solid waste. There would be no impact. No mitigation is required.
XVII. MANDATORY FINDINGS OF SIGNIFICANCE.

a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?

b. Does the project have impacts that are individually limited but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)

c. Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?

Cumulative impacts are analyzed on page III-161 of the 1994 Supplement.

Responses to Checklist Questions

a. As described above, the proposed project would not result in any significant impacts on the environment over and above those associated with implementation of the Village One Specific Plan and as analyzed in the Village One Specific Plan program EIR.

b. As described above, the proposed project would not result in any significant impacts, either on a project or on cumulative level, over and above those associated with implementation of the Village One Specific Plan and as analyzed in the Village One Specific Plan program EIR.

c. As described above, the proposed project would not result in any significant impacts affecting humans over and above those associated with implementation of the Village One Specific Plan and as analyzed in the Village One Specific Plan program EIR.
V. MITIGATION APPLIED TO PROJECT

The following mitigation measures developed in the 1994 Village One Specific Plan Supplement to the Program EIR are appropriate to the project and will be incorporated into the project. Therefore, the environmental effects of the project were covered by the program EIR.

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

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

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

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

5. Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.

6. Within urban areas, track out shall be immediately removed when it extends 50 or more feet from the site and at the end of each workday.

7. The developer shall implement measures to prevent carryout or trackout that may otherwise occur in conjunction with construction activities.

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

The Noise Ordinance prohibits the loud and raucous operation or use of any of the following before 7:00 a.m. or after 9:00 p.m. daily (except Saturday and Sunday and State or Federal holidays, when the prohibited time shall be before 9:00 a.m. and after 9:00 p.m.):
a. A hammer or any other device or implement used to pound or strike an object.

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

c. A hand-powered saw.

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

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

f. Any of the following: heavy equipment (such as but not limited to bulldozer, steam shovel, road grader, backhoe), ground drilling and boring equipment (such as but not limited to derrick or dredge), hydraulic crane and boom equipment, portable power generator or pump, pavement equipment (such as but not limited to pneumatic hammer, pavement breaker, tamper, compacting equipment), pile-driving equipment, vibrating roller, sand blaster, gunite machine, trencher, concrete truck, and hot kettle pump.

g. Any construction, demolition, excavation, erection, alteration, or repair activity. In the case of urgent necessity and in the interest of public health and safety, the Chief Building Official may issue a permit for exemption from these. Such period shall not exceed three (3) working days in length while the emergency continues but may be renewed for successive periods of three (3) days or less while the emergency continues. The Chief Building Official may limit such permit as to time of use and/or permitted action, depending upon the nature of the emergency and the type of action requested.

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

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

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