WHEREAS, the City of Modesto receives several Federal grants from the United States Department of Housing and Urban Development (HUD), and

WHEREAS, the City receives a Community Development Block Grant (CDBG) and an Emergency Shelter Grant (ESG), and

WHEREAS, the City receives these grants annually because of its population size, number of households living below the poverty level, and the number of housing units that are considered substandard, and

WHEREAS, for Fiscal Year 2006-2007, there are no Public Service grant applicants recommended to provide Fair Housing/Fair Housing Support Services, and

WHEREAS, Fair Housing is a required annual activity by HUD and provision of this service is necessary to meet service goals through the Housing and Community Development Act of 1974 and the 2005-2009 Consolidated Plan, and

WHEREAS, staff is seeking approval to prepare a Request for Information (RFI) to select a Fair Housing provider, and

WHEREAS, staff will bring forward a recommendation for a provider at a future meeting,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes staff to prepare a Request for Information (RFI) to select a Fair Housing provider.
BE IT FURTHER RESOLVED that staff is hereby directed to bring forward its recommendation for a provider at a future meeting.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 2nd day of May 2006, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Richard Rudnansky, Interim City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-276

A RESOLUTION FINDING THAT THE FOLLOWING PROJECT IS WITHIN
THE SCOPE OF THE PROJECT COVERED BY THE MODESTO URBAN
AREA GENERAL PLAN MASTER ENVIRONMENTAL IMPACT REPORT
(SCH NO. 1999082041): PAMELA MONTEROSSO PARK

WHEREAS, on March 4, 2003, by Resolution No. 2003-123, the City Council of
the City of Modesto certified the Final Master Environmental Impact Report ("Master
EIR") (SCH NO. 1999082041) for the Modesto Urban Area General Plan, and

WHEREAS, Section 21157.1 of the Public Resources Code, relating to reviewing
subsequent projects for a Master EIR, states that the lead agency shall prepare an Initial
Study on any proposed subsequent project to analyze whether the subsequent project may
cause any significant effect on the environment that was not examined in the master
environmental impact report and whether the subsequent project was described in the
master environmental impact report as being within the scope of the project, and

WHEREAS, the City’s Parks, Recreation and Neighborhoods Department, by
Environmental Assessment Initial Study, EA/PR&N No. 2006-05 ("Initial Study"),
reviewed the proposed development and construction of the Pamela Monterosso Park
project to determine whether the proposed project is within the scope of the project
covered by the Modesto Urban Area General Plan Master Environmental Impact Report,
and made the determination that the proposed project will have no additional significant
effect on the environment that was not identified in the Master EIR and, further, that no
new or additional mitigation measures or alternatives are required, and that, therefore, the
proposed project is within the scope of the project covered by the Master EIR, and
WHEREAS on May 2, 2006, concurrently with this resolution, the City Council considered approving and adopting the Pamela Monterosso Park project, which includes: adoption of the Master Plan and Design Development Report, and

WHEREAS, in accordance with the CEQA guidelines, on April 8, 2006, the City caused to be published a 20-day notice of the City’s intent to make a finding of conformance with the Initial Study and the Modesto Urban Area General Plan EIR, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on May 2, 2006, 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 Initial Study No. EA/ PR&N 2006-05, entitled “Proposed Design and Development of Pamela Monterosso Park”, for the proposed project, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference, and based on the substantial evidence included in said Initial Study makes the following findings:

A. The type of project is described in Chapter II of the Master EIR.
B. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the project or otherwise made conditions of approval of the project.
C. An Initial Study (EA/PR&N #2006-05) was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the MEIR and it has been determined that the project was described in the MEIR as being within the scope of the MEIR.
D. Based on the Initial Study, the City of Modesto finds and determines:
   a) The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 that was not identified in the MEIR.
   b) No new or additional mitigation measures or alternatives are required.
A copy of said Environmental Assessment No. EA/PR&N 2006-05, entitled “Proposed Design and Development of Pamela Monterosso Park”, is on file and available in the City Clerk’s Office.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Parks, Recreation and Neighborhoods 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 2nd day of May 2006, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

By: Richard Rudnansky, Interim City Attorney
City of Modesto

Finding of Conformance to General Plan Master EIR:

Initial Study C&ED No. EA/PR&N 2006-05

For the proposed:

PAMELA MONTEROSSO PARK

Prepared by:
City of Modesto
Parks, Recreation and Neighborhoods

April 27, 2005
City of Modesto
Master EIR Initial Study Checklist

I. PURPOSE

CEQA allows for the limited environmental review of subsequent projects under the City’s Master EIR. This Initial Study Checklist is used in determining whether Pamela Monterosso Park is “within the scope” of the project analyzed in the Modesto Urban Area General Plan Master EIR (SCH# 1999082041) (Public Resources Code section 21157.1). When the Initial Study supports this conclusion, the City will issue a finding of conformity.

A subsequent project is “within the scope” of the Master EIR when:

1. it will have no additional significant effects on the environment that were not addressed as significant effects in the Master EIR; and
2. no new or additional mitigation measures or alternatives are required.

“Additional significant effects” means a project-specific effect that was not addressed as a significant effect in the Master EIR. (Public Resources Code Section 21158(d))

The determination must be based on substantial evidence in the record. “Substantial evidence” means facts, reasonable assumptions predicated upon facts, or expert opinion based on facts. It does not include speculation or unsubstantiated opinion. (State CEQA Guidelines Section 15384)

This Initial Study has provided environmental review based on the MEIR and the Phase I ESA and Limited Phase II Sampling report (and supplementary information) prepared by American Geological Services, Inc. 2002 (available at the City).

II. PROJECT DESCRIPTION

A. Title: Pamela Monterosso Park

B. Address or Location: The 3.02-acre project site is located at the southern terminus of Coffee Road and Scenic Drive, in the City of Modesto and consists of APN# 034-018-01, 034-015-02 and 034-018-03. The majority of the project site is undeveloped and covered with low-lying ruderal vegetation.

C. Applicant: City of Modesto, PO Box 642, Modesto, CA 95353

D. City Contact Person: Loren R. Holt, Project Coordinator, Parks, Recreation and Neighborhoods, (209) 571-5573, lholt@modestogov.com

E. Current General Plan Designation(s): Open Space (below the 100-year flood zone), Mixed Use (above the 100-year flood zone), Redevelopment Area (RDA) in the northernmost triangular parcel adjacent to Scenic Drive
F. Current Zoning Classifications: Commercial (C-3) and Residential (R-1)

G. Surrounding Land Uses: The project is bounded on the west by commercial office buildings and associated parking areas, to the north by Scenic Drive, Coffee Road, and existing commercial and residential development, to the east by residential development (single-family homes), and to the south by Dry Creek.

H. Project Description, including the project type listed in Section II.C (Anticipated Future Projects) of the Master EIR (Attach additional maps/support materials as needed for complete record):

Project Objectives
The project objectives are as follows:

- Development of the Pamela Monterosso Park. This includes a parking area and turnaround (eight [8] parking spaces), bicycle rack, public kiosk, picnic tables and benches, and one (1) building pad with utility hookups (for a public restroom) and a concrete pad with electrical hookup for a food service cart
- Construction of 0.2 miles of winding trail connecting the trailhead to the Peggy Mensinger Trail via the existing elevated bridge
- Extensive planting/landscaping along the trail including planting of native plants and trees
- Preservation and protection of existing oak trees and ruderal vegetation throughout the site and along Dry Creek
- Enhancement and expansion of the City of Modesto’s recreational trail system
- Beautification of the existing site
- Improved safety

Project Characteristics
The project would develop the Pamela Monterosso Park (see Figure 2, Proposed Project). Preliminary development plans include a parking lot (eight [8] spaces) that would connect to a vehicular turnaround. The entrance to the trail would be via a sidewalk connecting to Scenic Drive from the north and via the turnaround from the west, and bollards would be installed to protect the entrance to the trailhead from vehicle traffic. The northern portion of the trailhead would include trail signage, bicycle racks, a vendor cart pad, a drinking fountain, and a public restroom. The southern portion of the trailhead would include an informational kiosk. Park benches, picnic tables, and trash receptacles would be available throughout the trailhead area.

Trail Development and Landscaping
The trail would be nine (9)-feet wide and 1050-feet long and made of semi-permeable asphalt. Trail lighting, benches, and trash receptacles would border the trail at regular intervals. Oak trees and native plant species would be used to landscape the trailhead area in the northwestern portion of the site and intermittent stands of oaks would be planted along the trail pathway. All oaks currently on the project site would remain.

Access and Circulation
As discussed, the trailhead would include a small parking lot and turnaround that connects to a commercial parking lot that connects to the intersection of Coffee Road and Scenic Drive. Access would be from the sidewalk along Scenic Drive and from the
bicycle path along Coffee Road. A bus stop is located on Scenic Drive just outside the project site entrance.

Site Lighting
The project would include twelve (14)-foot high exterior lighting near the parking lot and trailhead, and at 150-foot intervals along the trail. These lights would match the existing lights used on the adjacent commercial office development to the west. Lighting would illuminate the trail pathway and provide additional security for trail users.

Proposed Demolition
The project would demolish all except approximately one (1)-foot of the existing asphalt trail (to maintain the stability of the retaining wall). The existing retaining wall and chain link fencing adjacent to the residential development (to the north) would remain. The asphalt trail, retaining wall, and chain link fencing between the intersection of Coffee Road and Scenic Drive and the boundary of adjacent development (the western 1/3 of the existing asphalt trail) would be removed. A six (6)-foot high chain link fence would be installed between the project site and adjacent residential property. Climbing vines would be planted in appropriate areas.

Grading
The project would require minor grading at the western central portion of the site to increase the height of the creek bank and in various places along the winding trail to comply with American with Disabilities Act (ADA) trail requirements. The existing dirt piles on the site would be leveled out and used for grading purposes.

Drainage
Surface runoff from the project site naturally drains south to Dry Creek. The project would generate minor amounts of wastewater (public bathrooms, water fountain, etc.), which would use the existing drainage infrastructure from the adjacent commercial office development to the north. Drainage from the proposed drinking fountain and restroom would connect to sanitary sewer infrastructure in adjacent development.

Utilities
The project would tie into existing utility infrastructure (electricity and water) already in Scenic Drive. Development at the project site that would require utility hookups would include the public restroom, food cart, water fountain, and site lighting.

Construction Schedule
The project construction schedule is proposed for the summer or fall of 2006.

Other Public Agencies Whose Approval is Required: None
III. FINDINGS/DETERMINATION (SELECT ONE ON THE BASIS OF THE ANALYSIS IN SECTION IV)

1. **X** Within the Scope - The project is within the scope of the Master EIR and no new environmental document or Public Resources Code Section 21081 findings are required. The following items are found to be true:

A. The type of project is described in Chapter II of the Master EIR.

B. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the project or otherwise made conditions of approval of the project.

C. An Initial Study was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the MEIR and it has been determined that the project was described in the MEIR as being within the scope of the MEIR.

D. Based on the Initial Study, the City of Modesto finds and determines:
   a) The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 that was not identified in the MEIR.
   b) No new or additional mitigation measures or alternatives are required.

E. The criteria for currency of the Master EIR were reviewed (section 5 below) and it was determined that the Master EIR is current for all areas of the Initial Study.

2. **_** Mitigated Negative Declaration Required - On the basis of the above determinations, the project is not within the scope of the Master EIR. A mitigated negative declaration will be prepared for the project. The following items are found to be true:

A. The type of project is described in Chapter II of the Master EIR.

B. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the project or otherwise made conditions of approval of the project.

C. The project will have one or more potential new significant effects on the environment that were not addressed as significant effects in the Master EIR. New or additional mitigation measures are being required of the project that will reduce the effects to a less-than-significant level.

3. **_** Focused EIR Required - On the basis of the above determinations, the project is not within the scope of the Master EIR. A Focused EIR will be prepared for the project. The following items are found to be true:

A. The type of project is described in Chapter II of the Master EIR.

B. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the project or otherwise made conditions of approval of the project.
C. The project will have one or more new significant effects on the environment that were not addressed as significant effects in the Master EIR. New or additional mitigation measures or alternatives are required as a result.

Loren R. Holt, Project Coordinator

Date
4. Within the Scope Analysis of this Document:

The Master EIR permits projects to be found within the scope of the MEIR if certain criteria are met, basically, if the following statements are found to be true for all 20 sections of this Initial Study, then the project was covered by the MEIR analysis and is within the scope of the MEIR. Any "No" response must be discussed.

YES NO

(1) The lead agency for subsequent projects shall be the City of Modesto or a responsible agency identified in the Master EIR. □ □

(2) City policies which reduce, avoid or mitigate environmental effects, will continue to be in effect and therefore would be applied to subsequent projects where appropriate. The policies are described in the list of policies in place and mitigation measures attached to the Initial Study template. □ □

(3) Federal, State, Regional and Stanislaus County regulations do not change in a manner that is less restrictive on development than current law (i.e., would not offer the same level of protection assumed under the Master EIR). □ □

(4) No specific information concerning the known or potential presence of significant resources is identified in future reports, or through formal or informal input received from responsible or trustee agencies or other qualified sources. □ □

(5) The development will occur within the boundaries of the City’s planning area as established in this Urban Area General Plan. □ □

(6) Development within the project will comply with all mitigation measures identified in the General Plan Master EIR. □ □

Discussion:

(1) None
(2) None
(3) None
(4) None
(5) None
(6) None

5. Currency of the Master EIR Document

The MEIR should be reviewed on a regular basis to determine its currency, and whether additional analysis/mitigation should be incorporated into the MEIR via a Supplemental or Subsequent EIR (CEQA Section 21157.6). Staff has reviewed sections 1 through 20 of this...
document in light of the criteria listed below to determine whether the MEIR is current. The analysis contained within the Master EIR is current as long as the following circumstances have not changed. Any no response must be discussed.

YES NO

(1) Certification of the General Plan Master EIR occurred less than five years prior to the filing of the application for this subsequent project.

(2) This project was described in the Master EIR and its approval will not affect the adequacy of the Master EIR for any subsequent project because the City can make the following findings:

(3) No substantial changes have occurred with respect to the circumstances under which the Master EIR was certified.

(4) No new information, which was not known and could not have been known at the time the Master EIR was certified as complete, has become available.

(5) Policies remain in place that requires site-specific mitigation, and avoidance or other mitigation of impacts as a prerequisite to future development.

Discussion:
(1) None
(2) None
(3) None
(4) None
(5) None

IV. ENVIRONMENTAL ANALYSIS

This Initial Study, in accordance with Section 21157.1(b) of the Public Resources Code, analyzes whether this project may cause any project-specific significant effect on the environment that was not examined in the Final Master EIR (MEIR) for the General Plan and whether new or additional mitigation measures or alternatives may be required as a result. The Initial Study thereby documents whether or not the project is “within the scope” of the Master EIR.

Pursuant to Public Resources Code Section 21157.1, no new environmental document or findings are necessary for projects that are determined to be within the scope of the MEIR. Adoption of a notice of conformity after completion of the Initial Study fulfills the City’s obligation in that situation.

All environmental effects cited reflect year 2025 build out of the Urban Area General Plan as identified in the MEIR.
The Master EIR for the General Plan organizes its analysis of environmental impacts into eighteen subject areas. The following analysis is based on the impact analyses contained in Chapter V of the Master EIR. For ease of cross-reference, the sections are numbered in the same order as the analyses in Chapter V.

In addition to the 18 Master EIR subject areas, the Initial Study checklist addresses the issues of land use/planning and aesthetics. The reason for including these additional issues is to ensure that consideration is being given to the full range of subjects of importance contained in Appendix G of the CEQA Guidelines. The format for the land use/planning and aesthetics sections differs from that of the other 18 subject areas since these two subjects were not addressed as distinct subjects in the Master EIR.

1. **TRAFFIC AND CIRCULATION**

a. **Significant Effects Identified in the Master EIR**

The Master EIR identified the following significant and unavoidable traffic and circulation impacts:

**Effect:** Increased traffic will result in certain roadway segments operating at LOS D or worse.

**Effect:** The Substantial increase in traffic relative to the existing load and capacity of the street system will cause, violation, either individually or cumulatively, of an LOS standard established by the County CMP for designated roads and highways.

**Effect:** Creation of need for Capacity-enhancing modifications to existing facilities.

**Effect:** Increase in energy consumption associated with the operation of highway projects, rail improvements, and aviation facilities.

**Effect:** Severe contrast with existing neighborhood or area character caused by highway and transit projects.

b. **Master EIR and/or New Mitigation Measures Applied to the Project**

Traffic and Circulation mitigation measures that are pertinent to this project are found on MEIR pages V-1-15 through V-1-21. All feasible measures appropriate to the project – including any new measures – will be incorporated into or made conditions of approval of this project and will be listed in Section IV, Mitigation Measures Applied to Project.

**Discussion:**

The proposed project is consistent with the MEIR Traffic and Circulation Needs section (pages V-1-1 through V-1-39).

c. **Project-Specific Effects**

Section V-1.B of the MEIR provides analysis of Traffic and Circulation impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project -specific effect not previously analyzed in the MEIR.
Significance Criteria: A subsequent development project will have a new significant effect on the environment if it would exceed the following criteria:

YES NO

(1) The project exceeds the Master EIRs traffic generation assumptions for this site and City Engineering and Transportation staff has determined that the project would have additional project-specific effects that are not avoided or reduced by the Master EIRs program of mitigation measures. ☐ ☒

(2) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment). ☐ ☒

(3) Result in inadequate emergency access. ☐ ☒

(4) Result in inadequate parking capacity. ☐ ☒

Discussion:

(1) Engineering and Transportation Department has reviewed the project and determined that the project is within the scope of the Master EIR and no further traffic study is required (see attached memo).

(2) The project would be accessed from Scenic Drive or Coffee Road (a stoplight controlled intersection). The parking lot and turnaround would not create sharp curves or block visibility to and from the parking lot. Furthermore, final project plans are subject to review and approval by the City of Modesto, Public Works Department, Traffic Engineering & Operations Division.

(3) The project would be accessed via an adjacent parking lot which is accessed by (vehicles turning into from) Scenic Drive or (across the intersection) from Coffee Road into the parking lot area. Emergency vehicles could easily access this area via Scenic Drive or Coffee Road. Emergency access to the trail would be in compliance with all emergency access provisions of the Fire Marshal.

(4) The existing trail is used primarily by local residents, many within the immediate neighborhood. The new parking area would increase parking over existing conditions. Based on the current use patterns the provision of eight spaces would be adequate for the projected demand.

2. AIR QUALITY

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant environmental impacts relative to air quality:

Effect: Projected traffic levels will result in increased ambient carbon monoxide (CO) levels in the project area. This is a significant and unavoidable impact.
Effect: Projected traffic levels will result in increased ROG and NOX levels in the project area. This is a significant and unavoidable impact.

These are also cumulative impacts on air quality.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Air Quality mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-2-11 through V-2-18 MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project and are listed in Section IV, Mitigation Measures Applied to Project:

Discussion:

The proposed project is consistent with the MEIR Degradation of Air Quality section (pages V-2-1 through IV-2-26).

c. Project-Specific Effects

Section V-2.B of the MEIR provides analysis of Air Quality impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-than significant unless:

YES NO
(1) The project exceeds the emissions thresholds established for CO and NOx by the San Joaquin Valley Unified Air Pollution Control District’s (SJVUAPCD) adopted CEQA Guidelines.

(2) The project does not incorporate the best management practices for PM10 reduction established by the SJVUAPCD.

(3) The project does not comply with the air quality policies of the Modesto Urban Area General Plan.

(4) The project would expose sensitive receptors to substantial pollutant concentrations.

(5) The project would create objectionable odors affecting a substantial number of people.

Discussion:

(1) The project land uses would improve the existing land uses, which would not conflict with the air quality plan or generate air quality impacts in conflict with this plan. The operation of a trail with limited parking would not conflict with the air quality plan or adversely impact air quality. Bike racks will be provided at the site to encourage alternative transportation to and from the trail. Project construction would be temporary and would not require the use of heavy machinery and would not generate or contribute substantially to air quality pollutants.
(2) Project construction would result in disturbance and construction of approximately 3.02 acres over a six (6)-month period. This project will be constructed according to SJVAPCD Guidelines, and will implement all of the control measures for construction activities identified in SJVAPCD under Regulation VIII and discussed in the MEIR as New Mitigation Measure Air-1 (page V-2-24).

(3) See number 1. The operation of a trail with limited parking would not conflict with the air quality plan or adversely impact air quality. Bike racks will be provided at the site to encourage alternative transportation to and from the trail. The project is consistent with and complies with existing air quality policies of the Modesto Urban Area General Plan.

(4) The closest sensitive receptors to the project site are single-family residential lots to the north and east of the project site. The project would not generate or contribute substantially to air quality pollutants.

(5) The project would not generate or contribute to any objectionable odors.

3. NOISE

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant and unavoidable environmental impacts relative to noise:

Effect: Traffic noise levels for future conditions in the plan area have the potential to result in exceedances of the City’s Noise Significance Standards (see Table 3-3 MEIR).

Effect: Noise level projections based on the traffic levels anticipated in the General Plan indicate that noise will exceed the City’s General Plan and noise ordinance standards.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Noise policies and mitigation measures pertinent to the project being analyzed in this Initial Study are found on pages V-3-10 through V-3-15 MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project. and any new measures are listed in Section IV, Mitigation Applied to Project:

Discussion:

The proposed project is consistent with the MEIR Generation of Noise section (pages V-3-1 through V-3-22).

c. Project-Specific Effects

Section V-3.B of the MEIR provides analysis of noise impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-than significant unless:
The project will exceed the standards for noise level and hours of operation established by the Modesto noise ordinance.

The project will exceed the noise policies of or otherwise be inconsistent with the Modesto Urban Area General Plan.

The project will result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.

The project will result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.

Discussion:

(1) Noise levels on site during a visit on March 25, 2005 ranged from 46.0 dB(A) to 68.0 dB(A). Noise levels were greatest at the upland (northwestern) portion of the project site, closest to Scenic Drive. On average, noise levels on the site were 62-65 dB(A). Based on Table V-3-3, of the Noise Section of the MEIR, noise levels of 70.0 dB(A) and below are considered normally acceptable for playgrounds and neighborhood parks. The project would replace existing uses with similar uses, and would generate noise levels similar to existing noise levels. The project would not expose persons to or generate noise levels in excess of the City standards.

(2) See number 1.

(3) See number 1. The project would replace existing uses with similar uses, and would generate noise levels similar to existing noise levels.

(4) The City of Modesto Noise Ordinance (Modesto Municipal Code Section 4-9.101) prohibits the use of construction equipment (including hammers, saws, heavy equipment, etc.) before 7:00 AM or after 9:00 PM daily (except for Saturdays and Sundays and State or federal holidays, when the prohibited time shall be before 9:00 AM and after 9:00 PM). Furthermore, the General Plan requires all development projects located within the Baseline Developed Area and Redevelopment Area to incorporate explicit noise mitigation to mitigate noise levels. The project will comply with the Noise Ordinance and General Plan requirements during construction, which would reduce temporary noise impacts.

4. AGRICULTURAL LANDS

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant environmental impacts relative to agricultural lands:

Effect: Development within the urbanized Baseline Developed Area and Redevelopment Area will have a less-than-significant impact on agricultural lands.
Effect: Conversion of agricultural land will occur as available developable land is occupied within the City. This is a significant and unavoidable impact.

Effect: Growth within Modesto’s planning area would contribute considerably to the loss of agricultural land within Stanislaus County. This is a significant and unavoidable cumulative impact.

b. Master EIR and/or New Mitigation Measures Pertinent to the Project

Agricultural Land mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-4-7 and V-4-8 MEIR. All feasible measures appropriate to the project and any new mitigation to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Applied to Project:

Discussion:

The proposed project is consistent with the MEIR Agricultural Lands section (pages V-4-1 through V-4-12).

c. Project-Specific Effects

Section V-4.B of the MEIR provides analysis of Agricultural Lands impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-than significant unless:

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Discussion:

(1) The project site is currently occupied by an existing trail. The site is disturbed and covered in annual grasses and ruderal vegetation. The project site is not listed as farmland (prime, unique, or of statewide importance) on Figure V-4-1, Important Farmland Within City of Modesto Planning Areas, in the MEIR.
(2) The project site is located within a highly-urbanized area of Modesto and is surrounded by residential and commercial uses.

(3) The project site is not zoned for agricultural uses, nor is it under Williamson Act contract. The project would not conflict with these designations.

(4) The project site is located within a highly-urbanized area of Modesto and is surrounded by residential and commercial uses. The trail improvements would not directly or indirectly affect agricultural lands.

5. WATER SUPPLY

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant environmental impacts relative to water supply:

Effect: Urban Area General Plan policies are established to limit groundwater extractions to the safe yield of the aquifer and thereby avoid aquifer over drafting. In addition, the UWMP requires that new urban development would proceed in conjunction with the availability of water supplies and distribution facilities. It is assumed that increased entitlement of surface water supplies such as a water transfer from another water purveyor would undergo independent environmental review pursuant to CEQA. This is a less-than-significant impact.

Effect: Development to the future projected City population would require expansion of the MRWTP to its full 60 mgd capacity, development of additional groundwater wells, and construction of additional water distribution and treatment facilities. Construction of some of the required facilities would most likely require site-specific environmental impact assessments to be conducted under CEQA. Consequently, the potential environmental impacts of the Urban Area General Plan are considered less-than-significant.

Effect: During drought years, despite available options, significant water shortages are forecast for the San Joaquin River basin by the year 2020. Modesto would make a cumulatively considerable contribution to the cumulative impact on water supply under drought conditions. This is a significant and unavoidable cumulative impact.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Water Supply mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-5-7 through V-5-8 MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project:

Discussion:

This project will build a trail and would result in very little added consumption of water. All plantings will be of native plant material which would require limited added water during the plant establishment phase and no additional water once the plants have been established.
c. Project-Specific Effects

Section V-5.B of the MEIR provides analysis of Water Supply impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-significant unless:

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<td>Sufficient water supplies are not available to serve the project from existing entitlements and resources, new or expanded entitlements are needed.</td>
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Discussion:

(1) According to the City of Modesto, Public Works Department, no new or expanded water services are needed to serve this project. The project would hook up to existing water mains in Scenic Drive.

(2) The installation of drinking fountains and restrooms would not generate a substantial increase in water demand. As indicated in Item 1 above, the increased demand would be met by existing services.

6. SANITARY SEWER SERVICES

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant environmental impacts relative to sanitary sewer services:

**Effect:** The City has already begun to implement the provisions of the Wastewater Master Plan (WMP) to meet future demand for sanitary sewer services. As City wastewater treatment facilities are expanded to meet the needs of the Baseline Developed, Redevelopment, and Planned Urbanizing Areas, the City will obtain the necessary wastewater discharge and NPDES permits from the Central Valley RWQCB, as required under Urban Area General Plan Policy V-D.2(a). Implementing the WMP, requirement of Best Management Practices for post-construction activities, as well as the Urban Area General Plan policy cited above, will avoid violation of wastewater discharge requirements. As a result, this impact would be less-than-significant.

**Effect:** The City has adopted the WMP specifically to ensure that sewer capacity will match the level of growth projected by the Urban Area General Plan. Development within the Baseline Developed and the Planned Urbanizing Areas that is consistent with the Urban Area General Plan will not have a significant effect on capacity. Urban Area General Plan Policy III-D.1(d) will ensure that development in the Planned Urbanizing Area will fund the necessary improvements. This is a less-than-significant impact.
Note on the WMP Master EIR. The WMP Master EIR identified a number of impacts and mitigation measures. Its mitigation measures have been adopted by the City and are being implemented by the City under the WMP. Those impacts are being independently addressed under that Master EIR and do not need to be considered under this Initial Study. Refer to the WMP Master EIR for details.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Sewer Service mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-6-4 through V-6-7 MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project:

Discussion:

The proposed project is consistent with the MEIR Increased Demand for Sanitary Sewer Services section (V-6-1 through V-6-12).

c. Project-Specific Effects

Section V-6.B of the MEIR provides analysis of Sanitary Sewer Service impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-than significant unless:

YES NO

(1) The project is inconsistent with the Modesto Urban Area General Plan.

(2) The project will result in a determination by the wastewater treatment provider which 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.

Discussion:

(1) The proposed project is consistent with the Modesto Urban Area General Plan.

(2) The project would generate a minor amount of wastewater associated with the construction of a public restroom. Drainage from the drinking fountain and restroom would connect to sanitary sewer infrastructure in adjacent development, which has adequate capacity to serve the project.

7. SENSITIVE WILDLIFE AND PLANT HABITAT

a. Significant Effects Identified in the Master EIR
The Master EIR identified the following significant environmental impacts relative to sensitive wildlife and plant habitat:

**Effect:** Although many sensitive species live in riparian habitats within the planning area, the policies of the plan will ensure that impacts of the Urban Area General Plan will be less-than-significant.

**Effect:** Requiring higher residential density than the suburban norm and a compact pattern of growth within the designated planning area to the year 2025 will minimize the City’s contribution to the cumulative loss of habitat. Nonetheless, this is a significant and unavoidable impact.

### b. Master EIR and/or New Mitigation Measures Applied to the Project

Wildlife and Plant Habitat mitigation measure pertinent to the project being analyzed in this Initial Study are found on pages V-7-19 through V-7-21. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project:

**Discussion:**

The appropriate mitigation to be applied to this project includes: NONE from the MEIR, and no new or additional mitigation measures or alternatives are required.

### c. Project-Specific Effects

Section V-7.B of the MEIR provides analysis of Wildlife and Plant Habitat impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-than significant unless:

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**Discussion:**

(1) This project is consistent with the Modesto Urban Area General Plan.

(2) There are no sensitive natural communities within the project boundaries. The valley oak and riparian habitats bordering the site are considered to be sensitive plant
communities by the CDFG and this project does not include the removal of any trees or vegetation from these sensitive plant communities.

(3) The proposed trail would be constructed within the upland, annual grassland area and does not involve the removal of any trees, riparian-associated vegetation, or alterations to the banks of Dry Creek.

8. ARCHAEOLOGICAL OR HISTORICAL SITES

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant environmental impacts relative to archaeological or historical sites:

Effect: If a site-specific project involves the modification or demolition of a qualifying structure more than 50 years in age, then the impact will be significant.

Effect: Areas of high probability for archaeological resources are located within the riparian corridors along the Tuolumne River, Dry Creek, and the Stanislaus River. There, the potential impact comes from earthmoving activities that could result in disturbance of resources or human remains. There is a low probability that archaeological resources will be uncovered in areas outside of the riparian corridors.

Effect: The City Zoning Ordinance requires that when substantial changes to a structure are proposed, the development will be required to comply with other Zoning Ordinance provisions such as parking or landscaping requirements. This could result in modifications to the structure, which substantially reduce its historical significance. This would be a less-than-significant impact with the imposition of new mitigation measure Cultural-1.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Archaeological or Historic mitigation measures pertinent to the project being analyzed in this Initial Study are found on page V-8-13 and V-8-14 MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Applied to Project:

Discussion:

A records search conducted by the Central California Information Center (CCIC) at Stanislaus State University on April 4, 2005 indicated that no prehistoric or historic archaeological resources have been reported or found at the project site. The project would replace the existing trail with the Pamela Monterosso Park. Construction and development of the park would not cause a substantial adverse change in the site, or affect potential archaeological resources.
c. Project-Specific Effects

Section V-8.B of the MEIR provides analysis of Archaeological/Historical impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-significant unless:

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(1) The project is inconsistent with the Modesto Urban Area General Plan.  
(2) The project would adversely affect a cultural resource that is either listed or eligible for listing in the California Register of Historical Resources, or that is listed by the City of Modesto as a Designated Landmark Preservation Site.

Discussion:

(1) This project is consistent with the Modesto Area General Urban Plan.
(2) There are no buildings currently on the project site and there are no known archaeological resources on the project site.

9. STORM DRAINAGE

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant environmental impacts relative to storm drainage:

**Effect:** The potential impacts on storm water drainage that could occur from the project were qualitatively evaluated with respect to several factors including: extent of the projected increase in urban surface area compared to undeveloped ground; magnitude of projected changes to hydrologic and physical site characteristics of the study area compared to existing conditions; regulatory criteria and guidelines; and professional judgment. Because the Urban Area General Plan includes policies that require new development in all three sections of the planning area to install approved drainage facilities, the potential impacts of the Urban Area General Plan on storm water drainage are considered less-than-significant.

**Effect:** The population of Stanislaus County is projected to increase in a fashion similar to that of Modesto, resulting in additional urban development and associated increases in impervious areas and associated urban storm water drainage. Cumulative hydrologic impacts of storm water flows from Modesto urban areas and other areas of the County could occur due to the fixed capacity of MID and TID irrigation canals to convey drainage west to the San Joaquin River. If drainage channels in some areas prove insufficient to handle the increased drainage discharges, existing storm water runoff from urban and agricultural areas during large storm events would have to be interrupted until water levels receded to a point allowing the resumption of discharges to the channel. Ceasing discharges to drainage channels could cause inundation in and around the drainage conveyance pipeline systems, surface drainage...
channels, detention basins, and other urban areas. This cumulative impact is considered significant and unavoidable.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Storm Drainage mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-9-4 through V-9-8. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project:

Discussion:

The proposed project is consistent with the MEIR Increased Demand for Storm Drainage section (pages V-9-1 through V-9-13).

c. Project-Specific Effects

Section V-9.B of the MEIR provides analysis of Storm Drainage impacts of development of the General Plan; the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-than significant unless:

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(1) The project is inconsistent with the Modesto Urban Area General Plan.
(2) The project would substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or offsite.
(3) Create or contribute runoff water that would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff.

Discussion:

(1) This project is consistent with the Modesto Urban Area General Plan.
(2) According to City of Modesto, Public Works Department, the project would hook up to existing storm drainage infrastructure of the adjacent commercial office building to the west. Therefore, the project would not require new construction or expansion of existing facilities.
(3) This project would construct a trail located adjacent to the Dry Creek. Plantings would be native vegetation which would help slow the runoff of storm water into the creek. Since the project site is currently not developed, the project would not increase any storm water runoff.
10. FLOODING AND WATER QUALITY

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant environmental impacts relative to flooding and water quality:

**Effect:** Increased runoff can accelerate soil erosion, stream channel scouring, and sedimentation of channels, and also increase pollutant transport to waterways. The potential impacts of the project on flooding are considered less-than-significant because the Urban Area General Plan Update includes policies to restrict development in the floodplain and therefore would avoid exposing persons and property to flood hazards. In addition, new development under the Urban Area General Plan is required to install storm water drainage facilities that restrict the amount of post-development runoff from exceeding pre-development conditions.

**Effect:** The potential impacts of the project on surface-water quality are considered less-than-significant because the City policies and capital improvement projects for storm water drainage facilities would minimize discharges of urban pollutants to natural waterways. The City drainage program policies require new development to prepare drainage plans and implement urban runoff control measures; larger Specific Plan developments must have storm drainage systems designed to control pollutant runoff. The City's implementation policies for the municipal NPDES storm water permit require new development to implement an appropriate selection of permanent pollution control measures. Permanent erosion control measures such as seeding and planting vegetation for new cut-and-fill slopes, directing runoff through vegetation, or otherwise reducing the offsite discharge of particulates and sediment are the most effective method of controlling offsite discharges of urban pollutants.

**Effect:** The City's future development will contribute to cumulative water quality effects. EPA regulations for NPDES storm water permits and new proposed regulatory additions to the rules have become much more comprehensive in recent years and are being implemented to reduce pollutant runoff from both large- and small-scale activities. Implementation of NPDES-permitting programs throughout the county will reduce potential water-quality impacts to a less-than-significant level.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Flooding and Water Quality mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-10-7 through V-10-10 MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Applied to Project:

**Discussion:**

The proposed project is consistent with the MEIR Flooding and Water Quality section (pages V-10-1 through V-10-16).
c. Project-Specific Effects

Section V-10.B of the MEIR provides analysis of Flooding and Water Quality impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-less-than significant unless:

YES  NO

(1) The project is inconsistent with the Modesto Urban Area General Plan.  ☒

(2) The project does not comply with the regulatory requirements of the federal Clean Water Act or the State Porter-Cologne Act.  ☒

(3) The project does not comply with Modesto’s Guidance Manual for New Development Storm water Quality Control Measures.  ☒

(4) The project would create or contribute runoff water, which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff.  ☒

Discussion:

(1) This project is consistent with the Modesto Urban Area General Plan.

(2) The project would be subject to the federal Clean Water Act, the State Porter-Cologne Act and all local requirements.

(3) The project complies with Modesto’s Guidance Manual.

(4) The project will be subject to applicable Federal, State and City storm-water standards, and will therefore, not substantially increase polluted runoff. Most runoff from the site would continue to drain into Dry Creek, which historically has had sufficient capacity to carry runoff into the existing storm-water drainage system.

11. PARKS AND OPEN SPACE

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant environmental impacts relative to parks and open space:

Effect: Within the Baseline Developed and Redevelopment Areas, the Urban Area General Plan does not propose any elimination of existing park and/or open space land. Impacts on parks and open space will be less-than-significant.

Effect: The projected population of the Planned Urbanizing Area is 148,600, requiring 149 acres of neighborhood parks and 298 acres of community parks. The required minimum acreages
can be met through the application of existing policies and regulations, including Government Code Section 66474, which require developers to pay Parks Capital Facilities Fees to fund the acquisition of appropriate parkland acreage. This impact is less-than-significant.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Parks and Open Space Mitigation Measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-11-4 through V-11-19 MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Applied to Project:

Discussion:

This project creates park and open land.

c. Project-Specific Effects

Section V-11.B of the MEIR provides analysis of Parks and Recreation impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-significant unless:

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<td>(1) The project is inconsistent with the Modesto Urban Area General Plan.</td>
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Discussion:

(1) The project would replace the existing trail with the Pamela Monterosso Park. The project would serve to improve and augment existing City recreation facilities.

12. SCHOOLS

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant environmental impacts relative to schools:

Effect: The estimated increase in population over 1994/1995 would generate an additional 29,200 elementary school students, 7,330 middle school students, and 14,640 high school students above those enrollments. Assuming that existing facilities cannot sufficiently accommodate this increase and that all of the new students would require new school facilities, build out of the General Plan would result in the need for approximately 37 elementary schools, 8 middle schools, and 7 high schools beyond 1994/1995 levels. This would result in a significant impact on schools in that it would exceed current capacity. By statute, this impact is
considered to be mitigated below a level of significance by payment of school impact fees and exercise of any or all of the financing options set out in Government Code Section 65997.

b. Master EIR and/or New Mitigation Measures Applied to the Project

The Master EIR did not identify any new mitigation measures. Mitigation relies upon the implementation of the policies in place under the Modesto Urban Area General Plan. As long as all anticipated subsequent projects apply these policies, no new mitigation is necessary. Further, payment of school impact fees and compliance with SB 50 is statutorily deemed to be full mitigation of school impacts (Government Code Section 65995). The proposed additional school policy will address the situation that would arise should AB 50 be repealed. It will authorize impact fees or other methods to finance additional school facilities.

The following schools mitigation measure(s) are pertinent to the project being analyzed in this Initial Study. See pages V-12-4 through V-12-7 MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section IV, Mitigation Applied to Project:

Discussion:

This project creates a trail head for an existing trail and does not include any residential development. Therefore, no new schools would be needed.

c. Project-Specific Effects

Section V-12.B of the MEIR provides analysis of Schools impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-significantly significant unless:

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Discussion:

(1) This project is consistent with the Modesto Urban Area General Plan.

(2) This project creates a trail head for an existing trail and does not include any residential development. Therefore, no new schools would be needed.
13. POLICE SERVICES

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant environmental impacts relative to police services:

Effect: The 1995 Master EIR identified two impacts on the demand for police services; however, it concluded that no significant impact, based on the mitigation measures identified in the 1995 Master EIR, would occur. Those mitigation measures are now policies of the Urban Area General Plan. The impact is less-than-significant.

Effect: Within the Planned Urbanizing Area, complying with the Urban Area General Plan policies, particularly the policy that requires a long-range financing strategy for each Comprehensive Plan Area, will allow the City to provide the resources necessary to extend service to the newly growing Planned Urbanizing areas. These policies reduce the impact to a less-than-significant level.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Police Services mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-13-3 and V-13-4 MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project:

Discussion:

The proposed project is consistent with the MEIR Increased Demand for Police Services section (pages V-13-1 through V-13-7).

c. Project-Specific Effects

Section V-13.B of the MEIR provides analysis of police services impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR:

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-than significant unless:

YES NO

(1) The project is inconsistent with the Modesto Urban Area General Plan. □  □

(2) The project would result in the need for construction of new or significantly altered facilities which could cause new significant environmental impacts in order to maintain acceptable service ratios, response times or other performance objectives. □  □

Discussion:
This project is consistent with the Modesto Urban Area General Plan.

The project would replace the existing trail with the Pamela Monterosso Park. The project would be similar in nature to existing uses, and would incorporate improved trail lighting, promoting bicycle/pedestrian safety and security. Therefore, there would not be any anticipated increase in the demand for police services.

14. **FIRE SERVICES**

a. **Significant Effects Identified in the Master EIR**

The Master EIR identified the following significant environmental impacts relative to fire services:

- **Effect:** The Baseline Developed Area and Redevelopment Area are already developed. Impacts on fire services of development in these areas will be less-than-significant.

- **Effect:** In the Planned Urbanizing Area, the Urban Area General Plan would result in the need for additional fire protection services due to increases in the number of employees, permanent population, and associated improvements. City policy requires that fire protection be in place concurrent with construction in the Planned Urbanizing Area. This policy will be implemented with the adoption of future Comprehensive Plans in the Planned Urbanizing Area. This impact would be less-than-significant.

b. **Master EIR and/or New Mitigation Measures Applied to the Project**

The Master EIR did not identify any new mitigation measures. Mitigation relies upon the implementation of the policies in place under the Modesto Urban Area General Plan. These are identified and described in the list of policies in place and MEIR mitigation measures attached to the Initial Study template.

Fire Services mitigation measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-14-3 through V-14-5 MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project.

**Discussion:**

The proposed project is consistent with the MEIR Increased Demand for Fire Services section (pages V-14-1 through V-14-9).

c. **Project-Specific Effects**

Section V-14.B of the MEIR provides analysis of fire services impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-than significant unless:

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The project is inconsistent with the Modesto Urban Area General Plan.
(2) The project would result in the need for construction of new or significantly altered facilities which could cause new significant environmental impacts in order to maintain acceptable service ratios, response times or other performance objectives.

Discussion:

(1) This project is consistent with the Modesto Urban Area General Plan.

(2) The project would replace the existing trail with the Pamela Monterosso Park. The project would be similar in nature to existing uses. The project would not require the need for new fire protection services.

15. SOLID WASTE

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant environmental impacts relative to solid waste:

Effect: Since the project would exceed available landfill capacity, it is identified as a significant impact. The Fink Road Landfill may be closed by the time the City reaches build out, unless an expansion is approved by the County and the Integrated Waste Management Board. As the waste stream generated increases with population, additional landfills and methods for diversion would have to be utilized. The project will also generate the need for additional collection and transfer facilities. This impact is significant and unavoidable. The impact would be less-than-significant at such time as the Fink Road Landfill expansion is approved.

Effect: The project makes a considerable contribution to the cumulative impact on landfill capacity of development in Stanislaus County. This impact is significant and unavoidable.

b. Master EIR and/or New Mitigation Measures Applied to the Project

Solid Waste Mitigation Measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-15-5 and V-15-6 MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Applied to Project:

Discussion:

The proposed project is consistent with the MEIR Generation of Solid Waste section (pages V-15-1 through IV-15-10).

c. Project-Specific Effects

Section V-15.B of the MEIR provides analysis of solid waste impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.
Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-significant unless:

YES  NO

(1) The project is inconsistent with the Modesto Urban Area General Plan. □  ☒

(2) The County is unable to expand its solid waste disposal capacity and the project would result in waste stream levels that exceed disposal capacity. □  ☒

Discussion:

(1) This project is consistent with the Modesto Urban Area General Plan.

(2) There would be very little solid waste generated by the use of the trail. Trail users typically carry out what they bring onto the trail and waste receptacles would be provided at the entrance to the trail. The project would be similar to existing uses and the solid waste generation by the project would be similar to existing conditions.

16. HAZARDOUS MATERIALS

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant environmental impacts relative to hazardous materials:

Effect: The impacts of the project relative to hazardous materials are less-than-significant, based on the existing regulatory framework. New development will be required to comply with regulations monitoring and controlling the handling and use of hazardous and toxic materials.

b. Master EIR and/or New Mitigation Measures Applied to the Project

The Master EIR did not identify any new mitigation measures. Mitigation relies upon the implementation of the policies in place under federal, state and county policies and regulations, and the Modesto Urban Area General Plan. These are identified and described in the list of policies in place and MEIR mitigation measures attached to the Initial Study template.

Hazardous Materials Mitigation Measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-16-9 through V-16-12 MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project:

Discussion:

The proposed project is consistent with the MEIR Generation of Hazardous Materials section (pages V-16-1 through V-16-15).
c. Project-Specific Effects

Section V-16.B of the MEIR provides analysis of hazardous materials impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-than significant unless:

YES NO

(1) The project is inconsistent with the Modesto Urban Area General Plan. □ ☒

(2) The project does not comply with all applicable federal, state, and county standards and regulations relative to the handling, storage, disposal, and transport of hazardous or toxic materials or wastes. □ ☒

(3) The project contains a contaminated site not identified as of March 2003. □ ☒

(4) The project would emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school. □ ☒

(5) The project would be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and as a result, would create a significant hazard to the public or the environment. □ ☒

Discussion:

(1) This project is consistent with the Modesto Urban Area General Plan.

(2) The project would replace the existing trail with the Pamela Monterosso Park. The project would be similar to existing uses and would not introduce hazardous materials to the project site. The construction and operation of the trail would not use hazardous materials and therefore would not create a potential hazard to the public.

(3) A Phase I ESA conducted on October 4, 2002 by American Geological Services, Inc. did not find any evidence of hazardous materials on the project site.

(4) The project would not involve the transport, use or disposal of hazardous materials.

(5) See Item 2 & 3.

17. LANDSLIDES AND SEISMIC ACTIVITY

a. Significant Effects Identified in the Master EIR
The Master EIR identified the following significant environmental impacts relative to landslides and seismic activity:

**Effect:** There are areas of known sand and gravel resources within the Baseline Developed Area and Redevelopment Area. Future development will be subject to SMARA requirements, therefore, the project impact will be less-than-significant.

**Effect:** There are areas of known sand and gravel resources within the Planned Urbanizing Area. Future development will be subject to SMARA requirements, therefore, the project impact will be less-than-significant.

**b. Master EIR and/or New Mitigation Measures Applied to the Project**

The Master EIR did not identify any new mitigation measures. Mitigation relies upon the implementation of the policies in place under the Modesto Urban Area General Plan. These are identified and described in the list of policies in place and MEIR mitigation measures attached to the Initial Study template.

Landslide and Seismic Activity Mitigation Measure(s) pertinent to the project being analyzed in this Initial Study are found on pages V-17-6 and V-17-7 MEIR. All feasible measures appropriate to the project to be incorporated into or made conditions of approval of this project are listed in Section IV, Mitigation Measures Applied to Project:

**Discussion:**

The proposed project is consistent with the MEIR Potential for Landslides and Seismic Activity section (pages V-17-1 through V-17-12).

c. **Project-Specific Effects**

Section V-17.B of the MEIR provides analysis of landslides and seismic impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-significant unless:

1. The project is inconsistent with the Modesto Urban Area General Plan.
2. The project would be located on soil that is unstable, or that would become unstable as a result of the project, and potentially result in on or off-site landslide, lateral spreading, subsidence, liquefaction or collapse.

**Discussion:**

1. This project is consistent with the Modesto Urban Area General Plan.
2. Project construction and grading will be upland of the bluff and will be subject to the City's erosion control regulations.
18. ENERGY

a. Significant Effects Identified in the Master EIR

The Master EIR identified the following significant environmental impacts relative to energy:

Effect: The Baseline Developed Area and Redevelopment Area are already developed. New development within the Redevelopment Area will comply with Title 24 standards as well as City Urban Area General Plan policies. Impacts on energy by development in these areas (i.e., changes in levels of use above the current baseline) will be less-than-significant.

Effect: Build out under the Urban Area General Plan will utilize an estimated 1,400 million cubic feet per month of natural gas, 1,300 million kilowatt hours (kwh) of electricity per year and 650,000 gallons of gasoline per day. PG&E has indicated that they have at the current time sufficient supplies of natural gas to serve the increased natural gas demands of the project. At present, gasoline supplies are apparently sufficient to serve the gasoline demands of the project. Title 24 of the California Code of Regulation, which ensures that the project will not exceed local, state, and federal energy standards. The impact is less-than-significant.

b. Master EIR and/or New Mitigation Measures Applied to the Project

The following energy mitigation measure(s) are pertinent to the project being analyzed in this Initial Study. See page V-18-3 MEIR. All feasible measures appropriate to the project will be incorporated into or made conditions of approval of this project. Those measures will be listed in Section IV, Mitigation Applied to Project:

Discussion:

The proposed project is consistent with the MEIR Energy section (pages V-18-1 through IV-18-7).

c. Project-Specific Effects

Section V-18.B of the MEIR provides analysis of energy impacts of development of the General Plan, the following is an analysis of whether the proposed project would result in a new, significant, project-specific effect not previously analyzed in the MEIR.

Determination of project effects will be based on the following thresholds. The project-specific effects will be less-than-than significant unless:

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The project is inconsistent with the Modesto Urban Area General Plan.</td>
<td>☐ ☑</td>
</tr>
</tbody>
</table>

Discussion:

(1) This project is consistent with the Modesto Urban Area General Plan.
19. **PLANNING AND LAND USE**

The Master EIR was certified for the Modesto Urban Area General Plan. The significant effects described in the 18 subject areas contained in the Master EIR are based on the planning policies and diagrams adopted as part of the General Plan. Planning and land use were not among the 18 subject areas analyzed in the Master EIR because they essentially defined the project being evaluated in the EIR.

**a. Project-Specific Effects**

Determination of project effects will be based on the following threshold. A project-specific effect is less-than-than significant unless:

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
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<td>☐</td>
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</tbody>
</table>

**Discussion:**

1. This project is consistent with the Modesto Urban Area General Plan.
2. The project requires no need to amend the Modesto Urban Area General Plan.
3. The project will construct a trail head and improve an existing trail. This project will not divide and established community.

20. **AESTHETICS**

The Master EIR was certified for the Modesto Urban Area General Plan. The significant effects described in the 18 subject areas contained in the Master EIR, are based on the planning policies and diagrams adopted as part of the General Plan. At that level of detail, no significant effects on aesthetics were identified.

**a. Project-Specific Effects**

Determination of project effects will be based on the following threshold. A project-specific effect is less-than-than significant unless:

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>☐</td>
<td>☒</td>
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<tr>
<td>☒</td>
<td>☐</td>
</tr>
</tbody>
</table>

**Discussion:**

1. The project is inconsistent with the Modesto Urban Area General Plan.
2. The project would have a substantial adverse effect on a scenic vista.
3. The project would substantially degrade the existing visual character or...
quality of the project site and its surroundings.

(4) The project would create a new source of substantial light and glare, which would adversely affect day or nighttime views in the area.

Discussion:

(1) This project is consistent with the Modesto Urban Area General Plan.

(2) This project will build a trail head and improve an existing trail. This project will improve the site and allow better access to the scenic vista of Dry Creek.

(3) See Item 2.

(4) This project will introduce some light along the pathway, but it will be projected down onto the pathway and not be allowed to escape to the sides or upward. This light will not adversely affect night time views.

V. MITIGATION MEASURES APPLIED TO THE PROJECT

If the Initial Study results in the determination that a Finding of Conformance can be adopted for the proposed project Section A below applies. If the Initial Study results in the determination that a Finding of Conformance cannot be adopted and a Mitigated Negative Declaration/EIR must be prepared for the project then Section B, below applies.

A. Master EIR Mitigation Measures Applied to the Project

Pursuant to CEQA Section 21157.1(c), in order for a Finding of Conformance to be made, all feasible measures from the Master EIR appropriate to the project shall be incorporated into the project. The following adopted General Plan Policies and Master EIR Mitigation Measures (also contained in Section III, “Global List”) shall be made part of the project prior to approval by means of conditions of project approval or incorporation into the appropriate document or plan:

All applicable and appropriate mitigation measures have been applied to the project (see mitigation measures listed below).

B. New or Additional Mitigation Measures or Alternatives Required

Where the project’s effects would exceed the specific thresholds defined for each environmental category, a mitigated negative declaration or Focused EIR must be prepared. Staff has reviewed the project against those thresholds set forth in the Master EIR for all applicable categories in this Initial Study.

A Mitigated Negative Declaration/EIR shall be prepared for the project and the following additional project-specific mitigation measures listed below are necessary to reduce the identified new significant effect:

Traffic and Circulation Measures:
N/A

Air Quality Measures:
N/A

Noise Measures:
N/A

Agricultural Land Measures:
N/A

Water Supply Measures:
N/A

Sanitary Sewer Service Measures:
N/A

Sensitive Wildlife and Plant Habitat Measures:
N/A

Archaeological or Historic Sites Measures:
N/A

Storm Drainage Measures:
N/A

Flooding and Water Quality Measures:
N/A

Parks and Open Space Measures:
N/A

Schools Measures:
N/A

Police Services:
N/A
Fire Services:
N/A

Generation of Solid Waste
N/A

Generation of Hazardous Materials
N/A

Potential for Landslides and Seismic Activity
N/A

Energy
N/A

Planning and Land Use
N/A

Aesthetics
N/A
 MODESTO CITY COUNCIL
RESOLUTION NO. 2006-277

A RESOLUTION APPROVING THE DESIGN DEVELOPMENT REPORT AND
MASTER PLAN INCLUDED THEREIN FOR PAMELA MONTEROSSO PARK

WHEREAS, the City of Modesto currently owns the approximately 5.5 acre
Pamela Monterosso Park site immediately to the south of Scenic Drive at the southern
terminus of Coffee Road, and

WHEREAS, staff has prepared a Design Development Report and Master Plan
included therein for Pamela Monterosso Park, and

WHEREAS, prior to adopting the Design Development Report, the California
Environmental Quality Act (CEQA) requires that the City of Modesto consider the
environmental consequences of the proposed project, and

WHEREAS, by an agenda report dated April 13, 2006, from the Parks, Recreation
and Neighborhoods Director, staff recommended to the Council approving the Pamela
Monterosso Park Design Development Report, a copy of said report is on file in the
office of the City Clerk, and

WHEREAS, the Pamela Monterosso Park Design Development Report dated
April 12, 2006, is within the scope of the Modesto Urban Area General Plan Master
Environmental Impact Report (SCH #1999082041), and

WHEREAS, on May 2, 2006, concurrent with this resolution, the Modesto City
Council adopted Resolution No. 276, finding that the Pamela Monterosso Park project is
within the scope of the Project covered by the Modesto Urban Area General Plan Master
Environmental Impact Report (SCH No. 1999082041),
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds that the Pamela Monterosso Park Design Development Report is complete and adequate, and it hereby approves the Pamela Monterosso Park Design Development Report, and Master Plan included therein, a copy of which is 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 2nd day of May 2006, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Richard Rudnansky, Interim City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-278

A RESOLUTION APPROVING A THIRD AMENDMENT TO THE CONTRACT
FOR CONSULTANT SERVICES WITH MAZE & ASSOCIATES FOR
ADDITIONAL WORK AT A COST NOT TO EXCEED $33,380, AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT
AMENDMENT

WHEREAS, on April 6, 2004, the Modesto City Council, by Resolution No. 2004-171 entered into an original contract with Maze & Associates to perform non-audit services for the City, and

WHEREAS, on January 25, 2005, the Modesto City Council adopted Resolution No. 2005-044 approving execution of a First Amendment to said contract with Maze & Associates, to perform additional, non-audit services for the City, and

WHEREAS, on October 25, 2005, the Modesto City Council adopted Resolution No. 2005-525 approving execution of a Second Amendment to said contract with Maze & Associates, to perform additional, non-audit services for the City, and

WHEREAS, the City Manager executed said original contract, and the First and Second Amendments thereto, on behalf of the City of Modesto, and

WHEREAS, the City has requested Maze & Associates to perform additional work in addition to the originally contracted work, namely, to perform Agreed-Upon Procedures in the Public Works Department, for the three subsequent fiscal years 2003, 2004, and 2005, in an amount not to exceed $33,380, and

WHEREAS, this additional work increases the total contract price to an amount not to exceed $145,250, and
WHEREAS, the contract for these services requires Modesto City Council approval for such additional work,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a Third Amendment to the Agreement for Consultant Services with Maze & Associates, authorizing the additional work proposed, at a cost not to exceed $33,380.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of 2006, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By Richard Rudnansky, City Attorney
WHEREAS, in recent years the City of Modesto Parks, Recreation and Neighborhoods Department has faced an increase in the demand for services and the prospect of dwindling resources, and

WHEREAS, the City of Modesto Parks, Recreation and Neighborhoods Department, in an effort to be proactive in securing future funding for its parks, programs and facilities, created a dedicated fund development function, and

WHEREAS, this action included hiring a Fund Development Specialist responsible for securing grant funding and increasing co-sponsorships and donations, and forming a Fund Development Advisory Team, and

WHEREAS, since July 2004, using the fund development strategies already adopted by Council, the Strategic Funding plan has many of its designated proposals “in process” or completed, and

WHEREAS, at its meeting on March 27, 2006, the Finance Committee supported acceptance of the Fund Development Report for July 2004 through March 2006, and

WHEREAS, by a report dated April 18, 2006, the City of Modesto Parks, Recreation and Neighborhoods Department submitted a Fund Development Progress Report for July 2004 through March 2006 to the City Council, which outlines the department’s fund development efforts and achievements during this period, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the Parks, Recreation and Neighborhoods Fund Development Progress Report for July 2004 through March 2006, attached hereto as Exhibit “A” and incorporated herein by reference.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of May 2006, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES:    Councilmembers:    None

ABSENT:  Councilmembers:    None

Attest:    
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By:    
RICHARD RUDNANSKY, Interim City Attorney
Fund Development Progress Report

Background:

In recent years, the Modesto Parks, Recreation and Neighborhoods Department has faced an increase in the demand for facilities and services and a decrease in funding for those facilities and services. Parks and recreation systems all over the country are facing the same challenges and others, including:

- Competition for scarce resources
- State and local budget shortfalls
- Dwindling alternate funding sources
- National focus on funding for public safety.

Noting these trends nationally and locally, Modesto Parks, Recreation and Neighborhoods staff took proactive steps in securing the future of its programs and reducing dependence on the General Fund: These actions taken were:

- Increase co-sponsorship efforts
- Increase number of grant submissions
- Dedicate a “fund development” function.

On May 25, 2004, the Council adopted a resolution accepting the Parks, Recreation and Neighborhoods Department Fund Development Program Report. Within the report the Council authorized and directed staff to:

- Negotiate an agreement with the Stanislaus Community Foundation
- Develop a policy and marketing plan for Corporate Naming Rights and to identify properties to include in the naming rights inventory
- Develop a policy and marketing plan for Corporate Program Sponsorships
- Develop a plan to sell or lease remnant parcels of City-owned open space
- Pursue Exclusive Vendor/Official Sponsor Contracts
- Develop a policy and marketing plan for Presentation Sponsors
- Develop a methodology to create private-public partnerships to secure Neighborhood Improvement Sponsors.

Staff has had a very successful two years pursuing the goals outlined in the Fund Development Program. Although not always a straight line, we are moving in uncharted areas within fund development and every roadblock moves us to a turn in the path where we have become successful.

Since the Council adoption of the Fund Development Report, several of the items that Council authorized staff to accomplish have been completed or are in the process of implementation and/or completion.

**NEGOTIATE AN AGREEMENT WITH THE STANISLAUS COMMUNITY FOUNDATION**

On December 7, 2004, the Council approved an agreement with the Stanislaus Community Foundation to act as the City’s 501(c)(3) and fiscal agent for acceptance of endowments and
gifts for open space development and program activities. On February 22, 2005, the Council, acting as the Tuolumne River Regional Park’s fiscal agent, approved an Agreement with the Stanislaus Community Foundation to serve as TRRP’s fiscal agent for acceptance of endowment and gifts for open space development and program activities.

Currently the Stanislaus Community Foundation Parks Account holds a fund balance of $47,375.00 for the City. The monies collected are for a diverse collection of projects such as the Parade of Lights, Movies at Mancini, the Rogers Boy Fountain as well as the John Kenealy Memorial and John Muir Park Partners. The generosity of our citizens has been exemplary.

DEVELOP A POLICY AND MARKETING PLAN FOR CORPORATE NAMING RIGHTS AND TO IDENTIFY PROPERTIES TO INCLUDE IN THE NAMING RIGHTS INVENTORY AND DEVELOP A POLICY AND MARKETING PLAN FOR PRESENTATION SPONSORS

In September 2004, staff came to Council and was granted authorization to issue a Request for Proposal to search for a qualified company to develop a policy and marketing plan for program sponsorship and the development of presentation sponsors. Staff issued an RFP in the fall for 2004 and at the request of possible vendors, extended the time for the response. Staff received one response and it was deemed unacceptable due to the high price tag.

Staff went back to the "drawing board" and developed a shortened list of projects for sponsorships and with this carved out work piece visited some local agencies that have a good reputation and knowledge of the area, to offer them the possibility of working within this shortened scope of work. Only one company responded – Market Place Media. Staff did not limit the company from pursuing sponsorship outside the scope of work but is trying to focus on these specific programs:

- Activity Guide sponsorship (3 per year)
- Movies at Mancini (both teen and family nights)
- Brown Bag Lunch series
- Christmas Parade of Lights
- City Park and Activities Sponsorship

Within these parameters, Market Place Media has found sponsors to completely support the Winter 2005 activity guide and continues to work on sponsorship packages for the current edition. They are working with local radio stations to sponsor fund raising efforts for the aquatic activities of the City as well as sponsorships for a fall 2006 Brown Bag Lunch series. Staff has also added the possibility of issuing advertising/sponsorships on the backs of the parking garage tickets. This is currently in the works and could produce revenue to enhance the parking garage needs.

In September of 2004 the Council also directed staff to develop a policy and marketing plan for Corporate Naming Rights and to identify properties to include in the naming rights inventory. Staff believes the City’s most prominent venue for a corporate naming right property is the Modesto Centre Plaza. Ken McCall of Pacific Media was generous enough to give his and his companies time to the project of creating media information to use when discussing the proposal with individual sponsor prospects. Thurman Field has also been discussed as the next possible venue for corporate sponsorship opportunities. There have been a few quiet
discussions with a few prominent individuals within the community as to the possibility of their participation in this project and/or support.

DEVELOP A PLAN TO SELL OR LEASE REMNANT PARCELS OF CITY-OWNED OPEN SPACE

A Request for Proposal from qualified and experienced firms who might be interested in contracting with the City’s Parks, Recreation and Neighborhood Department to provide high-quality property management for certain specified City-owned properties was sent out in October 2004 per direction from the City Council. Wolverine Property Management was signed to deliver property management services to the city for these properties.

- 4205 Gomes Road
- 801 N. McClure Road
- 660 El Vista Dr.
- 1204 River Road
- 1318 W. Hatch Road
- McClure Farmhouse

With the professional management firm of Wolverine Properties working with our Building Services Division to manage the department’s rentals it has freed up much needed City manpower to work on other projects but has also assured us that we are placing the correct value on our properties and they are being handled by experienced property managers.

In 2005 the Council declared City-owned property at the northwest corner of 17th and G Streets as well as the former John Muir School site on Morris Street as surplus to the City’s needs. The City is currently working with the Modesto Redevelopment Agency to use the 17th and G Street site to develop an affordable housing project. The Morris Street site is going through the environmental process as well as the surplus property procedures with other public agencies.

DEVELOP A METHODOLOGY TO CREATE PRIVATE-PUBLIC PARTNERSHIPS TO SECURE NEIGHBORHOOD IMPROVEMENT SPONSORS.

Sponsorship is a two-way medium. It creates a relationship between sponsors and their target markets. Sponsorship says to consumers that the sponsor understand them and that the sponsor cares about what they care about. Sponsorship has now finally come into its own as the most powerful of all marketing media. Sponsorship is about how much value you can provide to a sponsor. It is important that both parties achieve their objectives and recognize that they have achieved something of value. That is the magic word that separates sponsorship from philanthropy – Value. (Grey & Sildum-Reid; The Sponsorship Seekers toolkit: 2005)

Staff is working on an expansion of the N.E.A.T (Neighborhood Environmental Action Team) program to harness the private partners who wish to sponsor the clean up along road right-of-ways through honor farm work teams. The cost of the sponsorship is to pay for the deputies who guard the honor farm crews. We have recently received a new application from NEXUS gaming company to help along Briggsmore Avenue.
Philanthropy, which in a public arena is sometimes referred to as citizen philanthropy, is what is happening in some of Modesto’s neighborhoods. Specifically, neighborhoods in the John Muir Park area as well as the George E. Rogers Park which have banded together to develop a plan for their parks and green spaces and have fund raised monies to help with the maintenance and operations of their parks. Working with City Park staff there are other neighborhoods that will follow in their footsteps and sponsor the parks in their neighborhoods.

**Landscape Maintenance Agreement**

Additionally, while not specifically outlined in the initial Fund Development Program. PR&N staff, with direction from Council, wrote an RFP for Landscape Maintenance and has successfully negotiated a contract with Grover Landscaping. This agreement will save the City $377,000+ annually and receive a one time influx of cash of $430,000, of which $100,000 will be directed to the Stanislaus Community Foundation.

**Grants awarded and pending**

The City of Modesto’s Parks, Recreation and Neighborhood Department has been very successful in obtaining grants for the departments projects. Over $12 million in grants have been awarded to the department since the last Fund Development Report in 2003. Attached in Appendix A is the list of the grant awards.

Staff has also been notified that the City was given an “earmark” in the current Federal Transportation bill specifically for the Virginia corridor for $3 million dollars.

Since the last Fund Development report the department has grant application pending for $5,022,543.00. Attached is Appendix B, which lists the current pending grant applications.

**Upcoming Grant Opportunities in 2006**

- Land and Water Conservation Fund (Competitive Grant)  
  Applications for funding through this source have been very successful in the past. We plan to submit a request in May for a picnic shelter for Marshall Park
- Habitat Conservation Fund (Competitive Grant)
- Recreational Trails Program (Competitive Grant)
- San Joaquin Valley Air Pollution Control District – REMOVE II (Competitive Grant) – The City is positioned very well to receive additional funding for 2006 for the Virginia Corridor. When the District awarded the City the REMOVE II grant in 2005 they encouraged staff to submit for 2006, also.
- Omega Nu (Competitive Grant) Staff will be requesting funding for Senior Club projects.
- Staff is looking in funding from foundations that do not traditionally give to governmental agencies but since we are affiliated with the Stanislaus Community Foundation they will partner with us to find funding with foundations. Our first project that staff is working on is funding equipment for the remodeled Maddux Youth Center. A proposal has been developed to present to foundations that support activities such as are held at Maddux.
The Fund Development Specialist has developed a spreadsheet to manage the grants that the City has been awarded, as well as information on pending grants and those grants we are anticipating sending application.

**The Fund Development Advisory Team**

The Fund Development Advisory Team was reinstated and revamped in 2004. Members are representatives from all areas of the Department. In a collaborative forum, led by the Fund Development Specialist, the team is responsible for addressing key topic related to fund development. The team format benefits the department through the pooling of knowledge, and by streamlining and coordinating the donation and sponsorship seeking processes.

The team has assisted in the development of the scope of work for the Request for Proposal for marketing of the sponsorships and advertising. Subsequently they came back to the table to reduce and prioritize the scope of work, which eventually was contracted to Market Place Media. They have also worked on the sponsorship catalogue for the Virginia Corridor, which is currently in production. Right now, the group is working on sponsorship activities for the renovated Maddux Youth Center.

**Staff Development**

The key component to fund development is to make sure that all members of the department are attuned to the Fund Development program. With this in mind the Fund Development Specialist has spoken at the division staff meetings to discuss the Fund Development program. It is critical that each member of the department understands that they are the eyes and ears of the fund development program and can be ambassadors to help the department gather funding to promote the programs, parks and facilities.

The Fund Development Specialist is a member of the Association of Fundraising Professionals and as such continues to network and join in learning seminars on fund development through their bimonthly meetings. Several training programs offered by the non-profit Foundation Center of San Francisco have been presented to help develop grant writing skills as well as grant management and budgeting.

It is a critical time in Fund Development but many of the strategies and proposals that were “new” ideas presented to the Council in 2002 have been accomplished or developed past more than the “talking stages”.

5
### Appendix A

**Parks Recreation and Neighborhoods Department Grants Awarded 2004-2006**

<table>
<thead>
<tr>
<th>Source</th>
<th>Project</th>
<th>Amount Awarded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposition 40</td>
<td>TRRP Gateway Project</td>
<td>$1,140,000.00</td>
</tr>
<tr>
<td>Federal TE 06-07</td>
<td>Virginia Corridor Phase III</td>
<td>$700,000.00</td>
</tr>
<tr>
<td>Proposition 40 - Urban Parks</td>
<td>Virginia Corridor Phase III</td>
<td>$2,887,000.00</td>
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<td>FHwA - Boxer Earmark</td>
<td>Virginia Corridor</td>
<td>$400,000.00</td>
</tr>
<tr>
<td>Bicycle Transportation Act 02-03</td>
<td>Virginia Corridor Phase III</td>
<td>$698,798.00</td>
</tr>
<tr>
<td>Bikes Belong</td>
<td>Virginia Corridor Phase III</td>
<td>$5,000.00</td>
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<tr>
<td>Proposition 12 per Capita</td>
<td>George Rogers Park Phase II</td>
<td>$932,000.00</td>
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<tr>
<td>Proposition 12 per Capita</td>
<td>Maddux Youth Center</td>
<td>$79,000.00</td>
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<td>Proposition 12 per Capita</td>
<td>Beardbrook Playground</td>
<td>$31,073.25</td>
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<td>Roosevelt Playground</td>
<td>$73,508.14</td>
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<tr>
<td>Proposition 12 per Capita</td>
<td>Sherwood Playground</td>
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<td>Proposition 12 per Capita</td>
<td>Chrysler Playground</td>
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<td>Proposition 12 per Capita</td>
<td>Whitmore Playground</td>
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<td>Proposition 12 per Capita</td>
<td>Sonoma Playground</td>
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<td>Proposition 12 per Capita</td>
<td>Sylvan Playground</td>
<td>$67,112.38</td>
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<td>Proposition 12 per Capita</td>
<td>Beyer and Graceada Picnic</td>
<td>$197,000.00</td>
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<td>Proposition 12 per Capita</td>
<td>Downey Park Play Equipment</td>
<td>$79,938.08</td>
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<tr>
<td>Proposition 12 RZH</td>
<td>Maddux Youth Center</td>
<td>$548,262.00</td>
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<tr>
<td>Proposition 40 per capita</td>
<td>Maddux Youth Center</td>
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<td>Proposition 40 per capita</td>
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<tr>
<td>Proposition 40 per capita</td>
<td>Catherine Everette Playground</td>
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<td>Proposition 40 per capita</td>
<td>Moran Estates Playground</td>
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<td>Garrison Estates Playground</td>
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<td>Proposition 40 per capita</td>
<td>Woodrow Playground</td>
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<td>Proposition 40 per capita</td>
<td>Rose Park Playground</td>
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<tr>
<td>Proposition 40 per capita</td>
<td>Standiford Playground</td>
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<td>Proposition 40 per capita</td>
<td>Muncy Playground</td>
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<td>Proposition 40 RZH</td>
<td>King Kennedy Kit and Aud</td>
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<td>Proposition 40 RZH</td>
<td>Maddux Youth Center</td>
<td>$187,781.00</td>
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<td>Minor B funds</td>
<td>Briggsmore/99</td>
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<td>Land and Water Conservation Fund</td>
<td>Mark Twain Shade Structure</td>
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<td>Omega Nu</td>
<td>Senior Club/Senior Center</td>
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<tr>
<td>Land and Water Conservation Fund</td>
<td>George Rogers Shade Structure</td>
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<td>Land and Water Conservation Fund</td>
<td>Virginia Corridor Phase III</td>
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<tr>
<td>Federal TE funds</td>
<td>Monterosso property/ Scenic Dr.</td>
<td>$611,000.00</td>
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<tr>
<td>Federal CMAQ funds</td>
<td>Monterosso property/ Scenic Dr.</td>
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<tr>
<td>SJVAPCD REMOVE II Grant</td>
<td>Virginia Corridor Phase III</td>
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<tr>
<td>Rotary International Centennial Proj.</td>
<td>Virginia Corridor</td>
<td>$500,000.00</td>
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</tbody>
</table>

**TOTAL** | $12,153,667.00
## Appendix B

### Parks Recreation and Neighborhoods Department Grants Pending 2004-2006

<table>
<thead>
<tr>
<th>Source</th>
<th>Project</th>
<th>Amount Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bicycle Transportation Account 2005</td>
<td>Virginia Corridor Phase V</td>
<td>$1,800,000.00</td>
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<tr>
<td>Bicycle Transportation Account 2005</td>
<td>Virginia Corridor Phase V</td>
<td>$1,500,000.00</td>
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<tr>
<td>California Parks - Recreational Trails</td>
<td>Tuolumne River Regional Park</td>
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<tr>
<td>California Parks - Habitat Conservation Fund</td>
<td>Tuolumne River Regional Park Phase I</td>
<td>$125,000.00</td>
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<tr>
<td>California River Parkways</td>
<td>Tuolumne River Regional Park Phase I</td>
<td>$22,000.00</td>
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<tr>
<td>Proposition 50</td>
<td>Tuolumne River Regional Park Phase I</td>
<td>$1,525,543.00</td>
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<tr>
<td>Stewardship Council Foundation grant</td>
<td>Tuolumne River Regional Park Phase I</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$5,022,543.00</strong></td>
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</tbody>
</table>
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-280

A RESOLUTION APPROVING AN AGREEMENT WITH HDR ENGINEERING, INC. FOR ENGINEERING SERVICES RELATED TO THE WASTE-TO-ENERGY PROJECT END-OF-CONTRACT ISSUES AT A MULTI-YEAR COST NOT TO EXCEED $146,390, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the County of Stanislaus and the City of Modesto have a Service Agreement with Covanta Stanislaus for the operation of the Waste-to-Energy Facility, and

WHEREAS, this Agreement requires Covanta to operate the facility in conformance with State and Federal regulations, and

WHEREAS, the Agreement stipulates that the cost of operating and maintaining the facility be part of the Service Fee paid to Covanta, and

WHEREAS, the Service Agreement between Covanta Stanislaus, Inc, the City of Modesto, and the County of Stanislaus will expire on December 31, 2009, and

WHEREAS, the decisions regarding the future of the facility are highly complex, and subject to fluctuations in market pricing for power as well as regulatory changes, and

WHEREAS, because of these factors, the Waste-to-Energy Executive Committee directed staff to put together a group of experts to assist in the end-of-contract decision making process, and

WHEREAS, to protect the interests of the City and County communities, it will be important to have a current assessment of the condition of the facility, which will require the services of a consulting engineer, and
WHEREAS, the Executive Committee therefore authorized the development and issuance of a Request For Proposals (RFP) for these services, and

WHEREAS, the RFP for these services was prepared by the County Purchasing Agent in conformance with County purchasing specifications and issued in February 2006, and

WHEREAS, one firm, HDR Engineering, Inc., responded to the RFP, and

WHEREAS, HDR has previously performed engineering services for the project, and served as the Consulting Engineer during the 2000 refinance of the Certificates of Participation for the project and HDR has also had extensive experience in performing evaluations of various waste-to-energy facilities, including several Covanta facilities, and

WHEREAS, County Purchasing has prepared a contract, which has been reviewed and approved by County Counsel and the City Attorney’s office, and

WHEREAS, in order to proceed, the City Council and County Board of Supervisors must authorize the execution of this contract, and

WHEREAS, the contract has two primary tasks, and

WHEREAS, the first task is to assess the physical and operating condition of the Facility and its ability to perform as anticipated throughout the balance of contract term at a multi-year cost not to exceed $68,390, and

WHEREAS, second, upon completion of Task 1 in 2006, and at the discretion of the City and County, HDR may be requested to perform an evaluation of the existing Service Agreement to identify key issues, improvements to be included in any new Service Agreement, development of negotiation posture and assist in the negotiation of a
new Service Agreement or extension/amendment for the Facility operation at a cost not to exceed $78,000,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with HDR Engineering, Inc. for engineering services related to the Waste-to-Energy project end-of-contract issues at a multi-year cost not to exceed $146,390.

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 9th day of May 2006, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Richard Rudnansky, Interim City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-281

A RESOLUTION APPROVING A COOPERATIVE AGREEMENT BETWEEN THE CITY OF MODESTO AND THE HOUSING AUTHORITY OF STANISLAUS COUNTY FOR ACQUISITION OF RENTAL PROPERTY AT 1901 PARAMONT WAY ("PARAMONT PROJECT"), AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE COOPERATIVE AGREEMENT AND RELATED DOCUMENTS

WHEREAS, on April 25, 2006, by Resolution No. 2006-240, the City Council approved a $750,000 loan to the Housing Authority of Stanislaus County, to provide partial financing to purchase a 12-unit multi-family housing development located at 1901 Paramont Way ("Paramont Project"), for rental to low-income households, and

WHEREAS, the Housing Authority of Stanislaus County will obtain the remainder of required financing through a Housing Authority Tax Exempt Bond, and

WHEREAS, the Housing Authority of Stanislaus County has the capacity to issue bonds to finance the acquisition of the housing units, and

WHEREAS, under Section 34209 of the California Health and Safety Code, the Housing Authority of Stanislaus County may only operate with the City of Modesto if the consent of the City Council has been obtained, and

WHEREAS, the Paramont Project features twelve (12) 2-bedroom/1-bath units, each with 865 square feet of living space, and

WHEREAS, on April 27, 2006, the Housing Authority of the County of Stanislaus submitted a request for the City Council to consider and approve a Cooperative Agreement, and
WHEREAS, the City of Modesto and the Housing Authority of Stanislaus County wish to cooperate with one another for the purposes of acquisition of the Paramount Project, and

WHEREAS, the Cooperative Agreement is not financially binding on the City, but will assist the Housing Authority of Stanislaus County’s efforts in pursuing bond financing for the acquisition of a proposed 12-unit residential rental housing facility located at 1901 Paramont Way, Modesto,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that (1) for the purposes of Section 34209 of the California Health and Safety Code, it hereby consents to the operation of the Housing Authority of Stanislaus County within the City of Modesto as necessary or appropriate to undertake and complete the financing described hereinabove, and (2) it hereby approves a Cooperative Agreement between the City of Modesto and the Housing Authority of the County of Stanislaus for acquisition of the 12-unit multi-family housing project located at 1901 Paramont Way (“Paramont Project”).

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Cooperative Agreement and related documents.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of May 2006, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: Jean Morris
JHAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Richard Rudnansky, Interim City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-282

A RESOLUTION APPROVING A SECOND AMENDMENT TO AN AGREEMENT WITH GEOLOGICAL TECHNICS, INC., IN THE AMOUNT OF $19,858.00, CONTRACT TOTAL OF $44,978.00, FOR CONSULTANT SERVICES TO MONITOR SOIL AND GROUNDWATER CONTAMINATION DISCOVERED DURING CONSTRUCTION OF THE POLICE HEADQUARTERS FACILITY AT 10TH AND "G" STREETS, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, during the course of constructing the Police Headquarters Facility at 10th and "G" Streets the contractor encountered contaminated soil that had to be monitored, and

WHEREAS, on April 12, 2004, the City entered into an agreement with Geological Technics, Inc., a local environmental services firm, to monitor the soil and groundwater contamination that was discovered, and

WHEREAS, on September 8, 2005, the first amendment to the consultant agreement was executed for additional geological services that were necessary to complete the scope of services provided for under the original agreement, and

WHEREAS, it was determined that additional services would be needed from Geological Technics, Inc., to allow final closure of the contamination site, and

WHEREAS, Staff recommends execution of a second amendment to the agreement with Geological Technics, Inc. for services associated with the closure of the contamination site at the Police Headquarters Facility at 10th and "G" Streets,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Second Amendment to the Agreement with Geological Technics, Inc., in the amount of $19,858.00, thereby increasing the total not to exceed
amount to $44,978.00, for consultant services in conjunction with soil and groundwater contamination monitoring.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of May 2006, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Richard Rudnansky

Interim City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-283

A RESOLUTION AMENDING THE FY 05-06 OPERATING AND CAPITAL IMPROVEMENT PROGRAM BUDGET TO DECREASE THE WATER CONTINGENCY, ACCOUNT NUMBER 6100-800-8000-8003, BY $19,858.00 TO INCREASE THE MODESTO SYSTEM IMPROVEMENTS – SECONDARY CONSTRUCTION ACCOUNT NUMBER 6180-480-W615-6040 BY $19,858.00

WHEREAS, during the course of constructing the Police Headquarters Facility at 10th and “G” Streets the contractor encountered contaminated soil that had to be monitored, and

WHEREAS, funds were not included in the current budget to pay for consultant services associated with soil and groundwater contamination at the Police Headquarters Facility at 10th and “G” Streets, and

WHEREAS, additional monitoring services are needed from Geological Technics, Inc. to allow closure of the monitoring wells and the contamination site,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a reduction of $19,858.00 from the Water Contingency (6100-800-8000-8003), and an increase of $19,858.00 to the Modesto System Improvements – Secondary Construction Account (6180-480-W615-6040).
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of May 2006, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: Jean Morris, City Clerk

RICHARD RUDNANSKY, Interim City Attorney
A RESOLUTION APPROVING THE CITY OF MODESTO STANDARD SPECIFICATIONS, 2006 EDITION

WHEREAS, in January 2005, the Public Works Department initiated an update to the City of Modesto Standard Specifications in response to suggestions from the development community and City staff, and

WHEREAS, Section 4-4.801 of the Modesto Municipal Code provides for the adoption by the City Council of “Standard Specifications of the City of Modesto”, said Standard Specifications to be prepared by the Public Works Director and recommended by the Planning Commission, and

WHEREAS, the current Standard Specifications were adopted in September 1997 with the last major update in November 2001, with supplemental updates in November 2002 and December 2004, and

WHEREAS, the Public Works Department, Development Services Division, has recommended a major update to the 2001 Edition, which includes the addition of several Standard Details, and

WHEREAS, the proposed update to the Standard Specifications will make them a valuable tool for the development and construction industries, improve overall user-friendliness, and provide greater efficiency and consistency in the design and construction of public improvements, and

WHEREAS, the proposed update to the Standard Specifications was considered by the Building Industry Association and the Construction Industry Liaison Committee and notices of an informal public hearing by the Planning Commission to consider the
proposed update were sent to the Building Industry Association, and Stanislaus County Public Works, and

WHEREAS, the Planning Commission, by Resolution No. 2006-33, adopted on May 1, 2006, recommended to the City Council the adoption of the City of Modesto Standard Specifications, 2006 Edition, a copy of which is on file in the offices of the City Clerk, Public Works Director and to the Planning Commission, and

WHEREAS, the proposed City of Modesto Standard Specifications, 2006 Edition, as prepared by the Public Works Director and recommended by the Planning Commission, were considered by the City Council at its regular meeting on May 9, 2006, at which time the Council determined that the proposed update to the Standard Specifications should be adopted,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto it hereby approves the City of Modesto Standard Specifications, 2006 Edition, copies of which are on file in the office of the City Clerk, Public Works Director and to the Planning Commission.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 9th day of May 2006, by Councilmember Marsh, who
moved its adoption, which motion being duly seconded by Councilmember Hawn, was
upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Richard Rudnansky, Interim City Attorney
A RESOLUTION AUTHORIZING THE AWARD OF PROPOSAL AND DIRECTING STAFF TO ENTER INTO CONTRACT NEGOTIATIONS FOR THE FURNISHING OF TEMPORARY LABOR SERVICES FOR THE CITY OF MODESTO WITH THE FOLLOWING COMPANIES AS "PRIMARY" CONTRACTORS, ADECCO USA, INC., MODESTO, CA, LABOR READY SOUTHWEST, INC., MODESTO, CA, REMEDY INTELLIGENT STAFFING, INC., MODESTO, CA, VALLEY STAFFING SERVICES, MODESTO, CA AND WESTAFF (USA), INC., MODESTO, CA, FOR A TWO (2) YEAR AGREEMENT, WITH THREE (3) ONE-YEAR EXTENSION OPTIONS, AT THE SOLE DISCRETION OF THE CITY

WHEREAS, City departments intermittently have the need of temporary employees to fill in for vacancies created through retirements, resignations, and terminations, and

WHEREAS, temporary employees are also utilized on a seasonal basis during periods of high demand and to handle workload fluctuations, and

WHEREAS, historically, the Personnel Department facilitated the hiring of most temporary labor services for City departments, and

WHEREAS, the Personnel Department would meet with the using department to help determine the skill set needed, and

WHEREAS, the Personnel Department would contact the temporary labor agency and arrange for candidates to be sent out for interviews and the using department would conduct the interviews, and

WHEREAS, the Personnel Department would negotiate the rates on specific or group placements based on their knowledge of the market, and
WHEREAS, while Personnel was the primary contact with temporary labor agencies, user departments gradually began working directly with the agencies in order to expedite the process, and

WHEREAS, in 1999 as part of assessing the Personnel Department’s delivery of services, several departments requested that the process be restructured to permit all departments to routinely deal with the temporary labor agencies directly, and

WHEREAS, the request was based on the need for expediency in hiring temporary labor and also to have direct control over the process, and

WHEREAS, based on the departmental requests and workload issues at the time, the decision was made to allow all departments to conduct their own transactions, and

WHEREAS, the Personnel Department continued to assist those departments that requested such assistance, although for the most part, departments conducted separate transactions with temporary agencies in order to meet their service level requirements, and

WHEREAS, last fiscal year the City as a whole spent approximately $1.9 million dollars on temporary labor services, and

WHEREAS, historically the largest departmental users of temporary labor have been the Public Works and Parks, Recreation & Neighborhoods Departments, and

WHEREAS, an RFP was issued to accomplish the following:

- Consolidation of Citywide requirements obtaining the best services for the price offered.
- Consistency of service delivery and the ability to provide activity reports to better monitor the cost and utilization of temporary services Citywide.
- Concise monitoring will allow quarterly reporting on usage hours and
expenditures, and

WHEREAS, on February 14, 2006, Council approved Resolution No. 2006-088 authorizing the Purchasing Manager to formally solicit Request for Proposals (RFP) for the furnishing of Temporary Labor Services for the City of Modesto, for a two (2) year agreement with three (3) one-year extension options, and

WHEREAS, the Purchasing Division solicited Request for Proposal No. 0506-27 for the furnishing of Temporary Labor Services for the City of Modesto to thirty-four (34) prospective proposers, twenty-one (21) of which were local companies, posted the proposal on the City’s web site, and formally advertised as required by law, and

WHEREAS, on March 28, 2006, RFP’s were formally opened in the City Clerk’s office. Of the thirty-four (34) prospective proposers solicited, ten (10) companies chose to respond, and

WHEREAS, on March 24, 2006, an evaluation committee was formed comprised of six (6) City staff personnel from the Parks Recreation and Neighborhoods, Public Works and Personnel/Risk Management Departments to evaluate the proposal submittals, and

WHEREAS, Councilmember Hawn was invited to observe the evaluation process, and

WHEREAS, the Purchasing Division facilitated the evaluation process but was not a grading participant, and

WHEREAS, on March 30, 2006, the evaluation committee met and proposal evaluation packets were given to each committee member to individually review and score, and
WHEREAS, after the meeting, committee members individually evaluated and scored the proposals, and

WHEREAS, on April 12, 2006, the evaluation committee met to discuss the proposal submittals and how they individually rated and scored each submittal, and

WHEREAS, committee member scores were combined and averaged to arrive at a committee score, and

WHEREAS, on April 19, 2006, proposer interviews were held for the top candidates to clarify any questions committee members had of their proposal submittals, and

WHEREAS, immediately following the interviews the committee members had an open discussion of the candidates and then came to a consensus for award recommendation, and

WHEREAS, the evaluation committee rated and scored the proposals based on the following evaluation categories:

<table>
<thead>
<tr>
<th>Evaluation Category</th>
<th>Possible Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
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<tr>
<td>Service Capabilities</td>
<td>40</td>
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<tr>
<td>Company History Statement</td>
<td>10</td>
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<tr>
<td>Relevant Experience</td>
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<tr>
<td>Cost</td>
<td>40</td>
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<tr>
<td>Total Possible Points:</td>
<td>125</td>
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</table>

COST (Tabulated cost):
• Lowest cost to City by job title, 40 points.
• Cost formula used in determining possible points: Lowest overall total cost divided by the next lowest overall total. Take that percentage and multiply by 40 points for total possible points. Round to whole number, and

WHEREAS, based on being ranked highest in total evaluation criteria as determined by the evaluation committee, the following companies are the primary contractors for the job titles listed below, and

WHEREAS, contingent upon successful contract negotiations, the primary contractors will furnish temporary labor services to the City of Modesto, beginning July 1, 2006, for a two (2) year agreement, with three (3) one-year extension options, at the sole discretion of the City, and

<table>
<thead>
<tr>
<th>Job Title Position</th>
<th>Primary Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account Clerk</td>
<td>Westaff (USA), Inc., Modesto, CA</td>
</tr>
<tr>
<td>Administrative Office Assistant I</td>
<td></td>
</tr>
<tr>
<td>Administrative Office Assistant III</td>
<td></td>
</tr>
<tr>
<td>Computer Operator</td>
<td></td>
</tr>
<tr>
<td>Laboratory Analyst I</td>
<td></td>
</tr>
<tr>
<td>Equipment Operator</td>
<td>Valley Staffing Services, Modesto, CA</td>
</tr>
<tr>
<td>Maintenance Worker I</td>
<td></td>
</tr>
<tr>
<td>Maintenance Worker II</td>
<td></td>
</tr>
<tr>
<td>Software Analyst I</td>
<td>Remedy Intelligent Staffing, Inc., Modesto, CA</td>
</tr>
<tr>
<td>Software Analyst II</td>
<td></td>
</tr>
<tr>
<td>Systems Technician II</td>
<td>Adecco USA, Inc., Modesto, CA</td>
</tr>
</tbody>
</table>
WHEREAS, contracts shall also be awarded to the following companies as secondary and third position contractors, in order to provide for backup, as determined by the evaluation committee and contingent upon successful contract negotiations, and

<table>
<thead>
<tr>
<th>Job Title Position</th>
<th>Secondary Position Contractor</th>
<th>Third Position Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account Clerk</td>
<td>Valley Staffing Services</td>
<td>Labor Ready Southwest, Inc.</td>
</tr>
<tr>
<td>Administrative Office Assistant I</td>
<td>Labor Ready Southwest, Inc.</td>
<td>Valley Staffing Services</td>
</tr>
<tr>
<td>Administrative Office Assistant III</td>
<td>Valley Staffing Services</td>
<td>Remedy Intelligent Staffing, Inc.</td>
</tr>
<tr>
<td>Computer Operator</td>
<td>Labor Ready Southwest, Inc.</td>
<td>Valley Staffing Services</td>
</tr>
<tr>
<td>Equipment Operator</td>
<td>Labor Ready Southwest, Inc.</td>
<td>Remedy Intelligent Staffing, Inc.</td>
</tr>
<tr>
<td>Laboratory Analysis I</td>
<td>Valley Staffing Services</td>
<td>Aerotek, Inc.</td>
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<td>Maintenance Worker I</td>
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<td>Labor Ready Southwest, Inc.</td>
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<tr>
<td>Software Analyst I</td>
<td>Valley Staffing Services</td>
<td>TEK Systems, Inc.</td>
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<td>Software Analyst II</td>
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<td>TEK Systems, Inc.</td>
</tr>
<tr>
<td>Systems Technician II</td>
<td>Remedy Intelligent Staffing, Inc.</td>
<td>TEK Systems, Inc.</td>
</tr>
<tr>
<td>Water Conservation Specialist</td>
<td>Valley Staffing Services</td>
<td>Remedy Intelligent Staffing, Inc.</td>
</tr>
</tbody>
</table>

WHEREAS, additional resources will be required to appropriately monitor and report on this contract, and
WHEREAS, staff will be returning to Council with a recommendation and funding request in the near future, and

WHEREAS, based on being the most responsive and responsible proposals, City staff recommends the award of RFP No. 0506-27 and enter into contract negotiations for the furnishing of Temporary Labor Services for the City of Modesto with the following companies as “primary” contractors, Adecco USA, Inc., Modesto, CA, Labor Ready Southwest, Inc., Modesto, CA, Remedy Intelligent Staffing, Inc., Modesto, CA, Valley Staffing Services, Modesto, CA and Westaff (USA), Inc., Modesto, CA, for a two (2) year agreement, with three (3) one-year extension options, at the sole discretion of the City,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby awards RFP No. 0506-27 and authorize the hiring of temporary labor from the primary contractors on a provisional basis.

BE IT FURTHER RESOLVED, that the Council of the City of Modesto authorize the hiring of temporary labor from the primary contractors on a provisional basis, and directs staff to enter into contract negotiations for the furnishing of Temporary Labor Services for the City of Modesto, beginning July 1, 2006, with the following companies as “primary” contractors, Adecco USA, Inc., Modesto, CA, Labor Ready Southwest, Inc., Modesto, CA, Remedy Intelligent Staffing, Inc., Modesto, CA, Valley Staffing Services, Modesto, CA and Westaff (USA), Inc., Modesto, CA, for a two (2) year agreement, with three (3) one-year extension options, at the sole discretion of the City, for the approval and signature of the City Manager.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of May 2006, 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, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: \[Signature\]  
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: \[Signature\]  
RICHARD RUDNANSKY, Interim City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-286

A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT “BANK” PROJECT FUNDING AGREEMENT BETWEEN THE COUNTY OF STANISLAUS (“COUNTY”) AND THE CITY OF MODESTO FOR THE DEVELOPMENT OF THE KIERNAN BUSINESS PARK EAST AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, on February 13, 2001, the Stanislaus County Board of Supervisors (“Board”) approved the formation of a Community Economic Development "Bank" (“Bank”) for the purpose of providing resources for economic development projects throughout the County, and

WHEREAS, the purpose of the “Bank” is to use said funds within the nine cities and communities within Stanislaus County to leverage State, Federal and private dollars to finance infrastructure that makes possible greater opportunities for job retention and creation, and

WHEREAS, the Board directed the Stanislaus County Chief Executive Officer (“CEO”) to meet with City Managers of the nine cities in the County to develop a structure for the “Bank” and a process for approving funding allocations from the “Bank”. The County’s CEO and City Managers recommended that the Workforce Investment Board (WIB) act as the “Board of Directors” for the “Bank”, and

WHEREAS, on June 16, 2001, the WIB agreed to act as the Board of Directors of the “Bank” and established an advisory committee consisting of nine City Managers and the County CEO, and

WHEREAS, the WIB and the Stanislaus County Economic Development Corporation formed a new combined nonprofit organization called the Stanislaus
Economic Development and Workforce Alliance ("Alliance") and the Alliance has assumed the responsibility of the WIB to act as the "Board of Directors" of the "Bank", and

WHEREAS, the Alliance Board issued a Request for Proposals in May 2005, and City of Modesto staff submitted a proposal to the Alliance Board requesting $357,375 in financing to be applied toward the Kiernan Business Park East Implementation Plan, which includes preparation of an amendment to the Kiernan Business Park Specific Plan ("Amendment"), preparation of a Facilities Master Plan, Finance Plan and appropriate CEQA documentation for the Amendment, and creation of a financing mechanism, such as, but not limited to a community facilities district for the principal purpose of master planning and financing the various public facilities necessary to serve the development of Kiernan Business Park East (collectively the "Project"), and

WHEREAS, the City of Modesto submitted an application to the Alliance Board requesting $357,375 in financing to be applied to the Kiernan Business Park East Implementation Plan, and was approved, and

WHEREAS, Modesto’s request for $142,625 was subsequently approved by the Board of Supervisors on December 14, 2004, and

WHEREAS, the City of Modesto submitted a second application to the Alliance Board requesting $142,625 in financing to be applied to the Kiernan Business Park East Implementation Plan, in addition to the already approved $357,375, for a total "Bank" contribution of $500,000, and
WHEREAS, Modesto’s additional request for $142,625 was approved by the Alliance Board on July 18, 2005 and was subsequently approved by the Board of Supervisors on August 2, 2005, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Economic Development “Bank” Project Funding Agreement between the County of Stanislaus and City of Modesto for an Economic Development Bank loan in the amount of $500,000 for the development of the Kiernan Business Park East Implementation Plan, is hereby approved.

BE IT FURTHER RESOLVED THAT the City Manager or his designee is hereby authorized to execute said Agreement on behalf of the City of Modesto.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of May 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES:  Councilmembers:  None

ABSENT:  Councilmembers:  None

ATTEST:  
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By:  
RICHARD RUDNANSKY, Interim City Attorney
EXHIBIT “A”

ECONOMIC DEVELOPMENT “BANK” PROJECT FUNDING AGREEMENT

(Included in the City Council Packet as Attachment “B”)
This Economic Development "Bank" Project Funding Agreement ("Agreement") is made and entered into on May 9, 2006 ("Effective Date"), by and between the County of Stanislaus ("County") and the City of Modesto, (the "Applicant").

RECITALS

This Agreement is made with the reference to the following recitals:

A. On February 13, 2001, the County Board of Supervisors authorized the establishment of an economic development "Bank" with an annual appropriation of $1.5 million dollars. The "Bank" funds are to be used for economic development within the County. The Board directed the Chief Executive Officer ("CEO") to meet with City Managers of the nine cities in the County to develop a structure for the "Bank" and a process for approving funding allocations from the "Bank." The County's CEO and City Managers recommended that the Workforce Investment Board (WIB) act as the "Board of Directors" for the "Bank"; and

B. On June 16, 2001, the WIB agreed to act as the Board of Directors of the "Bank" and established an advisory committee consisting of the nine City Managers and the County CEO; and

C. On September 17, 2001, the WIB approved guiding principles, application documents, an evaluation system and criteria that measures the public benefit of promoting economic development and providing jobs; and

D. The WIB and the Stanislaus County Economic Development Corporation formed a new combined nonprofit organization called the Stanislaus Economic Development and Workforce Alliance ("Alliance") and the Alliance has assumed the responsibility of the WIB to act as the "Board of Directors" of the "Bank"; and

E. In response to a Request for Proposals for economic development projects, the Applicant submitted two separate Economic Development "Bank" Applications For Funding, copies of which are collectively attached hereto as Exhibit A, requesting a loan for the development of the Kiernan Business Park East, which will contain industrial and medical offices used to enhance the local economy, generate jobs for residents, and create a better jobs/housing balance (the "Project"); and

F. Upon the review and recommendation of proposals for use of the "Bank" funds for the current and prior fiscal years, including the Applicant's proposal, by the Economic Development "Bank" Advisory Committee and the Alliance Board of
Directors, the Board of Supervisors approved funding of the Project;

NOW, THEREFORE, the Applicant and County enter into this Agreement pursuant to California Government Code section 6502 on the following terms and conditions.

TERMS AND CONDITIONS

1. OBLIGATIONS OF THE COUNTY

1.1 County agrees to advance sums as needed up to $500,000.00 to the Applicant from the “Bank” for the purpose of completing the Project as described in the Applicant’s application, attached hereto and incorporated herein by reference as Exhibit A (“Loan”).

1.2 The County Auditor-Controller shall set up an account payable from the “Bank” to the Applicant in the amount of $500,000.00.

1.3 Payments from the “Bank” to the Applicant shall be made upon the Applicant presenting invoices or other documentation showing that the amounts requested have been invoiced or paid, and are within the scope of the work as described in Exhibit A.

1.4 The payments of up to $500,000.00 from the “Bank” to the Applicant shall be set up as an advance by the County Auditor-Controller, which shall be retired over time by the Applicant as provided for in Section 2.2. No interest shall accrue on the Loan, or any portion thereof. The County shall designate that the County Auditor-Controller provide the Applicant with the status of the receivable account upon receiving a written request from the Applicant; otherwise, a statement showing the status of the account will be provided to the Applicant at the end of each fiscal year.

2. OBLIGATIONS OF THE APPLICANT

2.1 Applicant agrees to utilize the funds received from the County described in Section 1.1 exclusively for the purposes described in Exhibit A.

2.2 Applicant agrees to pursue the Project with reasonable diligence and use its best efforts to complete the Project by March 1, 2009. Applicant shall repay the Loan when funds are actually available for the repayment when the Applicant establishes and receives monies from a “Financing Mechanism” established by the Applicant, which may include, but is not limited to, a CFD established within the Kiernan Business Park East area, Loan repayment from the developer(s) of the Kiernan Business Park East area, Specific Plan reimbursement fees, or other funding mechanism established by the Applicant. The parties understand and agree that the payment obligations set forth herein are payable solely from the Financing Mechanism and from no other source, that the Applicant shall not be obligated to make any
payment hereunder except out of revenue from the above sources, and that the Applicant is not liable to maintain any funding sources out of its General Fund or by tax levies for the purposes of repaying the Loan. It is intended that the Loan be repaid within five years from the completion of the project, provided funds are made available as set forth herein. If Loan is not on schedule for repayment within five years of completion of project due to unforeseen circumstances, the Applicant and the County shall renegotiate another repayment schedule. Applicant has used, and will continue to use best efforts to ensure that the terms and conditions of this Agreement are met.

2.3 Applicant agrees that the Project described in Exhibit A will begin within one year of the commitment of funds by the "Bank" to the Project, which will commence on the date the Board of Supervisors approves funding of the Project. For purposes of this Agreement, the Project will “begin” as of the date Applicant receives a complete application for a Specific Plan Amendment for the Kiernan Business Park East area. Failure to begin the Project as described in Exhibit A within one year of the commitment of funding may result in the forfeiture by the Applicant of funding for the Project. Should the Project fail to begin within one year from the date the funds are approved by the Board of Supervisors, the Applicant agrees to meet with the County to determine the status and/or feasibility of the Project.

2.4 Applicant agrees to assume full fiscal responsibility for the appropriate use of the funds and assume responsibility for any disallowed expenditures.

2.5 Applicant, upon receiving a written request from the County’s Chief Executive Officer or designee, shall provide proof that the Applicant has expended the funds received from the “Bank” as contemplated by this Agreement and is repaying funds received as required by the terms of this Agreement.

2.6 Applicant agrees that, as part of the footnotes of its financial statement audit, it will include disclosure of Loan balances for the end of each fiscal year of the audit. Applicant further agrees that it will provide the County with quarterly reports on the progress of the Project, which reports shall include a recap of the quarterly expenses by category that have been paid from proceeds of the loan. Cumulative values for these expenses from prior quarters shall also be included in these reports.

2.7 Applicant agrees to timely (within 30 days) notify the County if, for any reason, the Project is suspended for a period of six months or is terminated by the Applicant or the developer(s).

2.8 Applicant agrees to timely (within 30 days) notify the County, when the Project has been completed. For purposes of this Agreement, the Project will be “completed” as of the date Applicant first issues building permits within the Kiernan Business Park East.

2.9 Applicant agrees that the County will be the first to be repaid from the revenue stream or streams referenced in Paragraphs 1.4 and 2.2 above.
3. MUTUAL OBLIGATIONS:

3.1 Any notices or communications required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, return receipt requested, postage prepaid as follows:

County:

Chief Executive Officer
County of Stanislaus
1010 Tenth Street, Suite 6800
Modesto, CA 95354

Applicant:

Community and Economic Development Director
City of Modesto
P.O. Box 642
Modesto, CA 95353

3.2 The provisions of this Agreement shall constitute the entire Agreement between the parties and unless modified by written agreement duly executed by the parties hereto, shall continue in full force and effect.

3.3 Venue for any actions initiated by either party shall be in the Superior Court of Stanislaus County and California law shall apply to all the Agreement’s terms and conditions.

3.4 Applicant and County further covenant to cooperate with one another in all respects necessary to ensure the successful consummation of the action contemplated by this Agreement, and each will take all actions within its authority to ensure cooperation of its officials, officers, agents and employees.

3.5 The parties agree to hold each other harmless from and against any and all claims, actions, lawsuits, losses, damages and liabilities arising from any contention, allegation, or negligent act or omission based on acts necessary to effectuate the purpose of the Agreement.
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. 2006-____, adopted by the Council of the City of Modesto on the ___th day of ____ May___, 2006, and County has caused this Agreement to be duly executed in duplicate as of the Effective Date.

COUNTY OF STANISLAUS

By: __________________________
   Richard W. Robinson
   Chief Executive Officer
   "County"

APPROVED AS TO FORM:
Michael H. Krausnick
County Counsel

By: __________________________
   John P. Doering
   Assistant County Counsel

CITY OF MODESTO

By: __________________________
   George Britton
   City Manager
   "Applicant"

ATTEST:

By: __________________________
   JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: __________________________
   Alison A. Barratt-Green,
   Senior Deputy City Attorney
ECONOMIC DEVELOPMENT "BANK" APPLICATION FOR FUNDING
Cover Sheet

Concept
It is the purpose of the Economic Development "Bank" to make funds available to countywide collaborative entities for economic development projects that will result in job retention and creation. Stanislaus County has committed to contributing $1.5 million per year to the "Bank" for economic development projects. It is expected that additional funds will be contributed to the "Bank" from grants or participating entities. Funds from the Economic Development "Bank" are intended to benefit the cities, the county and the community by leveraging these funds to match State, Federal and private dollars, in order to construct much-needed infrastructure and to promote programs that are conducive to countywide economic development.

Eligibility
Stanislaus County, Cities in Stanislaus County, Municipal Advisory Committees in Partnership with Stanislaus County, Community Service Districts in Partnership with Stanislaus County, Non-Profits and Schools in Partnership with a City and/or the County.

Applications for funds should be submitted on this form.

Applicant Information
Applying Entity: City of Modesto, CA
Contact Name: Brad Kilger, Title: Community & Economic Development Director
Mailing Address: 1010 Tenth Street, Suite 3300, P.O. Box 642, Modesto, CA 95353
Phone/Fax/email: Phone: (209) 577-5218 / Fax: (209) 491-5798 / bkilger@modestogov.com
Project Title: Kiernan Business Park-East (KBPE) Implementation Plan

Please provide a brief description of your project (25 words or less). The development will contain industrial, residential, commercial and medical office uses to enhance the local economy, generate jobs for residents, and create a better jobs/housing balance.

Which part of the County or City will this project benefit? Both County and City areas within the Kiernan Business Park-East project area will benefit economically. Please refer to Attachment A – "Kiernan Avenue Business Park Specific Planning Area," Attachment B – "Kiernan Avenue Business Park-East Implementation Plan," and Attachment C – A proposed site plan drawing.

Total Project Budget: The cost of the Implementation Plan is $1,000,000. A loan of $142,625 is being requested to supplement $500,000 from the property owners, and an ED "Bank" loan of $357,375 for a total "Bank" contribution of $500,000. Please refer to Attachment D – "Project Budget".

Please submit an attached one-page categorized project budget showing the project components and how the Economic Development "Bank" funds will be used in conjunction with contributions from other sources.

Amount Requested: $142,625

How will this loan be repaid? The loan will be repaid from a combination of collected CFD fees and property tax revenues. The payments and interest rate can be negotiated at the time of the award.

Signature/Endorsement by Mayor or Council Chair

This application and attachments are complete and accurate to the best of my knowledge.

Signature of Applicant
Print Name: Brad Kilger
Print Organization Name: City of Modesto
Telephone: (209) 577-5218
The Application

1. **Describe the project. What public benefit, need, problem or issues does it address? How does it promote economic development and job creation/retention?**

An Economic Development Bank loan is being requested to help finance and complete the critical facilities master plan and finance plan. These planning tools function as an essential component of the Kieman Business Park-East to provide timely construction of facilities needed to accommodate and guide future development. The facilities master plan and finance plan will be accomplished in association with an amendment to the Kiernan Business Park Specific Plan.

Modesto, and the Central Valley in general, have suffered for some time from relatively high unemployment and few high-income job opportunities. While Modesto's population has grown, and continues to grow, at a rapid pace\(^1\), the number of employment opportunities has failed to keep up\(^2\). The Kiernan Avenue area represents an important economic resource to the City of Modesto. The completion of the Business Park will have a significant impact on the local economy and the job market, creating a total of 8,164 new moderate to high-income jobs.

The 189-acre proposed project site is within the Kiernan Business Park Specific Plan (152 acres) and the Kiernan-Carver CPD (37 acres). The site is located 1.7 miles east of State Route (SR) 99, and is bounded by Kiernan (State Highway 219) on the north, Dale Road on the west, Bangs on the south and the extension of American Avenue on the east.

The proposed project site consists of underdeveloped parcels (primarily agricultural and residential uses) adjacent to Nagel Nursery and the construction of the Kaiser Hospital. Within the project area, 86.39 acres are annexed to the City (KBP-CPD), 65.42 acres are not annexed to the City (KBP-CPD) and 37.3 acres are not annexed to the City (KC-CPD) and not included in the Kiernan Business Park CPD. The zoning designation for the Kiernan Business Park is Business Park and the zoning designation for the Kiernan Carver CPD is village residential.

The development of the Kiernan Business Park will accommodate industrial uses and a medical campus in the vicinity of Kiernan Avenue, because of its location adjacent to Highway 99 and North Modesto, a prime job-creating location. The Kiernan Business Park will assist in implementing Modesto's long-range objectives to enhance its local economy, generate jobs for residents, and create a better jobs/housing balance.

With the progress of the Gateway Business Complex north of Kiernan Avenue, and construction of the Kaiser Medical Campus, staff has been receiving increased interest from property owners in the area, especially for properties east of Dale Road that are within the City's incorporated boundary. In order to facilitate this development, an infrastructure facilities master plan and financing plan must be prepared to provide for the sharing of costs among the developing properties. A Community Facilities District must also be formed to generate tax-exempt funding for public facilities needed to serve the project.

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\(^1\) Modesto's population growth from 2000-2004 ranked 5th fastest in the state with a current estimate of 206,200, and a growth rate of 9.2%. (Ranking of incorporated places of 100,000 or more) *California Department of Finance / U.S. Census Bureau, Census 2000.*

\(^2\) The County's job growth from 2000-2004 gained a mere 8,200 new jobs for a 4-year growth rate of 5.1%. *EDD-Labor Market Information Division.*
2. What are the projected outcomes for the proposed project?

The primary outcome is to create a mixed-use land-planning concept within the amendment to the Kiernan Specific Plan. The specific plan amendment will produce the following deliverables:

- **EIR Update:** The EIR for the Kiernan Business Park Specific Plan will be updated to reflect changing conditions, new information and examine the impacts from the proposed project.
- **Facilities Master Plan:** This will establish the base infrastructure for roads, water, sanitary sewer, storm drainage facilities, parks and other public facilities to mitigate the impacts of new development in KBPE.
- **The Finance Plan:** A market study will look at the recommended combination of Business Park, office, commercial and multi-family land uses based on analysis of the competitive marketplace and existing supply and demand. Additionally, the facilities in need of financing will be delineated.
- **Capital Facility (CFD) Plan:** This section describes the implementation strategy and financing strategy for public facilities in the Specific Plan area. This section will update the current development review process, specific plan amendment procedures, funding of capital facilities, phasing, and tentative map process. The formation of the CFD will be completed in conjunction with preparation of the specific plan amendment. One-time special tax rates and other provisions of the CFD will be outlined. A comparison of one-time and annual tax rates that will be levied on property on various stages of entitlement and development will be provided. The finance plan should explain how the KBPE CFD's will be monitored and administered on an ongoing basis.
- **Land Use Plan:** The land plan will address land use opportunities based on the Kaiser facility and other possible market forces, which serve as a catalyst for related medical office development in the area.
- **Concept Master Plan:** The concept plan will graphically depict the physical layout envisioned for the planning area. The plan would describe building placement, vehicular circulation elements, parking requirements, landscape/hardscape, entryway/gateway features, and location of storm drainage basin(s). This task would also calculate site area, building square footage/coverage, and include development phasing.
- **New Job Results:** New jobs will be the primary goal in developing KBPE. Current employment in the Business Park is currently very limited, with employment opportunities ranging from low-income to high-income. It is calculated that future employment opportunities to be created by development of the KBPE will exceed 26 jobs per acre for approximately 5,000 jobs. These future employment opportunities will consist of moderate to high-income paying jobs.

3. How will the stated outcomes be accomplished and measured?

Upon project build out, the success of the project will be measured against the following set of performance measures:

- Number of new jobs created within the Business Park and jobs per square foot of developed property.
- Wages & benefits earned by those employed within the Business Park.
- Total dollar amount of developer's investment within the Business Park.

4. Who will be involved in evaluating the outcome of the project?

Modesto City staff will be the principal project evaluation team in charge of keeping accurate record of project progress and success, and of collecting and compiling data for progress reports. Project status updates are submitted to the Modesto City Council on a periodic basis, as project progress warrants. It is further understood that project progress report(s) will be submitted to the Economic Development Bank Advisory Committee on a schedule to be negotiated at the time funding is approved.
5. **Describe the extent of collaborative efforts and identify the partners and the level of each partner's participation in this project, if any.**

The property owners have established a cooperative partnership with the City and will take the lead in preparation of the necessary land use, infrastructure and financing plans for the project. The City will contribute by expediting plan reviews and by forming a CFD.

6. **What is your repayment schedule?**

It is anticipated that the CFD formation will be the catalyst for a repayment funding mechanism. Once the development process has been complete, the CFD will begin taxation. The earliest estimates are of having the CFD in place by 2009. Repayment terms can be negotiated at the time of the loan award.

7. **How will the project be continued (if necessary) after "Bank" funding has been exhausted? List other funding sources and length of funding, if available.**

This loan is expected to contribute to the public sector share of funding for the components of the facilities master plan and finance plan. The additional $142,625 will supplement the ED Bank Loan of $357,375 approved in February 2005. Any additional costs beyond the expected $1 million project cost will be borne by the property owners.

8. **What accounting method/system will you use to track expenditures for the duration of the project?**

GAAP (Generally Accepted Accounting Procedures) under the administration of the City’s Finance Department.
City of Modesto
Kiernan Avenue
Business Park
Specific Planning Area

Kiernan Business Park SP
Area of Focus +/− 193 acres
Modesto Incorporated Area
Modesto Sphere of Influence

0 0.1 0.2 0.3 Miles

April 6, 2005
Projected Preparation Cost:
The following table outlines the estimated cost to complete the work program for the
Kiernan Business Park-East Implementation Plan. Costs are preliminary estimates and
are subject to change. Final costs will be determined upon completion of the
consultant selection process.

Table 1: Revised Total Cost Estimate

<table>
<thead>
<tr>
<th>Implementation Plan Studies</th>
<th>Estimated Cost</th>
</tr>
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<tbody>
<tr>
<td>EIR Update/Revision</td>
<td>$500,000</td>
</tr>
<tr>
<td>Facilities Master Plan</td>
<td>$252,100</td>
</tr>
<tr>
<td>Administration (1)</td>
<td>$83,300</td>
</tr>
<tr>
<td>Creation of Financing Mechanism (2)</td>
<td>$81,100</td>
</tr>
<tr>
<td>Finance Plan</td>
<td>$50,000</td>
</tr>
<tr>
<td>Land Use Concept Plan</td>
<td>$33,500</td>
</tr>
<tr>
<td>LAFCO Annexation Fee (3)</td>
<td>$0</td>
</tr>
<tr>
<td>Total</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

(1) Equals 10% of plan preparation costs (does not include CFD Formation costs)
(2) Cost shall be based on the size of the bond issue (include administration costs)
(3) $2,500 LAFCO Annexation Fee to be paid as part of a future phase

Table 2: Total Implementation Plan Cost Share

<table>
<thead>
<tr>
<th>Public/Private cost breakdown (50% Public, 50% Private):</th>
</tr>
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<tbody>
<tr>
<td>Local Property Owner Match</td>
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<tr>
<td>ED &quot;Bank&quot; Loan Application Match</td>
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</table>
ECONOMIC DEVELOPMENT "BANK"
APPLICATION FOR FUNDING
Cover Sheet

Concept
It is the purpose of the Economic Development “Bank” to make funds available to countywide collaborative entities for economic development projects that will result in job retention and creation. Stanislaus County has committed to contributing $1.5 million per year to the “Bank” for economic development projects. Funds from the Economic Development “Bank” are intended to benefit the cities, the county and the community by leveraging these funds to match State, Federal and private dollars, in order to construct much-needed infrastructure and to promote programs that are conducive to countywide economic development.

Eligibility
Stanislaus County, Cities in Stanislaus County, Municipal Advisory Committees in Partnership with Stanislaus County, Community Service Districts in Partnership with Stanislaus County, Non-Profits and Schools in Partnership with a City and/or the County.

Applications for funds should be submitted on this form.

Applicant Information
Applying Entity City of Modesto, CA
Contact Name: Brad Kilger Title: Community & Economic Development Director
Mailing Address 1010 Tenth Street, Suite 3300, P.O. Box 642, Modesto, CA 95353
Phone/Fax/email Phone: (209) 577-5218 / Fax: (209) 491-5798 / Email: bkilger@modestogov.com
Project Title Kiernan Business Park East (KBPE)

Please provide a brief description of your project (25 words or less). The development will contain industrial and medical office uses to enhance its local economy, generate jobs for residents, and create a better jobs/housing balance.

Which part of the County or City will this project benefit? Both County and City areas within the Kiernan Business Park East project area will benefit economically.

Please refer to Attachment A – “Project Map”

Total Project Budget Until applicable studies are complete, the only known cost is the Implementation Plan cost of $714,750. Please refer to Attachment B – “Project Budget”

Please submit an attached one-page categorized project budget showing the project components and how the Economic Development “Bank” funds will be used in conjunction with contributions from other sources.

Amount Requested $357,375
How will this loan be repaid? **The loan will be repaid from a combination of collected CFD fees and property tax revenues. The payments and interest rate can be negotiated at time of award.**

Signature/Endorsement by Mayor or Council Chair

This application and attachments are complete and accurate to the best of my knowledge.

Signature of Applicant

Print Name: Brad Kilger, Community & Economic Development Director

Print Organization Name: City of Modesto

Telephone: (209) 577-5218
The Application

1. Describe the project. What public benefit, need, problem or issues does it address? How does it promote economic development and job creation/retention?

Modesto, and the Central Valley in general, have suffered for some time from relatively high unemployment and few high-income job opportunities. While Modesto’s population has grown, and continues to grow, at a rapid pace¹, the number of employment opportunities has failed to keep up². The Kiernan Avenue area represents an important economic resource to the City of Modesto. The completion of the Business Park will have a significant impact on the local economy and the job market, creating a total of 8,164 new moderate to high-income jobs. The area consists of approximately 614 acres located adjacent to the City of Modesto’s northern border, east of Highway 99, and south of Kiernan Avenue in a portion of unincorporated Stanislaus County.

The development of the Kiernan Business Park will accompany industrial uses and a medical campus in the vicinity of Kiernan Avenue, because of its location adjacent to Highway 99 and North Modesto, a prime job-creating location. The Kiernan Business Park will assist in implementing Modesto’s long-range objectives to enhance its local economy, generate jobs for residents, and create a better jobs/housing balance.

With the recent progress of the Gateway Business Complex north of Kiernan Avenue, and announcement of the Kaiser Campus, staff has been receiving increased interest from property owners in the area, especially properties east of Dale Road that are within the City’s incorporated boundary. In order to facilitate this development, an infrastructure facilities master plan/financing plan must be prepared to provide for the sharing of costs among the developing properties. A Community Facilities District also must be formed to generate tax-exempt funding for public facilities needed to serve the project. The portion of the Kiernan Business Park, east of Dale Road, contains approximately 333 acres, divided into 23 parcels. The area is referred to as Kiernan Business Park East (KBPE). Approximately 264 acres within KBPE is contained within the City of Modesto’s incorporated boundary, while approximately 69 acres divided into 5 parcels are located outside the existing City limits (within the General Plan Boundary and the Modesto Sphere of Influence).

An Economic Development Bank loan is being requested to help the City finance and complete the critical Business Park facilities master plan and finance plan. These planning tools function as an essential component of the Kiernan Specific Plan to provide timely construction of facilities needed to accommodate and guide future development. The facilities master plan and facilities finance plan will be accomplished in association with a specific plan amendment to the Kiernan Business Park Specific Plan.

2. What are the projected outcomes for the proposed project?

- Facilities Master Plan: This will establish the base infrastructure for roads, water, sanitary sewer, storm drainage facilities, parks and other public facilities to mitigate the impacts of new development in KBPE.

---

¹ Modesto’s population growth from 2000-2004 ranked 5th fastest in the state with a current estimate of 206,200, and a growth rate of 9.2%. (Ranking of incorporated places of 100,000 or more) California Department of Finance / U.S. Census Bureau, Census 2000.

² The County’s job growth from 2000-2004 gained a mere 5,960 new jobs for a 4 year growth rate of 3.7%. EDD-Labor Market Information Division.
• **The Finance Plan**: A market study will look at the recommended combination of Business Park, office, commercial and multi-family land uses based on analysis of the competitive marketplace and existing supply and demand. Additionally, the facilities in need of financing will be delineated.

• **Capital Facility (CFD) Plan**: The formation of the CFD will be completed in conjunction with preparation of the specific plan amendment. One-time special tax rates and other provisions of the CFD will be outlined. A comparison of one-time and annual tax rates that will be levied on property on various stages of entitlement and development will be provided. The finance plan should explain how the KBPE CFD's will be monitored and administered on an ongoing basis.

• **Land Use Plan**: The land plan will address land use opportunities based on the Kaiser facility and other possible market forces, which serve as a catalyst for related medical office development in the area.

• **Implementation**: This section describes the implementation strategy and financing strategy for public facilities in the Specific Plan area. This section will update the current development review process, specific plan amendment procedures, funding of capital facilities, phasing, and tentative map process.

• **Concept Master Plan**: The concept plan will graphically depict the physical layout envisioned for the planning area. The plan would describe building placement, vehicular circulation elements, parking requirements, landscape/hardscape, entryway/gateway features, and location of storm drainage basin(s). This task would also calculate site area, building square footage/coverage, and include development phasing.

• **New Job Results**: New jobs will be the primary goal in developing KBPE. Current employment in the Business Park is currently very limited, with a total employment of 26 jobs per acre. The current employment opportunities range from low-income to high-income. In stark contrast, it is calculated that future employment opportunities to be created by development of the KWPE will a total of 8,164 jobs. These future employment opportunities will be moderate to high-income paying jobs.

3. **How will the stated outcomes be accomplished and measured?**

Upon project build out, the success of the project will be measured against the following set of performance measures:

- Number of new jobs created within the Business Park and jobs per square foot of developed property.
- Wages & benefits earned by those employed within the Business Park.
- Total dollar amount of developer’s investment within the Business Park.

4. **Who will be involved in evaluating the outcome of the project?**

Modesto City staff will be the principal project evaluation team in charge of keeping accurate record of project progress and success, and of collecting and compiling data for progress reports. Project status updates are submitted to the Modesto City Council on a periodic basis, as project progress warrants. It is further understood that project progress report(s) will be submitted to the Economic Development Bank Advisory Committee on a schedule to be negotiated at the time funding is approved.
5. Describe the extent of collaborative efforts and identify the partners and the level of each partner's participation in this project, if any.

The City is partnered with the various property owners, the County of Stanislaus and other City departments to provide financial and non-financial assistance in developing the Kiernan Business Park. The property owners have been involved in public meetings to offer feedback, as well as funding commitments for the project.

6. What is your repayment schedule?

It is anticipated that the CFD formation will be the catalyst for a repayment funding mechanism. Once the development process has been complete, the CFD will begin taxation. The earliest estimates are of having the CFD in place by 2009. Repayment terms can be negotiated at the time of the loan award.

7. How will the project be continued (if necessary) after "Bank" funding has been exhausted? List other funding sources and length of funding, if available.

This loan is expected to be a one-time application for the components of the facilities master plan and finance plan. Any additional funding will come from Modesto's General Fund, or CFD fees as collected within that funding structure.

8. What accounting method/system will you use to track expenditures for the duration of the project?

GAAP (Generally Accepted Accounting Procedures) under the administration of the City's Finance Department.
Kiernan Business Park Implementation Plan
Project Budget
February 11, 2004

Projected Preparation Cost:
The following table outlines the estimated cost to complete the work program for the Kiernan Business Park East Implementation Plan. Costs are preliminary estimates and are subject to change. Final costs will be determined upon completion of the consultant selection process.

Table 1: Revised Plan Preparation Cost Estimate

<table>
<thead>
<tr>
<th>Studies</th>
<th>Estimated Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facilities Master Plan</td>
<td>$390,000</td>
</tr>
<tr>
<td>Finance Plan</td>
<td>$75,000</td>
</tr>
<tr>
<td>Land Use Concept Plan</td>
<td>$20,000</td>
</tr>
<tr>
<td>EIR Update/Revision</td>
<td>$80,000</td>
</tr>
<tr>
<td>Creation of Financing Mechanism</td>
<td>$65,000</td>
</tr>
<tr>
<td>Administration (2)</td>
<td>$84,750</td>
</tr>
<tr>
<td>LAFCO Annexation Fee (3)</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$714,750</strong></td>
</tr>
</tbody>
</table>

(1) Cost shall be based on the size of the bond issue (include administration costs)
(2) Equals 15% of plan preparation costs (does not include CFD Formation costs)
(3) $2,500 LAFCO Annexation Fee to be paid as part of a future phase

Table 2: Cost Share

<table>
<thead>
<tr>
<th>Public/Private cost breakdown (50% Public, 50% Private)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Modesto Match</td>
<td>$357,375</td>
</tr>
<tr>
<td>ED &quot;Bank&quot; Loan Application Match</td>
<td>$357,375</td>
</tr>
</tbody>
</table>

Attachment ‘B’
Kiernan Business Park Implementation Plan
Project Budget
February 11, 2004

Projected Preparation Cost:
The following table outlines the estimated cost to complete the work program for the
Kiernan Business Park East Implementation Plan. Costs are preliminary estimates and
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</tr>
<tr>
<td>EIR Update/Revision</td>
<td>$80,000</td>
</tr>
<tr>
<td>Creation of Financing Mechanism (1)</td>
<td>$65,000</td>
</tr>
<tr>
<td>Administration (2)</td>
<td>$84,750</td>
</tr>
<tr>
<td>LAFCO Annexation Fee (3)</td>
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Table 2: Cost Share

<table>
<thead>
<tr>
<th>Fund Source</th>
<th>Allotment</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Modesto Match</td>
<td>$357,375</td>
</tr>
<tr>
<td>ED &quot;Bank&quot; Loan Application Match</td>
<td>$357,375</td>
</tr>
</tbody>
</table>

Attachment ‘B’
The Kiernan Business Park encompasses 614 acres situated in north Modesto. It is a prime location for new business and industrial uses due to its proximity to Highway 99.

Two major expressways also border the Kiernan Business Park, Kiernan Avenue (Hwy. 219) on the north and Pelandale Avenue on the south. Utilities, including sewer and water service are available.

The suitability of the area for development is exemplified by the recent announcement by Kaiser Medical of their plans to build a new 1.2 million square foot state of the art full service hospital and medical campus on Dale Road in the center of the Kiernan Business Park.
Figure V-1
Illustrative Public Facilities Plan Diagram
KIERNAN BUSINESS PARK
### Priority 1 Facilities

<table>
<thead>
<tr>
<th>FMP #</th>
<th>Facility</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>SD-300</td>
<td>Bear Cub Lane, Kodiak Drive, Hillglen Avenue - West Basin and Ustach Park frontage</td>
<td>$1,213,700.00</td>
</tr>
<tr>
<td>SD-201</td>
<td>West Basin fencing of lower tier</td>
<td>$37,800.00</td>
</tr>
<tr>
<td>SD-202</td>
<td>West Basin Inlet Structures - 410' of 90° CIPCP, 50' of 48° RCP, 570' of 70° RCP, Inlet structure</td>
<td>$753,800.00</td>
</tr>
<tr>
<td>SD-203</td>
<td>West Basin Inlet Structures - 110° of 66° RCP, Inlet structure</td>
<td>$101,800.00</td>
</tr>
<tr>
<td>PK-033A</td>
<td>Ustach Park Phase 1 &amp; 2 Park Construction</td>
<td>$394,800.00</td>
</tr>
<tr>
<td>SD-204</td>
<td>West Basin forebay and low flow channel</td>
<td>$54,000.00</td>
</tr>
<tr>
<td>SD-205</td>
<td>Hillglen Ave. 60° RCP from Roselle to Esta</td>
<td>$608,700.00</td>
</tr>
<tr>
<td>SD-206</td>
<td>Central Basin Inlet Structures and energy dissipator (for 30° RCP and 24° FM)</td>
<td>$108,000.00</td>
</tr>
<tr>
<td>SD-207</td>
<td>Force Main from West Basin to Central Basin (7000' of PVC FM (C-505) per CDM plan)</td>
<td>$1,051,700.00</td>
</tr>
<tr>
<td>SD-209</td>
<td>West Basin Pump Station</td>
<td>$597,600.00</td>
</tr>
<tr>
<td>SD-210</td>
<td>Central Basin Pump Station, FM to MID canal and completion of basin(maintenance road, low flow channel, etc.)</td>
<td>$528,200.00</td>
</tr>
<tr>
<td>SD-211</td>
<td>Central Basin Property Payback to SD Fund</td>
<td>$634,800.00</td>
</tr>
<tr>
<td>SD-214</td>
<td>Landscape West Basin per RHA plan</td>
<td>$1,501,200.00</td>
</tr>
<tr>
<td>INT-010</td>
<td>Sylvan &amp; Roselle Intersection - Intersection Control &amp; Road Widening</td>
<td>$1,887,000.00</td>
</tr>
<tr>
<td>RD-002</td>
<td>Sylvan Avenue - South side in front of Symphony Park (requires condemnation of 2 homes) (ROW 02/03)</td>
<td>$804,000.00</td>
</tr>
<tr>
<td>INT-009</td>
<td>Roselle &amp; Floyd Intersection Control &amp; Road Widening</td>
<td>$2,065,000.00</td>
</tr>
<tr>
<td>RD-007</td>
<td>Floyd Avenue - North side between Oakdale and Roselle</td>
<td>$4,111,000.00</td>
</tr>
<tr>
<td>RD-006</td>
<td>Pedestrian Overcrossing (Design 03/04)</td>
<td>$1,542,000.00</td>
</tr>
<tr>
<td>RD-004A</td>
<td>Sylvan Avenue - South side between Roselle and Millbrook (ROW 03/04)</td>
<td>$776,000.00</td>
</tr>
<tr>
<td>RD-004B</td>
<td>Sylvan Avenue - North side between Roselle and property line between Grogan Park and High School (ROW 03/04)</td>
<td>$1,236,000.00</td>
</tr>
<tr>
<td>M-001A</td>
<td>Planning Recoup (1/4 of total)</td>
<td>$189,750.00</td>
</tr>
</tbody>
</table>

Priority 1 Total: $20,107,850.00

### Priority 2 Facilities

<table>
<thead>
<tr>
<th>FMP #</th>
<th>Facility</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>PK-055A</td>
<td>Merle Park Street Improvements (Half width along Park)</td>
<td>$302,600.00</td>
</tr>
<tr>
<td>RD-008</td>
<td>Floyd Avenue - Full width between Roselle and Millbrook (not including Lawson property frontage)</td>
<td>$1,644,000.00</td>
</tr>
<tr>
<td>RD-005</td>
<td>Floyd Avenue - Full width between Millbrook and Fine</td>
<td>$2,788,000.00</td>
</tr>
<tr>
<td>SD-212</td>
<td>700' of 30° RCP from Merle to Central Basin (C-107 to basin)</td>
<td>$96,200.00</td>
</tr>
<tr>
<td>SD-228</td>
<td>Merle Avenue - Central Basin frontage</td>
<td>$129,600.00</td>
</tr>
<tr>
<td>INT-007</td>
<td>Roselle &amp; Merle Intersection Control &amp; Road Widening</td>
<td>$275,000.00</td>
</tr>
<tr>
<td>RD-014</td>
<td>Roselle Ave. - Briggsmore to Merle (median closure)</td>
<td>$23,000.00</td>
</tr>
<tr>
<td>PK-038</td>
<td>Ustach Park Phase 3.4 &amp; 5 Park Construction</td>
<td>$225,000.00</td>
</tr>
<tr>
<td>SD-218</td>
<td>800' of 24° RCP (C-165 to C-109, CDM Report) Merle Park to Merle</td>
<td>$90,700.00</td>
</tr>
<tr>
<td>SD-224</td>
<td>1100' of 36° RCP (W-107 to W-105, CDM Report) Kodiak</td>
<td>$187,100.00</td>
</tr>
<tr>
<td>SD-225</td>
<td>1500' of 48° RCP (W-105 to W-101, CDM Report) Kodiak</td>
<td>$362,900.00</td>
</tr>
<tr>
<td>SD-227</td>
<td>201' of 42° CIPCP at Floyd and Fine</td>
<td>$40,700.00</td>
</tr>
<tr>
<td>SD-216</td>
<td>6 AC-ft Retention basin on Merle Park</td>
<td>$67,500.00</td>
</tr>
<tr>
<td>INT-005</td>
<td>Oakdale &amp; Floyd</td>
<td>$1,442,000.00</td>
</tr>
<tr>
<td>PK-055B</td>
<td>Merle Park Phase 1 &amp; 2 Park Construction</td>
<td>$472,100.00</td>
</tr>
<tr>
<td>M-001B</td>
<td>Planning Recoup (1/4 of total)</td>
<td>$189,750.00</td>
</tr>
</tbody>
</table>

Priority 2 Total: $5,658,150.00
Locations where there will be ponding in the street during a 10-year storm. Ponding volume will be less than 4,000 cubic feet.

Legend
- Detention Basin: Street Design in the Area Between Kodiak Drive and Floyd Avenue. Will incorporate Stormwater Detention at Planned Locations.
- Proposed Pipes
- Proposed Force Mains
- Future Pipes

Figure 9
Stormwater System for Currently Proposed Storm Drain Master Plan Update
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-287

RESOLUTION APPROVING AN ADVANCED FUNDING AND COST SHARING AGREEMENT BETWEEN THE CITY OF MODESTO ("CITY") AND CHOPRA DEVELOPMENT ENTERPRISES ("APPLICANT") FOR KIERNAN BUSINESS PARK EAST, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the Applicant is in the process of preparing an amendment to the Kiernan Business Park Specific Plan ("Amendment") and has requested that the City review and process the proposed Amendment, prepare a Facilities Master Plan, Finance Plan and appropriate CEQA documentation for the Amendment and create an appropriate financing mechanism for the purpose of master planning and financing the various public facilities which are necessary to serve the development of Kiernan Business Park East, (collectively the "Project"), and

WHEREAS, the City has secured loans from the Stanislaus County Economic Development Bank ("ED Bank") in the amount of $500,000 which will be applied toward the estimated costs to assist with the public planning and environmental review process for the project, and

WHEREAS, the purpose of the Advanced Funding and Cost-Sharing Agreement ("Exhibit A") for the project is 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 the Agreement shall be applied and by which Applicant may make additional deposits if determined necessary, to reimburse the City and the ED Bank for the amounts advanced, and to reimburse Applicant for monies advanced for the benefit of other landowners in the KBPE, and
WHEREAS, the Advanced Funding and Cost-Sharing Agreement ("Exhibit A") sets forth the conditions of receipt and repayment of the $500,000 loan which is attached hereto and made a part herein by this reference,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Advanced Funding and Cost-Sharing agreement between the City and Chopra Development Enterprises for Kiernan Business Park East is hereby approved.

BE IT FURTHER RESOLVED THAT the City Manager, or his designee, is hereby authorized to execute the agreement on behalf of the City of Modesto.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of May 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris

JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Richard Rudnansky

INTERIM CITY ATTORNEY
EXHIBIT “A”

ADVANCED FUNDING AND COST-SHARING AGREEMENT

(Included in the City Council Packet as Attachment “C”)
ADVANCED FUNDING AND COST-SHARING AGREEMENT
FOR KIERNAN BUSINESS PARK EAST

THIS ADVANCED FUNDING AGREEMENT FOR KIERNAN BUSINESS PARK EAST ("Agreement"), dated as of ________, 2005, is entered into by and between the CITY OF MODESTO, a municipal corporation ("City"), and CHOPRA DEVELOPMENT ENTERPRISES, INC., a California corporation ("Applicant").

RECITALS:

A. Applicant has the right to acquire ownership interests in real property located within a portion of the Kiernan Business Park Specific Plan commonly known as the Kiernan Business Park East ("KBPE"), shown in Exhibit A attached hereto and incorporated herein by this reference, and is interested in pursuing development of properties in KBPE.

B. Applicant is in the process of preparing an Amendment to the Kiernan Business Park Specific Plan ("Amendment") and has requested that the City review and process the proposed Amendment, prepare a Facilities Master Plan, Finance Plan, and appropriate CEQA documentation for the Amendment ("Planning Documents") and create an appropriate financing mechanism, such as, but not limited to, a communities facilities district ("Financing Mechanism") for the principal purpose of master planning and financing the various public facilities which are necessary to serve or desirable for the development of KBPE (collectively the "Project").

C. The estimated cost for completing the Project is approximately ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS ($1,500,000.00) ("Project Costs").

D. Applicant is prepared to deposit with the City one third of the Estimated Costs less expenses advanced by Applicant to date and approved by City’s Community and Economic Development Director ("CEDD") which are incorporated in the Project Costs, in an amount not to exceed FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS ($500,000.00) 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 shall be provided as needed.

E. City has secured loans from the Stanislaus County Economic Development Bank ("ED Bank") in the amount of $500,000.00 (collectively "Loan") which will be applied toward the Estimated Costs in order to assist with the public planning and environmental review process for the KBPE.

F. The City and Applicant are desirous of entering into this Advanced Funding and Cost-Sharing Agreement for KBPE 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 Applicant may make additional deposits if determined necessary, to reimburse the City and the ED Bank for the amounts advanced, and to reimburse Applicant for monies advanced for the benefit of other landowners in the KBPE.
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.

2. **Proposed Preparation of the Planning Documents and Creation of the Financing Mechanism.**
   
   (a) Applicant agrees to pay all costs of reviewing, processing and approving the Amendment, preparing the Planning Documents and creating a Financing Mechanism, if any, for KBPE. City agrees to contribute any proceeds which it actually receives from the Loan, in an amount up to but not to exceed $500,000.00, to pay a portion of the costs associated with review, processing and approval of the CEQA documentation for the Amendment, preparation of the Planning Documents and creation of a Financing Mechanism. The parties understand and agree that the City’s obligation to contribute toward the Project Costs as set forth herein shall be payable solely from revenues received from the Loan and from no other source, and that the City is not liable to maintain or create any funding sources, including its General Fund or tax levies for the purposes of contributing to the Project Costs; provided, however, that if City establishes a Financing Mechanism for KBPE then City will make reasonable efforts to include a provision for reimbursement to Applicant as a component of said Financing Mechanism, to the extent legally permissible.

   (b) Within ten (10) calendar days after the City Council approves this Agreement, Applicant shall deposit the sum of $500,000 less expenses advanced by Applicant to date and approved by City CEDD which are incorporated in the Project Costs (“Initial Deposit”), with City to 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 Initial 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. 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.

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

   (d) Applicant 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 cover the costs referred to herein. In the event that the Applicant does not deliver the requested amount to the City within such ten (10) business day period, the City will have no obligation to proceed with any activity relating to the Project. The Applicant may notify the City at any time, in writing, of its intention to abandon the Project. Immediately upon City’s receipt of such notice, but in no case later than two (2) business days, the City shall instruct in writing its consultants to cease work.
immediately. The Applicant shall be responsible for all costs and expenses incurred by the City or any City consultant or advisor relating to the Project until City issues this cease work notice.

(e) Applicant agrees that, notwithstanding the Applicant’s 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 Applicant. 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 Applicant. Applicant agrees that it shall have no claim to, nor shall it assert any right in any reports, correspondence, plans, maps, drawings, news releases or any and all other documents or work product produced by City’s consultants. Applicant understands that it will not be a third party beneficiary to City’s contracts with the consultants. City will consult with Developer prior to replacing its current consultants; however, Applicant agrees that City may select other consultants to replace its current consultants and may do so without obtaining Developer’s approval.

3. City and Applicant to Cooperate with each other and with the City’s Consultants.

(a) City and Applicant shall work cooperatively and in good faith to facilitate completion of Project as quickly as possible and in the most cost effective way. City and Applicant 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 Applicant’s 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 approval and control.

(b) City shall prepare a tentative timeline of processing steps through adoption of the Specific Plan and posting of CEQA notices (“Project Schedule”). The Project Schedule shall be prepared in consultation with the Applicant. City and Applicant shall use reasonable efforts to process Applicant’s application in accordance with the Project Schedule. Applicant acknowledges that changes to the Project, delays in resolving infrastructure issues or obtaining information necessary to process the application, the public comment process and other issues beyond the City’s control may result in delays to the Project Schedule.

(c) City and Applicant shall establish a KBPE Development Team that regularly shall meet in person or teleconference to coordinate the work contemplated by this Agreement. City’s team members shall include at least one representative from all necessary City departments.

(d) City and Applicant shall each appoint one team leader. The City’s development team leader shall coordinate the City’s various departments in their interaction with the Applicant’s development team. The Applicant’s development team leader shall coordinate the Applicant’s team in its interaction with the City’s development team and shall ensure Applicant’s team timely makes any decisions necessary to move the Project to hearing.

(e) City and Applicant agree that water, wastewater, and storm water infrastructure issues are critical to timely moving the Project to hearing and to ensure the economic viability of the Project. The parties agree to work on these issues in a manner sufficient to ensure
that CEQA review of the project is not unduly delayed, and that the magnitude of infrastructure costs are identified as early in the process as practical.

(f) Prior to making any final decisions regarding the scope of work of any contract or consultant, City will provide the proposed scope of work to the Applicant for review and comment.

(g) Each party shall timely review documents and provide comments so that the Project Schedule can be maintained.

(h) Prior to making any final decisions regarding adoption of the proposed Amendment, the Planning Documents or Financing Mechanism, if any, City will send a draft of the proposed document to Applicant for review and comment.

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

4. Repayment of Loan.

(a) City has entered into an Economic Development “Bank” Project Funding Agreement with the County of Stanislaus (“County”) dated of even date herewith (“Loan Agreement”), a copy of which is attached hereto as Exhibit B and incorporated herein by reference. The purpose of the Loan Agreement is to secure the $500,000.00.

(b) Applicant acknowledges that City has entered into the Loan Agreement for the sole purpose of assisting Applicant with the costs of preparing the Amendment and Planning Documents and creating a Financing Mechanism in order to facilitate the development of KBPE. Applicant further acknowledges and agrees that it has or will receive a direct and substantial benefit as a result of City’s commitment to the Loan Agreement and, therefore, will fully guarantee any and all obligations of the City under the Loan Agreement in the event that City is unable to create a Financing Mechanism which includes adequate provision for repayment of the Loan. Applicant further acknowledges that City has entered into the Loan Agreement in reliance on Applicant’s agreement to guarantee City’s obligations under the Loan Agreement.

(c) City and Applicant agree to use best efforts to create a Financing Mechanism which includes sufficient provisions to ensure reimbursement of the Loan in accordance with the terms of the Loan Agreement. If such a Financing Mechanism is not or cannot be created for any reason whatsoever, or if such Financing Mechanism is insufficient to ensure reimbursement of the Loan in accordance with the Loan Agreement, then Applicant unconditionally guarantees and promises to pay to City and/or the ED Bank when due, any and all payments which are necessary to repay the Loan in full, according to the terms of the Loan Agreement, and shall hold the City harmless from and fully satisfy any and all of City’s obligations under the Loan Agreement. Applicant shall make payment to City or ED Bank of any amount necessary to repay the Loan when
due, or within ten (10) business days of receipt of a demand from City for payment of the same, whichever occurs later.

(d) Prior to or concurrent with execution of this Agreement, Applicant shall furnish, or cause to be furnished a security in the amount of FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($500,000.00) to secure and guarantee faithful performance of Applicant’s obligation to repay the Loan, including but not limited to payment of all administrative and legal costs incurred by City to enforce this obligation. The security shall be in the form of cash, assignment of a certificate of deposit or passbook savings account, or a letter of credit acceptable to the City Attorney. Unless otherwise agreed by City in writing, Applicant shall secure and maintain the performance security until the later of (1) repayment in full of the Loan and satisfaction in full of all City’s obligations under the Loan Agreement or (2) establishment of a Financing Mechanism which includes adequate provision for repayment of the Loan.

5. Reimbursement Procedure.

(a) If a Financing Mechanism is created, including but not limited to formation of a CFD and issuance of bonds, proceeds in excess of the amount determined by the City to be required in order to administer the Financing Mechanism and to satisfy the requirements of the City’s policies and procedures, including but not limited to City’s CFD Policies and Procedures with respect to capitalized interest and reserves, and to pay for facilities and incidental expenses, may be used to reimburse the Applicant and the City for the amounts that the Applicant and the City have advanced in connection with this Agreement; provided, however, that any such reimbursement monies available first shall be to the City for the purpose of repaying the Loan and satisfying any outstanding payment obligation from Applicant to City, then to Applicant. City shall pay interest on any monies to be reimbursed to Applicant through the Financing Mechanism, if legally permissible.

(b) In the event that the Planning Documents are not prepared or approved and/or a Financing Mechanism is not created for any reason, or in the event that a Financing Mechanism is created but no revenue stream is generated for any reason, the City shall refund any funds which have been advanced by the Applicant 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 any direct and indirect costs paid by Loan proceeds for review and processing of the proposed Amendment, preparation of the Planning Documents and/or creation of the Financing Mechanism. If the amounts advanced by the Applicant are insufficient to fully reimburse the City for all said direct and indirect costs and monies received from the Loan, then the Applicant shall pay to the City the amount of the deficiency within ten (10) days after receipt of a demand by City. City shall not be required to pay interest on any amount required to be refunded pursuant to this Agreement. The City shall be entitled to pay any refund or reimbursement 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 Applicant.

6. Abandonment of the Project. The Applicant understands that, subject to the satisfaction of all applicable legal requirements, the decision to review, process, prepare or approve the proposed Amendment, Planning Documents and Financing Mechanism 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 Amendment, Planning
Documents or Financing Mechanism. The City shall have no liability to Applicant for a decision not to review, process, prepare or approve the proposed Amendment, Planning Documents and Financing Mechanism.

7. **Indemnification and Hold Harmless.** The Applicant hereby assumes the defense of, and shall indemnify and save harmless, the City and each of its officers, directors, agents, contractors, and employees, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of or arising out of any acts or omissions of Applicant or any of the Applicant's officers, employees, contractors and agents in connection with the proposed review, processing, preparation or approval of the proposed Amendment, Planning Documents and/or creation of a Financing Mechanism provided by or on behalf of the Applicant or its consultants, except for any action, damages, claims, losses or expenses arising out of the sole negligence or willful misconduct of the City, its officers, directors, employees or agents.

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:** Chopra Development Enterprises, Inc.
1401 Spanos Court, Suite 128
Modesto, CA 95355
Attention: Dr. Aruna Chopra

With a copy to: Mr. Brian Velthoen
Velthoen Assoc. Commercial Brokers
300 Banner Court, Suite 1
Modesto, CA 95356

With an additional copy to: Mr. George A. Petrolakis
Petrolakis Jensen & Friedrich, LLP
1130 12th Street, Suite B
Modesto, CA 95354

**City:**
City of Modesto
1010 Tenth Street, Suite 6100
Modesto, California 95353
Attention: Brad Kilger, CED Director

9. **Assignment.** Applicant may not assign its interest in this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld. Any assignment or attempt to assign this Agreement without the prior written consent of CITY shall be deemed null and void as of the date of the purported assignment. All covenants, stipulations, and agreements in this Agreement shall bind any such representatives, successors and assigns.
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 Applicant, 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 Applicant's obligations under Sections 4 and 7 and the City's obligation to provide reimbursement in accordance with Section 5 for expenses incurred prior to the termination date shall survive termination or expiration of this Agreement.

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 Owner or its agents, employees or contractors. Except as City may specify in writing, Owner shall have no authority to act as an agent of City or to bind City to any obligation.

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 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 construction or improvements within or outside the KBPE which are within City's jurisdiction.
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. 2006-____, adopted by the Council of the City of Modesto on the ____ day of ________, 2006, and Applicant has caused this Agreement to be executed in duplicate, effective as of the date first written above.

CITY OF MODESTO, a municipal corporation

By: ________________________________
   GEORGE W. BRITTON, City Manager

ATTEST:

By: ________________________________
   JEAN ZAHR, City Clerk

CHOPRA DEVELOPMENT ENTERPRISES INC., a California corporation

By: ________________________________
   Dr. Aruna Chopra
   Title: ______________________________

APPROVED AS TO FORM:
Richard Rudnansky, Interim City Attorney

By: ________________________________
   ALISON A. BARRATT-GREEN
   Senior Deputy City Attorney
EXHIBIT "A"
KIERNAN BUSINESS PARK EAST

Included with the May 9, 2006, City Council Agenda Packet as Attachment "A"
EXHIBIT "B"
KIERNAN BUSINESS PARK EAST

Included with the May 9, 2006, City Council Agenda Packet as Attachment "B"
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-288

A RESOLUTION AMENDING THE FISCAL YEAR 2005-2006 OPERATING BUDGET TO INCREASE THE COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT REVENUE BUDGET BY $500,000 AND TO APPROPRIATE $500,000 FOR CONTRACT PROFESSIONAL SERVICES

WHEREAS, on August 2, 2005, the Stanislaus County Board of Supervisors approved an Economic Development Bank loan of $142,625 to be used by the City of Modesto for the Kiernan Business Park Implementation Plan, supplementing a previously approved loan of $357,375, for a total loan for these purposes of $500,000, and

WHEREAS, revenue projections for these projects were not included in the FY 2004/2005 budget, and

WHEREAS, Planning studies, including a Specific Plan amendment and Environmental Impact Report are to be completed using contract assistance, and

WHEREAS, the City has entered into an Economic Development Project Funding Agreement with Stanislaus County for the use of these funds and an Advanced Funding and Cost-Sharing Agreement with Chopra Development Enterprises for the balance of costs and for reimbursement, and

WHEREAS, the City Council on August 2, 2005, considered and approved further study of the concept for the Kiernan Business Park-East Specific Plan and EIR updates, and provided direction to staff to finalize the funding agreements and to schedule the agreements for review and consideration by the City Council.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Modesto that it hereby amends the Fiscal Year 2005-2006 operating budget to create a multi-year operating organization (0800-140-1454 – Kiernan Business Park East Economic Development Department).
Development “Bank” Loan) to recognize $500,000 in revenue, and to appropriate $500,000 for contract professional services.

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 9th day of May 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Keating, Marsh, O’Bryant, Olsen, Mayor Ridenour
NOES: Councilmembers: None
ABSENT: Councilmembers: None

ATTEST
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: RICHARD RUDNANSKY, Interim City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-289

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MODESTO AND TURNSTONE CONSULTING CORPORATION FOR THE PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED KIERNAN BUSINESS PARK-EAST SPECIFIC PLAN AMENDMENT PROJECT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT IN AN AMOUNT NOT TO EXCEED $483,202.00

WHEREAS, Dr. Aruna Chopra, has applied for a specific plan amendment and associated applications, referred to as the Kiernan Business Park-East project, to allow for orderly future development within the approximate 155-acre planning area located on the east side of Dale Road, between Kiernan Avenue and Bangs Avenue, and

WHEREAS, the Kiernan Business Park-East project will also involve the following associated entitlements: prezoning a portion of the area to a Specific Plan-Overlay (SP-O) Zone; Annexation of a portion of the area; amendment of the Kiernan Business Park Specific Plan; a General Plan Amendment to modify the land use mix within the Kiernan Business Park-East area; preparation of a Facilities Master Plan and associated Finance plan, formation of a Capital Facilities District (CFD); development agreement; and applicable subsequent approvals such as Tentative Subdivision or Parcel Maps, other Conditional Use Permits/Final Development Plan or plan 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 (EIR) is required for the proposed Kiernan Business Park-East project and related applications, and
WHEREAS, the City has determined that the EIR for the Kieran Business Park-East project should be completed in phases with Phase I being preparation of a Notice of Preparation and Initial Study, and preparation of the Draft EIR and Phase II will be preparation of the Final EIR.

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 Kiernan Business Park-East project because of their extensive experience on similar projects in other jurisdictions.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Agreement between the City of Modesto and Turnstone Consulting Corporation for the preparation of a Draft Environmental Impact Report for the proposed Kiernan Business Park-East project is hereby approved, in an amount not to exceed $483,202.00, a copy of which is on file in the City Clerk’s office.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement and the City Clerk is hereby authorized to attest thereto.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of May 2006, by Councilmember Keating, 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, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: RICHARD RUDNANSKY, Interim City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-290

A RESOLUTION APPROVING SPECIFIC PLAN AMENDMENT NO. 21 TO THE VILLAGE ONE SPECIFIC PLAN TO MODIFY POLICIES RELATED TO THE DEVELOPMENT OF THE VILLAGE ONE TOWN CENTER HOUSING PROJECT, PROPERTY LOCATED AT THE NORTHEAST CORNER OF ROSELLE AVENUE AND BELHARBOUR DRIVE. (STANISLAUS COUNTY HOUSING AUTHORITY)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the City Council on November 1, 2005, by Resolution No. 2005-547, adopted Specific Plan Amendment No. 20 to the Village One Specific Plan to allow for a revised layout for the Village Center Retail Center, property located at the southeast corner of Roselle and Floyd; and

WHEREAS, Stanislaus County Housing Authority has filed an application to amend the Village One Specific Plan to modify policies related to the development of the Village One Town Center Housing Project located at the northeast corner of Roselle Avenue and Belharbour Drive, and

WHEREAS, on October 10, 2003, the proposed Specific Plan amendment was referred to Stanislaus County, Sylvan Elementary School District, Modesto City High School District, Stanislaus LAFCO, and the City of Modesto Public Works Department, the water system purveyor for the area in which the project is located, for a 45-day review period in accordance with Government Code Sections 65453 and 65352, and
WHEREAS, on February 27, 2005, at 7:00 p.m. the Planning Commission held a duly noticed public hearing in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered concerning the proposed Village One Specific Plan amendment, and

WHEREAS, after said public hearing, the Modesto City Planning Commission by Resolution No. 2006-10, recommended to the City Council approval of an amendment to the Village One Specific Plan to modify policies related to the development of the Village Center at the northeast corner of Roselle Avenue and Belharbour Drive, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing on May 9, 2006, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds and determines that the proposed Amendment No. 21 to the Village One Specific Plan to modify policies related to the development of the Village One Town Center Housing Project at the northeast corner of Roselle Avenue and Belharbour Drive is consistent with the 2003 Modesto Urban Area General Plan, including the adopted Housing Element, because it will not adversely affect and is consistent with the Housing Element’s primary goals and objectives of ensuring that the City maintains a sufficient site inventory to meet its RHNA and providing for the development of low-income housing units within the City, that the proposed amendment will facilitate the development of the Village One Town Center Housing Project which will designate some
of the residential units for needed affordable housing, and that the revised layout will facilitate the development of needed street improvements along Roselle Avenue and Belharbour Drive for the Village One Town Center Housing Project.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Village One Specific Plan is hereby amended to modify policies related to the development of the Village One Town Center Housing Project at the northeast corner of Roselle Avenue and Belharbour Drive as shown on Exhibit "A" attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Council has reviewed and considered the amendments for the proposed Village One Town Center Housing Project, and the Council hereby makes the following additional finding:

The proposed Village One Town Center Housing Project is in conformance with the Regional Housing Needs Allocation (RHNA) program, which has been achieved with the following identified sites: 18 units at 3333 Carver Road, 5 units at Hope Village, and 27 units within the existing Village One Town Center Housing Project.

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

BE IT FURTHER RESOLVED that the project applicant shall indemnify, defend, and hold harmless the City of Modesto, its agents, officers, and employees from any and all claims, actions, or proceedings against the City of Modesto, its agents, officers, and employees to attack, set aside, void, or annul, any approval by the City of Modesto and its advisory agency, appeal board, or a legislative body concerning this Specific Plan Amendment (File No. SPA-03-003). The City of Modesto shall promptly notify the
applicant of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to do so, the applicant shall not thereafter be responsible to defend, indemnify, or hold City harmless.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of May 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Marsh, O'Bryant, Mayor Ridenour
NOES: Councilmembers: Keating, Olsen
ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:
By: Richard Rudnansky, Interim City Attorney
EXHIBIT "A"
VILLAGE ONE SPECIFIC PLAN AMENDMENT NO. 21

Included in the City Council Packet
Figure III - 21
Precise Plan Area #20

VR Village Residential
MF Multi-Family
SH Senior Housing
VC Village Commercial Center
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-291

A RESOLUTION FINDING THAT THE FOLLOWING PROJECT IS WITHIN THE SCOPE OF THE VILLAGE ONE PROGRAM ENVIRONMENTAL IMPACT REPORT (SCH NO. 90020181), AS AMENDED BY THE SUPPLEMENTAL EIR: SPECIFIC PLAN AMENDMENT NO. 21 TO THE VILLAGE ONE SPECIFIC PLAN TO AMEND THE VILLAGE ONE SPECIFIC PLAN TO MODIFY POLICIES RELATED TO THE DEVELOPMENT OF THE VILLAGE ONE TOWN CENTER HOUSING PROJECT, AND AN AMENDMENT TO THE PRECISE PLAN FOR THE SOUTHEAST QUADRANT OF AREA NO. 20 TO MODIFY POLICIES AND DIAGRAMS TO ACCOMMODATE A PROPOSAL FOR THE VILLAGE ONE TOWN CENTER HOUSING PROJECT, PROPERTY LOCATED AT THE NORTHEAST CORNER OF ROSELLE AVENUE AND BELHARBOUR DRIVE. (STANISLAUS COUNTY HOUSING AUTHORITY)

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

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

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

WHEREAS, an application has been filed by Stanislaus County Housing Authority for an amendment to the Village One Specific Plan to modify design policies related to the development of the Village One Town Center Housing Project at the
northeast corner of Roselle Avenue and Belharbour Drive, and to amend the Precise Plan for Area No. 20 to modify policies and diagrams to accommodate the design of a proposal for the Village One Town Center Housing Project, and

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

WHEREAS, City staff has prepared a Written Checklist, Environmental Assessment No. EA/C&ED 2005-01, which concluded that the proposed Project is within the scope of the Village One Program EIR (SCH No. 90020181), as amended by the Village One Supplemental EIR, and the Addendum to Village One Specific Plan Program Environmental Impact Report for the Village One Facilities Master Plan, and

WHEREAS, the Planning Commission, by Resolution No. 2006-10, adopted on February 27, 2006, recommended to the City Council approval of Amendment No. 21 to the Village One Specific Plan to modify design policies related to the development of the Village One Town Center Housing Project located at the northeast corner of Roselle Avenue and Belharbour Drive, and to amend the Precise Plan for Area No. 20 to modify policies and diagrams to accommodate the design of a proposal for the Village One Town Center Housing Project, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on May 9, 2006, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council has reviewed and considered Environmental Assessment No. EA/C&ED
2005-01, entitled "Village One Town Center Housing Project," for the proposed Project, and the Council hereby makes the following findings:

1. The proposed Specific Plan Amendment is consistent with the Modesto Urban Area General Plan, as the overall land use, intensity and circulation of the Village One Specific Plan and Village One Town Center Housing Project would not be changed by the amendment.

2. The proposed amendment to the Precise Plan for Area No. 20 is consistent with the Village One Specific Plan as amended.

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

4. 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.

5. 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.

6. There is no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence when the Program EIR was adopted, which shows any of the following:

   a. one or more significant effects which is not discussed in the Program EIR; or,

   b. significant effects which were previously examined will be substantially more severe than previously shown; or,

   c. previously infeasible mitigation measures or alternatives are now feasible and would substantially reduce one or more significant effects of the project, but the Project proponents decline to adopt the mitigation measure or alternative; or,
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.

7. The Initial Study, Environmental Assessment EA/PR&N 2005-01, provides the substantial evidence to support findings 3-6, noted above.

A copy of said Environmental Assessment No. EA/C&ED 2005-01, entitled "Village One Town Center Housing Project, is on file with the City Clerk.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the Council has reviewed and considered the amendments for the proposed Village One Town Center Housing Project, and the Council hereby makes the following additional findings:

The proposed Village One Town Center Housing Project is in conformance with the Regional Housing Needs Allocation (RHNA) program, which has been achieved with the following identified sites: 18 units at 3333 Carver Road, 5 units at Hope Village, and 27 units within the existing Village One Town Center Housing Project.

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 9th day of May, 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: Keating, Olsen

ABSENT: Councilmembers: None

ATTEST: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Richard Rudnansky, Interim City Attorney
A RESOLUTION APPROVING SUBMITTAL OF A GRANT APPLICATION TO THE FEDERAL TRANSIT ADMINISTRATION (FTA) REQUESTING $2,954,800 IN SECTION 5307 FORMULA FUNDS AND $88,530 IN CONGESTION MITIGATION AND AIR QUALITY (CMAQ) FUNDS TO HELP OFFSET THE COST OF PROVIDING PUBLIC TRANSPORTATION SERVICE IN THE MODESTO AREA, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ALL GRANT APPLICATION AND GRANT AGREEMENT DOCUMENTS

WHEREAS, the Federal Transit Administration (FTA) has been delegated authority to award federal financial assistance for transportation related projects, and

WHEREAS, the City of Modesto has provided all annual certifications and assurances to the Federal Transit Administration required for the projects, and

WHEREAS, each year the City of Modesto submits a grant application for Section 5307 and CMAQ funds from the formula apportionment made available to the Modesto Urbanized area by the FTA, and

WHEREAS, the City of Modesto has received authority from the Designated Recipient, StanCOG, to apply for Section 5307 Urban Area Formula Program Assistance for no more than $2,954,800 for FY 2005-2006, and

WHEREAS, the City of Modesto, through a competitive process, received approval from StanCOG to apply for Congestion Management and Air Quality (CMAQ) funds for no more than $88,530 for FY 2005-2006, and

WHEREAS, the projects in the Section 5307 and CMAQ grant application are in the Federal Transportation Improvement Program (FTIP) adopted by StanCOG February 9, 2005, and
WHEREAS, the grant for Federal assistance will impose certain obligations on the City of Modesto, and may require the City to provide the local share of the project costs, and

WHEREAS, by a report to the Council dated April 20, 2006, from the Public Works Director, City staff recommended submitting a grant application for $2,954,800 in Section 5307 formula FTA funds and $88,530 in CMAQ funds to partially offset the operational and capital costs of the City’s public transit program, and

WHEREAS, the Modesto City Council conducted a Public Hearing on May 9, 2006, at 5:30 p.m., in the Tenth Street Place Chambers located in the Basement of 1010 Tenth Street, Modesto, California, in accordance with FTA regulations,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the submittal of an application for Federal Section 5307 and CMAQ assistance on behalf of the City of Modesto with the Federal Transit Administration (FTA) for Federal assistance authorized by 49 U.S.C. Chapter 53, Title 23, United States Code, or other Federal statutes authorizing a project administered by the Federal Transit Administration.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute all grant application and grant agreement documents.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute all necessary grant documents with the Federal Transit Administration on behalf of the City of Modesto.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of May 2006, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: Jean Morris
JEAN MORRIS, City Clerk

APPROVED AS TO FORM:

By: Richard Rudnansky, Interim City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2006-293

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 FOR A PRECISE PLAN FOR AREA
NO. 30 OF THE VILLAGE ONE SPECIFIC PLAN AND FOR CONCURRENT
REZONING FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC
PLAN-OVERLAY ZONE, SP-O, PROPERTY LOCATED ON THE EAST SIDE
OF FINE AVENUE, SOUTH OF SHARON AVENUE, NORTH SIDE OF MERLE
AVENUE AND WEST OF CLAUS ROAD (CARY POPE)

WHEREAS, the Modesto City Council has adopted Resolution No. 90-757 certi-
ifying that the Village One Final Environmental Impact Report (“EIR”) (State Clearing
House No. 90020181) is complete and adequate pursuant to Section 15090 of the Cali-
ifornia 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 Pro-
gram 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 Cary Pope for a Precise Plan for
Area No. 30, property located on the east side of Fine Avenue, south of Sharon Avenue,
north side of Merle Avenue, and west of Claus Road, and

WHEREAS, the applicant has applied for approval of a rezoning from Specific
Plan-Holding Zone, SP-H, to a Specific Plan-Overlay, SP-O, 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 2005-35, which concluded that the proposed Project is within the scope of the Village One Program EIR (SCH No. 90020181), as amended by the Village One Supplemental EIR, and the addendum to Village One Specific Plan Program Environmental Impact Report for the Village One Facilities Master Plan, and

WHEREAS, the Planning Commission, by Resolution No. 2006-09, adopted on February 27, 2006, and City staff, by a report dated April 11, 2006, from the Community and Economic Development Department, recommended to the City Council approval of a Precise Plan for Area No. 30, and recommended approval of an amendment to Section 13-3-9 of the Zoning Map to rezone from Specific Plan-Holding Zone, SP-H to Specific Plan-Overlay Zone, SP-O, property located on the east side of Fine Avenue, south of Sharon Avenue, north side of Merle Avenue, and west of Claus Road, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on May 9, 2006, 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 2005-35, entitled “Determination: Project within the Scope of the Village One Specific Plan Program Environmental Impact Report Initial Study EA/C&ED No. 2005-35 For the Proposed Precise Plan and Concurrent Zoning for
Precise Plan Area No. 30 in the Village One Specific Plan Area”, for the proposed project, and the Council hereby makes the following findings:

1. The proposed Precise Plan and rezoning is consistent with the Village One Specific Plan and Modesto Urban Area General Plan, and

2. As per Sections 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 is not discussed in the Program EIR; or,

   b. Significant effects which were previously examined will be substantially more severe than previously shown; or,

   c. Previously infeasible mitigation measures or alternatives are now feasible and would substantially reduce one or more significant effects of the project, but the Project proponents decline to adopt the mitigation measure or alternative; or,

   d. Mitigation measures or alternatives which are considerably different from those analyzed in the Program EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

6. The Written Checklist, Environmental Assessment No. EA/C&ED 2005-35, provides the substantial evidence to support findings 3-6, 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 9th day of May 2006, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Morris, City Clerk

APPROVED AS TO FORM:

By: Richard Rudnansky, Interim City Attorney
EXHIBIT “A”

WRITTEN CHECKLIST

EA/C&ED NO. 2005-35
Determination:
Project within the Scope of the
Village One Specific Plan
Program Environmental Impact Report

Initial Study EA/C&ED No. 2005-35
For the Proposed Precise Plan and Concurrent
Zoning for Precise Plan Area No. 30 in the
Village One Specific Plan Area

City of Modesto
P.O. Box 642
Modesto, CA 95353

Prepared by:

Robert S. Cannell, Senior Planner
City of Modesto
Community & Economic Development
Department
209/577-5274

November 4, 2005
EA/C&ED No. 2005-35

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 Precise Plan and concurrent zoning for Precise Plan Area No. 30).

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: Precise Plan No. 30 and Concurrent Rezoning, Village One Specific Plan

2. Lead Agency Name and Address: City of Modesto

3. Contact Person and Phone Number: Robert S. Cannell, Senior Planner, Modesto Community & Economic Development Department, 209/577-5274

Written Checklist
Village One Specific Plan
Program Environmental Impact Report 2

Initial Study
C&ED No. 2005-35
November 4, 2005
4. Project Location: North of Merle Avenue, South of Sharon Avenue, East of Fine Avenue, all West of Claus Road Modesto, California

5. Project Sponsor's Name and Address: Cary Pope (Landowner within PPA #30) 3837 Merle Avenue Modesto, CA 95355
   Engineer: O'Dell Engineering 1165 Scenic Drive Modesto, CA 95350


7. Zoning: Specific Plan Overlay (SP-H)

8. Description of Project: The proposed Precise Plan contains a concept plan for approximately 174 single-family lots in accordance with the Specific Plan. The Precise Plan proposal ties into the circulation system with three local streets connecting existing peripheral street system.

9. Surrounding Land Uses and Setting: The Village One Specific Plan Area is well over half built, as planned and approved by the 1990 Village One Specific Plan. The project area is bounded by developing subdivisions, Sequoia Estates to the south, Banyon Estates and Falling Leaf to the north, two schools and a City park to the west.

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 projects known as Precise Plan 30 is within the scope of the Village One Program EIR.

Project Manager Date

Robert J. Connelly 11-14-05

Written Checklist
Village One Specific Plan
Program Environmental Impact Report

Initial Study
C&ED No. 2005-35
November 4, 2005
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.

<table>
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<tr>
<th>Potentially Significant Impact</th>
<th>Less than Significant Impact Mitigated</th>
<th>Less-than-Significant Impact</th>
<th>No Impact</th>
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</thead>
</table>

I. AESTHETICS. Would the project:

a. Have a substantial adverse effect on a scenic vista?  
   - [ ] Potentially Significant Impact  
   - [ ] Less than Significant Impact Mitigated  
   - [ ] Less-than-Significant Impact  
   - [x] No Impact

b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings along a scenic highway?  
   - [ ] Potentially Significant Impact  
   - [ ] Less than Significant Impact Mitigated  
   - [ ] Less-than-Significant Impact  
   - [x] No Impact

c. Substantially degrade the existing visual character or quality of the site and its surroundings?  
   - [ ] Potentially Significant Impact  
   - [ ] Less than Significant Impact Mitigated  
   - [ ] Less-than-Significant Impact  
   - [x] No Impact

d. Create a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area?  
   - [ ] Potentially Significant Impact  
   - [ ] Less than Significant Impact Mitigated  
   - [ ] Less-than-Significant Impact  
   - [x] No Impact

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 residential project 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 residential project. 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 residential project would not change the design or layout of the development proposed within the Village One 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 residential development 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.

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<th>Less than Significant Impact with Mitigation</th>
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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 residential development 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.

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:

- Conflict with or obstruct implementation of the applicable air quality plan?  
-  
-  
-  

- Violate any air quality standard or contribute substantially to an existing or projected air quality violation?  
-  
-  
-  

Written Checklist  
Village One Specific Plan  
Program Environmental Impact Report  

Initial Study  
C&ED No. 2005-35  
November 4, 2005
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)?

- [ ] Potentially Significant Impact
- [ ] Less than Significant Impact
- [ ] Less than Significant Impact with Mitigation Incorporated
- [x] No Impact

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<td>c.</td>
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d. Expose sensitive receptors to substantial pollutant concentrations?

- [ ] Potentially Significant Impact
- [ ] Less than Significant Impact
- [ ] Less than Significant Impact with Mitigation Incorporated
- [x] No Impact

e. Create objectionable odors affecting a substantial number of people?

- [ ] Potentially Significant Impact
- [ ] Less than Significant Impact
- [ ] Less than Significant Impact with Mitigation Incorporated
- [x] No Impact

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 residential project 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 residential development 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 residential development would not change the level of construction emissions. There would be no additional impact. No mitigation is required.

e. The proposed residential development would not create odors. There would be no impact. No mitigation is required.

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</thead>
</table>

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?

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?

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, a Swainson’s Hawk survey was conducted by a qualified biologist for the project site. The ensuing report (attached) found that 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 residential development 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 residential development 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 residential development 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 residential development 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 groundshaking?

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 residential development 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 residential project 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?  ☑
Responses to Checklist Questions

a.–c. The Village One Specific Plan does not allow any land uses that would use hazardous materials. The proposed residential development 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 residential development 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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VIII. HYDROLOGY AND WATER QUALITY.

Would the project:

a. Violate any water quality standards or waste discharge requirements? ☐ ☐ ☐ ☒

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)? ☐ ☐ ☐ ☒

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? ☐ ☐ ☐ ☒

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? ☐ ☐ ☐ ☒

e. 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? ☐ ☐ ☐ ☒

f. Otherwise substantially degrade water quality? ☐ ☐ ☐ ☒
g. 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? □ □ □ ☑

h. Place within a 100-year flood hazard area structures that would impede or redirect floodflows? □ □ □ ☑

i. 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? □ □ □ ☑

j. Contribute to inundation by seiche, tsunami, or mudflow? □ □ □ ☑

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 residential development 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?  
   - No mitigation is required.

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?
   - No mitigation is required.

c. Conflict with any applicable habitat conservation plan or natural community conservation plan?
   - No mitigation is required.

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.
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?  
   \[ \square \quad \square \quad \square \quad \square \quad \checkmark \]

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?  
   \[ \square \quad \square \quad \square \quad \square \quad \checkmark \]

**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?  
   \[ \square \quad \square \quad \square \quad \square \quad \checkmark \]

d. Result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?  
   \[ \square \quad \square \quad \square \quad \square \quad \checkmark \]

e. Be located within an airport land use plan area, or, where such a plan has not been adopted, within two miles of a public airport or public use airport and expose people residing or working in the project area to excessive noise levels?  
   \[ \square \quad \square \quad \square \quad \square \quad \checkmark \]

f. Be located in the vicinity of a private airstrip and expose people residing or working in the project area to excessive noise levels?  
   \[ \square \quad \square \quad \square \quad \square \quad \checkmark \]

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.

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No Impact

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?

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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.

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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 project would not change the provision of public services. There would be no additional impact. No mitigation is required.

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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? | □ | □ | □ | ☑ |
| b. Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment? | □ | □ | □ | ☑ |

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)? | □ | □ | □ | ☑ |
| 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? | □ | □ | □ | ☑ |
| 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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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 project would not alter traffic patterns in the Specific Plan area or result in additional trips. There would be no additional impact. No mitigation is required.

c. The Village One Specific Plan program EIR did not find that the 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. The proposed project would not change roadway design or land uses. There would be no impact. No mitigation is required.

e. 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 proposed project would not change roadway design or land uses contained within the Specific Plan. There would be no additional impact. 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. The provision of parking, consistent with zoning requirements for the proposed project, is included in the project design. 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? ☐ ☐ ☐ ☑

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 project 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. Prior to the Final Inspection, Building Inspection Division shall verify that all fireplaces and wood stoves in residential units are equipped to meet the performance and emissions standards set forth in Part 60, Title 40, Subpart AAA Code of Federal Regulations, February 26, 1988.

2. Construction noise is regulated by the City’s Noise Ordinance, Section 4.9 − 103. Construction noise is generally permitted during the hours of 7:00 am to 9:00 pm. To avoid complaints from nearby residents, and possible citations, the full text of the ordinance should be reviewed by builders prior to construction. City construction projects will be monitored by Construction Inspection for conformance with the City’s Noise Ordinance.

3. During construction activities, Building Inspection Division shall verify that contractors observe the requirements of City of Modesto Standard Specification 2.07(A)(5), Dust Control, and when necessary, Regulation VIII of the San Joaquin Valley Unified Air Pollution Control District to control the generation of PM 10 from construction related dust and emissions.

4. “All deeds for lots sold in this subdivision shall contain the following statement:

'This lot is located near existing agricultural operations. Residents may be subjected to customary and accepted farming practices that produce noise, dust, smoke and other impacts. The grantee accepts the potential impacts of customary farming practices, which may include the application and use of various, chemicals through spraying, spreading or other customary means in accordance with applicable state and federal regulations regarding such applications. The grantee also acknowledges the need to avoid activities that conflict with nearby farm uses.'"
September 13, 2004

Mr. John Degele
O'Dell Engineering
1165 Scenic Drive
Modesto, CA 95350

Dear Mr. Degele:

I conducted a field reconnaissance survey of the Modesto Properties on September 9, 2004. One parcel was evaluated, APN 85-07-18, in the area bounded by Fine Avenue, Sharon Avenue, Claus Road, and Merle Avenue. The purpose of this survey was to evaluate the properties for potential Swainson's hawk foraging or nesting habitat. I evaluated the property and conducted a visual survey of the surrounding area within a 0.5 mile radius. No Swainson’s hawks or Swainson’s hawk nest sites were observed on the properties. However, the California Natural Diversity Database (CNDDB 2003) documents four occurrences within 10 miles of the properties. One of these occurrences, Number 713, was last documented in April 1999.

The Swainson’s hawk is state listed as threatened, and is also protected by the Migratory Bird Treaty Act of 1918 (16 USC 703-711). Sections 3503, 3503.5, and 3800 of the California Fish and Game Code prohibit the take, possession, or destruction of birds, their nests, or eggs. The California Department of Fish and Game (CDFG) considers loss of foraging habitat within a 10-mile radius of an active Swainson’s hawk nest as an impact to this species. Nests are considered active if they have been used at least once during the last five years (CDFG 1994). CDFG also considers any intensive new disturbance within 0.25-mile of an active nest that may cause nest abandonment or forced fledging as an impact to the species.

The California Department of Fish and Game Staff Report Regarding Mitigation for Impacts to Swainson’s Hawk (Buteo swainsoni) in the Central Valley of California states that the following vegetation types/agricultural crops are considered appropriate foraging habitat for the Swainson’s hawk: alfalfa, fallow fields, beet, tomato, and other low-growing row or field crops, dry-land and irrigated pasture, rice land (when not flooded), and cereal grain crops (including corn after harvest).

The parcel I evaluated consists of a residence and a ruderal field, which was mowed at the time of the site visit. The parcel is bordered on all sides by a mixture of developed properties and small pastures, some pastures being grazed by cattle at the time of the site visit.
Assumptions used to evaluate impacts from the proposed development:

- Direct impacts to Swainson's hawks are correlated with the loss of plant communities that provide their primary foraging or nesting habitats.
- Indirect impacts to Swainson's hawks can occur where remaining fragments of undeveloped habitat are isolated from larger areas of contiguous habitat. The remaining habitats are expected to have lower biological values than those prevailing before development.
- Records of Swainson's hawk nests in the 2003 version of the CNDDB are the most reliable current records of Swainson's hawks within the vicinity of the project.
- The site visit was conducted after normal Swainson hawk nesting season, therefore no nesting birds would be likely to be observed.
- Not all lands meeting the strict definition of foraging habitat, irrespective of their quality, size, and location in the landscape, contribute equally to the health and vigor of adults, and their eggs and nestlings.

The Modesto property has low potential for utilization by foraging Swainson’s hawk because the prey resources are minimized by disturbance and ruderal vegetation. Disturbance from the developed areas would make the area unappealing to nesting or foraging Swainson’s hawks. The sparsely vegetated or mowed pasture areas would provide poor quality habitat for prey species and the smaller prey base is less likely to provide foraging habitat for Swainson’s hawks.

I trust that this information meets your needs. However, if you have questions, or if I can be of further assistance, please contact me at (510) 874-3239.

Sincerely,

URS CORPORATION

Rosemary Laird,
Biologist
Qualifications:

- A Master of Science from the College of William and Mary and a Bachelor of Science in Conservation Resource Studies from the University of California at Berkeley.

- Seven years of experience as a biologist and ecologist working with threatened and endangered animal species. I have worked for both the National Marine Fisheries Service and Ducks Unlimited, a wildlife conservation organization.

- Experience conducting wildlife surveys for large infrastructure projects.

References: