A RESOLUTION AUTHORIZING THE PURCHASING SUPERVISOR TO FORMALM SOLICIT REQUEST FOR BIDS FOR THE FURNISHING OF DISCING AND FLAIL MOWING SERVICES, ON A "CITYWIDE" BASIS, FOR A THREE (3) YEAR AGREEMENT, WITH TWO (2) ONE-YEAR EXTENSION OPTIONS, FOR AN ESTIMATED ANNUAL COST OF $24,073

WHEREAS, the Operations and Maintenance Department, Park Services Division has requested discing and flail mowing services for nine (9) City locations, consisting of approximately 196 total acres, and

WHEREAS, discing and flail mowing is performed as part of a weed abatement program on open fields to control the over-growth of weeds, and

WHEREAS, discing and flail mowing services shall be provided on a scheduled program determined by the Operations and Maintenance Department, Park Services Division, and

WHEREAS, by authorizing the Purchasing Supervisor to solicit formal request for bids, for a three (3) year agreement, with two (2) one-year extension options, the City will achieve the best value possible for discing and flail mowing services, and

WHEREAS, Modesto Municipal Code, MMC Section 8-3.203, generally requires all purchases that meet or exceed $50,000.00 for material, equipment or contractual services to be formally bid, and

WHEREAS, by soliciting competitive bids for discing and flail mowing services, the Finance Department, Purchasing Division will comply with MMC Section 8-3.203 regarding formal bid procedures,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Purchasing Supervisor is hereby authorized to solicit formal request for bids as follows:

SECTION 1. The City Clerk shall call for public competitive sealed bids for the furnishing of discing and flail mowing services, for a three (3) year agreement, with two (2) one-year extension options, to be opened in the office of the City Clerk, 1010 Tenth Street, in the City of Modesto. The City Clerk shall be directed to give notice inviting such sealed bids in the time, form, and manner provided by law.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:
By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-272

A RESOLUTION AUTHORIZING THE PURCHASING SUPERVISOR TO FORMALM SOLICIT REQUEST FOR BIDS FOR THE FURNISHING OF TANK DIVING SERVICES, FOR THE OPERATIONS AND MAINTENANCE DEPARTMENT, WATER DIVISION, FOR A THREE (3) YEAR AGREEMENT, WITH TWO (2) ONE-YEAR EXTENSION OPTIONS, FOR AN ESTIMATED ANNUAL COST OF $42,150

WHEREAS, the Operations and Maintenance Department, Water Division has requested tank diving services for seven (7) above ground non-elevated potable water storage tanks, and

WHEREAS, the tank diving services consist of performing all work necessary for the removal of sediments, touch-up and repair of corrosive areas, underwater closed circuit video inspection, visual inspections of the tank floor, interior coating and exterior coating, and underwater cutting and welding, and

WHEREAS, each tank varies in size, holding from .22 million gallons to 2.0 million gallons of potable water, and

WHEREAS, tank diving services shall be performed on an annual basis, scheduled by the Operations and Maintenance Department, Water Division, and

WHEREAS, by authorizing the Purchasing Supervisor to solicit formal request for bids, for a three (3) year agreement, with two (2) one-year extension options, the City will achieve the best value possible for tank diving services, and

WHEREAS, Modesto Municipal Code, MMC Section 8-3.203, generally requires all purchases that meet or exceed $50,000.00 for material, equipment or contractual services to be formally bid, and
WHEREAS, by soliciting competitive bids for tank diving services, the Finance Department, Purchasing Division will comply with MMC Section 8-3.203 regarding formal bid procedures,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Purchasing Supervisor is hereby authorized to solicit formal Request for Bids as follows:

SECTION 1. The City Clerk shall call for public competitive sealed bids for the furnishing of tank diving services, for a three (3) year agreement, with two (2) one-year extension options, to be opened in the office of the City Clerk, 1010 Tenth Street, in the City of Modesto. The City Clerk shall be directed to give notice inviting such sealed bids in the time, form, and manner provided by law.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers:

ABSENT: Councilmembers: ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-273

A RESOLUTION APPROVING AN AGREEMENT WITH GARTNER CONSULTING IN THE AMOUNT OF $99,500 TO CONDUCT A “BUSINESS PROCESS ANALYSIS AND SYSTEM REQUIREMENTS STUDY” AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT.

WHEREAS, it is the City’s goal to use state-of-the-art technology to provide an economically feasible information technology environment, which will improve access, reliability, productivity, efficiency and effectiveness, and which in turn will allow City staff to better serve the public and manage public resources, and

WHEREAS, the City utilizes a wide variety of computer applications to provide services to internal and external customers, and

WHEREAS, the existing applications lack the ability to share information in an enterprise manner, and

WHEREAS, the City desires to conduct a comprehensive analysis of systems and associated processes to improve current systems and implement future systems, and

WHEREAS, the development of a business process and system requirement plan is directly related to Strategic Plan item numbers “IV.L” and IV.M, which focus on increasing productivity through the use of information tools and increasing productivity through systems integration, and

WHEREAS, this project was coordinated with the City Attorney’s Office, City Manager’s Office, and the following City departments: Community and Economic Development, Finance, Information Technology, Operations and Maintenance and Parks, Recreation, and Neighborhoods, and

WHEREAS, the Finance Committee met on January 26th, 2004 and supported the
execution of an agreement with Gartner Consulting to perform the “Business Process Analysis and Systems Requirements Study” to go to the full Council for the review.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Modesto that it hereby approves an agreement with Gartner Consulting in the amount of $99,500.00 to perform a “Business Process Analysis and Systems Requirements Study”.

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 25th day of May, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr

JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2004-274  

A RESOLUTION APPROVING AN AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF MODESTO AND SUE FISCOE, DBA FISCOE MANAGEMENT (FM GOLF) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT TO THE AGREEMENT.

WHEREAS, the City owns, operates and manages the Municipal Golf Course ("Municipal Course"), Dryden Park Municipal Golf Course ("Dryden Course"), Dryden Park Municipal Golf Course Driving Range ("Dryden Range"), Creekside Municipal Golf Course ("Creekside Course") and Creekside Municipal Golf Course Driving Range ("Creekside Range"), and

WHEREAS, on March 21, 2000, the City of Modesto and FM Golf entered into an agreement under authority of Resolution No. 2000-131, retaining FM Golf as golf course professional to provide golf professional services at Municipal Course, Dryden Course, Dryden Range, Creekside Course, and Creekside Range, and

WHEREAS, also under authority of Resolution No. 2000-131, FM Golf was retained to provide food and beverage concession services at Municipal Course and Dryden Course Clubhouse, and

WHEREAS, on November 13, 2003, the City extended the agreement with FM Golf under authority of Resolution 2003-606 for a five-year period commencing on July 1, 2003, and

WHEREAS, it is the desire of CITY and FM Golf that FM Golf also provide food and beverage concession services at Creekside Municipal Golf Course, and

WHEREAS, at their May 3, 2004, meeting, the Safety and Communities Committee recommended amending the agreement with FM Golf to provide food services at Creekside Golf Course,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves amending the agreement with FM Golf to provide concession services at Creekside Municipal Golf Course.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ________________

JEAN ZAHR, City Clerk
(SEAL)

APPROVED AS TO FORM:

By: ____________________

MICHAEL D. MILICH, City Attorney
A RESOLUTION APPROVING A COOPERATIVE AGREEMENT NO. 10-177 WITH THE STATE OF CALIFORNIA – DEPARTMENT OF TRANSPORTATION TO PROVIDE FOR LANDSCAPE ENHANCEMENT WITHIN AND NEAR THE BRIGGSMORE EXPRESSWAY INTERCHANGE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE COOPERATIVE AGREEMENT.

WHEREAS, at the March 21, 2001, meeting, the City Council authorized the City Manager to submit an application and negotiate an agreement with the State of California Department of Transportation (Caltrans) for the use of Transportation Enhancement Activities (TEA) funds for a landscape beautification project within and near the Briggsmore/State Route 99 Interchange, and

WHEREAS, at the same time, the City Council committed matching funds of up to $75,000 for this project from the General Fund, and

WHEREAS, in the Fall of 2002, the City was notified that funding in the amount of $1,300,000 in non-local funding was identified for this project, and

WHEREAS, on September 2, 2003, the City Council authorized the City Manager to execute two cooperative agreements with Caltrans, and

WHEREAS, following submission of the agreements to Caltrans, City staff was informed that Caltrans wanted to revise the agreements to consolidate them into one agreement and that funding was no longer certain for this project, and

WHEREAS, Caltrans has now completed the agreement and has notified City staff that funding is available, and

WHEREAS, the Transportation Policy Committee met on February 22, 2004 and endorsed the submittal of the TEA application, and
WHEREAS, the Safety and Communities Committee endorsed the original two agreements on August 4, 2003 and supported staff's recommendations to enter into a cooperative agreement on May 3, 2004,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a Cooperative Agreement No. 10-177 with the State of California Department of Transportation to provide for landscape enhancement within and near the Briggsmore Expressway Interchange.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: 

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-276

A RESOLUTION AUTHORIZING STAFF TO PROCEED WITH A REQUEST FOR PROPOSALS TO PROVIDE LANDSCAPE ENHANCEMENT WITHIN AND NEAR THE BRIGGSMORE EXPRESSWAY INTERCHANGE, AND SUPPORTING THE PROPOSED EVALUATION CRITERIA FOR THE DESIGN OF SAID ENHANCEMENTS.

WHEREAS, at the March 21, 2001, meeting, the City Council authorized the City Manager to submit an application and negotiate an agreement with the State of California Department of Transportation (Caltrans) for the use of Transportation Enhancement Activities (TEA) funds for a landscape beautification project within and near the Briggsmore/State Route 99 Interchange, and

WHEREAS, following submission of the agreements to Caltrans, City staff was informed that Caltrans wanted to revise the agreements to consolidate them into one agreement and that funding was no longer certain for this project, and

WHEREAS, Caltrans has now completed the agreement and has notified City staff that funding is available, and

WHEREAS, in order to proceed with the project, staff is requesting authorization to send a Request for Proposals (RFP) to the following landscape architectural firms, deemed most qualified based on their qualification package: Royston Hanamoto Alley and Abey; Callander Associates; and, Stantec Consulting, and

WHEREAS, on May 3, 2004, the Safety and Communities Committee supported staff’s recommendations to proceed with a Request for Proposals and the proposed evaluation criteria, a copy of which is attached hereto as Exhibit “A”, and is incorporated herein by reference.
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby authorizes staff to proceed with a Request For Proposals to provide landscape enhancement within and near the Briggsmore Expressway Interchange.

BE IT FURTHER RESOLVED that the proposed evaluation criteria, a copy of which is attached hereto as Exhibit “A”, and is incorporated herein by reference, is hereby approved.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: 
JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney
SELECTION CRITERIA

A. EXPERIENCE (50%)

1. Years of experience of firm and/or its team as design professionals.

2. Broad Character and scope of past projects.

3. Experience of proposed team members in designs of similar magnitude, design requirements and complexity within past five years.

4. If experience is lacking, explanation by consultant as to why it should be selected over others with more experience.

5. History of repeat business with clients. Stipulate the number of previous contracts with the City of Modesto.

B. Analysis (40%)

6. Demonstrated management and organizational ability as relates to time management, scheduling, City staff/client relationships, etc., and the ability to meet deadlines.

7. Ability to execute complete designs of cost-effective and aesthetically pleasing highway landscape projects and produce a quality work order.

C. GENERAL (10%)

8. Size of firm and available staff appropriate to project size.

9. Location of firm in relation to City of Modesto and project size.

10. Firm reputation as relates to principles, credibility and attitude.
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-277

A RESOLUTION ACCEPTING A GRANT ENTITLED "CALIFORNIA SEAT BELT COMPLIANCE CAMPAIGN" FROM THE STATE OFFICE OF TRAFFIC SAFETY FOR THE GOAL OF INCREASING STATEWIDE SEAT BELT USE TO 94 PERCENT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY GRANT DOCUMENTS AND REscINDING RESOLUTION NUMBER 2003-535

WHEREAS, the City of Modesto Police Department desires to undertake a certain project designated as California Seat Belt Compliance Campaign from the State Office of Traffic Safety (hereafter referred to as OTS), and

WHEREAS, the goal of the grant in the amount of $101,392.00 is to increase statewide seat belt use to 94 percent in the year 2004 through the combined efforts of the California Highway Patrol, the State Office of Traffic Safety and local law enforcement, and

WHEREAS, the monies provided in this grant will provide for overtime police personnel for seat belt enforcement during a mobilization period from November 17 – 30, 2003 and will provide for overtime police personnel for seat belt enforcement during the following three mobilization periods:

    May 24 – June 6, 2004,

    August 12 – 18, 2004, and

    September 2 – 8, 2004, and

WHEREAS, there is no required City match for this program and all costs are paid for by funds from the State, and

WHEREAS, the State Office of Traffic Safety and the City of Modesto have an executed agreement for a grant project in the amount of $34,469.00 for the mobilization period of November 17 – 30, 2003, approved by Council Resolution Number 2003-535,
and the State Office of Traffic Safety has chosen to incorporate that agreement into this new agreement which will cover all four mobilization periods and all the budget costs thereof,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts a grant from the State Office of Traffic Safety in the amount of $101,392.00 to participate in the California Seat Belt Compliance Campaign.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the grant contract with OTS, including any extensions or amendments thereof and any subsequent contract with the State in relation thereto.

BE IT FURTHER RESOLVED that Resolution Number 2003 – 535, accepting the first Office of Traffic Safety agreement for the mobilization period of November 17 – 30, 2003, is hereby rescinded.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O’Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: JEAN ZAHN, City Clerk

(SEAL)

APPROVED AS TO FORM:
By: MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2004-278


WHEREAS, the City of Modesto Police Department desires to undertake a certain project designated as California Seat Belt Compliance Campaign from the State Office of Traffic Safety, and

WHEREAS, the goal of the grant in the amount of $101,392.00 is to increase statewide seat belt use to 94 percent in the year 2004 through the combined efforts of the California Highway Patrol, the State Office of Traffic Safety and local law enforcement, and

WHEREAS, the monies provided in this grant will provide for overtime police personnel for seat belt enforcement during four mobilization periods of:

November 17 – 30, 2003,
May 24 – June 6, 2004,
August 12 – 18, 2004, and
September 2 – 8, 2004,

WHEREAS, there is no required City match for this program and all costs are paid for by funds from the State, and

WHEREAS, the State Office of Traffic Safety and the City of Modesto have previously executed an agreement for a grant project in the amount of $34,469.00 for the mobilization period of November 17 – 30, 2003, and by Resolution Number 2003-536 the fiscal year 2003/2004 budget was amended to estimate revenue and appropriate funds, and
WHEREAS, the State Office of Traffic Safety has chosen to incorporate that agreement into this new agreement which will cover all four mobilization periods and all the budget costs thereof,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that to initiate this grant project, in the amount of $101,392, the 2003/2004 Annual Budget is hereby amended as indicated below:

**Expense:**

<table>
<thead>
<tr>
<th>To:</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0410-190-2997-0130</td>
<td>$19,599.00</td>
<td>Police Sergeant Overtime</td>
</tr>
<tr>
<td></td>
<td>$70,360.00</td>
<td>Police Officer Overtime</td>
</tr>
<tr>
<td></td>
<td>$7,091.00</td>
<td>CSO Overtime</td>
</tr>
<tr>
<td></td>
<td>$4,342.00</td>
<td>Police Clerk Overtime</td>
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</table>

Total $101,392.00

**Revenue:**

<table>
<thead>
<tr>
<th>To:</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0410-190-2997-3490</td>
<td>$101,392.00</td>
<td>OTS Seat Belt Campaign</td>
</tr>
</tbody>
</table>

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

BE IT FURTHER RESOLVED that Resolution Number 2003 – 536, amending the 2003/2004 fiscal year budget in accordance with the financial terms of the original agreement, is hereby rescinded.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004 - 279

A RESOLUTION ACCEPTING TWO GRANTS, ONE IN THE AMOUNT OF $6,470 FROM THE OFFICE OF CRIMINAL JUSTICE PLANNING AND ONE IN THE AMOUNT OF $43,024 FROM THE BOARD OF CORRECTIONS, APPROVING THE MODESTO JUVENILE IMPACT PROGRAM AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY GRANT DOCUMENTS

WHEREAS, the Modesto Police Department proposed a project to the State Office of Criminal Justice Planning designated the Modesto Juvenile Impact Program to continue the WAKE-UP (Willing to become Aware and to Gain Knowledge of Experiences that are Useful Program) sessions and the Diversion Clean-Up Work Details, and

WHEREAS, Modesto’s allocation under this program was $44,545 from the State with a match of $4,949 for a total program amount of $49,494 for the 2003/2004 fiscal year, and

WHEREAS, the grant covers the cost of six WAKE-UP sessions for a total of 210 at-risk or first-time offending diversion referred juveniles and their parents and 37 community clean-up work details for 370 first-time offending diversion referred juveniles, and

WHEREAS, approval of this program will assist in attaining the Health and Safety Plan Strategic Action to “Develop and implement Youth Crime Prevention Programs,” and

WHEREAS, this grant program was approved for a three month grant with the Office of Criminal Justice Planning for $6,470 and for a nine month grant with the Board
of Corrections for $43,024 because the Office of Criminal Justice Planning was eliminated in the 2003/2004 California State budget, and

WHEREAS, in anticipation of the approval of the Modesto Juvenile Impact Program, funds were budgeted in the 2003/2004 Police Department Budget,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby accepts the two grants in the total amount of $49,494 and approves the Modesto Juvenile Impact Program with the State Office of Criminal Justice Planning and the Board of Corrections.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the necessary grant documents for the two grants.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City of Modesto agrees to provide the matching funds in the amount of $4,949 for the program.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the grant funds received hereunder shall not be used to supplant expenditures controlled by this body.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

JEAN ZAHR City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2004-280

A RESOLUTION AMENDING THE FISCAL YEAR 2003/04 BUDGET TO
RECOGNIZE REVENUE AND APPROPRIATE FUNDS FOR THE 2003
“MODESTO JUVENILE IMPACT PROGRAM”

WHEREAS, the Modesto Police Department proposed a project to the State
Office of Criminal Justice Planning designated the Modesto Juvenile Impact Program to
continue the WAKE-UP (Willing to become Aware and to Gain Knowledge of
Experiences that are Useful Program) sessions and the Diversion Clean-Up Work
Details, and

WHEREAS, Modesto’s allocation under the Modesto Juvenile Impact Program
was $44,545 from the State with a match of $4,949 for a total program amount of
$49,494 for the 2003/2004 fiscal year, and

WHEREAS, this grant program was approved for a three month grant with the
Office of Criminal Justice Planning for $6,470 and for a nine month grant with the Board
of Corrections for $43,024 because the Office of Criminal Justice Planning was
eliminated in the 2003/2004 California State budget,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that the 2003/04 Annual Budget is hereby amended as follows:

To:
Revenue: $44,545 0410-190-2986-3507 2003 Juvenile Impact Grant
$ 4,949 0410-190-2986 City Match

To:
Appropriations: $49,494 0410-190-2986 Various accounts 2003 Juvenile Impact Grant
BE IT FURTHER RESOLVED that the Finance Director is hereby authorized to take the necessary steps to implement the provisions of this resolution.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: JEAN ZAHN

JEAN ZAHN, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-281

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: PRECISE PLAN AMENDMENT FOR AREA NO. 13 TO ALLOW THE CREATION OF 16 ADDITIONAL LOTS

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

WHEREAS, the Modesto City Council has adopted Resolution No. 94-297 which certified the Final Supplemental EIR for Village One; thus, the 1990 Village One Program EIR has been superseded and updated by the 1994 Supplemental EIR, adopted on May 24, 1994, which Supplemental EIR incorporates by reference technical studies and background material from the 1990 Program EIR, and

WHEREAS, an application has been filed by John Lagos for a Precise Plan Amendment for Area No. 13, property located east of Roselle Avenue, between Hillglen Avenue and Kodiak Drive, and

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

WHEREAS, City staff has prepared an Initial Study, Environmental Assessment No. EA/C&ED 2002-24, 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
WHEREAS, the Planning Commission, by Resolution No. 2004-23, adopted on April 19, 2004, and City staff, by a report dated May 3, 2004, from the Community and Economic Development Department, recommended to the City Council approval of an amendment to Precise Plan Area No. 13, property located east of Roselle Avenue, between Hillglen Avenue and Kodiak Drive, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing which was held on May 25, 2004, 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 Environmental Assessment No. EA/C&ED 2004-24, and the Council hereby makes the following findings:

1. As per Sections 15168(c) and 15182 of the California Environmental Quality Act ("CEQA") Guidelines, this project is within the scope of the projects covered by the Program EIR, and no new environmental document or findings are required by CEQA.

2. There are no substantial changes proposed in the project which result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Village One Program EIR, as amended by the 1994 Supplemental EIR, are required.

3. No substantial changes have occurred with respect to the circumstances under which the project is undertaken which will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects and therefore, no major revisions to the Village One Program EIR, as amended by the 1994 Supplemental EIR are required.

4. There is no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence when the Village One Program EIR, as amended by the 1994 Supplemental EIR, was adopted which shows any of the following:

   a. one or more significant effects which is not discussed in the Village One Program EIR, as amended by the 1994 Supplemental 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 Village One Program EIR, as amended by the 1994 Supplemental EIR, would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

5. The Initial Study, Environmental Assessment EA/C&ED 2004-24, provides the substantial evidence to support findings 1-4, noted above.

A copy of said Environmental Assessment No. EA/C&ED 2004-24, is attached hereto as Exhibit "A", and incorporated herein as reference.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

ATTEST: Jean Zahr

JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
EXHIBIT "A"

INITIAL STUDY

EA/C&ED NO. 2004-24
Determination:
Project within the Scope of the
Village One Specific Plan
Program Environmental Impact Report for the
Amendment to Precise Plan Area #13 & Lagos
VTSM & Rush VTSM

Prepared for:
City of Modesto
P.O. Box 642
Modesto, CA 95353
Contact: Josh Bridegroom
209/571-5540

Prepared by:
Josh Bridegroom, Associate Planner
City of Modesto
Community & Economic Development Department
209/571-5540

April 9, 2004
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 Amendment to Precise Plan Area #13 and Lagos VTSM and Rush VTSM (project).

The 1994 Supplemental EIR that amended and superseded the 1990 Program EIR is the document reviewed for projects within the Village One Specific Plan area. A summary of significant impacts and their mitigation measures from the 1994 Supplemental EIR is attached as Exhibit "A." Where appropriate those feasible mitigation measures developed in the Supplement to the program EIR shall be incorporated into the proposed project.

II. PROJECT INFORMATION

1. Project Title: Amendment to Precise Plan 13 & Lagos VTSM and Rush VTSM

2. Lead Agency Name and Address: City of Modesto

3. Contact Person and Phone Number: Josh Bridegroom, Associate Planner
   Modesto Community & Economic Development Department
   209/571-5540
4. Project Location: Between Hillglen Avenue and Kodiak Drive East of Oakdale Road. Modesto, California APN #s 085-001-061, 010, 017, 048

5. Project Sponsor's Name and Address: Associated Engineering 4206 Technology Drive Modesto, Ca. 95354


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

8. Description of Project: This is an application to amend Precise Plan Area No. 13, to allow the creation of 19 additional lots. The redesign affects the circulation and density of the previously approved Precise Plan. Specifically, it proposes to create an additional through street to Kodiak Drive and add 13 new lots to the southwest section of the precise plan and to construct a new cul-de-sac with six lots and a remainder out of a ranchette parcel, one parcel south of the intersection of Esta Avenue and the future extension of Hillglen Avenue. The Lagos VTSM proposes the creation of 50 lots on the northwest corner of Kodiak Drive and Esta Avenue. The Rush VTSM proposes the creation of six lots with a remainder on the southwest corner of Hillglen and Esta Avenues.

9. Surrounding Land Uses and Setting: The Village One Specific Plan Area is over half built, as planned and approved by the 1990 Village One Specific Plan. The project area is surrounded by single-family residential development and ranchettes.

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
IV. PROJECT EVALUATION:

The following written Checklist based on Appendix G of the CEQA Guidelines serves to document the evaluation of the site and activity of the proposed project pursuant to CEQA Guidelines Section 15168 (c) (4) to determine whether the environmental effects of the operation were covered in the Program EIR.

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I. AESTHETICS. Would the project:

a. Have a substantial adverse effect on a scenic vista?

b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings along a scenic highway?

c. Substantially degrade the existing visual character or quality of the site and its surroundings?

d. Create a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area?

Aesthetic and visual impacts are analyzed on pages III-100 through III-101 of the 1994 Supplement.

Responses to Checklist Questions

a. The Village One Specific Plan program EIR found that as the Specific Plan area is developed, it will eliminate views of the valley and the distant mountains from adjacent areas and reduce the area’s visual open space. However, the program EIR found the effects of buildout of Village One on scenic vistas to be less than significant because views from the project area are minimal. The proposed residential projects 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
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 Amendment to Precise Plan Area 13 and Lagos VTSM and Rush VTSM are within the scope of the Village One Program EIR.

Project Manager Date
finding would not be affected by the proposed residential projects. 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 projects 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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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:

a. Conflict with or obstruct implementation of the applicable air quality plan? ☐ ☐ ☐ ☑

b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation? ☐ ☐ ☐ ☑
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is a nonattainment area for an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?

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d. Expose sensitive receptors to substantial pollutant concentrations?

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e. Create objectionable odors affecting a substantial number of people?

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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 made a statement of overriding consideration for each impact. The proposed residential projects 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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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?

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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?  

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b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?  

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c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?  

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d. Disturb any human remains, including those interred outside of formal cemeteries?  

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**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?
f. Be located within the vicinity of a private airstrip and result in a safety hazard for people residing or working in the project area?

- Impact: 
- Mitigation Incorporated: 
- Impact: 

Impacts associated with hazards and hazardous materials are analyzed on pages III-80 through III-94 and III-109 through III-119 of the 1994 Supplement.

Responses to Checklist Questions

a.–c. The Village One Specific Plan does not allow any land uses that would use hazardous materials. The proposed 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.
IX. LAND USE AND PLANNING. Would the project:

a. Physically divide an established community? □ □ □ □

b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, a general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? □ □ □ □

c. Conflict with any applicable habitat conservation plan or natural community conservation plan? □ □ □ □

Impacts associated with land use and planning are analyzed on pages III-80 through III-94 of the 1994 Supplement.

Responses to Checklist Questions

a. The proposed project would not result in any physical changes to the environment beyond those described in the Village One Specific Plan. Village One would continue to be developed as a planned community; therefore, the project would not divide an established community. There would be no impact, and no mitigation is required.

b., c. The Village One Specific Plan has been adopted by the City of Modesto and has been incorporated into the Modesto General Plan. The proposed project would be consistent with the Village One Specific Plan. There are no other applicable land use or conservation plans for the project area. There would be no impact. No mitigation is required.

X. MINERAL RESOURCES. Would the project:

a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? □ □ □ □
b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?

Responses to Checklist Questions

a., b. No known mineral resources or important recovery sites are located in the Village One Specific Plan Area. There would be no impact. No mitigation is required.

XI. NOISE. Would the project:

c. Result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?

d. Result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?

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?

f. Be located in the vicinity of a private airstrip and expose people residing or working in the project area to excessive noise levels?

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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XII. POPULATION AND HOUSING. Would the project:

a. Induce substantial population growth in an area, either directly (e.g., by proposing new homes and businesses) or indirectly (e.g., through extension of roads or other infrastructure)? ☐ ☐ ☐ ☑

b. Displace a substantial number of existing housing units, necessitating the construction of replacement housing elsewhere? ☐ ☐ ☐ ☑

c. Displace a substantial number of people, necessitating the construction of replacement housing elsewhere? ☐ ☐ ☐ ☑

Impacts on population and housing are analyzed on pages III-95 through III-99 of the 1994 Supplement.

Responses to Checklist Questions

a.–c. The Village One Specific Plan program EIR found that buildout of the Village One Specific Plan area would not result in significant adverse impacts on population and housing units. No mitigation is required.
XIII. PUBLIC SERVICES. Would the project:

a. Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or a need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the following public services:

- Fire protection? ☐ ☐ ☐ ☐ ☑
- Police protection? ☐ ☐ ☐ ☐ ☑
- Schools? ☐ ☐ ☐ ☐ ☑
- Parks? ☐ ☐ ☐ ☐ ☑
- Other public facilities? ☐ ☐ ☐ ☐ ☑

Impacts on public services are analyzed on pages III-120 through III-158 of the 1994 Supplement.

Responses to Checklist Questions

a. The Village One Specific Plan program EIR found that the only significant impact that buildout of the Village One Specific Plan area would have on public services would be in the areas of fire protection and law enforcement. Mitigation measures were identified in the program EIR to reduce the level of this impact to a less-than-significant level. No other significant impacts on public services were identified. The proposed 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? ☐ ☐ ☐ ☑
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.

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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? ☐ ☐ ☐ ☑

d. Substantially increase hazards because of a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? ☐ ☐ ☐ ☑

e. Result in inadequate emergency access? ☐ ☐ ☐ ☑

f. Result in inadequate parking capacity? ☐ ☐ ☐ ☑

g. Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? ☐ ☐ ☐ ☑

Impacts on transportation and traffic are analyzed on pages III-40 – III-44 of the 1994 Supplement.
Responses to Checklist Questions

a., b. The Village One Specific Plan program EIR found that buildout of the Village One Specific Plan area would cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system and would affect level of service at several intersections. Mitigation measures identified in the program EIR were identified to reduce impacts to a less-than-significant level for all intersections except the Briggsmore Avenue/Oakdale Avenue intersection. For that intersection, the impact was determined to be significant and not mitigable. The City of Modesto made a statement of overriding considerations for that impact at the time it certified the 1994 Supplement. The proposed 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.

### Potentially Significant Impact

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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? ☐ ☐ ☐ ☑
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.

Impacts on utilities and service systems are analyzed on pages III-120 through III-158 of the 1994 Supplement.
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 ofCalifornia 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.'"
SWAINSON'S HAWK FORAGING HABITAT SURVEY
VILLAGE ONE
Precise Plan Area 13

Prepared for:
ASSOCIATED ENGINEERING, INC.
4206 Technology Drive
Modesto, CA 95356

Prepared by:
WALTER TORDOFF, Ph.D.
Professor Emeritus of Biology
Department of Biological Sciences
California State University, Stanislaus
801 W. Monte Vista Ave.
Turlock, CA 95382

March 29, 2004
INTRODUCTION

Swainson's Hawk, *Buteo swainsoni*, is a species of large hawk that nests in the Central Valley of California. It is a California state listed threatened species and thus it is protected, as is its nesting and foraging habitat. The large Village One development in Modesto, California has been divided into 35 “Precise Plan Areas”. An earlier study had identified, in general terms, possible Swainson’s Hawk foraging habitat within this development. Swainson’s Hawks forage for food in a prescribed manner. As is typical of a number of other large hawks, they forage during the daylight hours by soaring high above the ground and watching for suitable prey (mostly small mammals such as mice and ground squirrels, but also large insects like grasshoppers). Once prey is spotted the bird dives to the ground to capture it. Thus suitable foraging habitat must be relatively clear of high vegetation or other obstructions, such as fences, for two reasons: to allow the hawk to see the prey; and to allow the hawk to swoop down upon it without striking obstructions. Thus, open fields and low growing croplands are suitable but orchards, vineyards, and tall crops (mature corn) are not. Since the Swainson’s Hawk is only present in the Central Valley during Spring and Summer and nesting occurs predominantly from April through July, it is the condition of the fields at that time which is most important.

This study was undertaken to assess the foraging habitat for Swainson’s Hawk in Precise Plan Area 13 for Village One in Modesto, California. This area contains approximately 55 acres of land bordered by Roselle Avenue to the West, Millbrook Avenue to the East, Hillglen Avenue (proposed extension) to the North and Kodiak Avenue (proposed extension) to the South.

QUALIFICATIONS

My Curriculum Vita (resume) is attached. In summary, I have a Ph.D. in Zoology with over 30 years of university teaching experience in ecology and ornithology and appropriate research experience in each including conducting numerous wildlife surveys in Stanislaus County. I am also an ardent bird watcher who has spent many hours observing Swainson’s Hawks both in California and throughout its range in the United States.

FIELD SURVEY

Since all of the land in PPA #13 is visible from the existing roads, access to the property was not necessary, and a single visit was sufficient to assess the potential of its use for foraging by Swainson’s Hawk. I conducted this visit on March 24, 2004.
DESCRIPTION OF THE AREA

As presented above, Roselle Avenue, Millbrook Avenue, Hillglen Avenue and Kodiak Avenue border PPA #13. In addition, Esta Avenue runs through the area from North to South near Millbrook Avenue. Much of the area is already developed, or is currently being developed, as house lots. This includes almost all of the area between Esta Avenue and Millbrook Avenue. Most of the frontage along Roselle Ave. and on the West side of Esta Ave. is developed as house lots. The development along Roselle is particularly deep into the area, extending to the East as far as Kodiak Avenue is currently paved (about half way between Roselle and Esta).

ASSESSMENT OF THE AREA AS SWAINSON’S HAWK FORAGING HABITAT

Historically, the entire 55 acres of PPA #13 would have been good Swainson’s Hawk foraging habitat. However, at the present time, more than half of this area is definitely not foraging habitat for this species. Although some of the developed acreage is in the form of pasture or gardens, the fences present obstacles to Swainson’s Hawks foraging and render it unsuitable. The remaining land, between the developed land west of Esta Avenue and the west end of the existing pavement on Kodiak Avenue, is undeveloped pasture and thus it is potentially foraging habitat. However, a number of factors indicate that this land is, at best, very poor foraging habitat and the hawks probably use it minimally.

First, the preferred food of this hawk is small mammals, the predominant species in this area being the California ground squirrel. If this species is present in this area it is in very low numbers. I did not observe any ground squirrels or burrows on the property during my visit.

Second, since this land is surrounded by housing developments with a lot of automobile traffic on the roads, people walking through the area, and pets, particularly dogs being present, the hawks are likely to be disturbed while foraging and feeding which would drastically reduce the foraging efficiency for the species. Such reductions in foraging efficiency have been shown to result in nest failure or nest abandonment by the parents.

Finally, the close proximity to many humans and their activities presents the possibility of inadvertent poisoning of the hawks if people are intentionally or even unintentionally introducing toxic substances into the food chain. Poisons put out for rats, mice, and squirrels have been shown to be ingested by raptors causing illness, sterility, and/or death (this was one of the major causes of the decline in California condors in the 1980’s). Substances such as antifreeze, while not intended to kill, may also be lethal to the hawks if ingested.
CONCLUSIONS

Although some of the land in Precise Plan Area #13 is technically foraging habitat for the Swainson's Hawk, a number of factors render it of minimal value to the species and I strongly doubt that it is used by that species. The loss of this habitat will have no significant impact for the Swainson’s Hawk and no mitigation should be required.

Sincerely,

Walter Tordoff, Ph.D.
Professor Emeritus of Biology

Curriculum Vitae attached
CURRICULUM VITAE

WALTER TORDOFF III
Professor Emeritus of Biology
Department of Biological Sciences
California State University, Stanislaus

Address

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801 W. Monte Vista Ave.
Turlock, CA, 95382

Home: 2891 Case Way
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(209) 667-3480 or 667-3476
FAX (209) 667-3694
e-mail: wally@chem.csustan.edu

Professional Expertise

Ecology, Ornithology, Herpetology, Vertebrate Ecology, Population Biology,
Evolution, Genetics.

Academic Degrees


B.A. - University of Massachusetts, Amherst. 1965. Major: Zoology

Professional Experience

Professor Emeritus of Biology, Department of Biological Sciences, California State University, Stanislaus, 2001 to present.

Professor of Biology, Department of Biological Sciences, California State University, Stanislaus, 1981-2001. Department Chairman 1981-1990.
Associate Professor of Biology, Department of Biological Sciences, California State College, Stanislaus, 1975-1981.

Assistant Professor of Biology, Department of Biological Sciences, California State College, Stanislaus, 1970-1975.

Papers Presented or Published


1981. Tordoff, W. III. Population and habitat surveys of the limestone salamander in Mariposa County. Presented at the annual meeting of the Western Section of the Wildlife Society, San Luis Obispo, CA.


Tordoff - Curriculum Vita - Page 3

Papers Presented or Published (continued)


Wildlife Surveys Completed


Wildlife Surveys Completed (continued)


Wildlife Surveys Completed (continued)


2003e. Tordoff, W. Swainson's Hawk Foraging Habitat Survey - Village One, Precise Plan Areas 2, 15, 16, 17. Associated Engineering Group, Inc., Modesto, CA

MODESTO CITY COUNCIL
RESOLUTION NO. 2004-282

A RESOLUTION DENYING THE APPEAL OF NIKKI CROWL TO A PLANNING COMMISSION DECISION APPROVING THE FINAL DEVELOPMENT PLAN FOR SHADOW CREEK APARTMENTS, PROPERTY LOCATED NEAR THE NORTHEAST CORNER OF ROSELLE AND FLOYD AVENUES (AMERICAN PROPERTY DEVELOPMENT)

WHEREAS, the City Council adopted the Village One Specific Plan, a 1,780-acre area of land adjoining the northeast portion of the City of Modesto, on October 16, 1990, and

WHEREAS, in accordance with the Village One Specific Plan, on July 10, 2001, by Ordinance No. 3229 C.S., the City Council adopted a Precise Plan for Area No. 20(NE), which designated 14 acres at the northeast corner of Floyd and Roselle Avenues for multi-family residential development, and

WHEREAS, an application for a Final Development Plan for a 232-unit apartment complex within Precise Plan Area No. 20(NE), near the northeast corner of Floyd and Roselle Avenues, was filed by American Property Development on December 19, 2003 in accordance with Chapter IV-C(1) of the Village One Specific Plan, and

WHEREAS, a public hearing was held by the Planning Commission on March 29, 2004, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after considering testimony from staff, the applicants, and neighbors, the Commission continued the hearing item to April 19, 2004, and directed the applicants to work with neighborhood residents and staff to resolve compatibility issues related to privacy concerns, and
WHEREAS, the continued public hearing was held by the Planning Commission on April 19, 2004, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, Planning Commission Resolution No. 2004-21, approved the Final Development Plan for a 232-unit multi-family apartment complex located near the northeast corner of Floyd and Roselle Avenues, and

WHEREAS, an appeal to the decision of the Planning Commission was filed with the Office of the City Clerk by Nikki Crowl on April 28, 2004, and

WHEREAS, said appeal was set for a duly noticed public hearing before the City Council to be held on May 25, 2004, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which time said public hearing was held, and evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing the Council of the City of Modesto found and determined that the appeal of Nikki Crowl to the decision of the Planning Commission should be denied and the decision of the Planning Commission should be affirmed for the following reasons:

1. The proposed Final Development Plan for a 232-unit multi-family apartment complex located near the intersection of Floyd and Roselle Avenues meets all requirements of the City of Modesto Municipal Code and Village One Specific Plan.
2. Due to specifics of the project design, such as eight-foot masonry walls and screen landscaping, no neighborhood compatibility issues should be created by the proposed project.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the appeal of Nikki Crowl to the decision of the Planning Commission approving a Final Development Plan for a 232-unit multi-family apartment complex located near the northeast corner of Floyd and Roselle Avenues is denied and the decision of the Planning Commission is hereby affirmed for the reasons set forth above.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember O'Bryant, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

JEAN ZAHN City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

MICHAEL D. MILICH, City Attorney
RESOLUTION NO. 2004-283

A RESOLUTION ESTABLISHING NEW RATES AT THE MUNICIPAL NINE-HOLE GOLF COURSE, THE DRYDEN PARK MUNICIPAL GOLF COURSE, AND THE CREEKSIDER MUNICIPAL GOLF COURSE, ESTABLISHING NEW RATES FOR ANNUAL PASSES, ESTABLISHING NEW RATES FOR HIGH SCHOOL ROUNDS AND TOURNAMENT PLAY, DEDICATING $1.00 PER 18-HOLE ROUND AT THE END OF EACH FISCAL YEAR TO THE GOLF FUND RESERVE FOR CAPITAL IMPROVEMENTS, INTRODUCING A 6-HOLE RATE AT MUNICIPAL NINE-HOLE GOLF COURSE, AND RESCINDING RESOLUTION NO 2003-329.

WHEREAS, on June 24, 2003, the City Council adopted Resolution No. 2003-329 which increased green fees at Municipal Nine-Hole Golf Course, Dryden Park Municipal Golf Course and Creekside Golf Course, and

WHEREAS, Resolution No. 2003-329 also established new rates for annual passes, high school rounds and tournament play, and

WHEREAS, City staff is recommending a green fee rate increase at the Municipal Nine-Hole Golf Course, Dryden Park Municipal Golf Course, and Creekside Municipal Golf Course, an increase in the price of annual passes, an increase in the price of high school rounds at City courses, and an increase in the tournament fee schedule, and

WHEREAS, City staff is recommending that a Golf Fund Reserve be established for future capital improvements, and this reserve be funded at the end of each fiscal year based on $1.00 per round played that fiscal year, and

WHEREAS, City staff is recommending the introduction of a 6-hole rate at Municipal Nine-Hole Golf Course, and

WHEREAS, the Golf Courses Committee met on April 21, 2004, and supported rate increases at the City's Municipal Golf Courses if the $1.00/18-hole round was
WHEREAS, the Safety and Communities Committee met on May 3, 2004, and supported increases in green fees and annual passes at all City Municipal courses, supported the dedication of $1.00 per 18-hole round for capital improvements and supported introduction of a 6-hole rate at Municipal Nine-Hole Golf Course, and

WHEREAS, by an agenda report to the City Council from the Parks, Recreation and Neighborhoods Department dated May 5, 2004, City staff recommended the changes as outlined in the report, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m. on May 25, 2004, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of receiving public comment on the proposed amended golf fees, and

WHEREAS, the Council of the City of Modesto finds that new fees for play need to be established at the Municipal Golf Course, the Dryden Park Municipal Golf Course and the Creekside Municipal Golf Course,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves dedicating $1.00 per round at the end of each fiscal year to the Golf Fund Reserve for capital improvements to be used for capital improvements to the Modesto Nine-Hole Municipal Golf Course, the Dryden Park Municipal Golf Course, and the Creekside Municipal Golf Course.

BE IT FURTHER RESOLVED by the City Council as follows:

05/25/04/PR&N/B Quintella/Item 24 2004-283
SECTION 1. RATES. The rates for players upon the Modesto Nine-Hole Municipal Golf Course, the Dryden Park Municipal Golf Course, and the Creekside Municipal Golf Course are hereby established as set forth on Exhibit "A" attached hereto and incorporated herein by reference.

The policies and rates for tournament players upon the Modesto Nine-Hole Municipal Golf Course, the Dryden Park Municipal Golf Course, and the Creekside Municipal Golf Course are hereby established as set forth on Exhibit "B" attached hereto and incorporated herein by reference.

SECTION 2. DISCOUNTS. (a) School Golf Teams. School golf team passes are to be issued only upon presentation by holder of a current high school or college student body card and verification of golf team membership by the school golf coach. Students shall possess and display an etiquette card obtained by completing a required training course in golf rules and etiquette at a recognized golf facility. Team members with team member passes must be accompanied by their respective golf coaches and shall play only between the hours of 2:00 p.m. and 5:00 p.m. during the spring golf season. The specific spring school golf team season will be set by the golf professional after receiving the schools' schedules of matches from each school coach. Green fees at the rate of $5.00 per round shall be implemented for high school and Modesto Junior College golf programs at the Modesto Nine Hole Municipal Golf Course, the Dryden Park Municipal Golf Course and the Creekside Municipal Golf Course.

(b) Junior Discounts. Junior discounts are to be given only to persons eighteen (18) years of age and younger any day after 12:00 noon. Juniors shall possess
and display an etiquette card obtained by completing a required training course in golf rules and etiquette at a recognized golf facility.

(c) **Senior/Junior/Disabled Discounts.** Senior/Junior/Disabled discounts are to be given only to persons who are eighteen (18) years of age and younger or sixty-two (62) years of age or older or to those who are on disability retirement. Proof of age or proof of disability retirement must be displayed to obtain a Senior/Junior/Disabled discount. Discounts are good weekdays except for holidays.

Members of the five officially recognized golf clubs (Muni Niners, Modesto Golf Club, Dryden Park Women’s Golf Club, Creekside Golf Club and S.I.R.S.), who qualify, will be allowed to use Senior/Junior/Disabled discounts for official club tournaments Monday through Thursday, excluding holidays.

(d) **Valu-Play Cards.** Golfers can purchase a weekday, 6-round Valu-Play (multiple play) card for Dryden/Creekside or Muni. Valu-Play Discounts are effective for sixty (60) days from the date of purchase except for the months of December, January and February. During this period multiple play cards will be good for the entire three months. Multiple play cards are not refundable or transferable. The multiple play card is not good on weekends or holidays.

(e) **Special Rates.** From time to time, the Parks, Recreation and Neighborhoods Director or his or her designee may provide up to a fifty percent (50%) discount off of daily greens fees. Such specials shall occur no more than twenty (20) days per month at each golf course.

(f) **Family Tee Program.** To promote family play, golfers may play from established “family tees” to be set no more than 175 yards from the greens at Municipal
Nine-Hole Golf Courses. Rates for play are $6.00 weekdays and $7.00 weekends. All members of the foursome or group must use the family tees for this rate to be in effect.

(g) Play one round, get the second round at half price. This discount is good on the day and at the course on which the original full-fee round is played. The fee for the second round shall be one-half of the green fee in effect at the time the second round is played.

SECTION 3. COMPLIMENTARY TICKETS. Complimentary tickets without fee may be issued by or under the direction of the Golf Course Professional to visiting professionals or others, for services rendered to the golf course. Free play must be approved by the Parks, Recreation and Neighborhoods Director or designee.

SECTION 4. CHILDREN. Children under the age of eleven (11) will not be permitted to play golf unless accompanied by an adult playing golf.

SECTION 5. POLICY. In order for fees to be consistent and competitive with other courses in the valley, the Play Day Policy for Play at the City's Municipal Golf Courses by Non-Affiliated Groups shall continue to be implemented as set forth on Exhibit “C” attached hereto and incorporated herein by reference.

SECTION 6. HOLIDAYS. "Holidays", as used herein, shall mean New Year's Day (January 1st), Martin Luther King's Birthday (the third Monday in January), Washington's Birthday (the third Monday in February), Memorial Day (the last Monday in May), Independence Day (July 4th), Labor Day (the first Monday in September), Veterans Day (November 11th), Thanksgiving Day (the fourth Thursday in November) and the day after Thanksgiving. When a holiday falls on Sunday, the following Monday
shall be observed as a holiday. When a holiday falls on Saturday, the preceding Friday shall be observed as a holiday.

SECTION 7. SIGNS. The Golf Course Professional is authorized and directed to post a sign in a conspicuous place informing all golfers of the established greens fees.

SECTION 8. OFFICIALLY RECOGNIZED AFFILIATED GOLF CLUBS. Golf Clubs officially recognized under the terms of this resolution are: Muni Niners, Modesto Golf Club, Dryden Park Women’s Golf Club, Creekside Golf Club and S.I.R.S.

SECTION 9. EFFECTIVE DATE. This resolution shall go into effect and be in full force and operation on and after July 1, 2004.


The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember O’Bryant, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

(Seal)

ATTEST: Jean Zahr

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
CITY OF MODESTO GOLF COURSES
GREEN FEE SCHEDULE
EFFECTIVE JULY 1, 2004

DRYDEN PARK MUNICIPAL GOLF COURSE

Weekdays, 9-holes $14.50
Weekdays, 9-holes (senior/junior/disabled) $12.50
Weekdays, 18-holes $20.50
Weekdays, 18-holes (senior/junior/disabled) $17.00
Weekdays, 18-holes (juniors, after noon) $13.00
Weekdays Mid-day, 18-holes $16.50
Weekdays Super-Twilight, 18-holes $10.50
Weekdays afternoon League Play $15.00
Weekends/Holidays, 9-holes $16.50
Weekends/Holidays, 18-holes $26.50
Weekends/Holidays, 18-holes (juniors, after noon) $15.50
Weekends/Holidays Mid-day, 18-holes $19.50
Weekends/Holidays Super-Twilight, 18-holes $13.50

6-play Valu-Play booklet $105.00
6-play Valu-Play booklet (seniors/juniors/disabled) $90.00

CREEKSIDE MUNICIPAL GOLF COURSE

Weekdays, 9-holes $16.00
Weekdays, 9-holes (senior/junior/disabled) $13.50
Weekdays, 18-holes $22.50
Weekdays, 18-holes (senior/junior/disabled) $18.50
Weekdays, 18-holes (juniors, after noon) $14.00
Weekdays Mid-day, 18-holes $17.50
Weekdays Super-Twilight, 18-holes $11.50
Weekdays afternoon League Play $16.00
Weekends/Holidays, 9-holes $18.50
Weekends/Holidays, 18-holes $29.50
Weekends/Holidays, 18-holes (juniors, after noon) $17.50
Weekends/Holidays Mid-day, 18-holes $21.50
Weekends/Holidays Super-Twilight, 18-holes $15.50

6-play Valu-Play booklet $105.00
6-play Valu-Play booklet (seniors/juniors/disabled) $90.00
**MODESTO NINE HOLE MUNICIPAL GOLF COURSE (MUNI)**

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weekdays, 9-holes</td>
<td>$13.00</td>
</tr>
<tr>
<td>Weekdays, 9-holes (senior/junior/disabled)</td>
<td>$11.00</td>
</tr>
<tr>
<td>Weekdays, 9-holes (juniors, after noon)</td>
<td>$8.50</td>
</tr>
<tr>
<td>Weekdays Mid-day, 9-holes</td>
<td>$11.00</td>
</tr>
<tr>
<td>Weekdays Super-Twilight, 9-holes</td>
<td>$9.00</td>
</tr>
<tr>
<td>Weekdays afternoon League Play</td>
<td>$10.00</td>
</tr>
<tr>
<td>Weekdays/Holidays, 9-holes</td>
<td>$15.00</td>
</tr>
<tr>
<td>Weekdays/Holidays, 9-holes (juniors, after noon)</td>
<td>$9.50</td>
</tr>
<tr>
<td>Weekdays/Holidays Mid-day, 9-holes</td>
<td>$12.00</td>
</tr>
<tr>
<td>Weekdays/Holidays Super-Twilight, 9-holes</td>
<td>$10.00</td>
</tr>
<tr>
<td>6-play Valu-Play booklet</td>
<td>$52.50</td>
</tr>
<tr>
<td>6-play Valu-Play booklet (seniors/juniors/disabled)</td>
<td>$45.00</td>
</tr>
<tr>
<td>Weekdays, 9-holes, Family Tees</td>
<td>$6.00</td>
</tr>
<tr>
<td>Weekends, 9-holes, Family Tees</td>
<td>$7.00</td>
</tr>
<tr>
<td>Weekdays, 6-holes</td>
<td>$6.00</td>
</tr>
<tr>
<td>Weekends, 6-holes</td>
<td>$7.00</td>
</tr>
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</table>

**MUNICIPAL NINE-HOLE GOLF COURSE, DRYDEN PARK MUNICIPAL GOLF COURSE AND CREEKSIIDE MUNICIPAL GOLF COURSE**

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Annual Club Membership, Initial Membership</td>
<td>$150.00</td>
</tr>
<tr>
<td>*Annual Club Membership, Every Day</td>
<td>$980.00</td>
</tr>
<tr>
<td>*Annual Club Membership, Every Day, Jr./Sr.</td>
<td>$860.00</td>
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<tr>
<td>*Annual Club Membership, Every Day, Family</td>
<td>$1,460.00</td>
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<tr>
<td>*Annual Club Membership, Every Day, Family, Jr./Sr.</td>
<td>$1,280.00</td>
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<tr>
<td>*Annual Club Membership, Week Day</td>
<td>$800.00</td>
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<tr>
<td>*Annual Club Membership, Week Day, Jr./Sr.</td>
<td>$670.00</td>
</tr>
<tr>
<td>*Annual Club Membership, Week Day, Family</td>
<td>$1,190.00</td>
</tr>
<tr>
<td>*Annual Club Membership, Week Day, Family, Jr./Sr.</td>
<td>$1,010.00</td>
</tr>
</tbody>
</table>

*At Dryden Park Municipal Golf Course and Creekside Municipal Golf Course, the Every Day annual passes provided for above shall not apply to tee times prior to 1:00 p.m. during Daylight Savings Time and 12:00 Noon during Standard Time on Saturdays, Sundays, and Holidays. At Municipal Nine-Hole Golf Course, the Every Day annual passes provided for above shall not apply to tee times prior to 10:00 a.m. year-round on Saturdays, Sundays, and Holidays.*
TOURNAMENT FEE SCHEDULE AND POLICY  
EFFECTIVE JULY 1, 2004

<table>
<thead>
<tr>
<th></th>
<th>CREEKSIDEx</th>
<th>DRYDEN</th>
<th>MUNIx</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FEE PER PLAYER</strong></td>
<td><strong>Time Style</strong></td>
<td><strong>Full</strong></td>
<td><strong>Modified</strong></td>
</tr>
<tr>
<td><strong>Regular Tee</strong></td>
<td>$32.50</td>
<td>$40.50</td>
<td>$40.50</td>
</tr>
<tr>
<td><strong>Weekdays</strong></td>
<td>$39.50</td>
<td>$48.50</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Weekends</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Excluding cart</strong></td>
<td>$23.00</td>
<td>$25.00</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Weekdays</strong></td>
<td>$25.00</td>
<td>$27.00</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Weekends</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In addition, a non-refundable deposit of $50.00 per tournament is required.

Regular tee time style tournaments require a minimum of 28 players. Per player fees include: green fees ($22.50 weekdays/$29.50 weekends at Creekside, $20.50 weekdays/$26.50 weekends at Dryden and $13.00 weekdays/$15.00 weekends at Muni); and Pro Shop merchandise credit ($5.00 at Creekside/Dryden/Muni); and golf course restaurant credit ($5.00 at Creekside/Dryden/Muni).

Full shotgun tee time style tournaments require a minimum of 120 players at Creekside/Dryden and a minimum of 72 players at Muni. Per player fees include: green fees ($26.50 weekdays/$34.50 weekends at Creekside, $24.50 weekdays/$31.50 weekends at Dryden and $15.00 weekdays/$17.00 weekends at Muni); Pro Shop merchandise credit ($7.00 at Creekside/Dryden and $5.00 at Muni); and golf course restaurant credit ($7.00 at Creekside/Dryden and $5.00 at Muni). Cart rental is required for shotgun style tournaments.

Modified shotgun tee time style tournaments require a minimum of 72 players at Creekside/Dryden. Per player fees include: green fees ($26.50 weekdays at Creekside; $24.50 weekdays at Dryden); Pro Shop merchandise credit ($7.00 at Creekside/Dryden); and golf course restaurant credit ($7.00 at Creekside/Dryden). Cart rental is required for modified shotgun style tournaments. Modified shotgun style tournaments are not available at Muni.

Members of the five officially recognized affiliated golf clubs (Muni Niners, Modesto Golf Club, Dryden Park Women's Club, Creekside Golf Club and S.I.R.S.), who qualify, will be allowed to use Senior/Junior/Disabled discounts for official club tournaments Monday through Friday, excluding holidays.
The following policy is hereby established for Non-Affiliated Groups to encourage their use of the City’s municipal golf courses:

Criteria for these groups are:

1. They are a group with an identification or organizational structure;

2. They commit to use the City’s golf course(s) on a regular basis (weekly, bi-weekly, monthly, etc.);

3. They have a minimum of twenty-four (24) players;

4. Regular tee-time style starting will be used (no shotgun style starting will be allowed);

5. Their events do not promote a formal competition or championship; and

6. Play days will be restricted to Monday through Wednesday after 9:00 a.m.

In recognition of their contribution to the golf program, no mandatory pro shop or restaurant fees will be assessed. Tee time reservations, in advance of public reservations, will be allowed.
WHEREAS, the City of Modesto and the County of Stanislaus are joint partners in the Waste-to-Energy Facility, which is operated by Covanta Stanislaus, and

WHEREAS, tipping fees are established to pay debt service, operation and maintenance costs and pass through costs, such as insurance, property taxes, and various permits and fees that are incurred by Covanta Stanislaus, as provided for in a Service Agreement, and

WHEREAS, tipping fees at the Waste-to-Energy Facility are set by joint action of the Contracting Communities, which are the City of Modesto and Stanislaus County, and

WHEREAS, the Contracting Communities approved a $28.00 per ton tipping fee at the Waste-to-Energy Facility which became effective August 1, 2003, and

WHEREAS, the Council of the City of Modesto must concur with any proposed reduction in the tipping fees at the Waste-to-Energy Facility, and

WHEREAS, the Solid Waste-to-Energy Executive Committee, at its April 29, 2004, meeting discussed a $3.00 per ton reduction in the tipping fees at the Waste-to-Energy Facility and recommends approval of said decrease in the tipping fee and City staff recommends, upon concurrence by the County Board of Supervisors, that the tipping fee at the Waste-to-Energy Facility be decreased from the present $28.00 per ton to $25.00 per ton, effective August 1, 2004, and
WHEREAS, the 25th day of May, 2004, at 5:30 p.m. in the Tenth Street Place Chambers, located at 1010 10th Street, Modesto, California, was set as the time and place for consideration of a decrease in tipping fees at the Waste-to-Energy Facility.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves a decrease in the tipping fee at the Waste-to-Energy Facility from the present $28.00 per ton to $25.00 per ton, effective August 1, 2004.

BE IT FURTHER RESOLVED that Resolution No. 2003-364 is hereby rescinded effective July 31, 2004.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES:    Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Byant, Mayor Sabatino

NOES:    Councilmembers: None

ABSENT:  Councilmembers: None

ATTEST:  

(SEAL)

APPROVED AS TO FORM:

By      

MICHAEL D. MILICH, City Attorney
A RESOLUTION APPROVING THE PARKS, RECREATION AND NEIGHBORHOODS DEPARTMENT FUND DEVELOPMENT PROGRAM REPORT AND: AUTHORIZING STAFF TO NEGOTIATE AN AGREEMENT WITH THE STANISLAUS COMMUNITY FOUNDATION; DIRECTING STAFF TO DEVELOP A POLICY AND MARKETING PLAN FOR CORPORATE NAMING RIGHTS AND TO IDENTIFY PROPERTIES TO INCLUDE IN THE NAMING RIGHTS INVENTORY; DIRECTING STAFF TO DEVELOP A POLICY AND MARKETING PLAN FOR CORPORATE PROGRAM SPONSORSHIPS; DIRECTING STAFF TO DEVELOP A PLAN TO SELL OR LEASE REMNANT PARCELS OF CITY-OWNED OPEN SPACE; DIRECTING STAFF TO PURSUE EXCLUSIVE VENDOR/OFFICIAL SPONSOR CONTRACTS; DIRECTING STAFF TO DEVELOP A POLICY AND MARKETING PLAN FOR PRESENTATION SPONSORS; AND, DIRECTING STAFF TO DEVELOP A METHODOLOGY TO CREATE PRIVATE-PUBLIC PARTNERSHIPS TO SECURE NEIGHBORHOOD IMPROVEMENT SPONSORS.

WHEREAS, for many years, the Parks, Recreation and Neighborhoods Department has been successful in its fundraising efforts, and

WHEREAS, this effort notwithstanding, in recent years, the Parks, Recreation and Neighborhoods Department has faced an increase in the demand for services and the prospect of dwindling funding, and

WHEREAS, on February 25, 2003, the City Council by Resolution No. 2003-95 accepted the Parks, Recreation and Neighborhoods Department’s first Fund Development Report, and

WHEREAS, on September 9, 2003, by Resolution No. 2003-485, the Council approved an agreement with Koegler Consulting Group to conduct an asset inventory and valuation assessment of parks, trails, recreation facilities and recreation programs, and to offer recommendations to lead us into a successful fund development program, ("Report") and
WHEREAS, this Report addresses short-term fund-raising for on-going operations and programs and provides a long-term strategy for replacing infrastructure in our parks and along our trails, and

WHEREAS, this Report was presented to the Safety and Communities Committee at its April 5, 2004, meeting and the Committee supported the recommendations presented in the Report,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby accepts the Fund Development Program Report, a copy of which is on file in the City Clerk's Office.

BE IT FURTHER RESOLVED that the Council hereby authorizes staff to negotiate an agreement with the Stanislaus Community Foundation.

BE IT FURTHER RESOLVED that the Council hereby directs staff to develop a policy and marketing plan for Corporate Naming Rights and to identify properties to include in the naming rights inventory.

BE IT FURTHER RESOLVED that the Council hereby directs staff to develop a policy and marketing plan for Corporate Program Sponsorships.

BE IT FURTHER RESOLVED that the Council hereby directs staff to develop a plan to sell or lease remnant parcels of City-owned open space.

BE IT FURTHER RESOLVED that the Council hereby directs staff to pursue Exclusive Vendor/Official Sponsor Contracts.

BE IT FURTHER RESOLVED that the Council hereby directs staff to develop a policy and marketing plan for Presentation Sponsors.
BE IT FURTHER RESOLVED that the Council hereby directs staff to develop a methodology to create private-public partnerships to secure Neighborhood Improvement Sponsors.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of May, 2004, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: Jean Zahri

JEAN ZAHRI City Clerk

APPROVED AS TO FORM:

By: 

MICHAEL D. MILICH, City Attorney
A RESOLUTION APPROVING CHANGES TO THE EMERGENCY HOME REPAIR PROGRAM (EHRP)/DISABLED ACCESS ASSISTANCE PROGRAM (DAAP) AND APPROVING THE REVISION OF CHAPTER 12 OF THE PARKS, RECREATION AND NEIGHBORHOODS DEPARTMENT, RECREATION AND NEIGHBORHOOD SERVICES DIVISION MANUAL.

WHEREAS, on December 2, 2003, by Resolution No. 2003-631, the City Council approved the current EHRP/DAAP policy and loan limits of $15,000 for EHRP and $10,000 for DAAP, and

WHEREAS, as construction costs rise, EHRP projects are topping the $15,000 limit if additional items, along with roof replacement, are needed, and the current loan limit is not sufficient to cover the needed repairs that are critical to the well being of the applicants, and

WHEREAS, a DAAP for a bathroom renovation, changing doorways, and adding a wheelchair ramp could easily exceed the $10,000 limit, and

WHEREAS, staff recommends raising the loan limit for EHRP to $20,000, DAAP to $20,000, for a combined loan limit of $40,000 if both programs are necessary, and

WHEREAS, homes built prior to 1978, where paint may be “disturbed”, must be tested for the presence of lead based paint, and if lead based paint is present, the cost of testing, assessment, clearance, and possible stabilization could add up to $5,000, and

WHEREAS, staff recommends an additional $5,000 be included in the loan limit for these items; any type of environmental hazards work would qualify in this category, such as mold, air quality issues, or asbestos, and

WHEREAS, if a combined EHRP/DAAP required necessary environmental hazards work in the amount of $5,000, the maximum loan amount would be $45,000, but only if that amount was needed to cover critical needs, and

05/25/04/PR&N/J. Hannon
WHEREAS, the environmental hazards work would be limited to testing, risk assessment, clearance, and stabilization; any amount exceeding the $5,000 limit would have to come from the EHRP or DAAP loan limit, as applicable, and

WHEREAS, with the increased limits for EHRP/DAAP, it becomes necessary to determine a maximum allowable loan-to-value ratio (LTV); this is the percentage of indebtedness against the property compared to the after rehabilitation value of the home, and

WHEREAS, staff recommends a maximum LTV of 90%, and

WHEREAS, all the above changes will be reflected in the revisions to Chapter 12 of the Parks, Recreation and Neighborhoods Department, Recreation and Neighborhood Services Division Manual, a copy of which is attached hereto and incorporated herein by reference, and

WHEREAS, the Housing Rehabilitation Loan Committee (HRLC) recommended approval of this item at its April 22, 2004, meeting, and the Citizens Housing and Community Development Committee (CH&CDC) also recommended approval of this item at its April 23, 2004, meeting,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the changes to the EHRP/DAAP to include: increasing the Emergency Home Repair Program (EHRP) loan limit to $20,000; increasing the Disabled Access Assistance Program (DAAP) loan limit to $20,000; allowing an additional $5,000 loan limit for Environmental Hazards on EHRP/DAAP; establishing a Loan-To-Value (LTV) ratio for EHRP and DAAP, not to exceed 90% of the property value after rehabilitation.

BE IT FURTHER RESOLVED that the revisions to Chapter 12 of the Parks, Recreation and Neighborhoods Department, Recreation and Neighborhood Services Division Manual, a copy of which is attached hereto and incorporated herein by reference, are hereby approved.
Division Manual are hereby approved, a copy of which is attached hereto 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 25th day of May, 2004, by Councilmember Jackman,
who moved its adoption, which motion being duly seconded by Councilmember Hawn,
was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: 
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney
WHEREAS, on April 13, 1999, by Resolution No. 1999-148, the City Council approved the policy for the target areas and the Housing Maintenance Program, and

WHEREAS, the Housing Maintenance Program available to the City’s Mandatory Target Areas was established to save existing housing stock in those areas by upgrading the area as a whole community, and

WHEREAS, in 2000, the Department of Housing & Urban Development (HUD) enacted lead based paint regulations, stating that if these property owners wish to use the City’s financial assistance, either in the form of a loan or a paint rebate, they are subject to the lead based paint regulations, and

WHEREAS, since rehabilitation work in the mandatory areas is a requirement for many homeowners, and the City seeks to improve the appearance of the homes, staff recommends that lead based paint costs for testing, assessment, clearance, and stabilization, up to $5,000, be covered by HUD funds, and

WHEREAS, if the property owner requests a housing maintenance program loan, and if lead based paint work is necessary, a grant will be provided for the lead based paint costs, up to $5,000, and if the property owner requests a paint rebate, the total costs for testing, assessment, clearance, and stabilization of the affected areas will be rebated to the owner, up to $5,000, and

WHEREAS, all the above changes will be reflected in the revisions to Chapter 11 of the Parks, Recreation and Neighborhoods Department, Recreation and Neighborhood Services Division Manual.
Services Division Manual, a copy of which is attached hereto and incorporated herein by reference, and

WHEREAS, the Housing Rehabilitation Loan Committee (HRLC) recommended approval of this item at its April 22, 2004, meeting, and the Citizens Housing and Community Development Committee (CH&CDC) also recommended approval of this item at its April 23, 2004, meeting,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves the changes to the EHRP/DAAP to provide grants of a maximum of $5,000 per property for Lead Based Paint Hazards in the Mandatory Target Areas.

BE IT FURTHER RESOLVED that the Council hereby approves revisions to Chapter 11 of the Parks, Recreation and Neighborhoods Department, Recreation and Neighborhood Services Division Manual, a copy of which is attached hereto 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 25th day of May, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

Attest: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
A RESOLUTION APPOINTING TAMMY MAISETTI TO THE DOWNTOWN IMPROVEMENT DISTRICT ADVISORY BOARD

WHEREAS, Section 1102 of the Charter of the City of Modesto authorizes the City Council to appoint members to various Boards and Commissions, and

WHEREAS, the Economic Development Committee met on May 10, 2004, and recommended appointment of TAMMY MAISETTI to the Downtown Improvement District Advisory Board.

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

SECTION 1. TAMMY MAISETTI is hereby appointed to the Downtown Improvement District Advisory Board, with a term expiration of January 1, 2008.

SECTION 2. The City Clerk is hereby directed to transmit a copy of this resolution to the newly appointed member of the Downtown Improvement District Advisory Board, and the Secretary thereof.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2004, by Councilmember Keating, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O‘Bryant

ATTEST: [Signature]
JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

[Signature]
Michael D. Milich, City Attorney
A RESOLUTION APPROVING AND AUTHORIZING SUBMISSION OF THE FISCAL YEAR 2004-2005 ANNUAL TRANSPORTATION CLAIM FOR $4,857,817, FOR TRANSIT PURPOSES ONLY, TO THE STANISLAUS COUNCIL OF GOVERNMENTS

WHEREAS, the greatest portion of the City’s funding for the Transit Service Program, other than fare revenue and federal funds, is the Local Transportation Fund (LTF), and

WHEREAS, on February 11, 2004, the Stanislaus Council of Governments (StanCOG) pursuant to Section 99401.6 of the California Public Utility Code (PUC) has determined that there are no unmet transit needs and no unmet transit needs that are reasonable to meet, and

WHEREAS, StanCOG has informed the Finance Department that LTF funding has been apportioned by the State to StanCOG for allocation to transportation public agencies pursuant to Sections 99233.3 and 99234 of the California PUC, and

WHEREAS, the City has developed an application for Fiscal Year 2005 LTF reimbursement pursuant to Section 99233.3 of the California PUC, and

WHEREAS, the City’s transit LTF Claim for Fiscal Year 2004 is $4,857,817, and

WHEREAS, the total transit operating budget is $10,478,927, and

WHEREAS, the added transit capital budget is $1,628,987 and

WHEREAS, Council action authorizing the Claim is required by StanCOG pursuant to Section 99261 of the California PUC before any LTF funding can be released to the City.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the annual LTF transit claim in the amount of $4,857,817.
BE IT FURTHER RESOLVED that the City Manager, or his authorized designee, is hereby authorized to execute and submit the Transit Claim for apportionment of LTF to StanCOG for Fiscal Year 2004.

BE IT FURTHER RESOLVED that the City Manager, or his authorized designee, is hereby authorized to modify the FY2004-2005 Operating and Capital Budgets of the Bus Fund to assure consistency between the LTF Claim and these budgets, as necessary.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O’Bryant

Attest: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
RESOLUTION NO. 2004 - 290

A RESOLUTION AMENDING THE FISCAL YEAR 2003-2004 ANNUAL BUDGET

WHEREAS, a monthly financial analysis has been completed and it has been determined that certain adjustments are required to the Annual Budget of the City of Modesto for the Fiscal Year 2003-2004,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that appropriations, revenues, and transfers for the 2003-2004 budget have been adjusted as shown in Schedule A.

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:
By: MIKE MILICH, City Attorney

06/01/04/Finance/G Bailey/Item 06  1  2004-290
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Judith Ray
Telephone No.: 
Department: O&M
Fund Title: gas tax fund

Council Action Date: 
Resolution Number: 
FY: 03-04

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<th>Current Budget</th>
<th>Increase/Decrease</th>
<th>Revised Budget</th>
<th>Description of Object</th>
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**DEPARTMENTAL REVENUES**
FROM

TO

** APPROPRIATIONS **
FROM

0700-480-4612-0360 4612C $1,091,000 ($39,000) $1,052,000 Completed as Appropriation Transfer

TO

0700-480-4613-6041 4613 $39,000 $39,000 Completed as Appropriation Transfer

** TRANSFERS **

0700-700-4613-9010 $60,000 $60,000 Revenue
0100-700-1802-7010 $60,000 $60,000 Expense

** COMMENTS/JUSTIFICATION **
This adjustment Transfer sets up the multi-year organization 0700-480-4613 Bluegum Road Improvements. The $39k was set up as an appropriation transfer which does not require Council Action. Additional funding of $60k is expected from the Fire Fund. The Fire Fund Transfer to this organization will be considered by council on May 25th.

** AUTHORIZATION **
(check if required)

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<td>All items requiring City Manager's Approval</td>
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<td>Salary lines movement in or out</td>
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REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Tracie Madison
Telephone No.: 1-5855
Department: Finance
Fund Title: Wastewater

Council Action Date: ____________________
Resolution Number: ____________________
FY: 03-04
Transfer No. ____________________

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COMMENTS/JUSTIFICATION
In order to eliminate redundant projects within the utility funds, E&T, O&M and Finance are in the process of reviewing and reprioritizing Wastewater Capital Improvement Projects. This project L084 Annual Renewal and Replacement - Secondary has been identified as complete needing closure. This adjustment will allow the budget to be adjusted to reflect the final cost of the project and close the project completely.

AUTHORIZATION (check if required) SIGNATURE DATE
DEPARTMENT DIRECTOR or
AUTHORIZED ASSISTANT
(Allocation of Dept Appr to Line-Item Level)
FINANCE DIRECTOR
(Transfers to/from Internal Service Charges)
(All items requiring City Manager’s Approval)
CITY MANAGER
(Transfers between Budgeted Activities of Departments within Funds)
(Appropriation of Unbudgeted Dept Revenues)
(Salary lines movement in or out)
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Tracie Madison
Telephone No.: 1-5855
Department: Finance
Fund Title: Transfer

Council Action Date: __________________
Resolution Number: __________________
Transfer No. __________________
FY: 03-04

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DEPARTMENTAL REVENUES

FROM

TO

APPROPRIATIONS

FROM
- My-6100-480-Q212-6010 Q212 $105,000 ($105,000) Design
- 04-6100-800-8000-8003 6100R $105,000 ($105,000) Water Contingency

TO
- 04-6100-800-8000-8003 6100R $105,000 $105,000 Water Contingency
- MY-6100-430-A202-6010 A202 $3,593,997 $105,000 $3,698,997 Design

COMMENTS/JUSTIFICATION

In a joint effort to eliminate redundant projects and reprioritize existing projects, O&M and E&T have gone through existing Water CIP and identified these projects as either redundant or in need of reprioritizing in order budget for predesign work needed for MID Phase II. Project Q212 Ground Water Mgmt will have its budget reduced and the project will be closed. All funds will be returned to Water fund Reserves then be reallocated based on the priority of the Phase II expansion to A202.

AUTHORIZED (check if required) SIGNATURE DATE

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

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

CITY MANAGER
(Transfers between Budgeted Activities of Departments within Funds)
(Appropriation of Unbudgeted Dept Revenues)
(Salary lines movement in or out)
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Tracie Madison  
Council Action Date: ___________ _  
Telephone No.: 1-5855  
Resolution Number: ___________ _  
Department: Finance  
FY: 03-04  
Transfer No. BT  
Fund Title: ______________________

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DEPARTMENTAL REVENUES

FROM

TO

APPROPRIATIONS

FROM  
MY-6150-430-A033-6010  
A033 $25,000 ($25,000) Design  
04-6150-800-8000-8003  
6100R ($25,000) Water Contingency

TO  
04-6150-800-8000-8003  
6100R $25,000 $25,000 Water Contingency

MY-6150-430-M231-6010  
M231 $75,381 $25,000 $100,381 Design

COMMENTS/JUSTIFICATION

In a joint effort to eliminate redundant projects and reprioritize existing projects, O&M and E&T have gone through existing Water CIP and identified these projects as either redundant or in need of reprioritizing in order budget for predesign work needed for MID Phase II. 
Project A033 Install New Wells Zone2 will have its budget reduced and the project will be closed. All funds will be returned to Water fund Reserves then be reallocated to another project with the same purpose M231 Install New Wells

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REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Tracie Madison
Telephone No.: 1-5855
Department: Finance

Council Action Date: ____________________
Resolution Number: ____________________

FY: 03-04
Transfer No. BT

DEPARTMENTAL REVENUES

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APPROPRIATIONS

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COMMENTS/JUSTIFICATION

In a joint effort to eliminate redundant projects and reprioritize existing projects, O&M and E&T have gone through existing Water CIP and identified these projects as either redundant or in need of reprioritizing in order budget for predesign work needed for MID Phase II.
Projects A039 Install New Wells Zone3 and N644 Retro Meters will have their budgets reduced and the projects will be closed. All funds will be returned to Water fund Reserves then be reallocated to projects with the same purpose.

AUTHORIZED (check if required)   SIGNATURE   DATE

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

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

CITY MANAGER
(Transfers between Budgeted Activities of Departments within Funds)
(Appropriation of Unbudgeted Dept Revenues)
(Salary lines movement in or out)
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A RESOLUTION APPROVING A SUBORDINATION AGREEMENT FOR THE 
HOME LOAN PROVIDED TO STANISLAUS COUNTY AFFORDABLE 
HOUSING CORPORATION (STANCO) IN FISCAL YEAR 2001-2002, FOR THE 
DEVELOPMENT AND CONSTRUCTION OF THE 3333 CARVER ROAD 
PROJECT, APPROVING AN EXTENSION FOR COMPLETION OF THE 
CONSTRUCTION BY JUNE 30, 2005, AND AUTHORIZING THE CITY 
MANAGER OR HIS DESIGNEE TO EXECUTE THE AGREEMENT.

WHEREAS, on April 9, 2002, by Resolution No. 2002-168, the Modesto City 
Council approved the allocation of $250,000 for the Miller Pointe project and $832,000 
for the 3333 Carver Road project; the development of these two projects will add 34 
affordable multi-family units for very-low, low, and moderate-income families in the 
City of Modesto, and

WHEREAS, on September 3, 2002, by Resolution No. 2002-426, the City 
Council approved an agreement with STANCO to provide $657,000 in HOME funds and 
$175,000 in HOME CHDO-designated funds for the development of 3333 Carver Road; 
the agreement was executed and then recorded at the Stanislaus County Clerk’s office on 
October 4, 2002, and

WHEREAS, the funds allocated to this project along with other funding sources 
were estimated to be enough; however, after the construction bids were opened, it was 
revealed that the lowest responsible bids were approximately $600,000 higher than 
originally budgeted due to:

- The housing industry is booming and contractors are extremely busy, which 
invariably raises the prices,

- Workman’s Compensation insurance for contractors and subcontractors has 
drastically increased,
• It is difficult to get contractors to bid for small projects because the cost of the insurance for multi-family housing developments, and,

WHEREAS, in September 2003, the City received an application from STANCO requesting additional funds for the 3333 Carver Road project; STANCO also secured additional funds from other financial institutions, and

WHEREAS, on March 23, 2004, by Resolution No. 2002-164, the City Council approved a request from STANCO for HOME funds in the amount of $624,831 for the development of the 3333 Carver Road project, and

WHEREAS, in May 2004, the City received a subordination agreement from STANCO for the subordination of the $832,000 HOME loan provided by the City of Modesto for the development and construction of the Carver Road project, and if the Council approves the subordination agreements, the City HOME loans will be in second position,

WHEREAS, the financial institution lending the funds to STANCO requires that as a condition to provide the loans, the loans be and remain at all times prior and superior to other loans, and the subordination agreements set forth the priority of repayment rights against the borrower and its assets, and

WHEREAS, the City of Modesto HOME loan agreements executed in the year 2002 required that the project be completed by December 2003; based on the issues above mentioned and the financing gap, the project was not completed by December 2003, and an extension is needed for completion of construction by June 30, 2005,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a Subordination Agreement for the HOME loan
provided to Stanislaus County Affordable Housing Corporation (STANCO) in fiscal year 2001-2002, for the development and construction of the 3333 Carver Road project.

BE IT FURTHER RESOLVED that the Council hereby approves an extension for completion of the construction by June 30, 2005.

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 1st day of June, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

Attest: Jean Zahr
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-292


WHEREAS, on April 9, 2002, by Resolution No. 2002-168, the Modesto City Council approved the allocation of $250,000 for the Miller Pointe project and $832,000 for the 3333 Carver Road project; the development of these two projects will add 34 affordable multi-family units for very-low, low, and moderate-income families in the City of Modesto, and

WHEREAS, On October 22, 2002, by Resolution No. 2002-519, the City Council approved an agreement with the Housing Authority of Stanislaus County to provide $250,000 in HOME funds for the development of Miller Pointe subdivision; the agreement was executed and then recorded at the Stanislaus County Clerk's office on December 2, 2002, and

WHEREAS, the funds allocated to this project along with other funding sources were estimated to be enough; however, after the construction bids were opened, it was revealed that the lowest responsible bids were approximately $600,000 higher than originally budgeted due to:

• The housing industry is booming and contractors are extremely busy, which invariably raises the prices,

• Workman's Compensation insurance for contractors and subcontractors has drastically increased,
• It is difficult to get contractors to bid for small projects because the cost of the insurance for multi-family housing developments, and,

WHEREAS, in September 2003, the City received an application from the Housing Authority requesting additional funds for the Miller Pointe project; the Housing Authority also secured additional funds from other financial institutions, and

WHEREAS, on March 23, 2004, by Resolution No. 2002-164, the City Council approved a request from Housing Authority for HOME funds in the amount of $400,000 for the development of the Miller Pointe project, and

WHEREAS, in May 2004, the City received a subordination agreement from Housing Authority for the subordination of the $250,000 HOME loan provided by the City of Modesto for the development and construction of the Miller Pointe project, and if the Council approves the subordination agreements, the City HOME loans will be in second position,

WHEREAS, the financial institution lending the funds to the Housing Authority requires that as a condition to provide the loans, the loans be and remain at all times prior and superior to other loans, and the subordination agreements set forth the priority of repayment rights against the borrower and its assets, and

WHEREAS, the City of Modesto HOME loan agreements executed in the year 2002 required that the project be completed by December 2003; based on the issues above mentioned and the financing gap, the project was not completed by December 2003, and an extension is needed for completion of construction by June 30, 2005,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a Subordination Agreement for the HOME loan
provided to the Housing Authority of the County of Stanislaus (Housing Authority) in fiscal year 2001-2002, for the development and construction of the Miller Pointe project.

BE IT FURTHER RESOLVED that the Council hereby approves an extension for completion of the construction by June 30, 2005.

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 1st day of June, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O’Bryant

Attest: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-293

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT, AN AMENDMENT TO THE CABLE TELEVISION FRANCHISE RENEWAL AGREEMENT, AND AN INSTITUTIONAL NETWORK CONSTRUCTION AND MAINTENANCE AGREEMENT WITH COMCAST, INC., AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS.

WHEREAS, the City and Comcast, Inc. (Comcast), desire to settle pending litigation in federal court relating to Comcast’s failure to correct the cable system grounding within the time set forth in the cable franchise documents, and

WHEREAS, the cable franchise agreement provides for a 5-year extension of its term in the event that Comcast completes the cable upgrade by July 5, 2003, and

WHEREAS, with the completion of the upgrade, the City and Comcast now desire to enter into an Amendment to the Cable Television Franchise Renewal Agreement for a five-year extension, said term expiring on July 4, 2016, and

WHEREAS, the City and Comcast desire to enter into an Institutional Network Construction and Maintenance Agreement whereby the terms of Comcast’s construction of an Institutional Network are set forth,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Settlement Agreement, the Amendment to the Cable Television Franchise Renewal Agreement, and an Institutional Network Construction and Maintenance Agreement with Comcast, Inc.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute said Settlement Agreement, Amendment to the Cable Television Franchise Renewal Agreement, and the Institutional Network Construction and Maintenance Agreement with Comcast, Inc.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2004, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-294

A RESOLUTION AUTHORIZING MODESTO AREA EXPRESS (MAX) TO IMPLEMENT TWO NEW ROUTES AND MAKE CHANGES TO ELEVEN OTHER ROUTES EFFECTIVE JANUARY 2005

WHEREAS, the City of Modesto’s Strategic Plan includes Strategy III.B.1: “Develop an efficient, well coordinated, county-wide, multi-modal transportation system”, and

WHEREAS, Modesto Area Express (MAX) is a critical component of the transportation system, and

WHEREAS, establishing two new routes to serve South Modesto and the Vintage Faire Mall areas would enhance the efficiency of the MAX system, and

WHEREAS, additional efficiencies are to be gained by making schedule and/or route changes to eleven other routes, and

WHEREAS, an informal, drop in, public meeting was held on Thursday, April 29, 2004, from 4:00 p.m. to 6:00 p.m. to allow for discussion of the new routes and proposed route changes, and

WHEREAS, the Economic Development Committee approved this item at its May 10, 2004 meeting, and

WHEREAS, by a report to the Council dated May 17, 2004, from the Engineering and Transportation Department, City staff recommended implementing two new routes and revising schedules and/or routes for eleven other routes, a copy of said report is
WHEREAS, the City Council conducted a duly noticed Public Hearing on these proposed changes on June 1, 2004, in accordance with Federal Transit Administration regulations,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the two new routes and the changes to eleven other routes and authorizes the Transit Manager to implement the two new routes and make changes to eleven other routes effective January 2005.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of June, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

ATTEST: Jean Zahr, City Clerk

(SEAL)

APPROVED AS TO FORM:
By Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-295

A RESOLUTION APPROVING THE FINAL MAP AND ACCEPTING PUBLIC IMPROVEMENTS IN THE ESTA ESTATES SUBDIVISION OF THE CITY OF MODESTO AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBDIVISION AGREEMENT WITH RANDALL A. O’DELL AND CARLA O’DELL, HUSBAND AND WIFE AS JOINT TENANTS

WHEREAS, RANDALL A. O’DELL and CARLA O’DELL, Husband and Wife as Joint Tenants, are possessed of a tract of land situated in the City of Modesto, County of Stanislaus, consisting of 2.07 acres, known as the ESTA ESTATES SUBDIVISION ("SUBDIVISION"), in the Village One Specific Plan Area, and

WHEREAS, an application for a vesting tentative subdivision map was deemed complete by the Secretary of the Planning Commission on June 10, 2002, and

WHEREAS, a tentative map of said tract was approved by the Planning Commission of the City of Modesto on the 29th day of July, 2002, and

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

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

WHEREAS, the Engineering and Transportation Director has certified that all public improvements required by the City of Modesto have been completed in said tract to the satisfaction of the Engineering and Transportation Director, and
WHEREAS, the Engineering and Transportation Director has indicated that it would be in order for the City Council to accept the public improvements in said subdivision as complete and authorize the City Clerk to file a Notice of Completion and release the bonds upon the expiration of the statutory periods,

WHEREAS, the subdivider has posted a warranty security in an amount equal to the estimated cost of the public improvements, as determined by the City Engineer, to guarantee and warranty the public improvements for a period of one year after acceptance.

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

1. The final map is hereby approved.

2. The dedications for streets and easements as shown thereon within the boundaries of said tract are hereby accepted on behalf of the public for public use.

3. The improvements completed in Esta Estates Subdivision are hereby accepted and the City Clerk is hereby authorized to file a Notice of Completion for the improvements.

4. The City Clerk is hereby authorized to certify the map of said tract on behalf of the City of Modesto, after the fees and deposits required by the Modesto Municipal Code in amounts determined by the City Engineer have been paid.
5. The City Manager and the City Clerk are hereby authorized to execute and attest, respectively, an agreement with subdivider as required by Section 4-4.604(c) of the Municipal Code.

6. The City Clerk is further authorized to release the warranty security to guarantee improvements in the amount of $10,427.19 one year and one day after the effective date of this resolution, provided no claim is made thereon.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of June, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahrl, City Clerk

(SEAL)

APPROVED AS TO FORM:

MICHAEL D. MILICH, City Attorney

By ALISON A. BARRATT-GREEN
Senior Deputy City Attorney
TO: Mayor and City Council

FROM: Peter Cowles, Interim Engineering & Transportation Director

SUBJECT: Modesto Area Express (MAX) Route and Schedule Changes

CONTACT: Fred Cavanah, Transit Manager, fcavanah@modestogov.com 577-5295

PRESENTER: Fred Cavanah, Transit Manager

RECOMMENDED COUNCIL ACTION:

Approve routes and schedules for two new Modesto Area Express (MAX) routes and route and schedule changes for 11 of the 17 existing MAX routes to become effective January 2005 at a cost of approximately $184,000 in Local Transportation Fund (LTF) monies for FY 2004/05.

I. BACKGROUND:

On April 6, the City Council approved conceptual plans and funding to implement two new MAX routes in January 2005. In addition to adding new routes, staff indicated in the report its plan to make route and/or schedule changes to several additional MAX routes. The proposed new routes and revisions to existing routes are described in the attachments to this report and are summarized below.

New Routes

The two new routes proposed for implementation are shown on the attached Public Hearing Notice as Routes 41x and 42.

Route 41x would operate between the Transportation Center and Vintage Faire Mall via the freeway and also facilitate the provision of service to areas north of the mall. On weekdays, this route would operate every 30 minutes between 9:15 a.m. and 7:40 p.m. On Saturdays, it would operate hourly, between approximately 9:30 a.m. and 7:40 p.m.

Route 42 would connect the downtown Transportation Center, the Community Services Agency on Hackett Road, and the residential area west of Crows Landing Road. It would operate every 30 minutes between 5:51 a.m. and 7:54 p.m. This route would replace a portion of Route 29 that currently serves this area. It would significantly reduce passenger travel time and overcrowding on Route 29, which routinely operates with standing room only.

Revisions to Existing Routes

Scheduling: The bus bays at the Transportation Center are fully utilized at present. As a result, in order to add the two new routes it is necessary to revise the times that routes stop there. Routes currently come into the Center only at 15 and 45 minutes past the hour. The
proposal is to shift approximately half of the routes to come into the center on the hour and/or the half hour, dependent upon bus operating frequency.

Routing: Proposed changes to existing routes are briefly described as follows and are shown on the map in the Public Hearing notice.

- Route 29 would be split into two routes and Route 42 would cover the route portion deleted from Route 29.
- Route 31 would be deleted from Standiford Ave. between Tully Rd. and Dale Rd. It would be rerouted to provide service to the Stanislaus County Housing Authority residential facility at the intersection of Pelandale Ave. and Tully Road and would also serve the recently opened Kaiser Permanente facility on Dale Road, north of the mall.
- Service on Route 33 would be reversed on parts of Tully Road, 9th St. and Coldwell Ave. in an effort to enable the route to run on schedule.
- Due to poor ridership, Route 34 would no longer make the morning and evening trips east of Lakewood that it currently does and would instead provide more service to that portion of Route 34 north of Orangeburg Ave.
- Route 36 would no longer serve Robertson Rd. and portions of Carpenter Rd. and Sutter Ave. south of Beverly Dr. and Rouse Ave., respectively. This change will shorten the route and allow it to better adhere to its schedule.

II. REASONS FOR RECOMMENDATION:

The transit system needs to grow with the community to maintain its effectiveness. In addition, as traffic congestion and ridership increase, existing routes need to be revised occasionally to better operate on schedule.

III. EXISTING POLICY / RELATIONSHIP TO THE STRATEGIC PLAN:

Provision of transit service is consistent with City policy and the strategic plan.

IV. POLICY ALTERNATIVES:

The City Council may choose to implement more or fewer services than staff recommends.

V. FISCAL IMPACTS:

The two new routes and other route and schedule changes proposed for implementation in January 2005 would require about $184,000 in LTF funds for FY2004/05. Total LTF required for a full year of operation of the route and schedule changes would be approximately $440,000. The gross cost of providing these new services for a little over 5 months during FY 2004/05 is approximately $305,000. The gross cost for a full year would be $730,000. In addition to LTF, funding needed to operate the new service would come from the Federal Transit Administration (FTA) and passenger fares. Funding for the new service is included in the FY 2004/05 baseline operating budget. LTF is eligible to be used for street purposes if it is not needed to meet unmet public transit needs that are reasonable to meet.

VI. INTERDEPARTMENTAL COORDINATION:

Staff works with the O&M Bus Maintenance Division on all proposals.
VII. PUBLIC PARTICIPATION:

An informal, drop in, public meeting was held Thursday, April 29, from 4 p.m. to 6 p.m. Since no formal presentation was made, the public could come and go as they pleased and not miss anything. The time was very convenient for bus riders since bus service continues well after the 6 p.m. ending time.

Seventeen individuals attended the public meeting and staff received e-mails or telephone calls from thirteen others. Nearly all comments were very supportive. Among the small group of individuals who voiced concerns, the largest number was regarding the removal of Route 31 from Standiford. Although Standiford will continue to be served by Route 22, Route 31 stops at the mall’s rear entrance and Route 22 stops on Dale Road adjacent to the mall. The concerned passengers wanted to be able to continue to ride the bus to the mall’s rear entrance and avoid the walk from Dale Rd.

The other major concern was the timing of Route 34. However, the complainants were satisfied with the staff proposal to offset Route 34 by 30 minutes from its proposed schedule.

VIII. COMMITTEE RECOMMENDATION:

The Economic Development Committee (EDC) approved this item at its meeting on May 10, 2004.

IX. ENVIRONMENTAL REVIEW:

Not required for this project.

X. STEPS FOLLOWING APPROVAL:

The route changes will take effect in late January 2005. The changes will be preceded by a campaign to inform passengers.

Prepared By:  
Fred Cavanah, Transit Manager, fcavanah@modestogov.com, 577-5295

Reviewed By:  
Peter Cowles, Interim Engineering & Transportation Director

Submitted By:  
Jack Crist, City Manager

Attachments:  
A) Brochure describing proposed route and schedule changes  
B) Route Changes Summary Table  
C) Council Resolution
NOTICE OF PUBLIC HEARING

A public hearing will be held by the Council of the City of Modesto on Tuesday, June 1, 2004, at 5:30 pm in the City Council Chambers, Basement Level, Tenth Street Place, 1010 10th Street, Modesto, California, to consider establishing two new Modesto Area Express (MAX) routes and revising eleven other routes. If you have any questions, please call the Transit Division at 577-5295.

Overview of Proposed Route and Schedule Changes

Staff is proposing to add two new routes: (1) Route 41x would connect the downtown Transportation Center with Vintage Faire Mall via the freeway. (2) Route 42 would connect the Transportation Center via the freeway with Crows Landing Road and the County Community Services Agency and also serve the neighborhood west of Crows Landing Road. Schedule changes would have buses leave the Transportation Center every 15 minutes to the Modesto Junior College East campus and Vintage Faire Mall. These changes would also help buses stay on time and make transferring easier.

Route Additions, Deletions and Revisions (See reverse side for maps)

- Existing Route 29 would be split into two routes, a revised Route 29 and a new Route 42. The revised Route 29 would be shorter than the old Route 29. New Route 42 would serve the neighborhood southwest of Crows Landing Road that would not be served by the revised Route 29. Both routes would run every 30 minutes.
- A new Route 41x would be an express route traveling between Vintage Faire Mall and the Transportation Center using Highway 99 and would run every 30 minutes.
- Route 31 service would be eliminated from Standiford between Tully and Dale Rd. New service would be provided as shown on the map.
- Route 36 service would be eliminated from Robertson Rd, Sutter and a part of Carpenter. Service would be added to Beverly and Rouse.
- Route 34 would no longer serve any streets east of Lakewood. Additional trips would be provided on the portion of Rt 34 north of Orangeburg.
- Route 33 service would be reversed on parts of Tully, 9th, and Coldwell.

Monday - Saturday Schedule Changes

For weekdays and Saturdays, instead of leaving from the Transportation Center at 15 and/or 45 minutes past the hour as they currently do, the routes listed below would leave on the hour and half past the hour. New weekday and Saturday leave times are listed below for each route that would change. All routes NOT LISTED would stay the same as they are currently.

- Route 22 would leave on the hour and the half hour (on the hour on Saturdays)
- Route 24 would leave once each hour at half past the hour
- Route 26 would leave on the hour and the half hour
- Route 27 would leave once each hour at half past the hour
- Route 30 would leave on the hour and the half hour (Saturday is yet to be determined)
- Route 33 would leave on the hour and the half hour (on Saturdays, once each hour at 15 minutes past the hour)
- Route 34 would leave once each hour on the hour
- Route 35 would leave on the hour and the half hour

Leave times on Sunday would continue to be 15 and/or 45 minutes past the hour for all routes.

For more information call: 577-5295
Route Changes and New Service Described on the Reverse Side of this Brochure.
## Proposed MAX Changes Summary for January 2005

<table>
<thead>
<tr>
<th>Route</th>
<th>New Route</th>
<th>Route Change</th>
<th>Bus Frequency</th>
<th>Transit Center Departure</th>
<th>Change to Start and Stop Times</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>---</td>
<td>---</td>
<td>30 Minutes</td>
<td>15 and 45 After</td>
<td>No Change</td>
</tr>
<tr>
<td>22</td>
<td>---</td>
<td>---</td>
<td>30 Minutes</td>
<td>On Hour and Half</td>
<td>Starts 15 Minutes Earlier and Ends 15 Minutes Later</td>
</tr>
<tr>
<td>24</td>
<td>Yes</td>
<td>---</td>
<td>60 Minutes</td>
<td>On the Half Hour</td>
<td>Starts 15 Minutes Later and Ends 15 Minutes Later</td>
</tr>
<tr>
<td>25</td>
<td>---</td>
<td>---</td>
<td>30 Minutes</td>
<td>15 and 45 After</td>
<td>No Change</td>
</tr>
<tr>
<td>26</td>
<td>---</td>
<td>---</td>
<td>30 Minutes</td>
<td>On Hour and Half</td>
<td>Starts 15 Minutes Earlier and Ends 15 Minutes Later</td>
</tr>
<tr>
<td>27</td>
<td>---</td>
<td>---</td>
<td>60 Minutes</td>
<td>On the Half Hour</td>
<td>Starts 5 min Earlier and Ends 20 Minutes Later</td>
</tr>
<tr>
<td>28</td>
<td>---</td>
<td>---</td>
<td>30 Minutes</td>
<td>From Mall Only</td>
<td>Arrives Downtown in AM Same time and Leave in PM Same Time</td>
</tr>
<tr>
<td>29</td>
<td>Yes</td>
<td>---</td>
<td>30 Minutes</td>
<td>15 and 45 After</td>
<td>Starts 15 Minutes Earlier and Ends 15 Minutes Later</td>
</tr>
<tr>
<td>30</td>
<td>---</td>
<td>---</td>
<td>30 Minutes</td>
<td>On Hour and Half</td>
<td>Starts 15 Minutes Earlier and Ends 15 Minutes Later</td>
</tr>
<tr>
<td>31</td>
<td>Yes</td>
<td>---</td>
<td>30 Minutes</td>
<td>15 and 45 After</td>
<td>No Change</td>
</tr>
<tr>
<td>32</td>
<td>---</td>
<td>---</td>
<td>30 Minutes</td>
<td>15 and 45 After</td>
<td>No Change</td>
</tr>
<tr>
<td>33</td>
<td>Yes</td>
<td>---</td>
<td>30 Minutes</td>
<td>On Hour and Half</td>
<td>Starts 15 Minutes Earlier and Ends 15 Minutes Later</td>
</tr>
<tr>
<td>34</td>
<td>Yes</td>
<td>---</td>
<td>60 Minutes</td>
<td>On the Half Hour</td>
<td>Starts 15 Minutes Earlier and Ends 15 Minutes Earlier</td>
</tr>
<tr>
<td>36</td>
<td>---</td>
<td>---</td>
<td>60 Minutes</td>
<td>15 After</td>
<td>No Change</td>
</tr>
<tr>
<td>37</td>
<td>---</td>
<td>---</td>
<td>60 Minutes</td>
<td>45 After</td>
<td>No Change</td>
</tr>
<tr>
<td>38</td>
<td>---</td>
<td>---</td>
<td>30 Minutes</td>
<td>On Hour and Half</td>
<td>Starts 15 Minutes Earlier and Ends 15 Minutes Later</td>
</tr>
<tr>
<td>39</td>
<td>---</td>
<td>---</td>
<td>No Change</td>
<td>No Change</td>
<td>No Change</td>
</tr>
<tr>
<td>41 X</td>
<td>Yes</td>
<td>---</td>
<td>30 Minutes</td>
<td>15 and 45 After</td>
<td>New Service</td>
</tr>
<tr>
<td>42</td>
<td>Yes</td>
<td>---</td>
<td>30 Minutes</td>
<td>15 and 45 After</td>
<td>Areas served will have same service as they currently have with Rt 29</td>
</tr>
</tbody>
</table>
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-296

A RESOLUTION ACCEPTING IMPROVEMENTS IN PAPATONE EAST SUBDIVISION, IN THE VILLAGE ONE SPECIFIC PLAN AREA, AUTHORIZING THE CITY CLERK TO RECORD A NOTICE OF COMPLETION AND AUTHORIZING RELEASE OF BONDS

WHEREAS, LANCELOT PAPATONE, L.P., an Arizona limited partnership, and MERITAGE HOMES OF NORTHERN CALIFORNIA, INC., a California Corporation, are the subdividers of the Papatone East Subdivision, and

WHEREAS, MERITAGE HOMES OF NORTHERN CALIFORNIA, INC., a California Corporation, has filed irrevocable subdivision bonds to secure faithful performance and payment for labor and materials in the amounts of $875,174.00 and $437,587.00, respectively, and

WHEREAS, MERITAGE HOMES OF NORTHERN CALIFORNIA, INC., a California Corporation, has filed a warranty bond in the amount of $87,517.40 to guarantee improvements in the Papatone East Subdivision, and

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

WHEREAS, the Engineering & Transportation Director has indicated that it would be in order for the City Council to accept the improvements in said subdivision as complete, and authorize the City Clerk to file a Notice of Completion and release the bonds upon expiration of the statutory periods,

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

06/08/04/E&T/D Leamon/Item 08  1  2004-296
1. The improvements in the Papatone East Subdivision are hereby accepted and the City Clerk is hereby authorized to file a Notice of Completion for the improvements.

2. The City Clerk is hereby authorized to release the subdivision bond for faithful performance in the amount of $875,174.00 upon recordation of the Notice of Completion.

3. The City Clerk is hereby authorized to release the subdivision bond for labor and materials in the amount of $437,587.00 sixty (60) days after the recordation of the Notice of Completion, provided no claim is made thereon.

4. The City Clerk is hereby authorized to release the warranty bond to guarantee improvements in the amount of $87,517.40 one year and one day after the effective date of this resolution, provided no claim is made thereon.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of June, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: ALISON BARRATT-GREEN, City Attorney

06/08/04/E&T/D Leamon/Item 08 2 2004-296
A RESOLUTION SUMMARILY VACATING AND ABANDONING A 30-FOOT SEWER, WATER AND ACCESS EASEMENT LOCATED ON 1000 OATES COURT AT APN 086-014-019 IN THE CITY OF MODESTO

WHEREAS, Chapter 4, Part 3 of Division 9, Section 8330, et seq of the California Streets and Highway Code authorizes a city council, by resolution, to summarily vacate public service easements where the easement has been superseded by relocation and no other public facilities are located within the easement, and

WHEREAS, the City of Modesto has received a request from MARVIN OATES, Trustee of the MARVIN L. OATES TRUST, PHILIP D. OATES, a married man, as his sole and separate property, and O.B.F., A California General Partnership, to vacate one of two Sewer, Water, and Access Easements at 1000 Oates Court on APN 086-014-019, and

WHEREAS, said 30-foot Sewer, Water and Access Easement was created and dedicated to the City of Modesto on July 7, 1999, on the Enterprise Business Park Subdivision Map Vol. 38; Page 58, and

WHEREAS, said 30-foot Sewer, Water, and Access Easement is more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference, and

WHEREAS, on July 1, 2002, the then property owners dedicated a relocated Sewer, Water, and Access Easement at 1000 Oates Court to the City of Modesto to replace said easement, and

WHEREAS, the Engineering and Transportation Department has contacted the Operations and Maintenance Department, Community and Economic Development
Department, and all public utilities and none of these agencies have any objection to the abandonment, and

WHEREAS, the Council of the City of Modesto finds and declares that:

1. The vacation of this easement is made pursuant to Chapter 4, Part 3 of Division 9, Section 8333(c) of the California Streets and Highways Code.

2. The use of the property described in Exhibit “A”, attached hereto, is a 30-foot Sewer, Water and Access Easement located at 1000 Oates Court on APN 086-014-019 in the City of Modesto, which is more particularly described in Exhibit “A”, has been superseded by relocation and there are no other public facilities within the easement and the easement is no longer required for sewer, water and access purposes.

3. That from and after the date this resolution is recorded, the 30-foot Sewer, Water and Access Easement which is proposed for vacation will no longer constitute a public service easement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the 30-foot Sewer, Water and Access Easement located at 1000 Oates Court on APN 086-014-019 in the City of Modesto, which is more particularly described in Exhibit “A”, attached hereto and incorporated herein by reference, be and is hereby vacated.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to record a certified copy of this resolution in the Stanislaus County Recorder’s Office. From and after the date this resolution is recorded, said 30-foot Sewer, Water and Access Easement shall no longer constitute a public service easement.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of June, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr

JEAN ZAHR City Clerk

(SEAL)

APPROVED AS TO FORM:

MICHAEL D. MILICH, City Attorney

By: ALISON A. BARRATT-GREEN
   Senior Deputy City Attorney
ENTERPRISE BUSINESS PARK SEWER, WATER & ACCESS EASEMENT ABANDONMENT

Legal Description

All of the 30.00 foot wide sewer, water, and access easement, being a portion of Lots 2 and 3 as dedicated by Enterprise Business Park, filed for record in Book 38 of Maps, at Page 58, Stanislaus County Records, situate in the Northeast Quarter of Section 9, Township 4 South, Range 9 East, Mount Diablo Base and Meridian, City of Modesto, County of Stanislaus, State of California containing 0.52 acres, more or less.

END DESCRIPTION
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-298

RESOLUTION ACCEPTING THE WORK BY D. A. WOOD CONSTRUCTION, INC., FOR THE "VILLAGE ONE FORCE MAIN" PROJECT AS COMPLETE, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION, AND AUTHORIZING PAYMENT OF AMOUNTS DUE TOTALING $565,805.70 PER THE CONTRACT. TOTAL PROJECT COST IS $678,941.92.

WHEREAS, a report has been filed by the Acting Engineering & Transportation Director that the project titled "Village One Force Main" has been completed by D. A. Wood Construction, Inc., in accordance with the contract agreement dated August 12, 2003.

NOW, THEREFORE, BE IT RESOLVED that the "Village One Force Main" project be accepted from said contractor, D. A. Wood Construction, Inc., that the notice of completion be filed with the Recorder of Stanislaus County and that payment of amounts due totaling $565,805.70, as provided in the contract, be authorized.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of June, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney

06/08/04/ E&T/T. Parmer/Item 10 1 2004-298
A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR THE PURCHASE AND ASSEMBLY OF TEN (10) GRANULAR ACTIVATED CARBON (GAC) UNITS, TO CARBON ACTIVATED CORPORATION, COMPTON, CA, FOR A TOTAL COST OF $803,131

WHEREAS, granular activated carbon (GAC) units are pressure vessels filled with granular activated carbon, and

WHEREAS, granular activated carbon is a filter used to remove and dissolve organics and chlorine from drinking water, and

WHEREAS, on February 24, 2004, in an effort to return inactive wells to service prior to the peak water use season, Council approved Resolution No. 2004-115, authorizing the Purchasing Supervisor to formally solicit bids for the purchase and assembly of nine (9) granular activated carbon (GAC) units, for the Operations and Maintenance Department, Water Division, for an engineer’s estimated unit cost of $80,000, for a combined total engineer’s estimated cost of $720,000, and

WHEREAS, the purchase of these vessels would provide treatment capability at four (4) priority wells; Well 225, 303, 21 and 8, and

WHEREAS, returning these wells to service, coupled with the completion of work on Well 65 (new well at Tank 5), Well 312 (new well in Empire), and the return to service of Well 50 (currently advertising for bids to install GAC treatment), would regain approximately thirty-six (36%) percent of the lost drinking water well production capacity, and

WHEREAS, on February 25, 2004, the Purchasing Division solicited Request for Bid No. 0304-19, for the purchase and assembly of nine (9) granular activated carbon
(GAC) units to three (3) bidders, plus posted the bid on the City’s web site. The bid was also formally advertised by the City Clerk’s Office, and

WHEREAS, during the bidding process, the Operations and Maintenance Department, Water Division made a request to add one (1) additional GAC vessel for Well 303, and

WHEREAS, on March 5, 2004, Addendum No. 1 was issued adding one (1) additional GAC vessel to the bid, bringing the bid total to ten (10) GAC vessels, and

WHEREAS, on March 10, 2004, Addendum No. 2 was issued affording prospective bidders the opportunity to submit bids for vessels filled with either “Domestic” or “Foreign” GAC, or both, if they were capable of supplying both, and

WHEREAS, bids were opened in the City Clerk’s Office on March 16, 2004, and

WHEREAS, of the three (3) bidders solicited, all chose to respond, and

WHEREAS, two (2) out of the three (3) bidders submitted responsive bids, providing the required number of signed original bid documents and copies per the bid requirements, and

WHEREAS, one (1) bidder Carbon Activated Corporation (CAC), submitted one (1) signed original bid marked “Foreign” and one (1) signed original bid marked “Domestic”, along with four (4) required bid copies marked “Domestic”, and

WHEREAS, based on the documents submitted it appeared as though Carbon Activated Corporation was submitting a bid for “Domestic” GAC, and

WHEREAS, a phone call was made to clarify Carbon Activated Corporation’s bid intention, and
WHEREAS, Carbon Activated Corporation submitted an email stating that they
had intended to bid “Foreign” GAC, and

WHEREAS, based on not submitting the Council required number of signed
original bid documents for either “Foreign” or “Domestic” GAC, their bid was deemed to
be non-responsive and was disqualified, and

WHEREAS, Carbon Activated Corporation filed a written protest to the
Purchasing Supervisor as well as to the Deputy City Manager, per written protest
procedure guidelines, and

WHEREAS, both the Purchasing Supervisor and Deputy City Manager acting as
the Hearing Officer, reviewed all of the documents submitted by Carbon Activated
Corporation and based on their findings, concluded that Carbon Activated Corporation
had submitted a non-responsive bid, and

WHEREAS, based on Council policy ensuring the integrity of the bidding
process, the Purchasing Division had no option but to reject their bid, and

WHEREAS, City staff recommended rejecting all bids for Request for Bid No.
0304-19 for the purchase and assembly of ten (10) granular activated carbon (GAC) units
based on responsive bids received exceeding the engineer’s estimate. Staff also
recommended authorizing the Purchasing Supervisor to re-bid for the purchase and
assembly of ten (10) granular activated carbon units, and

WHEREAS, re-bidding was the recommended option because the responsive bid
packages were significantly higher than the original engineer’s estimate, and
WHEREAS, on April 27, 2004, Council approved Resolution No. 2004-239, rejecting all bids and authorizing re-bidding, for the purchase and assembly of ten (10) granular activated carbon (GAC) units, and

WHEREAS, on April 28, 2004, the Purchasing Division solicited Request for Bid No. 0304-22, for the purchase and assembly of ten (10) granular activated carbon (GAC) units to three (3) bidders, plus posted the bid on the City’s web site, and

WHEREAS, the engineer’s estimate remained the same as in the first bid of, $80,000 per unit, for a combined total engineer’s estimate of $800,000, and

WHEREAS, bids were opened on May 11, 2004, in the City Clerk’s office, and

WHEREAS, of the three (3) bidders solicited, all three (3) chose to respond, and

WHEREAS, all three (3) bidders submitted responsive bids, and

WHEREAS, only one (1) bidder, Carbon Activated Corporation, submitted a bid that was within the range of the engineer’s estimate, and

WHEREAS, Carbon Activated Corporation submitted a total bid price of $803,131, and

WHEREAS, based on being the lowest responsive bid, it is recommended by staff that the City award the bid and contract for the purchase and assembly of ten (10) granular activated carbon (GAC) units, to Carbon Activated Corporation, Compton, CA, for a total bid price of $803,131.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby awards the bid and contract for the purchase and assembly of ten (10) granular activated carbon (10) granular activated carbon (GAC) units, to Carbon Activated Corporation, Compton, CA, for a total bid price of $803,131.
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute said contract.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of June, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
A RESOLUTION AUTHORIZING THE SOLICITATION OF BIDS FOR COMMUNICATION EQUIPMENT AS PART OF THE NATIONAL ASSISTANCE TO FIREFIGHTER'S GRANT PROGRAM. THE ESTIMATED COST OF THE EQUIPMENT IS $256,000.00. THE CITY'S SHARE IN THE COST FOR THIS GRANT-FUNDED PURCHASE IS 30% ($77,000.00)

WHEREAS, the City of Modesto applied for a grant for communications equipment as part of the National Assistance to Firefighter's Grant Program in the category of Fire Operations and Firefighter Safety Program in March of 2003, and

WHEREAS, the grant was awarded and accepted by Council on November 13, 2003, and

WHEREAS, the granted dollar amount is $256,000.00, and

WHEREAS, the City of Modesto's Federal cost-share of 30% is $77,000.00, and

WHEREAS, by soliciting bids for the communication equipment requested as part of this grant, the City will satisfy the Municipal Code requirements and will obtain the best pricing.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the solicitation of bids for communication equipment as part of the National Assistance to Firefighter's Grant Program in the category of Fire Operations and Firefighter Safety Program in the amount of $256,000 grant amount and the $77,000.00 City of Modesto Federal cost-share.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 8th day of June, 2004, by Councilmember Jackman, who
moved its adoption, which motion being duly seconded by Councilmember Keating, was
upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-301

A RESOLUTION AUTHORIZING THE IMPLEMENTATION OF AN AUTOMATED RED-LIGHT ENFORCEMENT PROGRAM TO AUGMENT THE EXISTING COMPREHENSIVE TRAFFIC CALMING MEASURES CURRENTLY BEING UTILIZED BY THE MODESTO POLICE DEPARTMENT APPROVING A FIVE (5) YEAR BASE CONTRACT WITH TWO (2) ADDITIONAL, ONE YEAR CONTRACT EXTENSION OPTIONS WITH REDFLEX TRAFFIC SYSTEMS OF CULVER CITY, CALIFORNIA FOR THE DESIGN AND IMPLEMENTATION OF SAID AUTOMATED RED-LIGHT ENFORCEMENT PROGRAM AND AUTHORIZING THE EXECUTION OF SAID CONTRACT BY THE CITY MANAGER

WHEREAS, research by the United States Department of Transportation revealed there are more than 1.8 million intersection collisions annually, and, according to the Insurance Institute for Highway Safety, red light running is the leading cause of urban collisions, and

WHEREAS, in the year 2000, more than 106,000 of those 1.8 million collisions were the result of vehicles running a red light, and

WHEREAS, those red light collisions resulted in 89,000 injuries and 1,036 deaths, and

WHEREAS, in the year 2003, the City of Modesto had 313 intersection collisions directly attributable to red light running, and

WHEREAS, this statistic represents five percent (5%) of the total citywide collisions for 2003, and

WHEREAS, as the result of those collisions, there were 170 injuries, and

WHEREAS, in those cities where photo enforcement technology has been deployed, red light violations, traffic collisions and the resulting injuries and fatalities have been significantly reduced, and
WHEREAS, as part of a comprehensive traffic safety program, the Police Department, the Engineering and Transportation Department, and the Operations and Maintenance Department believe that the implementation of red light photo enforcement will significantly reduce the number of red light violations in the City of Modesto, and

WHEREAS, collisions resulting from red light violations will be reduced, thus providing the City with another valuable traffic calming tool to improve community and pedestrian safety, and

WHEREAS, the Council of the City of Modesto approved the issuance of a Request for Qualifications (RFQ) to prospective Automated Red Light Photo Enforcement vendors at its meeting of October 8, 2002, and

WHEREAS, in December of 2002 the Purchasing Division sent out an RFQ to seven (7) prospective vendors of automated red light camera systems, and

WHEREAS, out of the seven (7) vendors solicited, four (4) vendors submitted qualification proposals, and

WHEREAS, after reviewing the proposals three (3) vendors were selected to give presentations to the evaluation committee, and

WHEREAS, the committee comprised of City of Modesto staff, one City of Modesto Council Member, a City of Modesto citizen, and a member of the Stanislaus County District Attorney’s Office carefully evaluated the responses based on the criteria contained in the RFQ, and

WHEREAS, that evaluation process included proposal evaluations, presentations, telephone interviews with references, and visitation to site references, and
WHEREAS, the committee selected Redflex Automated Red Light Camera technology for installation and use in the City of Modesto for the following reasons:

* Redflex technology and the company's past performance in other cities came closest to fulfilling the original list of desired features the committee felt would be the best fit for Modesto,

* The combination of digital photography and video, coupled with access via the Internet from any computer, including the courts, was very significant,

* Redflex was the only vendor with this technology in place in California for the required 18 months prior to the RFQ, and

WHEREAS, this red light camera system is revenue neutral for the City of Modesto, and

WHEREAS, at its meeting of April 5, 2004 the Safety and Communities Committee unanimously recommended this action,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the implementation of an Automated Red-Light Photo Enforcement program to augment the existing comprehensive traffic calming measures currently being utilized by the Modesto Police Department.

BE IT FURTHER RESOLVED that a five (5) year base contract with two (2) additional one (1) year contract extension options with Redflex Traffic Systems of Culver City, California for the design and installation of said Red Light Photo Enforcement equipment and all related maintenance services at up to ten (10) City designated intersections for a phased implementation plan is hereby approved.

BE IT FURTHER RESOLVED that the Council hereby authorizes the City Manager or his designee to execute the contract with Redflex Traffic Systems.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 8th day of June, 2004, by Councilmember Jackman, who
moved its adoption, which motion being duly seconded by Councilmember Hawn, was
upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 
JEAN ZAHN, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-302

A RESOLUTION APPROVING AND AUTHORIZING THE FILING OF A SECTION 5307 APPLICATION WITH THE FEDERAL TRANSIT ADMINISTRATION FOR PUBLIC TRANSIT OPERATING AND CAPITAL PURPOSES AND AUTHORIZING THE CITY MANAGER 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 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 $2,503,541 for FY 2003-04, and

WHEREAS, the projects in the Section 5307 grant application are in the Federal Transportation Improvement Program (FTIP) adopted by StanCOG November 12, 2003, 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, the Economic Development Committee approved this request to file a Section 5307 application with the Federal Transit Administration at its meeting on May 10, 2004, and

WHEREAS, by a report to the Council dated May 17, 2004, from the Engineering and Transportation Department, City staff recommended submitting a grant application for $2,530,541 in Section 5307 formula FTA funds to partially offset the operational and capital costs of the City’s public transit program, a copy of said report is attached hereto and incorporated herein by reference, and

WHEREAS, the City Council conducted a duly noticed Public Hearing on June 8, 2004, in accordance with FTA regulations,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the filing of the Section 5307 application is hereby approved, and the City Manager, or his designee, is hereby authorized to execute and file said application for Federal Section 5307 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 State Code, or other Federal statues 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 and file the annual certifications and assurances and other documents the Federal Transit Administration requires for awarding a federal assistance grant.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute grant agreements 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 8th day of June, 2004, by Jackman, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By [Signature]

MICHAEL D. MILICH, City Attorney

ATTEST: [Signature]

JEAN ZAHN, City Clerk

(SEAL)
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-303

A RESOLUTION ACCEPTING THE 2004 PUBLIC HEALTH GOALS REPORT IN COMPLIANCE WITH TITLE 22 OF THE CALIFORNIA HEALTH AND SAFETY CODE.

WHEREAS, Title 22 of the California Health and Safety Code requires that all large water system providers issue a Consumer Confidence Report on water quality standards in their service area, and

WHEREAS, said Consumer Confidence Report is required to be delivered to customers by July 1, 2004, and

WHEREAS, Title 22 of the California Health and Safety Code also requires all large water system providers to issue a Public Health Goals Report once every three years on exceedances of the Public Health Goals, and

WHEREAS, the water system providers are also mandated to hold a public hearing for comments regarding the Public Health Goals Report, a copy of which is on file in the office of the City Clerk, and

WHEREAS, said Public Health Goals Report has been prepared and the matter set for a public hearing to be held on June 8, 2004, at 5:30 p.m., in the Tenth Street Place Chambers, located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of receiving public comments.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that following the receipt of public comment, and the 2004 Public Health Goals Report having been duly considered, said report is hereby accepted.
The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 8th day of June, 2004, by Councilmember O’Bryant, who
moved its adoption, which motion being duly seconded by Councilmember Keating, was
upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

BY: Michael D. Milich
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-304


WHEREAS, on July 13, 1993, by Resolution No. 93-412, the City Council established a non-salaried honorary position to be known as “The Poet Laureate of the City of Modesto”, and

WHEREAS, the Culture Commission has the responsibility for nominating and recommending appointments to the Poet Laureate position, and

WHEREAS, the purpose of a Poet Laureate is to present original poems at various official occasions, and

WHEREAS, a copy of the City of Modesto Policy regarding said non-salaried honorary Poet Laureate position is on file in the office of the City Clerk, and

WHEREAS, the Culture Commission met on May 3, 2004, and concluded that Sam Pierstorff met the criteria for fulfilling the obligations as Poet Laureate of the City of Modesto, and

WHEREAS, the Culture Commission recommended the appointment of Sam Pierstorff as Poet Laureate of the City of Modesto, and

WHEREAS, the Safety and Communities Committee met on June 2, 2004, and supported the Culture Commission’s recommendation to appoint Sam Pierstorff as the City of Modesto’s Poet Laureate,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby appoints Sam Pierstorff as the Poet Laureate of the City of Modesto from July 1, 2004, through June 30, 2006.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2004, by Councilmember Keating, who moved its adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(SEAL)

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NO. 2004-305  

A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF EDWIN LOPES FROM THE EQUAL OPPORTUNITY/DISABLED COMMISSION  

WHEREAS, EDWIN LOPES was appointed a member of the Equal Opportunity/Disability Commission on February 12, 2002; and  

WHEREAS, EDWIN LOPES has tendered his resignation from the Equal Opportunity/Disability Commission, effective June 22, 2004; and  

WHEREAS, EDWIN LOPES has been a devoted and sincere public servant and has contributed greatly to our civic progress,  

NOW, THEREFORE, BE IT RESOLVED that the resignation of EDWIN LOPES from the Equal Opportunity/Disability Commission be, and hereby is accepted with regret.  

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

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the resolution adopted by the following vote:  

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

NOES: Councilmembers: None  

ABSENT: Councilmembers: None  

ATTEST:  

JEAN ZAHR  City Clerk  

APPROVED AS TO FORM:  

[Signature]  
Michael D. Milich, City Attorney  

06/22/04/CMO/Pucket/Item 3 1 2004-305
MODESTO CITY COUNCIL
RESOLUTION NO. 2004-306

A RESOLUTION APPROVING AN AMENDMENT TO THE CONTRACT FOR AUDIT SERVICES WITH MAZE & ASSOCIATES AT A COST NOT TO EXCEED $5,155 FOR 2003 AUDIT WORK, $17,126 FOR 2004 AUDIT WORK, $17,656 FOR 2005 AUDIT WORK, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AMENDMENT.

WHEREAS, at its April 1, 2003, meeting the Modesto City Council adopted Resolution 2003-164 approving execution of a contract with Maze & Associates to perform the City’s annual financial audits, and

WHEREAS, the City Manager executed said contract on behalf of the City of Modesto, and

WHEREAS, the audit firm was required as part of its work to perform additional work for the 2003 Single Audit that was outside the scope of the original contract, at a price not to exceed $5,155, and

WHEREAS, additional audit services are required in Fiscal Years 2004 and 2005, for two additional federal programs and two additional Community Facilities Districts, at respective additional annual costs of $17,126 and $17,656, and

WHEREAS, the contract for these audit services requires Modesto City Council approval for such additional work, and

WHEREAS, at its June 21, 2004, meeting the Audit Committee recommended that the Council approve payment for the additional work,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an amendment to the contract for audit services with Maze & Associates, authorizing the additional work proposed, at a cost not to exceed $5,155 for Fiscal Year 2003, $17,126 for Fiscal Year 2004, and, $17,656 for 2005.
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 22nd day of June, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr
JEAN ZAHN, City Clerk

(SEAL)

APPROVED AS TO FORM:

By
Michael D. Milich, City Attorney
A RESOLUTION AMENDING POLICIES AND PROCEDURES FOR THE USE OF MELLO-ROOS COMMUNITY FACILITIES DISTRICTS

WHEREAS, on September 3, 1996, by Resolution No. 96-501, the City Council adopted “Policies and Procedures” for the creation and administration of Mello-Roos Community Facilities Districts, and

WHEREAS, by Resolution No. 96-545, adopted on October 8, 1996, the City Council made certain amendments to its “Policies and Procedures” for the creation and administration of Mello-Roos Community Facilities Districts, and

WHEREAS, by Resolution No. 98-164, adopted on March 24, 1998, the City Council made certain amendments to its “Policies and Procedures” for the creation and administration of Mello-Roos Community Facilities Districts, and

WHEREAS, by Resolution No. 98-186, adopted on April 7, 1998, the City Council made certain amendments to its “Policies and Procedures” for the creation and administration of Mello-Roos Community Facilities Districts, and

WHEREAS, by Resolution No. 98-483, adopted on September 8, 1998, the City Council made certain amendments to its “Policies and Procedures” for the creation and administration of Mello-Roos Community Facilities Districts, and

WHEREAS, by Resolution No. 99-405, adopted August 10, 1999, the City Council made certain amendments to its “Policies and Procedures” for the creation and administration of Mello-Roos Community Facilities Districts, and

WHEREAS, by Resolution No. 99-500, adopted October 5, 1999, the City Council made certain amendments to its “Policies and Procedures” for the creation and administration of Mello-Roos Community Facilities Districts, and
administration of Mello-Roos Community Facilities Districts, and

WHEREAS, by Resolution No. 2002-39, adopted on January 22, 2002, the City Council transferred the CFD administration function from the City Clerk and the City Attorney to the City Manager, and by the same Resolution the City Council made certain amendments to its Policies and Procedures for the creation and administration of Mello-Roos Community Facilities Districts, and

WHEREAS, by Resolution No. 2004-172, adopted April 6, 2004, the City Council made certain amendments to its “Policies and Procedures” for the creation and administration of Mello-Roos Community Facilities Districts, and

WHEREAS, The City Council desires to further amend the City’s Policies and Procedures for formation and administration of Mello-Roos Community Facilities Districts.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Modesto that its “Policies and Procedures” relating to the application for, creation of and administration of Mello-Roos Community Facilities Districts, formerly adopted and amended by this Council, be further amended as set forth below:

1. That the following definition be added to Section 2) Definitions:
   k) **City Manager.** City Manager or his or her designee.

2. That Section 3) Application Process be amended to read as follows:

   3) **Application Process.**

      a) **Application.** The applicant shall submit an application in the form attached hereto as Example “A”, or as may be amended from time to time by the City Manager, to the City together with a nonrefundable fee as set forth herein and amended from time to time. The fee is for the purpose of application processing, other preliminary costs, retention of appropriate consultants, and the compensation of staff.
time devoted to the formation of the CFD.

b) **Project Review.** Applicant and the CFD Formation Group may discuss the application including but not limited to further information that might be required and other issues as necessary. If necessary, the applicant may be required to submit a revised application. Once the application is accepted by the CFD Formation Group, it may be reviewed by City Finance personnel or City consultants to determine the adequacy of the proposed financing. CFD Formation Group may also forward the application to the City's engineering staff for determination that the application package is in fact both complete and practicable. Applicant and the CFD Formation Group may also conduct a face to face meeting between the applicant and the CFD Formation Group to "scope" the consultant work necessary to the formation of the CFD. However, the final authority to approve the scope of the consultant work to be performed in connection with the formation of any CFD and for the compensation of such services shall be solely within the authority of the CFD Formation Group.

c) **Project Initiation.** The application is accepted by the CFD Formation Group and the CFD Formation Group receives contracts, reimbursement agreements, bond documents and other pertinent items for consideration by the City Council, as required.

d) **Costs Incurred By The City Prior To Formation.** All costs incurred by the City prior to formation of the CFD, including but not limited to consultant costs (e.g. legal counsel, engineer firms, appraisers, special tax consultants, financial advisors), City staff and administrative costs and related expenses, cost of providing notices, printing and publication costs, and all expenses directly or indirectly relating to these items, shall be reimbursed to the City by the applicant prior to the completion of formation. The CFD Formation Group shall utilize timekeeping computer software, as such may be updated from time to time, to track billable hours in 1/10 hour increments attributable to CFD formation, amendment, annexation or other modification, and CFD administration. The timekeeping process will be used both to audit time spent as appropriate, and to generate bills to applicants for formation costs. Such bills shall also contain, in so far as practicable, costs or estimates of costs incurred by CFD group members in connection with CFD formation and/or CFD administration.

From time to time the CFD Formation Group will review and re-evaluate the City's fee/deposit requirements in light of the cost
results of recent CFD formations for the purpose of recommending modifications of excessively high or low fee/deposit charges as required. The initial such review shall occur in September 1998.

e) **Costs Incurred Prior To Bond Closing.** If a CFD is formed, and if bonds are issued, the City may direct that all of its costs of formation be reimbursed from bond proceeds.

f) **Costs Incurred By The City Subsequent To Formation.** All City administrative and consultant costs, including those of the District Administrator, related to administration of a CFD and incurred after formation shall be included within the special tax formula in accordance with applicable provisions of law.

g) **Formation Reimbursement To Applicant.**

1) **Where CFD is Not Formed, or where CFD is Formed and Bonds are Not Issued.** In the event that the CFD is not formed due to City disapproval or abandonment, or due to applicant abandonment, or due to nonpayment of any reimbursable fee, or the CFD is formed and bonds are not issued for any reason, the City will refund to the applicant any remaining unexpended and unobligated portion of advance deposits posted with the City, subject to the City's prior and full reimbursement of all of its direct and indirect costs. In the event that the applicant's advance deposit to the City is not sufficient to reimburse the City for all of its direct and indirect costs, the City will require an additional deposit by the applicant for the difference. The City shall be entitled to pay any refund to the applicant listed on the application form without interest, irrespective of any changes in the ownership or compensation of the applicant.

2) **Where CFD is Formed and Bonds are Issued.** If the CFD is formed and bonds are issued, bond proceeds shall be used to defray all approved costs and expenses incident to the proceedings in construction of the public facilities, subject to approval of the CFD Formation Group in conjunction with Bond Counsel, and subject to any applicable restrictions contained in the Act as amended. With respect to applicant paid consultant costs, reimbursement shall be limited to those CFD-related consultant's hired by the City or those hired by the applicant and expressly approved by the City in writing. Eligibility for reimbursement of any otherwise-eligible expense is conditioned upon the applicant providing paid invoices therefore to the City, and the CFD Formation Group's approval thereof. The applicant shall not be entitled to reimbursement from
bond proceeds for any of the following reasons: interest expense incurred by the applicant during the planning or design of construction (subject to exception for construction-related interest expense, set forth below) of the public improvements and any other costs and expenses incurred by the applicant which are not legally authorized for reimbursement, or as to which Bond Counsel has declined approval for reimbursement.

(3) Pursuant to Government Code Section 53314.9, the City Council may enter into an agreement, by resolution, with a person or entity advancing funds or work-in-kind for any authorized purpose, including, but not limited to, paying any cost incurred by the City in creating a CFD, without interest, under all of the following conditions:

(a) The reimbursement proposal is included in the resolution of intention to establish the CFD and in the resolution of formation to establish the CFD, or in the resolution of consideration adopted pursuant to Government Code Section 53334.

(b) The proposed special tax or change in a special tax is approved by the qualified electors of the CFD, or in the event that the electors do not approve the proposed special tax or change in a special tax, the City shall return any funds which have not been committed for any authorized purpose at the time of the election.

(c) Any work-in-kind accepted pursuant to this paragraph shall have been performed or constructed as if the work had been performed or constructed under the direction and supervision, or under the authority of, the City.

(d) Any reimbursement agreement entered into pursuant to this paragraph and Government Code Section 53314.9, shall not constitute a debt or liability of the City or of the District.

The reimbursement procedure specified in Government Code Section 53314.9 and incorporated in this paragraph may be utilized both in the case where the requesting person or entity owns all of the land within a proposed CFD, and in the case in which the requesting person or entity owns less than all of the land within the proposed CFD. In the latter event, consideration will be given to setting forth two (2) or more tax districts within the CFD in order to facilitate reimbursement of the person or entity which paid more than its pro-rata share of the formation costs from the proceeds of one time special facilities taxes paid by landowners in the tax district or
districts that does/do not include the land owned by the person or entity that paid more than its prorata share of the CFD formation costs.

(4) Where CFD is Formed and Bonds are Not Issued. With respect to advance formation fees pursuant to Paragraph 3.u. of these Policies and Procedures, any portion of such fee/deposit not paid out or obligated for the direct or indirect costs of CFD formation by the CFD Formation Group, may be further obligated by the CFD Formation Group based on its good faith estimate of the cost, including consultant costs, and other reasonable incidental costs as defined in the Act that may be incurred in the administration of the CFD during the period of time following its formation but prior to the City’s receipt of sufficient annual maintenance special taxes to provide for appropriate administration of the CFD. The remaining fee/deposit not paid out or obligated for the direct or indirect costs of the CFD formation or administration by the CFD Formation Group shall be returned to the applicant within five (5) business days after the CFD Formation Group presents its written accounting and good faith estimate. The accounting and good faith estimate shall be prepared within thirty (30) days after the CFD is formed.

(5) “Dollar for Dollar” Credit Against One-Time Facility Tax. Where the applicant makes a timely request that CFD formation costs be included in the cost of infrastructure for the purpose of computing taxes due under the Rate and Method of Apportionment and the final tax formulas, such CFD formation costs, including the initial fee/deposit, may be recovered by crediting such formation costs against facilities special taxes which would otherwise be due from the applicant from the time when such taxes would initially be due until the subject formation costs to be credited are exhausted by facilities special taxes incurred.

h) Agreements Required. Applicant will be required to enter into all necessary agreements incident to CFD proceedings in a form provided by the City and consistent with these Policies and Procedures. These agreements may include, but not be limited to:

(1) Acquisition and Shortfall Agreement
(2) Advance Deposit Agreement
(3) Land Dedication Agreement (where required)
(4) Acquisition and Disclosure Agreement
(5) Disposition and Development Agreement (where required)
(6) Development Agreement
(7) Other agreements (as required)

As a condition of the issuance and sale of bonds, all of the agreements required by the City shall be duly approved and executed by the parties thereto. Prior to execution of any such agreements, the agreements shall be reviewed and approved by the City Attorney. They may also be reviewed by Bond Counsel and such other consultants as the City believes are appropriate.

i) Land Use Approvals. All projects within the proposed CFD, together with the infrastructure and public facilities, must be consistent with the City’s adopted General Plan and zoning classifications. All property within the proposed CFD must possess land use determinations or zoning classifications of sufficient certainty, and facility requirements of sufficient specificity that each parcel can be adequately assessed.

j) Use of Consultants. The City shall employ any consultants necessary for the formation of a CFD, review of financing, the issuance and administration of bonds, including but not limited to underwriters and underwriter’s counsel, Bond Counsel, Financial Advisor, special tax consultant, engineers, appraisers, market absorption study consultant, or any other consultant deemed necessary by the CFD Formation Group in its judgment to complete the CFD proceedings and/or for issuance of bonds. The cost reimbursement provisions of these Policies and Procedures shall apply to all costs and expenses incurred by the CFD Formation Group in employing such consultants. An applicant may retain its own consultants for its own benefit, but must work only through those consultants hired by the City. In the event the applicant retains its own consultants, all costs associated therewith shall be borne by the applicant, without reimbursement from bond proceeds unless expressly agreed in writing by the CFD Formation Group.

k) Eligible Infrastructure and Public Facilities. Infrastructure and public facilities eligible for CFD financing are those public improvements which benefit properties within a proposed CFD and/or will mitigate impacts of that development upon areas of the City outside the proposed CFD, and which will be owned, operated and maintained by the City or another public agency expressly approved in writing by the CFD. Improvements which are or will be owned, operated or maintained by a private company or utility are not eligible, except for improvements to be owned by shareholder owned utility companies regulated by the California...
Public Utilities Commission and which comprise less than five (5%) percent of the project. In-tract facilities, exactions, or other public right of way easements and/or lands which are dedicated by applicant as a condition of a development entitlement will not be eligible for bond financing, except if they are expressly allowed in a development agreement or other agreement between the City and the applicant.

I) Bidding Process.

i) In retaining construction contractors for work which is reimbursable by a City of Modesto CFD and where the Acquisition and Shortfall Agreement (or other similar agreement) with the CFD is less than $300,000.00, the developer shall abide by the following bid process:

1) The developer shall provide three (3) competitive bids. If the developer desires to award to a contractor other than the low bidder, a written request must be submitted to the District Engineer. The District Engineer may allow this if the developer can provide adequate justification.

2) The developer shall ensure that all contractors and subcontractors are licensed in accordance with sections 7000 through 7145 inclusive, of the California Business and Professions Code and maintain adequate insurance for any work or services performed.

3) In accordance with California Labor Code section 1770, developer shall require the payment of prevailing wages based on the rates determined by the California Director of Industrial Relations. Unless otherwise directed by the District Engineer, Developer's construction schedule shall provide adequate time for completion of the work such that no holiday or overtime labor shall be required. The CFD shall not reimburse developer for any labor costs which exceed the normal and customary straight time rates as described in the City of Modesto General Provisions, Section 4.19, for the work performed unless the District Engineer authorizes the use of overtime or legal holiday time, in advance and in writing.

4) The District Engineer shall retain the right to be in attendance to inspect all bids and change orders. Any extra work or charges during construction for which reimbursement is sought shall be justified and documented. Except in the case of an emergency, any such charges shall be approved by the District Engineer in advance and in writing. In the case of an emergency, any such charges may
be authorized by the District Engineer if the developer provides adequate justification that an emergency existed and that the extra work or charges incurred were reasonable. Said justification shall be provided within a reasonable time after the emergency ends and prior to reimbursement for any such charges.

(5) No permits shall be issued and no work shall commence until the developer and the District Administrator have executed an Acquisition and Shortfall Agreement for the improvements to be constructed.

(6) The developer shall maintain certified payroll records for all labor costs incurred on all CFD reimbursable work for a minimum period of four (4) years from the issuance of the Notice of Completion. Said payroll records shall be made available to the CFD or any state regulatory agency for review, audit, inspection or copying upon request.

(7) Developer shall indemnify and hold the City and the CFD harmless for ensuring that the project is bid and constructed in accordance with City and CFD standards, and in compliance with all applicable local, state and federal laws. Developer shall also indemnify and hold the City and the CFD harmless for any damages, claims or actions arising out of said construction activities in a form approved by the City Attorney and the Risk Manager.

(8) Developer may be reimbursed for design costs incurred prior to the execution of an Acquisition and Shortfall Agreement for completed and accepted, CFD-funded facilities as determined and approved by the CFD Administrator and the CFD Engineer.

ii) In retaining construction contractors for work which is reimbursable by a City of Modesto CF and where the Acquisition and Shortfall Agreement (or other similar agreement) with the CFD is $300,000.00 or greater, the developer shall abide by the following bid process:

(1) Using a bid package approved by the City, the developer shall advertise for bids in the appropriate newspapers and periodicals, including but not limited to the local Builders Exchange and the Modesto Bee. Bid opening shall be no sooner than 7 days after the initial publication.

(2) The bid package shall include, and be based upon, improvement
plans as stamped approved by the City Engineer or his or her designee ("City Engineer"), and the Community Facilities District Engineer or his or her designee ("District Engineer"). The bid package may not contain any alterations, deviations or exceptions to the improvement plans, unless the alteration, deviation or exception is approved in writing by the District Engineer and is advertised for a reasonable period prior to the bid opening.

(3) The developer shall only accept bids using a bid proposal form approved by the City. The developer shall ensure that copies of the form are made available to prospective bidders at a local business office located within Stanislaus County during reasonable business hours throughout the bid advertising period. Contractors interested in submitting sealed bids for the project will be directed to do so on the approved form and at a specific date and time (e.g., at 9 a.m. on February 1, 2004, at the developer’s place of business). At this specified time, the District Engineer may be in attendance to receive the bid packages.

(4) The bid packages will be opened immediately after the close of the specified time period. The bid opening shall be open to the public and may be in the presence of the District Engineer. All bids will be publicly announced at the bid opening. The developer will then begin the process of executing a contract with the lowest responsible bidder.

If the developer desires to award to a contractor other than the low bidder, a written request must be submitted to the District Engineer. The District Engineer may allow this if the developer can provide adequate justification.

(5) The developer shall insure that all contractors and subcontractors are licensed in accordance with sections 7000 through 7145 inclusive, of the California Business and Professions Code and maintain adequate insurance for any work or services performed.

(6) In accordance with California Labor Code section 1770, developer shall require the payment of prevailing wages based on the rates determined by the California Director of Industrial Relations. Unless otherwise directed by the District Engineer, Developer’s construction schedule shall provide adequate time for completion of the work such that no holiday or overtime labor shall be required. The CFD shall not reimburse developer for any labor costs which exceed the normal and customary straight time rates as described in the City of Modesto General Provisions, Section 4.19,
for the work performed unless the District Engineer authorizes the use of overtime or legal holiday time, in advance and in writing.

(7) The District Engineer shall retain the right to be in attendance to receive the bid package, or to inspect all bids and change orders. Any extra work or charges during construction for which reimbursement is sought shall be justified and documented. Except in the case of an emergency, any such charges shall be approved by the District Engineer in advance and in writing. In the case of an emergency, any such charges may be authorized by the District Engineer if the developer provides adequate justification that an emergency existed and that the extra work or charges incurred were reasonable. Said justification shall be provided within a reasonable time after the emergency ends and prior to reimbursement for any such charges.

(8) No permits shall be issued and no work shall commence until the developer and the District Administrator have executed an Acquisition and Shortfall Agreement for the improvements to be constructed.

(9) The developer shall maintain certified payroll records for all labor costs incurred on all CFD reimbursable work for a minimum period of four (4) years from the issuance of the Notice of Completion. Said payroll records shall be made available to the CFD or any state regulatory agency for review, audit, inspection or copying upon request.

(10) Developer shall indemnify and hold the City and the CFD harmless for ensuring that the project is bid and constructed in accordance with City and CFD standards, and in compliance with all applicable local, state and federal laws. Developer shall also indemnify and hold the City and the CFD harmless for any damages, claims or actions arising out of said construction activities in a form approved by the City Attorney and the Risk Manager.

(11) Developer may be reimbursed for design costs incurred prior to the execution of an Acquisition and Shortfall Agreement for completed and accepted, CFD-funded facilities as determined and approved by the CFD Administrator and the CFD Engineer.

m) Designation of Spokesperson. The applicant(s) owners requesting preparation of a petition for formation of a CFD, if more than one, shall designate a spokesperson for all of them. The
applicants' spokesperson shall be responsible for the following.

(1) Advising joint applicants to contact him or her for answers to their questions concerning CFD matters.

(2) Contacting appropriate City representatives to obtain answers to such questions as he or she is unable to answer. The appropriate City representatives are the members of the CFD Formation Group.

(3) Informing joint applicants that any estimated cost figures supplied to them prior to the estimate contained in the public report, as preliminarily approved by the CFD Formation Group, must not be relied upon as necessarily precise.

n) Additional Advances. It is the policy of the City that applicants with properties improved through CFD proceedings pay all City and associated costs of such proceedings and other costs incurred in advance of CFD formation, or, in the case of the sale of bonds, before any bonds are sold. Therefore, with respect to all developer-initiated applications, if actual City costs exceed the amounts estimated below, the applicant will be required to advance additional monies to pay all costs incurred or to be incurred. Any failure to do so within ten (10) days of provision of written demand by the CFD Formation Group will be grounds for immediate termination of all activities by the CFD Formation Group, and by the consultants, if any, retained by the CFD Formation Group for the purpose of bond financing.

o) Boundary Map. A boundary map for each proposed CFD must be provided with the application. The boundary map should be provided in the following formats:

(1) 18" x 26" Mylar
(2) 8 ½ x 11" paper
(3) PDF

Assessor's parcels maps may be compiled on which the project boundary and other required information are shown. The map must identify all Assessor's parcels within the project boundary and the boundary of the area being annexed must follow existing parcel lines. The map must be certified by a licensed civil engineer. The CFD number to be included in the map title and page numbers may be obtained from the CFD Formation Group.

p) Registered Voter/Property Owner Certification. Any CFD
election will be voted upon by property owners (one vote per acre) so long as there are fewer than twelve (12) registered voters residing within the proposed CFD area. The CFD Formation Group will not process registered voter elections absent special arrangements with the CFD proponent. Each of the property owners must designate a single proxy to cast their ballot. The civil engineer for the CFD applicant must verify the number of registered voters within the project and list all property owners showing APN and number of acres. The civil engineer must then file a certification suitable to the CFD Formation Group as part of the application package. This certification must be made within ninety (90) days prior to the hearing on the resolution of formation for the CFD.

q) Waiver and Consent. The qualified electors (property owners) must file a waiver and consent document suitable to the CFD Formation Group waiving some of the statutory election requirements, particularly the time lines. With this waiver, the election may take place sooner than otherwise.

r) Fiscal Feasibility Report. Prior to the formation of a CFD, a fiscal feasibility report may be required if a portion of the land within a CFD is substantially undeveloped. The report shall be prepared by or at the direction of the CFD Formation Group. All costs for preparing this report shall be borne by the applicant.

s) Special Taxes and Assessments. The projected special tax, when added to the ad valorem property tax and other direct and overlapping debt for the proposed CFD (including other benefit assessments, special taxes levied for authorized but unissued debt, and any other anticipated special assessments, taxes or charges which may be included on a property owner’s annual property tax bill), shall not exceed two (2%) percent of the projected assessed value of each improved parcel within the CFD. A backup special tax may be required to protect against changes in land use that may result in insufficient annual special tax revenues.

t) Special Tax Formula. The maximum special tax submitted to the qualified voters of the CFD shall not exceed one (1%) percent of the projected assessed value of the developed properties at the time of full build out of CFD formation. Furthermore, the total of the following shall not exceed two (2%) percent of the projected assessed value of the subject properties:

(1) Ad valorem property taxes levied by the City.
(2) Voter approved ad valorem taxes levied by the City in excess of one (1%) percent of the assessed value.

(3) Special taxes levied by any existing CFD for the payment of bonded indebtedness or ongoing services.

(4) Assessments levied for any assessment district or maintenance district for the payment of bonded indebtedness or services.

(5) The maximum special tax for the proposed CFD.

The maximum special tax formula shall adhere to the following requirements:

1. The maximum special tax shall be established when a developed parcel is first subject to the tax and shall include the annual administrative costs to the City to administer the CFD.

2. Concerning that portion of the tax restricted to generating funds for maintenance of facilities, the special tax formula shall not include escalator rates allowing annual tax increases above four (4%) percent per year for developed parcels.

3. The City shall have discretion to allow a special tax in excess of the two (2%) percent maximum tax burden limits for any commercial or industrial lands within the CFD.

4. Concerning that proportion of the tax restricted to generate funds for the payment of debt service, the special tax formula shall not include escalator rates allowing annual tax increases above two (2%) percent.

u) **CEQA Compliance.** The CFD Formation Group shall be responsible for compliance with the California Environmental Quality Act with respect to each CFD formation analyzed or completed by it.

v) Based on substantial evidence presented to the City Council, it is determined that advance deposits in the following sums must be received in all cases, whether reimbursable or not, prior to an applicant's application for a CFD being deemed complete by the CFD Formation Group.

(1) A CFD is to be created at applicant's request and where bonds are
issued - $64,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.

(2) A CFD is to be created at applicant's request and where bonds are not to be issued - $64,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.

(3) In the case of the creation of a “simple” annexation to an existing CFD, which does not require the preparation of a new public report, or the alteration of an existing Public Report or modification of any other CFD-related document for the existing CFD, and the annexation does not involve the sale of bonds - $9,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.

(4) In the case of the creation of a “complex” annexation to an existing CFD, which requires an amendment to or modification of a Public Report or other CFD-related document, and the annexation does not require the sale of bond - $20,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.

(5) In the event that a "registered" voter election is required, an additional amount over and above the previously mentioned fees may be incurred. The City Clerk will estimate the minimum time and material costs pertaining to such an election based on the facts known at the time the election becomes necessary, and payment of the estimated sum shall be required prior to initiation of such an election.

(6) In the event that a "registered voter" election is both required and results in the nonformation/nonannexation of the subject CFD, the above-referenced fees and costs will not be refundable to the applicant save and except those amounts advanced by the applicant which are in excess of those obligated for the CFD Formation Group formation/annexation costs, consulting fees and other related expenses.
w) Resolution of Intention. When a CFD application and all related documents have been completed, the appropriate fee has been paid, and the CFD Formation Group has agreed to place the matter of the formation/annexation of the pertinent CFD before the City Council, the vehicle for such placement shall be the "Resolution of Intention" as required by the Act. The City Council vote on the Resolution of Intention shall also be the City's final determination on the application. If the Resolution of Intention is approved, the CFD Formation Group will undertake the necessary steps to complete formation/annexation of the CFD, including, but not limited to, completion of appropriate contracts, legal documentation, bond documents, project schedule, and other pertinent items.

x) Fiscal Year Planning. In the event that the fiscal year in which a CFD is commenced ends during the formation of the CFD, the Finance Department of the City shall carry forward any unused CFD funds to the next fiscal year in order to facilitate a smoothly continuous CFD formation/annexation process, and to permit prompt payment of ongoing expenditures.

y) Fiscal Authority. The CFD Formation Group has the inherent authority to receive and to appropriate CFD revenue and to direct the Finance Department of the City of Modesto to establish a new fund for each new CFD formation/annexation.

3. That Section 4) a. Terms and Conditions of Bonds be amended to read as follows:

2) Terms and Conditions of Bonds.

a) All terms and conditions of bonds shall be established by the City. The City will control, manage and invest all CFD issued bond proceeds. Unless otherwise authorized by the City, the following shall serve as bond requirements:

(1) A debt service reserve fund equal to an amount not less than ten (10%) percent of the bond issue's par value, subject to federal tax regulations will be established.

(2) The special taxes shall be levied for the first fiscal year following sale of the bonds for which they may be levied. Unless otherwise agreed to by the City, interest shall not be funded (capitalized) beyond the earliest interest payment date for which sufficient special tax revenues will be available for payment of interest.
(3) Beginning with the commencement of the repayment of principal, annual debt service may be level or may escalate up to a maximum of two (2%) percent per year.

(4) The maximum special tax shall be established to assure that the annual revenue produced by levy of the maximum special tax shall be equal to at least one hundred ten (110%) percent of the average annual debt service.

(5) The initial maximum annual administration requirement shall be no more than two (2%) percent of the par amount of the bonds but may escalate up to a maximum of two (2%) percent per year.

(6) Prior to the issuance of bonds, the City shall authorize its Bond Counsel to commence and process to final judgment an action establishing the validity of the proceedings, special tax and issuance of bonds, unless advised to the contrary by such Bond Counsel.

(7) In instances where multiple series of bonds are to be issued, the City shall make a final determination as to which public facilities are of the highest priority and those public facilities which will be financed first, pursuant to funding availability and the proposed timing of facilities development, and will be subject to the earliest or most senior lien except, when concerning land-secured financings if the City and applicant agree separately.

(8) The City may require that each new CFD bond issue refund any prior issues, if they exist on properties included in the CFD, in order to avoid subordinated liens. Instances where prior issues may not require refunding are:

(a) Where refunding of prior issues will result in higher interest costs;

(b) Where there can be assurance that prior liens may pose no marketing problems for the new CFD bonds; or

(c) Where refunding of prior issues may present future administrative difficulties to the City or other affected public entities.

4. That Section 4) h. (1) Credit Quality to be Required of Bond Issues be amended to read as follows:

(1) **Debt Service.** Except for commercial or industrial property
financings with no residential components, debt service shall be substantially level throughout the life of the bond issue or shall escalate at a rate generally not greater than two (2%) percent per year. Phased bond issuance shall not result in increased debt service to existing residential homeowners. Unless determined to be specifically required, debt service shall not exceed thirty (30 years) from the date of bond issuance.

5. That Section 5) d. District Administrator be amended to read as follows:

d) Take any and all actions necessary for prudent administration of all post-formation/post-annexation CFDs, including but not limited to the expenditure or allocation of District funds, in strict accordance with Section 53343 of the Mello-Roos Act of 1982 as it may be amended, so that any such funds shall only be allocated or expended for facilities and services authorized by the Act. This shall include but not be limited to, creation of and modification to the Capital Improvement Project (CIP) budgets.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2004, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(Seal)

APPROVED AS TO FORM:

By: 

MICHAEL MILICH, City Attorney
CITY OF MODESTO

POLICIES & PROCEDURES FOR THE FORMATION, ANNEXATION, AND ADMINISTRATION OF COMMUNITY FACILITIES DISTRICTS CREATED PURSUANT TO THE PROVISIONS OF THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982

Adopted - September 3, 1996 (Resolution No. 96-501)
Amended - October 8, 1996 (Resolution No. 96-545)
Amended - March 24, 1998 (Resolution No.98-164)
Amended - April 7, 1998 (Resolution No. 98-186)
Amended - June 2, 1998(Resolution No. 98-301)
Amended - September 8, 1998 (Resolution No. 98-483)
Amended - August 10, 1999 (Resolution No. 99-405)
Amended - October 12, 1999 (Resolution No. 99-500)
Amended - January 22, 2002 (Resolution No. 2002-39)
Amended – April 6, 2004 (Resolution No. 2004-172)
Amended – June 22, 2004 (Resolution No. 2004-?)

1) Introduction.

The following policies and procedures ("Policies and Procedures") for the use of the Mello-Roos Community Facilities Act of 1982 (the "Act") are established pursuant to Government Code Section 53312.7. These Policies and Procedures describe the application, formation, annexation, appropriate uses for and administration of any Community Facilities District ("CFD") used to finance facilities or for the provision of allowable services.

The City of Modesto (the "City") will consider developer or property-owner initiated applications requesting the formation of a CFD, and the possible issuance of bonds or the generation of revenues to finance eligible public facilities necessary to serve residential, commercial and/or industrial projects. The City may also establish CFDs which are initiated by the City. Priority in using CFD funding will be given to capital projects that are regional in nature and have the broadest possible benefit to the land uses included in the CFD. While it is the City's intent to use the Act to provide for the financing of City-owned and operated infrastructure and services, projects of a regional nature may include facilities to be owned and operated by other public agencies. In any event, only regional or community serving public facilities which directly benefit the CFD, and the provision of services (if applicable) may be eligible for CFD funding.

The City shall make the final determination as to whether or not a proposed CFD shall proceed under the provisions of the Act. The City may confer with the applicant and its consultants to learn of any unique district requirements, such as regional-serving facilities or long term development phasing prior to making any such final determination.

The Act may be used for the purchase, construction, expansion, rehabilitation, or acquisition of public improvements, or the provision of public services subject to the provisions of these Policies and Procedures and any subsequent amendments thereto, to the fullest extent permitted by the Act. The City shall use the Act to provide for the financing of City-owned and operated infrastructure and services, except as noted above.

The City will make the final determination whether or not the CFD will be a construction or acquisition district. All City and consultant costs incurred in the evaluation of CFD applications and the creation of CFDs must be paid in advance by the applicants in those instances where a CFD is initiated by a party or parties other than the City. However, the City may incur expenses for analyzing proposed districts where the City is the principal proponent of the CFD formation for financing of the CFD.

Expenses not legally reimbursable by the district shall be borne by the applicant. Both City costs and district consultant costs may be funded from bond proceeds.
For the purposes of reviewing activities undertaken pursuant to these Policies and Procedures, and to review proposed Mello-Roos financing, all relevant matters shall be referred to the Financial Policy Committee of the City Council.

2) Definitions.

a) **Acquisition District.** A CFD formed to finance the acquisition of infrastructure or public facilities where the applicant will be reimbursed for eligible construction related costs by means of tax credits or otherwise.

b) **Amendment.** A change, in any manner, to an adopted Public Report.

c) **Annexation.** The addition of real property into a CFD which has already been formed, and for which a Public Report has already been prepared and adopted. “Annexation” in this context does not mean a change in organization as described in the Cortese-Knox Act of 1985 (Sections 56000 et seq., Division 3 of the Government Code).

d) **Applicant.** Developer or landowner who initiates formation/annexation of a CFD.

e) **Bonds.** Bonds authorized and issued under the Mello-Roos Community Facilities Act of 1982.

f) **Bond Counsel.** Outside counsel retained by the City to assure compliance with applicable federal and State tax and other laws and regulations relating to public financing.

g) **Bond Underwriter.** The investment banker(s) retained by the City to design, develop and execute the sale of bonds in the market place.

h) **Certificate of Completion.** A written document provided to a facility provider by the District Engineer stating that the facility is complete and in good working order, and that the requirements of the facility acquisition agreement have been met.

i) **City.** The City of Modesto.

j) **City Attorney.** City Attorney of the City of Modesto or his or her designee.

k) **City Manager.** City Manager or his or her designee.

l) **Community Facilities District (CFD).** A special district formed pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 as amended, to finance specific public improvements or public services, and where properties within the CFD are levied a special tax in accordance with the rate and method of apportionment adopted as part of the district proceedings.

m) **Conclusion of Formation.** The date a tax lien, for a specific CFD, is successfully recorded by the Stanislaus County Clerk Recorder.
Credit. An offset against tax owed, or cash reimbursement for tax paid, as appropriate, calculated by subtracting from the Facility Cost Estimate any non-prepaid costs or incidental costs as defined in the Mello Roos Act, Section 53317(c) and (e), by means of a cash administrative cost offset. The administrative offset may be specified in the public report.

CFD. A Community Facilities District created for the purpose of financing the costs of certain public facilities and services pursuant to the provisions of Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code.

CFD Team. An interdepartmental City working group consisting of a representative of the City Attorney's Office, the District Administrator and such other staff as the District Administrator may designate. Its function shall be to process CFD applications and the formation of CFDs, including elections as appropriate.

District Administrator. A subgroup of the CFD Formation Group composed of a Deputy City Manager, selected by the City Manager. The District Administrator shall have the power to retain and consult with an outside consultant experienced in administering established CFDs in order to assure such administration is in accordance with City ordinances, resolutions, these Policies and Procedures as amended, and applicable law. The District Administrator shall also have the power to appoint an Acting District Administrator to serve in his or her absence.

District Engineer. A California registered professional engineer employed by the City of Modesto, or a City of Modesto CFD, who is responsible for making final engineering determinations on behalf of that CFD.

Facility. Any public works-type infrastructure for which tax is to be collected pursuant to the public report, which could be eligible for tax credit and is located within a CFD.

Facility Cost Estimate. The facility (or facility segment) cost estimate, including contingency cost estimates relating to that facility (or segment) which are included in the tax stated directly, or by reference, in the public report, as that report may be amended or adjusted for inflation from time to time.

Facility Provider. Any person or entity constructing a facility.

Fair Market Value, or Value. The amount of cash or its equivalent which property would bring if exposed for sale on the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other and both have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon uses and purposes.

Financial Advisor. Financial consultant retained by the City to review, comment and advise on financial matters relating to CFDs.

Fiscal Feasibility Report. A study performed under the direction of the City to
determine the financial viability of a proposed CFD.

**yy)** **Infrastructure and Public Facilities.** Those public improvements including but not limited to major streets and arterials, highway improvements and freeways, freeway interchanges, right of way acquisitions, bridges, street lights, water, flood, sewer and drainage improvements, fire and police stations, parks, wetlands, telephone ducts, electrical conduits, libraries, transit improvements (including public parking facilities), and the provision of certain services (if applicable), that may be eligible for financing pursuant to these Policies and Procedures, and which are authorized improvements pursuant to provisions of the Mello-Roos Community Facilities Act of 1982 ("Act").

**zz)** **In-tract Facilities.** Infrastructure and public facilities which serve an individual CFD, such as local subdivision streets, local utilities and local drainage systems. Not all such infrastructure and public facilities may actually be located within the boundaries of the CFD. (Possible example: drainage system).

**aaa)** **Oversubscription.** Oversubscription is the furnishing of land or facilities whose total value as set forth in the public report exceeds the total taxes attributable to a facility provider's entire development within a CFD.

**aab)** **Public Report.** A report generally containing the following:

(1) A description of the public capital facilities and services proposed for the CFD.

(2) A general description of the area to be served by said facilities; said areas being the boundaries of the CFD.

(3) A cost estimate, setting forth the costs and expenses for providing the public facilities and services to the properties within the boundaries of the CFD and the costs of any incidental expenses to be paid by the CFD.

(4) The rate and method of apportionment of the special tax in sufficient detail to allow each landowner or resident within the proposed CFD to estimate the annual amount of payment;

(5) General Terms and conditions relating to the proceedings.

(6) All exhibits and attachments to the resolution of formation of a CFD, and documents included therein by reference.

**bb)** **Special Tax Consultant.** A consultant retained by the City to develop the rate and method of apportionment and other special tax formulas and criteria for a Mello-Roos CFD.

**ee)** **Tax:** Any facilities special tax specified in the public report for the CFD.

**dd)** **Value-to-Lien Ratio.** The value of a parcel of land as determined by an MAI appraisal relative to the amount for which land secured bonds may be sold for the parcel.
3) **Application Process.**

   a) **Application.** The applicant shall submit an application in the form attached hereto as Example “A”, or as may be amended from time to time by the City Manager to the City together with a nonrefundable fee as set forth herein and amended from time to time. The fee is for the purpose of application processing, other preliminary costs, retention of appropriate consultants, and the compensation of staff time devoted to the formation of the CFD.

   b) **Project Review.** Applicant and the CFD Formation Group may discuss the application including but not limited to further information that might be required and other issues as necessary. If necessary, the applicant may be required to submit a revised application. Once the application is accepted by the CFD Formation Group, it may be reviewed by City Finance personnel or City consultants to determine the adequacy of the proposed financing. CFD Formation Group may also forward the application to the City’s engineering staff for determination that the application package is in fact both complete and practicable. Applicant and the CFD Formation Group may also conduct a face to face meeting between the applicant and the CFD Formation Group to “scope” the consultant work necessary to the formation of the CFD. However, the final authority to approve the scope of the consultant work to be performed in connection with the formation of any CFD and for the compensation of such services shall be solely within the authority of the CFD Formation Group.

   c) **Project Initiation.** The application is accepted by the CFD Formation Group and the CFD Formation Group receives contracts, reimbursement agreements, bond documents and other pertinent items for consideration by the City Council, as required.

   d) **Costs Incurred By The City Prior To Formation.** All costs incurred by the City prior to formation of the CFD, including but not limited to consultant costs (e.g. legal counsel, engineer firms, appraisers, special tax consultants, financial advisors), City staff and administrative costs and related expenses, cost of providing notices, printing and publication costs, and all expenses directly or indirectly relating to these items, shall be reimbursed to the City by the applicant prior to the completion of formation. The CFD Formation Group shall utilize timekeeping computer software, as such may be updated from time to time, to track billable hours in 1/10 hour increments attributable to CFD formation, amendment, annexation or other modification, and CFD administration. The timekeeping process will be used both to audit time spent as appropriate, and to generate bills to applicants for formation costs. Such bills shall also contain, in so far as practicable, costs or estimates of costs incurred by CFD group members in connection with CFD formation and/or CFD administration.

   From time to time the CFD Formation Group will review and re-evaluate the City’s fee/deposit requirements in light of the cost results of recent CFD formations for
the purpose of recommending modifications of excessively high or low fee/deposit charges as required. The initial such review shall occur in September 1998.

e) **Costs Incurred Prior To Bond Closing.** If a CFD is formed, and if bonds are issued, the City may direct that all of its costs of formation be reimbursed from bond proceeds.

f) **Costs Incurred By The City Subsequent To Formation.** All City administrative and consultant costs, including those of the District Administrator, related to administration of a CFD and incurred after formation shall be included within the special tax formula in accordance with applicable provisions of law.

g) **Formation Reimbursement To Applicant.**

1. **Where CFD is Not Formed, or where CFD is Formed and Bonds are Not Issued.** In the event that the CFD is not formed due to City disapproval or abandonment, or due to applicant abandonment, or due to nonpayment of any reimbursable fee, or the CFD is formed and bonds are not issued for any reason, the City will refund to the applicant any remaining unexpended and unobligated portion of advance deposits posted with the City, subject to the City’s prior and full reimbursement of all of its direct and indirect costs. In the event that the applicant’s advance deposit to the City is not sufficient to reimburse the City for all of its direct and indirect costs, the City will require an additional deposit by the applicant for the difference. The City shall be entitled to pay any refund to the applicant listed on the application form without interest, irrespective of any changes in the ownership or compensation of the applicant.

2. **Where CFD is Formed and Bonds are Issued.** If the CFD is formed and bonds are issued, bond proceeds shall be used to defray all approved costs and expenses incident to the proceedings in construction of the public facilities, subject to approval of the CFD Formation Group in conjunction with Bond Counsel, and subject to any applicable restrictions contained in the Act as amended. With respect to applicant paid consultant costs, reimbursement shall be limited to those CFD-related consultant’s hired by the City or those hired by the applicant and expressly approved by the City in writing. Eligibility for reimbursement of any otherwise-eligible expense is conditioned upon the applicant providing paid invoices therefore to the City, and the CFD Formation Group’s approval thereof. The applicant shall not be entitled to reimbursement from bond proceeds for any of the following reasons: interest expense incurred by the applicant during the planning or design of construction (subject to exception for construction-related interest expense, set forth below) of the public improvements and any other costs and expenses incurred by the applicant which are not legally authorized for reimbursement, or as to which Bond Counsel has declined approval for reimbursement.

3. **Pursuant to Government Code Section 53314.9,** the City Council may enter into an agreement, by resolution, with a person or entity advancing funds or work-in-kind for any authorized purpose, including, but not limited to, paying any cost incurred by the City in creating a CFD, without interest, under all of the following conditions:
(a) The reimbursement proposal is included in the resolution of intention to establish the CFD and in the resolution of formation to establish the CFD, or in the resolution of consideration adopted pursuant to Government Code Section 53334.

(b) The proposed special tax or change in a special tax is approved by the qualified electors of the CFD, or in the event that the electors do not approve the proposed special tax or change in a special tax, the City shall return any funds which have not been committed for any authorized purpose at the time of the election.

(c) Any work-in-kind accepted pursuant to this paragraph shall have been performed or constructed as if the work had been performed or constructed under the direction and supervision, or under the authority of, the City.

(d) Any reimbursement agreement entered into pursuant to this paragraph and Government Code Section 53314.9, shall not constitute a debt or liability of the City or of the District.

The reimbursement procedure specified in Government Code Section 53314.9 and incorporated in this paragraph may be utilized both in the case where the requesting person or entity owns all of the land within a proposed CFD, and in the case in which the requesting person or entity owns less than all of the land within the proposed CFD. In the later event, consideration will be given to setting forth two (2) or more tax districts within the CFD in order to facilitate reimbursement of the person or entity which paid more than its prorata share of the formation costs from the proceeds of one time special facilities taxes paid by landowners in the tax district or districts that does/do not include the land owned by the person or entity that paid more than its prorata share of the CFD formation costs.

(4) Where CFD is Formed and Bonds are Not Issued. With respect to advance formation fees pursuant to Paragraph 3.u. of these Policies and Procedures, any portion of such fee/deposit not paid out or obligated for the direct or indirect costs of CFD formation by the CFD Formation Group, may be further obligated by the CFD Formation Group based on its good faith estimate of the cost, including consultant costs, and other reasonable incidental costs as defined in the Act that may be incurred in the administration of the CFD during the period of time following its formation but prior to the City's receipt of sufficient annual maintenance special taxes to provide for appropriate administration of the CFD. The remaining fee/deposit not paid out or obligated for the direct or indirect costs of the CFD formation or administration by the CFD Formation Group shall be returned to the applicant within five (5) business days after the CFD Formation Group presents its written accounting and good faith estimate. The accounting and good faith estimate shall be prepared within thirty (30) days after the CFD is formed.
(5) “Dollar for Dollar” Credit Against One-Time Facility Tax. Where the applicant makes a timely request that CFD formation costs be included in the cost of infrastructure for the purpose of computing taxes due under the Rate and Method of Apportionment and the final tax formulas, such CFD formation costs, including the initial fee/deposit, may be recovered by crediting such formation costs against facilities special taxes which would otherwise be due from the applicant from the time when such taxes would initially be due until the subject formation costs to be credited are exhausted by facilities special taxes incurred.

h) Agreements Required. Applicant will be required to enter into all necessary agreements incident to CFD proceedings in a form provided by the City and consistent with these Policies and Procedures. These agreements may include, but not be limited to:

- Acquisition and Shortfall Agreement
- Advance Deposit Agreement
- Land Dedication Agreement (where required)
- Acquisition and Disclosure Agreement
- Disposition and Development Agreement (where required)
- Development Agreement
- Other agreements (as required)

As a condition of the issuance and sale of bonds, all of the agreements required by the City shall be duly approved and executed by the parties thereto. Prior to execution of any such agreements, the agreements shall be reviewed and approved by the City Attorney. They may also be reviewed by Bond Counsel and such other consultants as the City believes are appropriate.

i) Land Use Approvals. All projects within the proposed CFD, together with the infrastructure and public facilities, must be consistent with the City’s adopted General Plan and zoning classifications. All property within the proposed CFD must possess land use determinations or zoning classifications of sufficient certainty, and facility requirements of sufficient specificity that each parcel can be adequately assessed.

j) Use of Consultants. The City shall employ any consultants necessary for the formation of a CFD, review of financing, the issuance and administration of bonds, including but not limited to underwriters and underwriter’s counsel, Bond Counsel, Financial Advisor, special tax consultant, engineers, appraisers, market absorption study consultant, or any other consultant deemed necessary by the CFD Formation Group in its judgment to complete the CFD proceedings and/or for issuance of bonds. The cost reimbursement provisions of these Policies and Procedures shall apply to all costs and expenses incurred by the CFD Formation Group in employing such consultants. An applicant may retain its own consultants for its own benefit, but must work only through those consultants hired by the City. In the event the applicant retains its own consultants, all costs associated therewith shall be borne by the applicant, without reimbursement from bond proceeds unless expressly agreed in writing by the CFD Formation Group.

k) Eligible Infrastructure and Public Facilities. Infrastructure and public facilities eligible for
CFD financing are those public improvements which benefit properties within a proposed CFD and/or will mitigate impacts of that development upon areas of the City outside the proposed CFD, and which will be owned, operated and maintained by the City or another public agency expressly approved in writing by the City. Improvements which are or will be owned, operated or maintained by a private company or utility are not eligible, except for improvements to be owned by shareholder owned utility companies regulated by the California Public Utilities Commission and which comprise less than five (5%) percent of the project. In-tract facilities, exactions, or other public right of way easements and/or lands which are dedicated by applicant as a condition of a development entitlement will not be eligible for bond financing, except if they are expressly allowed in a development agreement or other agreement between the City and the applicant.

1) Bidding Process.

i) In retaining construction contractors for work which is reimbursable by a City of Modesto CFD and where the Acquisition and Shortfall Agreement (or other similar agreement) with the CFD is less than $300,000.00, the developer shall abide by the following bid process:

(1) The developer shall provide three (3) competitive bids. If the developer desires to award to a contractor other than the low bidder, a written request must be submitted to the District Engineer. The District Engineer may allow this if the developer can provide adequate justification.

(2) The developer shall insure that all contractors and subcontractors are licensed in accordance with sections 7000 through 7145 inclusive, of the California Business and Professions Code and maintain adequate insurance for any work or services performed.

(3) In accordance with California Labor Code section 1770, developer shall require the payment of prevailing wages based on the rates determined by the California Director of Industrial Relations. Unless otherwise directed by the District Engineer, Developer’s construction schedule shall provide adequate time for completion of the work such that no holiday or overtime labor shall be required. The CFD shall not reimburse developer for any labor costs which exceed the normal and customary straight time rates as described in the City of Modesto General Provisions, Section 4.19, for the work performed unless the District Engineer authorizes the use of overtime or legal holiday time, in advance and in writing.

(4) The District Engineer shall retain the right to be in attendance to inspect all bids and change orders. Any extra work or charges during construction for which reimbursement is sought shall be justified and documented. Except in the case of an emergency, any such charges shall be approved by the District Engineer in advance and in writing. In the case of an emergency, any such charges may be...
authorized by the District Engineer if the developer provides adequate justification that an emergency existed and that the extra work or charges incurred were reasonable. Said justification shall be provided within a reasonable time after the emergency ends and prior to reimbursement for any such charges.

(5) No permits shall be issued and no work shall commence until the developer and the District Administrator have executed an Acquisition and Shortfall Agreement for the improvements to be constructed.

(6) The developer shall maintain certified payroll records for all labor costs incurred on all CFD reimbursable work for a minimum period of four (4) years from the issuance of the Notice of Completion. Said payroll records shall be made available to the CFD or any state regulatory agency for review, audit, inspection or copying upon request.

(7) Developer shall indemnify and hold the City and the CFD harmless for ensuring that the project is bid and constructed in accordance with City and CFD standards, and in compliance with all applicable local, state and federal laws. Developer shall also indemnify and hold the City and the CFD harmless for any damages, claims or actions arising out of said construction activities in a form approved by the City Attorney and the Risk Manager.

(8) Developer may be reimbursed for design costs incurred prior to the execution of an Acquisition and Shortfall Agreement for completed and accepted, CFD-funded facilities as determined and approved by the CFD Administrator and the CFD Engineer.

ii) In retaining construction contractors for work which is reimbursable by a City of Modesto CF and where the Acquisition and Shortfall Agreement (or other similar agreement) with the CFD is $300,000.00 or greater, the developer shall abide by the following bid process:

(1) Using a bid package approved by the City, the developer shall advertise for bids in the appropriate newspapers and periodicals, including but not limited to the local Builders Exchange and the Modesto Bee. Bid opening shall be no sooner than 7 days after the initial publication.

(2) The bid package shall include, and be based upon, improvement plans as stamped approved by the City Engineer or his or her designee (“City Engineer”), and the Community Facilities District Engineer or his or her designee (“District Engineer”). The bid package may not contain any alterations, deviations or exceptions to the improvement plans, unless the alteration, deviation or exception is approved in writing by the District Engineer and is advertised for a reasonable period prior to the bid opening.
(3) The developer shall only accept bids using a bid proposal form approved by the City. The developer shall ensure that copies of the form are made available to prospective bidders at a local business office located within Stanislaus County during reasonable business hours throughout the bid advertising period. Contractors interested in submitting sealed bids for the project will be directed to do so on the approved form and at a specific date and time (e.g., at 9 a.m. on February 1, 2004, at the developer’s place of business). At this specified time, the District Engineer may be in attendance to receive the bid packages.

(4) The bid packages will be opened immediately after the close of the specified time period. The bid opening shall be open to the public and may be in the presence of the District Engineer. All bids will be publicly announced at the bid opening. The developer will then begin the process of executing a contract with the lowest responsible bidder.

If the developer desires to award to a contractor other than the low bidder, a written request must be submitted to the District Engineer. The District Engineer may allow this if the developer can provide adequate justification.

(5) The developer shall insure that all contractors and subcontractors are licensed in accordance with sections 7000 through 7145 inclusive, of the California Business and Professions Code and maintain adequate insurance for any work or services performed.

(6) In accordance with California Labor Code section 1770, developer shall require the payment of prevailing wages based on the rates determined by the California Director of Industrial Relations. Unless otherwise directed by the District Engineer, Developer’s construction schedule shall provide adequate time for completion of the work such that no holiday or overtime labor shall be required. The CFD shall not reimburse developer for any labor costs which exceed the normal and customary straight time rates as described in the City of Modesto General Provisions, Section 4.19, for the work performed unless the District Engineer authorizes the use of overtime or legal holiday time, in advance and in writing.

(7) The District Engineer shall retain the right to be in attendance to receive the bid package, or to inspect all bids and change orders. Any extra work or charges during construction for which reimbursement is sought shall be justified and documented. Except in the case of an emergency, any such charges shall be approved by the District Engineer in advance and in writing. In the case of an emergency, any such charges may be authorized by the District Engineer if the developer provides adequate justification that an emergency existed and that the extra work or charges incurred were reasonable. Said justification shall be
provided within a reasonable time after the emergency ends and prior to reimbursement for any such charges.

(8) No permits shall be issued and no work shall commence until the developer and the District Administrator have executed an Acquisition and Shortfall Agreement for the improvements to be constructed.

(9) The developer shall maintain certified payroll records for all labor costs incurred on all CFD reimbursable work for a minimum period of four (4) years from the issuance of the Notice of Completion. Said payroll records shall be made available to the CFD or any state regulatory agency for review, audit, inspection or copying upon request.

(10) Developer shall indemnify and hold the City and the CFD harmless for ensuring that the project is bid and constructed in accordance with City and CFD standards, and in compliance with all applicable local, state and federal laws. Developer shall also indemnify and hold the City and the CFD harmless for any damages, claims or actions arising out of said construction activities in a form approved by the City Attorney and the Risk Manager.

(11) Developer may be reimbursed for design costs incurred prior to the execution of an Acquisition and Shortfall Agreement for completed and accepted, CFD-funded facilities as determined and approved by the CFD Administrator and the CFD Engineer.

m) Designation of Spokesperson. The applicant(s) owners requesting preparation of a petition for formation of a CFD, if more than one, shall designate a spokesperson for all of them. The applicants’ spokesperson shall be responsible for the following.

(1) Advising joint applicants to contact him or her for answers to their questions concerning CFD matters.

(2) Contacting appropriate City representatives to obtain answers to such questions as he or she is unable to answer. The appropriate City representatives are the members of the CFD Formation Group.

(3) Informing joint applicants that any estimated cost figures supplied to them prior to the estimate contained in the public report, as preliminary approved by the CFD Formation Group, must not be relied upon as necessarily precise.

n) Additional Advances. It is the policy of the City that applicants with properties improved through CFD proceedings pay all City and associated costs of such proceedings and other costs incurred in advance of CFD formation, or, in the case of the sale of bonds, before any bonds are sold. Therefore, with respect to all developer-initiated applications, if actual City costs exceed the amounts estimated below, the applicant will be required to advance additional monies to pay all costs incurred or to be incurred. Any failure to do so within ten
(10) days of provision of written demand by the CFD Formation Group will be grounds for immediate termination of all activities by the CFD Formation Group, and by the consultants, if any, retained by the CFD Formation Group for the purpose of bond financing.

o) **Boundary Map.** A boundary map for each proposed CFD must be provided with the application. The boundary map should be provided in the following formats:

1. **18” x 26” Mylar and three blue lined copies**
2. **8 1/2 x 11” paper**
3. **PDF**

Assessor’s parcels maps may be compiled on which the project boundary and other required information are shown. The map must identify all Assessor’s parcels within the project boundary and the boundary of the area being annexed must follow existing parcel lines. The map must be certified by a licensed civil engineer. The CFD number to be included in the map title and page numbers may be obtained from the CFD Formation Group.

p) **Registered Voter/Property Owner Certification.** Any CFD election will be voted upon by property owners (one vote per acre) so long as there are fewer than twelve (12) registered voters residing within the proposed CFD area. The CFD Formation Group will not process registered voter elections absent special arrangements with the CFD proponent. Each of the property owners must designate a single proxy to cast their ballot. The civil engineer for the CFD applicant must verify the number of registered voters within the project and list all property owners showing APN and number of acres. The civil engineer must then file a certification suitable to the CFD Formation Group as part of the application package. This certification must be made within ninety (90) days prior to the hearing on the resolution of formation for the CFD.

q) **Waiver and Consent.** The qualified electors (property owners) must file a waiver and consent document suitable to the CFD Formation Group waiving some of the statutory election requirements, particularly the time lines. With this waiver, the election may take place sooner than otherwise.

r) **Fiscal Feasibility Report.** Prior to the formation of a CFD, a fiscal feasibility report may be required if a portion of the land within a CFD is substantially undeveloped. The report shall be prepared by or at the direction of the CFD Formation Group. All costs for preparing this report shall be borne by the applicant.

s) **Special Taxes and Assessments.** The projected special tax, when added to the ad valorem property tax and other direct and overlapping debt for the proposed CFD (including other benefit assessments, special taxes levied for authorized but unissued debt, and any other anticipated special assessments, taxes or charges which may be included on a property owner’s annual property tax bill), shall not exceed two (2%) percent of the projected assessed value of each improved parcel within the CFD. A backup special tax may be required to protect against changes in land use that may result in insufficient annual special
t) **Special Tax Formula.** The maximum special tax submitted to the qualified voters of the CFD shall not exceed one (1%) percent of the projected assessed value of the developed properties at the time of full build out of CFD formation. Furthermore, the total of the following shall not exceed two (2%) percent of the projected assessed value of the subject properties.

1. Ad valorem property taxes levied by the City.
2. Voter approved ad valorem taxes levied by the City in excess of one (1%) percent of the assessed value.
3. Special taxes levied by any existing CFD for the payment of bonded indebtedness or ongoing services.
4. Assessments levied for any assessment district or maintenance district for the payment of bonded indebtedness or services.
5. The maximum special tax for the proposed CFD.

The maximum special tax formula shall adhere to the following requirements:

1. The maximum special tax shall be established when a developed parcel is first subject to the tax and shall include the annual administrative costs to the City to administer the CFD.
2. Concerning that portion of the tax restricted to generating funds for maintenance of facilities, the special tax formula shall not include escalator rates allowing annual tax increases above four (4%) percent per year for developed parcels.
3. The City shall have discretion to allow a special tax in excess of the two (2%) percent maximum tax burden limits for any commercial or industrial lands within the CFD.
4. Concerning that proportion of the tax restricted to generate funds for the payment of debt service, the special tax formula shall not include escalator rates allowing annual tax increases above two (2%) percent.

u) **CEQA Compliance.** The CFD Formation Group shall be responsible for compliance with the California Environmental Quality Act with respect to each CFD formation analyzed or completed by it.

v) Based on substantial evidence presented to the City Council, it is determined that advance deposits in the following sums must be received in all cases, whether reimbursable or not, prior to an applicant’s application for a CFD being deemed complete by the CFD Formation.
(1) A CFD is to be created at applicant's request and where bonds are issued - $64,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.

(2) A CFD is to be created at applicant's request and where bonds are not to be issued - $64,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.

(3) In the case of the creation of a "simple" annexation to an existing CFD, which does not require the preparation of a new public report, or the alteration of an existing Public Report or modification of any other CFD-related document for the existing CFD, and the annexation does not involve the sale of bonds - $9,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.

(4) In the case of the creation of a "complex" annexation to an existing CFD, which requires an amendment to or modification of a Public Report or other CFD-related document, and the annexation does not require the sale of bond - $20,500.00. The Developer shall make additional advances to the City within ten (10) days following receipt from the City of a request for an additional advance to cover the costs referred to herein.

(5) In the event that a "registered" voter election is required, an additional amount over and above the previously mentioned fees may be incurred. The City Clerk will estimate the minimum time and material costs pertaining to such an election based on the facts known at the time the election becomes necessary, and payment of the estimated sum shall be required prior to initiation of such an election.

(6) In the event that a "registered voter" election is both required and results in the nonformation/nonannexation of the subject CFD, the above-referenced fees and costs will not be refundable to the applicant save and except those amounts advanced by the applicant which are in excess of those obligated for the CFD Formation Group formation/annexation costs, consulting fees and other related expenses.

w) Resolution of Intention. When a CFD application and all related documents have been completed, the appropriate fee has been paid, and the CFD Formation Group has agreed to place the matter of the formation/annexation of the pertinent CFD before the City Council, the vehicle for such placement shall be the "Resolution of Intention" as required by the Act. The City Council vote on the Resolution of Intention shall also be the City's final determination on the application. If the Resolution of Intention is approved, the CFD Formation Group will undertake the necessary steps to complete formation/annexation of
the CFD, including, but not limited to, completion of appropriate contracts, legal
documentation, bond documents, project schedule, and other pertinent items.

x) Fiscal Year Planning. In the event that the fiscal year in which a CFD is commenced ends
during the formation of the CFD, the Finance Department of the City shall carry forward
any unused CFD funds to the next fiscal year in order to facilitate a smoothly continuous
CFD formation/annexation process, and to permit prompt payment of ongoing
expenditures.

y) Fiscal Authority. The CFD Formation Group has the inherent authority to receive and to
appropriate CFD revenue and to direct the Finance Department of the City of Modesto to
establish a new fund for each new CFD formation/annexation.

4) Terms and Conditions of Bonds.

a) All terms and conditions of bonds shall be established by the City. The City will control,
manage and invest all CFD issued bond proceeds. Unless otherwise authorized by the City,
the following shall serve as bond requirements:

   (1) A debt service reserve fund equal to an amount not less than ten (10%) percent of
       the bond issue’s par value, subject to federal tax regulations will be established.

   (2) The special taxes shall be levied for the first fiscal year following sale of the bonds
       for which they may be levied. Unless otherwise agreed to by the City, interest shall
       not be funded (capitalized) beyond the earliest interest payment date for which
       sufficient special tax revenues will be available for payment of interest.

   (3) Beginning with the commencement of the repayment of principal, annual debt
       service may be level or may escalate up to a maximum of two (2%) percent per year.

   (4) The maximum special tax shall be established to assure that the annual revenue
       produced by levy of the maximum special tax shall be equal to at least one hundred
       ten (110%) percent of the average annual debt service.

   (5) The initial maximum annual administration requirement shall be no more than two
       (2%) percent of the par amount of the bonds but may escalate up to a maximum of
       two (2%) percent per year.

   (6) Prior to the issuance of bonds, the City shall authorize its Bond Counsel to
       commence and process to final judgment an action establishing the validity of the
       proceedings, special tax and issuance of bonds, unless advised to the contrary by
       such Bond Counsel.

   (7) In instances where multiple series of bonds are to be issued, the City shall
       make a final determination as to which public facilities are of the highest priority and
       those public facilities which will be financed first, pursuant to funding availability
       and the proposed timing of facilities development, and will be subject to the earliest
or most senior lien except, when concerning land-secured financings if the City and applicant agree separately.

The City may require that each new CFD bond issue refund any prior issues, if they exist on properties included in the CFD, in order to avoid subordinated liens. Instances where prior issues may not require refunding are:

(a) Where refunding of prior issues will result in higher interest costs;

(b) Where there can be assurance that prior liens may pose no marketing problems for the new CFD bonds; or

(c) Where refunding of prior issues may present future administrative difficulties to the City or other affected public entities.

b) Security and Credit Enhancement.

1) Financial Plan. Prior to City Council approval of the CFD, the applicant must submit a financial plan which demonstrates to the City's satisfaction the applicant's ability to pay all assessments and/or special taxes through build out of the project.

2) Credit Enhancement. In general, where credit enhancement is required for the bond issue as a whole, in the opinion of the City, the applicant shall provide such enhancement in such form as is approved by the City and the underwriters. Such enhancement may, for example, be required in cases where the value-to-lien ratio for property within the CFD is sufficient, and may take the form of letter of credit, policies of insurance, or other vehicles.

3) Letter of Credit Requirements. In general, the following requirements apply to letters of credit.

(a) The term shall be at least one (1) year, with automatic renewal unless canceled in writing by City.

(b) The amount the applicant is required to post shall be determined by the City.

(c) The letter of credit must be posted with the City in final form, properly authorized and executed, prior to Council authorization to issue bonds for the CFD. Irrevocable credit commitments, commitment letters, in-lieu letter of credit guarantee forms, or other similar instruments, will not be accepted.

(d) The letter of credit shall be irrevocable, and issued for the benefit of the City.

(e) The issuer of any Letter of Credit or other credit enhancement shall be a bank legally operating within the State of California, and which has a Thompson Bank Watch rating of "C" or higher, or an equivalent rating by any other nationally recognized financial institution rating agency, and whose letters of credit are
deemed marketable by the City for public financing purposes.

(f) The City reserves the right to consider other forms of credit enhancement or bond guarantee which are determined by the City, in its sole discretion, to be a lawful and adequate substitute for a letter of credit.

c) **Value-to-Lien Ratios.**

1. If the value-to-lien ratio is 3:1 or greater for the entire CFD and if there is a value-to-lien ratio of 3:1 on at least ninety (90%) percent of vacant land in the CFD, the City may not require letters of credit or other security to secure payment of the special taxes to be levied annually on properties within the CFD.

2. If the value-to-lien ratio is less than 3:1 for the CFD as a whole or on at least ninety (90%) percent of vacant land in the CFD, the City may require either letters of credit or other security (assigned deposits, deposits to escrow) to secure payment of the special taxes/special assessments on properties within the CFD or may elect to abandon the CFD.

d) **Market Absorption Study.** The City in its discretion may require and may employ a consultant for the purpose of conducting a market absorption study. The study, if required, shall include and estimate the total number of units, land uses and rate of absorption, and will be used as a basis for verification that sufficient revenues can be generated, and to determine if the financing of the infrastructure and public facilities is appropriate given the projected level and pace of development.

e) **Disclosure Requirements.** The applicant shall be responsible for compliance with all applicable federal and state statutory disclosure requirements, as well as any additional City requirements, in transactions with purchasers of properties with the CFD.

f) **Continuing Disclosure.** The developer will comply with federal and State securities laws and SEC Rule 15c 2-12 requirements concerning secondary market disclosure as those requirements are interpreted by the City and its counsel.

g) **Refunding.** The City will analyze outstanding bond issues for refunding opportunities. In addition, the City will accept refunding proposals from underwriting firms and financial advisors which the City will then analyze and verify. The City will refund outstanding bond issues if:

1. The refunding will generate at least five (5%) percent net present value savings; or

2. There is another reason the City determines is compelling enough to complete a refunding (e.g. for the purpose of changing onerous legal requirements in a previous bond indenture or resolution).

h) **Credit Quality to be Required of Bond Issues.**
(1) **Debt Service.** Except for commercial or industrial property financings with no residential components, debt service shall be substantially level throughout the life of the bond issue or shall escalate at a rate generally not greater than two (2%) percent per year. Phased bond issuance shall not result in increased debt service to existing residential homeowners. Unless determined to be specifically required, debt service shall not exceed twenty-five thirty-(2530) years from the date of bond issuance.

(2) **Bond Redemptions.** Maximum redemption premiums shall not exceed three percent (3%). Call protection provisions shall not exceed ten (10) years and no provision shall be made to restrict the ability of the City to refund any bond issue. Consideration shall be given to allowing redemption of bonds at par (without premium) with surplus construction funds, or from the prepayment of the special tax. Provision shall be made to allow the City to purchase bonds on the open market at par plus accrued interest, in lieu of redemption of bonds.

(3) **Reserve Funds.** A reserve fund shall be required (unless specifically exempted for cause) for every land-secured financing. The City will consider the substitution of other security, such as a letter of credit, for monies in the reserve fund. The reserve fund will be sized by the City with the advice of the financing team, and, for tax-exempt financings, will not exceed the maximum prescribed by applicable federal tax law. Reserve fund earnings beyond maximum reserve fund size should be used to credit debt service and may be used to pay applicable rebate obligations under federal tax law. (The City may also determine to permit such reserve fund earnings to be transferred to the construction fund until the project is completed.)

(4) **Capitalized Interest.** The City, with the advice of the financing team, will determine, on a case by case basis, the amount of capitalized interest for a particular financing. The amount of such interest will be determined based on factors such as the length of the construction period, the earliest date upon which tax toll collection may commence and the amount such interest will add to the total amount of the financing, taking into account the restrictions on value to lien expressed herein, the ability of the owner(s) to defray the debt service, and applicable provisions of the Act.

(5) **Foreclosure Covenants.** Every land-secured financing bond issuance document shall provide for the judicial foreclosure of delinquent payments of assessments or special taxes. Such covenants may vary with the particular financings, but shall at the minimum generally provide for the institution of foreclosure not more than 150 days from April 10 of a calendar year and shall authorize the City Attorney or delegate thereof to commence foreclosure without further Council action upon notification of a delinquency. Provision may be made to allow deferral of foreclosure in the event the City advances funds to the reserve fund to maintain any specific reserve requirement.

(6) **Discounts.** In competitive bond sales, the amount of discount shall be determined by the City with the advice of its financial advisor. In negotiated sales, it shall be the burden on the underwriter to justify its discount as competitive and such justification must take into account any other compensation being paid to the underwriter.
Original issue discount will be allowed if it results in a lower true interest cost and will not adversely affect the ability to construct the public improvements.

(7) **Information to Property Owners.**

1. **Prospective Purchasers.** The Director of Finance shall be responsible for providing notice of special tax to prospective property owners pursuant to Section 53340.2 of the Act and, upon request of an applicant, or its agent or representative, information in order for such applicant, agent or representative to comply with Section 53341.5 of the Act.

2. **Existing Lenders.** The City may require the consent of the existing deed of trust holders in any CFD to be formed by landowner (rather than registered voter) approval.

i) **Criteria for Evaluating the Equity of the Special Tax Formula.**

The proposed rate and method of apportionment shall comply with the following criteria:

1. The rate and method of apportionment generally shall not provide for an annual increase in the maximum special tax for any classification. However, under limited circumstances an increase in the maximum special tax will be permitted, not to exceed two percent (2%) annually. As a general rule, escalation of the maximum annual special tax will be allowed when bonds are to be sold in several series over an extended period of time.

2. The total projected annual special tax revenues, less estimated annual administrative expenses, must exceed the projected annual gross debt service on the bonds by ten percent (10%). In structuring the special tax, projected annual interest earnings at current passbook savings rates on bond reserve funds may also be included as revenue for the purpose of this calculation. Reserve fund interest earnings credit in excess of the foregoing will only be permitted if an investment agreement, satisfactory to the City, is secured at the time any bonds are sold and delivered.

3. The projected annual tax revenues shall include reasonable annual administrative expenses and other direct costs to the CFD.

4. All property not otherwise statutorily exempted or owned (or to be owned) by a public entity shall bear its appropriate share of the special tax liability.

5. The special tax shall be allocated and apportioned on the basis of reasonableness to all categories and classes of property receiving general or specific benefit within the CFD.

6. A formula to prepay the special tax shall be considered.

7. The projected ad valorem property tax and other direct and overlapping debt for the
proposed CFD (including estimated CFD charges, projected benefit assessments, levies for authorized but unissued debt and any other anticipated municipal charges which may be included on a property owner's annual tax bill), including the proposed maximum special tax, should not exceed two percent (2%) of the anticipated assessed value of each improved parcel upon completion of the public and private improvements. Any deviations from the foregoing will not be permitted unless specifically recommended by the CFD Formation Group and approved by the City Council.

(8) The special tax formula shall be structured to produce sufficient annual special tax revenue to pay annual debt service, administrative expenses, and "pay as you go" programs funded by the CFD special tax. To the extent a special tax is to be levied to pay for services, it should be separate from the special tax to pay for facilities.

(9) The special tax formula shall be such that once the total special tax need is known, and the status of all properties within the CFD relative to that formula are known, the special tax on each parcel is determined purely by the application of the formula without the exercise of discretion on the part of any person.

j) Criteria for the Sale of Bonds.

In order to ensure the long-term security of any bonds sold as the result of the formation of a CFD, the following policies shall be followed:

(1) The ratio of the appraised value of the land to the value of the proposed bond issue, and any other overlapping debt, shall not be lower than 3-to-1 unless authorized by the City Council with specific findings in accordance with the Act.

(2) Market absorption studies may be required at the City's discretion to determine if the financing of the infrastructure and public facilities is appropriate given the projected level and pace of development. The study may also be required by the appraiser for use in the appraisal process. The City will employ any market-absorption consultant.

(3) All terms and conditions for the sale of bonds shall be established by the City.

k) Continuing Disclosure.

By being allowed to participate for a Mello-Roos proceeding, each owner of land therein must be willing to provide information deemed by the City and its financing team to be needed in order for the City and the underwriter to comply with applicable Federal and State securities laws, including continuing disclosure requirements imposed by S.E.C. Rule 15c 2-12.


Appraisals undertaken to establish value-to-lien ratios for land-secured financings can be complex, requiring the appraiser to interpret the significance of various financial and demographic data. Because an appraisal essentially is an appraiser's opinion of value, the City requires
that the appraiser be qualified to render this opinion.

(1) **Credentials.** The appraiser will be credentialed by the State of California Office of Real Estate Appraisers and be a member of the Appraisal Institute (MAI) or have similar training, experience and qualifications.

(2) **Independence.** The appraiser will be an independent contractor retained by the public agency, rather than a land owner/developer.

**m) The Appraisal Problem.**

The appraiser will begin each assignment by defining the *appraisal problem* - that is, succinctly stating the objective of the appraisal. The statement of the appraisal problem will identify (1) the property rights to be valued, (2) the operative definition of value, and (3) the date of the value estimate.

(1) **Property Rights to be Valued.** Appraisals undertaken to establish value-to-lien ratios in CFDs and assessment districts will value the fee simple estate within the established district and subject to the special tax or assessment lien.

(2) **Definition of Value.** Appraisal undertaken to establish value-to-lien ratios in CFDs and assessment districts will estimate the market value of the subject property. The market value estimate will be the bulk sale value for all vacant properties - both unimproved properties and improved or partially improved but unoccupied properties. The bulk land value will include the property within the district as it is currently entitled with all appropriate zoning and in its current state of development, the value of the improvements to be financed with the proposed bond issue, if any, and the value of other improvements to be financed with any other cash escrow or security whose cash value is entirely controlled by the City. Paragraph o, which follows, provides those valuation methods the City will allow an appraiser to use to estimate the bulk sale value.

(3) **Date of the Value Estimate.** The date of the value estimate should clearly be identified in the appraisal report. The period between the date of the appraisal and the financing should be no more than four months, to accurately represent land values to prospective investors.

**n) Valuation Methods.** The first three valuation methods discussed below - the Sales Comparison Approach to Value, the Cost Approach to Value, and the Income Capitalization Approach to Value - form the core of modern real estate appraisal practices. These valuation methods are appropriate for conventional appraisal assignments involving improved real property, but are less well-suited to the valuation of unimproved land. Appraisals of unimproved CFDs and assessment districts will additionally employ a Discounted Cash Flow (DCF) analysis based upon the bulk land value of the property appraised, the fourth valuation method discussed in this section. This section concludes with a brief discussion of Mass Appraisal techniques and an assessed value approach alternative. An appraisal may include more than one appraisal method, depending on the
status of the project.

(1) **Sales Comparison Approach to Value.** The Sales Comparison Approach to Value offers the best indication of the market value of the subject property, because it is based on actual sales data. This methodology is appropriate for most improved properties, but the absence of comparable sales data usually constrains its application to appraisals of unimproved CFDs and assessment districts. The Sales Comparison approach, however, provides the analytical basis for estimating a future retail value of presently unimproved properties which may be incorporated into a Discounted Cash Flow analysis.

(2) **Cost Approach to Value.** The Cost Approach to Value is not appropriate for appraisals undertaken to establish value-to-lien ratios in CFDs and assessment districts. Cost does not create value. The Cost Approach may be useful, however, for adjusting for physical differences between properties under the Sales Comparison Approach. Sales Comparison appraisals can be adjusted to reflect infrastructure differences between different projects.

(3) **Income Capitalization Approach to Value.** The Income Capitalization Approach to Value is appropriate for retail value calculations of income-producing properties. It also may be appropriate for estimating the future retail values of income-producing properties for use in a Discounted Cash Flow analysis.

(4) **Discounted Cash Flow Analysis.** Discounted Cash Flow Analysis is appropriate for bulk sale valuations of unimproved properties and improved or partially improved but unoccupied properties. Discounted Cash Flow valuations should rely on an absorption study to estimate how quickly properties can be developed and sold or leased to end users. The expense of converting raw land to finished product or improved lots must be deducted from gross cash flow to derive net cash flow prior to discounting. The value of the public facilities to be financed with the contemplated bond financing will be included in the appraisal. The discount rate should reflect the rates of return needed to attract debt and equity participation in the project.

(5) **Mass Appraisal Techniques.** When an entire tract or project has been built and fully absorbed, the appraiser may employ mass appraisal techniques, utilizing conservative per dwelling unit estimates.

(6) **Assessed Value.** If, based upon assessed value, the value-to-lien ratio of the project and ninety (90%) percent of the undeveloped parcels is greater than 3:1, then a separate appraisal may not be required. If the assessed value of ninety (90%) percent of the undeveloped parcels is not greater than three times the amount of the lien then the City can require an appraisal to be completed on the undeveloped portion of the project while it uses the assessed value for the developed portion.

o) **Contents of Appraisal.** The appropriate format and level of appraisal documentation can vary according to its complexity. A detailed appraisal will reflect nationally recognized
appraisal standards, including, to the extent appropriate, the Uniform Standards of Professional Appraisal Practice. Appraisal methodology and presentation of the results of the appraisal shall be presented in writing in either form report or narrative report, as required, by the CFD Formation Group.

Appraisals should conform to the following specific criteria:

1. Appraisals must be selected from a "pre-qualified" list of appraisers determined by the City.

2. Appraisals must be in writing, using either a "form report" (Uniform Commercial and Industrial Appraisal Report - Existing Property) or a "narrative report."

3. Each appraisal shall clearly state the purpose of the report; a definition of the estate being appraised (i.e. fee, leasehold, etc.); and a description of the limiting conditions and assumptions underlying the appraisal.

4. Valuation dates shall be as determined by the City, but in no event earlier than 120 days prior to the sale of the bonds. To the extent practical, valuation dates on all properties shall be synchronized to a specific date, such as "October 1, 1999."

5. A physical description of the property being appraised, along with a discussion of its "highest and best use," land use regulations, present use and location.

6. An opinion of value which specifically considers the value of the property (including individual parcels) with the completed public facilities (bond proceeds and other financial guarantees).

7. A certificate of the appraiser stating the absence of any direct or indirect interests in the property, along with a brief description of the appraiser's qualifications.

8. Improvement description (to the extent information is practically available).

(a) Land parcels which have been developed and subsequently sold should at a minimum indicate land parcel size, number of lots, density, number of plans, square footage, year construction was initiated, year of completion, and when sales were initiated.

(b) Land parcels with product under construction or with standing inventory, should be described as in (5) above and include a summary of the stage of development including: number of residential units or buildings completed, number of buildings, status of buildings under construction, finished lots and mass-graded or raw lots. In addition, a comment on the marketability of the building (architecture, size, etc.) is appropriate.

(c) Land parcels which have been developed with income-producing (or owner-occupied) commercial, industrial, offices, etc., should be described as follows:
(i) Commercial Retail. Land parcel size; basic construction type; typical tenant improvements (and who is responsible for their construction); leasable area, when construction was initiated; and date of completion.

(ii) Industrial. Land parcel size; basic construction type, whether single or multi-tenant typical office build-out as percentage of total area, when construction was initiated; and date of completion.

(iii) Office. Land parcel size; basic construction type; typical tenant improvements/allowance; net rentable area, when construction was initiated; and date of completion.

(iv) Residential. Land parcel size; basic construction type; whether single or multi-family; when construction was initiated; and date of completion.

5) District Administrator.

Upon completion of the formation of or annexation to a CFD, the District Administrator shall oversee all post-formation/post-annexation administrative duties. Examples of said duties include but are not limited to the following:

a) Establish through the Finance Department of the City of Modesto the financing mechanism to receive, dispense and administer all monies received post-formation/post-annexation.

b) Establish and administer a reserve fund.

c) File all appropriate notices.

d) Take any and all actions necessary for prudent administration of all post-formation/post-annexation CFDs, including but not limited to the expenditure or allocation of District funds, in strict accordance with Section 53343 of the Mello-Roos Act of 1982 as it may be amended, so that any such funds shall only be allocated or expended for facilities and services authorized by the Act. This shall include but not be limited to, creation of and modification to the Capital Improvement Project (CIP) budgets.

6) District Administration.

a) District Administration Requirement of Infrastructure/Credit Specification in Subdivision Agreements.

On or after December 1, 1998, it shall be City policy with respect to those subdivisions located within the boundaries of a proposed Community Facilities District, an existing Community Facilities District, or a proposed or existing annexation to a Community Facilities District that the subdivision agreement required by the City for each such subdivision specify the creditable infrastructure or infrastructure segment percentages to be provided by the Developer of that
subdivision in detail, as well as proposed credit amounts associated with the subject infrastructure or infrastructure segment percentages. The infrastructure or infrastructure percentages shall be among those required to be completed by the Facility Master Plan or another similar infrastructure specification pertaining to the subdivision for which an agreement is sought.

b) **District Administrator To Consult With Director Of Community Development Re Inclusion of Community Facilities Districts In Specific (Or Other) Plan Finance Plans.**

When Specific or analogous Plans required by law for development are being prepared by the City, the City's Director of Community Development, after consultation with the City's Director of Engineering and Transportation and its District Administrator, shall determine whether or not a Community Facilities District shall be at least one means of financing infrastructure within any proposed Specific Plan on and after December 1, 1998, once the Director of Community Development has determined that a Community Facilities District shall be one means of financing such infrastructure, each subdivision within such a Plan shall have approval of its tentative subdivision map conditioned on the creation of or annexation to a Community Facilities District prior to final approval of its subdivision map, and the District Administrator shall assist the Director of Community Development in ensuring enforcement of this policy.

c) **Uncreditable Portion Of Contingency Estimates In Village One.**

The District Administrator, in coordination with the City's Community Development Department, shall ensure that the contingency portion of each facility segment credit against the one-time facilities taxes otherwise due shall be uncreditable, and received in cash, in an amount equivalent to 10.5% of the 25% contingency portion of each such facility segment credit, so that Village One developers will receive a net credit of 14.5% with respect to the contingency portion of each such facility segment credit against the appropriate one-time facilities tax.

d) **Uncreditable Portion Of Contingency Costs To Be Included In Future Community Facilities Districts.**

The District Administrator, in coordination with the City’s Community Development Department, shall insure that an uncreditable percentage of each future one-time facilities tax is incorporated into each of the City’s future Community Facilities Districts by means of inclusion in the Public Report and in the Rate and Method of Apportionment of Taxes. In order to ensure that the City's sunk costs of planning and engineering, ongoing administration, indirect costs and consultant costs can be paid from cash on hand generated by this requirement, some portion of the estimated cost of each facility, facility segment, or unit cost of a facility shall be disallowed from presentation for credit against the special one-time facilities tax which would otherwise be due with respect to the provision of that facility.
e) **Tax Credit Procedure**

i) Facility providers may be permitted credits against taxes owed, or cash credits, as appropriate, and as set forth herein.

ii) In the case of oversubscription, cash up to the amount of the oversubscription may be paid to a facility provider as cash becomes available to the CFD through tax collection.

iii) Taxes shall be payable at the time specified in the public report. Until January 1, 2000, the tax payable shall at least equal the administrative offset specified in the public report or otherwise.

iv) The district shall also be compensated from available tax monies for money and services advanced by it for the acquisition, construction, improvement or control of any or all of the facilities set forth in the public report, all in accordance with and subject to the Mello Roos Act (including, without limitation, Section 53314.9 of the Act), the resolution of formation of the CFD, the policies and procedures for administration of the CFD, the public report and other applicable law.

v) In no event shall cash advances, dedications, or construction of facilities become either a debt of the City, or a debt in excess of actual tax receipts, of the CFD.

vi) All tax credits shall be made by the District Administrator pursuant to a valid, executed facility acquisition agreement in a form approved by the District Administrator.

vii) Prior to January 1, 2000, with the approval of the District Administrator, credits may be furnished to a facility provider to offset taxes otherwise due if the facility provider has furnished or is furnishing facilities which have not yet received a notice of completion. Notwithstanding the foregoing, such discretionary credit shall be fully reimbursable to the CFD in cash by the facility provider in the event that a facility acquisition agreement is not executed by the facility provider, or if that facility provider does not receive a notice of completion from the District Engineer.

viii) On and after January 1, 2000:

1. The District Administrator shall ensure that the full tax is collected as it becomes due from each provider of facilities or facility segments to the CFD until (a) a valid facility acquisition agreement exists between the CFD and the facility provider and, (b) the facility has been completed, and (c) a certificate of completion has been issued to the facility provider. The District Administrator shall then provide facility special tax credits or cash reimbursement, as appropriate, to that facility provider.

2. All facility providers shall be denied tax credit for any portion of an otherwise credit-eligible facility constructed prior to execution by that provider of a facility acquisition agreement suitable to the District Administrator. Credit shall not be denied for planning or engineering costs included in a Facility Cost Estimate incurred prior to execution of that agreement.
(3) Credits shall be expended by the District Administrator in date order of the certificate of completion of the facility for which credits are requested, and each such facility shall be completely credited before the district administrator shall grant credits to a facility receiving a certificate of completion later in time.

(4) Where apportionment is required, as with respect to a total facilities cost stated in the public report including two or more sub-facilities, or where more than one person or entity participates in the construction or furnishing of a facility, the determination of such apportionment and credit by the District Administrator or their designee shall be conclusive evidence of the amount of the credit derived thereby.