A RESOLUTION AMENDING THE FISCAL YEAR 2005/06 OPERATING BUDGET TO ESTIMATE REVENUE AND APPROPRIATE FUNDS FOR THE 2005 BYRNE JUSTICE ASSISTANCE GRANT (BJAG) WITH THE U.S. DEPARTMENT OF JUSTICE

WHEREAS, the Police Department acquired a grant award in the sum of $116,260 from the U.S. Department of Justice for the 2005 Byrne Justice Assistance Grant to assist in funding of the Modesto Police Department’s new Computer Aided Dispatch System (CAD), Integrated Public Safety System, and Records Management System (RMS) upgrade, and

WHEREAS, the grant will commence on October 1, 2005 and end on September 30, 2008, and

WHEREAS, the City shall be compensated $116,200 from the U.S. Department of Justice for this program, and

WHEREAS, there is no local match required for this program,

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the fiscal year 2005/2006 Annual Budget is hereby amended as indicated below to initiate said grant project:

Expenses:
To: 0400-190-2902-5926 $116,200 2005 Byrne Justice Assistance Grant

Revenue:
From: 0400-190-2902-3508 $116,200 Grant Revenue
BE IT FURTHER RESOLVED that the Acting Finance Director, or her
authorized designee, is hereby authorized to take the necessary steps to implement the
provisions of this resolution.

The foregoing resolution was introduced at a special meeting of the Council of the
City of Modesto held on the 11th day of October 2005, by Councilmember Jackman, who
moved its adoption, which motion being duly seconded by Councilmember Dunbar, was
upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-514

A RESOLUTION INCREASING THE PUBLIC WORKS DIRECTOR’S AUTHORITY TO ISSUE CHANGE ORDERS TO INCREASE THE PROJECT SCOPE, BY ADDING ADDITIONAL PAVING AND STORM DRAIN WORK, ON THE “FLOYD AVENUE IMPROVEMENTS – OAKDALE ROAD TO GROUSE CROSSING WAY” PROJECT FROM 8 PERCENT ($188,365.87) TO 16.5 PERCENT ($388,504.60) OF THE ORIGINAL CONTRACT PRICE WITH GEORGE REED, INC. TOTAL ESTIMATED COST OF THIS PROJECT IS $4,743,961.00, WHICH INCLUDES RIGHT-OF-WAY, CONSTRUCTION CONTINGENCY, CONSTRUCTION ADMINISTRATION AND ENGINEERING DESIGN

WHEREAS, on May 24, 2005, the City Council awarded a $2,354,573.40 contract to George Reed, Inc. to construct the “Floyd Avenue Improvements – Oakdale Road to Grouse Crossing Way” project, and

WHEREAS, the contractor started work on August 4, 2005, and

WHEREAS, additional work not included in the original bid is to be added to the project to improve existing pavement and storm water drainage, and

WHEREAS, the cost of the extra work could be as high as an estimated $388,504.60, an amount which exceeds the Director’s authority for the project as established by the Council’s Change Order Approval Policy adopted by Resolution No. 94-443 on July 19, 1994, and

WHEREAS, the Director currently has authority to approve change orders up to a cumulative amount of $188,365.87, and seeks authority to issue change orders in an increased amount,

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Modesto that it hereby increases the Public Works Director’s authority level to issue change orders, from 8 percent ($188,365.87) to 16.5 percent ($388,504.60) of the original...
contract price for the project entitled “Floyd Avenue Improvements – Oakdale Road to Grouse Crossing Way.”

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of October, 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney
A RESOLUTION MAKING CERTAIN FINDINGS CONCERNING MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING FINDINGS CONCERNING ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS IN CONNECTION WITH APPROVAL OF THE PROJECT CONTEMPLATED BY THE FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT FOR THE MODESTO REGIONAL WATER TREATMENT PLANT PHASE TWO EXPANSION PROJECT AND RELATED DOWNSTREAM IMPROVEMENTS (SCH NO. 2004022013)

WHEREAS, the City of Modesto (the “City”) and the Modesto Irrigation District (“MID”) have been planning for the Phase II expansion of the Modesto Regional Water Treatment Plant (“MRWTP”) and the construction of new water storage tanks, distribution pipelines and associated downstream facilities to improve the delivery capacity of the existing MRWTP (“Project”); and

WHEREAS, in March, 1990, the City and MID certified a Final EIR (SCH No. 89020044) for the MRWTP and construction of new water storage tanks, distribution pipelines and associated downstream facilities, which included an environmental assessment for the proposed Project in accordance with the California Environmental Quality Act, Public Resources Section 21000, et seq (“CEQA”); and

WHEREAS, on January 26, 2004, the City and MID as co-lead agencies published an Initial Study and a Notice of Preparation (“IS/NOP”) for the proposed Project; and

WHEREAS, based on the information in the Initial Study and because of the additional level of detail known about the project and the potential for changed conditions since the certification of the 1990 Final EIR for the MRWTP, the City and
MID determined that a Subsequent Environmental Impact Report ("SEIR") was required for the proposed Project; and

WHEREAS, on July 12, 2005, the City Council certified the Final SEIR for the proposed MRWTP Phase II Expansion and the construction of downstream facilities (SCH No. 2004022013); and

WHEREAS, the City proposes to approve the Project as analyzed by the Final SEIR, including approval of the Amended and Restated Treatment and Delivery Agreement with MID, design and construction of the Downstream City Facilities, which includes storage tanks, pipelines, flow control valves, pumps, and associated structures, acquisition of rights of way as necessary to implement the Downstream City Facilities, and any activities as necessary to obtain necessary permits or authorizations to implement the Downstream City Facilities; and

WHEREAS, CEQA requires that, in connection with the approval of a project for which an EIR has been prepared which identifies one or more significant environmental effects, the decision-making agency make certain findings regarding those effects,

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

1. On July 12, 2005, the Final SEIR was completed and certified in compliance with CEQA.

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

3. That all significant effects of the Project on the environment have been eliminated or substantially eliminated where feasible.
4. That the Findings set forth in Exhibit “A” and incorporated by reference are hereby adopted as the City’s findings under the California Environmental Quality Act (“CEQA”), Public Resources Code Section 21000, et seq., and the CEQA guidelines, Cal. Code Regs., Title 13, sec. 15000 et seq., relating to the Project. The Findings provide the written analysis and conclusions of the Council regarding the Project’s environmental impacts, mitigation measures and alternatives to the Project.

5. That pursuant to Public Resources Code Section 21091 and CEQA Guidelines Sections 15091, et seq., the City Council hereby adopts and makes the following statement of overriding considerations regarding the remaining significant and unavoidable impacts of the Project and the anticipated environmental, economic, legal, social, technological, and other benefits of the Project.

   a. With respect to the foregoing findings, as set forth in Exhibit A, and in recognition of those facts which are included in the record as a whole, the City Council has determined the following:

   • That the Project will cause significant, unavoidable impacts to Aesthetics and Visual Resources, Agricultural Resources, Air Quality, Population and Housing, Noise and Transportation and Traffic

   • That the Project will contribute to significant, unavoidable cumulative impacts to Agricultural Resources, Air Quality and Population and Housing

These impacts cannot be avoided or substantially reduced by feasible changes or alterations to the Project, other than the changes or alterations already adopted.

b. Overriding Considerations

The City Council specifically adopts and makes this Statement of Overriding Considerations that this Project includes all feasible measures that would eliminate or substantially lessen the significant impacts of the Project on the environment, and that the remaining significant, unavoidable impacts of the Project are acceptable in light of the environmental, economic, legal, social, technological, and other considerations set forth herein because the benefits of the Project outweigh the significant and adverse impacts of the Project. The City Council finds that each of the overriding considerations set forth below constitutes a separate and
independent ground for finding that the benefits of the Project outweigh its significant adverse environmental impacts and sets forth an overriding consideration warranting approval of the Project. These findings and this Statement of Overriding Considerations are supported by evidence in the record.

c. Benefits of the Proposed Project

The City Council has considered the FSEIR, the record of proceedings on the proposed Project, including all written materials presented to the City as well as oral and written testimony at all public hearings related to the Project, and does hereby determine that implementation of the Project would result in the substantial public benefits set forth below.

The City Council has weighed the benefits of and needs for the proposed Project against its unavoidable environmental risks and adverse environmental effects identified in the FSEIR and hereby determines that those benefits and needs outweigh the risks and adverse environmental effects and, therefore, further determines that these risks and adverse environmental effects are acceptable.

i. The Project will provide water treatment and delivery capacity through expansion of MID’s existing MRWTP and terminal reservoir/pump station in order to provide existing users with a reliable source of potable water and accommodate future planned development in the City, in accordance with the City of Modesto’s General Plan.

ii. The Project will put MID’s water rights to beneficial use for the benefit of the residents of the City of Modesto.

iii. The Project will meet peak treated water demands and maintain water line pressures for the City’s existing users.

iv. The Project will improve water supply reliability for the City.

v. The Project will increase operational flexibility and reliability in the City’s water transmission and distribution system.
vi. The Project will assist the City in developing a more comprehensive conjunctive use system for domestic water treatment and delivery, and reduce the City’s reliance on groundwater.

vii. The Project will enable the City to use environmentally sensitive and cost effective methods for achieving the above objectives and meeting the above needs.

6. The Mitigation Monitoring and Reporting Program for the Final SEIR is attached to this resolution as Exhibit “B” and is incorporated and adopted as part of this resolution herein. The Program identifies impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action.

7. The above findings and statement of overriding considerations represent the independent judgment of the City of Modesto.

8. The City Council does hereby designate the Deputy Director, Capital Improvement Services for the City of Modesto, at his office at 1010 Tenth Street, Modesto, California 95354 as the custodian of documents and record of proceedings on which this decision is based; and

9. The City Council does hereby make the foregoing findings with the stipulations that all information in these findings is intended as a summary of the full administrative record supporting approval of the Project and certification of the Final SEIR, which full administrative record should be consulted for the full details supporting these findings, and that any mitigation measures and/or alternatives that were suggested by commenters to the Draft SEIR and were not certified as part of the Final SEIR are hereby expressly rejected for the reasons stated in the responses to the comments set forth in the Final SEIR and elsewhere in the record.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of October 2005, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney

ATTEST

Jean Zahr, City Clerk
MRWTP Phase Two Expansion Project

Findings and Facts in Support of Findings

Prepared for:

Modesto Irrigation District
1231 Eleventh Street
Modesto, CA 95354
Contact: Greg Dias 209/526-7566

and

City of Modesto
1010 Tenth Street, Suite 4600
Modesto, CA 95353
Contact: Jack Bond 209/571-5424

October 2005
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### Acronyms and Abbreviations

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<tr>
<th>Abbreviation</th>
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<tr>
<td>afa</td>
<td>acre-feet annually</td>
</tr>
<tr>
<td>BMPs</td>
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<tr>
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<tr>
<td>mgd</td>
<td>million gallons per day</td>
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<td>VELB</td>
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Introduction

Modesto Irrigation District (MID) and the City of Modesto (City) have prepared a subsequent environmental impact report (SEIR) to provide the public, responsible agencies, and trustee agencies with information about the potential environmental effects of the proposed Modesto Regional Water Treatment Plant (MRWTP) Phase Two Expansion Project (Proposed Project). As part of the Proposed Project, MID is proposing to construct and operate the Phase Two Expansion of the MRWTP and associated facilities. Also as part of the Proposed Project, the City is proposing to construct and operate new water storage tanks, pipelines, and associated facilities. All of these facilities are needed to provide adequate municipal and industrial water supply within the City’s service area. A previous EIR was prepared in 1990 that addressed these facilities at a general level of detail; this SEIR was prepared to evaluate the Proposed Project in more detail now that the specific project features are more defined, and to address any changes in conditions that have occurred since the 1990 EIR was certified.

MID and the City certified the final subsequent environmental impact report (FSEIR) for this project on July 12, 2005. This document presents the MID Board of Directors’ (MID Board’s) and City of Modesto City Councils’ (City Council’s) findings and facts in support of findings, and statement of overriding considerations for the Proposed Project, as required by the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The FSEIR is known as the MRWTP Phase Two Expansion Project FSEIR.

The MRWTP Phase Two Expansion Project FSEIR identifies potentially significant impacts in the following subject areas: aesthetics and visual resources, agricultural resources, air quality, water resources, noise, population and housing, recreation, cultural resources, biological resources, and transportation. The FSEIR also identifies mitigation measures to reduce the level of significance of anticipated impacts. Mitigation measures include without limitation compensation for loss of farmland, street sweeping, best management practices to maximize stormwater quality, appropriate design on retention facilities, stop work requirements and development of appropriate treatment measures if buried cultural resources are found, stop work and notification requirements if Native American remains are found, cultural resources surveys in archaeological resources zones prior to construction, completion of a cultural
resources treatment plan, preconstruction surveys for valley elderberry longhorn beetle, avoidance or compensation measures for loss of valley elderberry longhorn beetle habitat, transplanting of elderberry shrubs, implementation of California Department of Fish and Game (DFG) guidelines for Swainson’s Hawk foraging habitat mitigation, preconstruction surveys for nesting Swainson’s Hawk, preconstruction surveys for active Burrowing Owl burrows, maintenance of traffic lanes and limits on hours of construction, implementation of enhanced measures to control PM10 generation, and measures to reduce emissions.

Organization of This Document

This first section of this document provides a brief summary of the Proposed Project and the environmental review process. Section 2 contains the findings of the MID Board and City Council for each significant environmental effect of the Proposed Project identified in the FSEIR, as required by CEQA. Section 3 describes the alternatives considered.

Project Description

The Proposed Project includes two main components.

- Expansion of the MRWTP, which will allow MID to provide an additional 33,600 acre-feet annually (afa) of treated domestic water to the City.
- Construction of downstream facilities within the City, including water storage tanks, pump stations, distribution pipelines, and pressure-regulating control valves.

The MRWTP will continue to be owned and operated by MID; the downstream facilities will belong to the City. Water from the MRWTP will continue to be conveyed from the MRWTP near Modesto Reservoir to the City water system through an existing water transmission system constructed as part of the Phase One project.

The water treatment plant expansion will occur on the same parcel as the existing MRWTP site. The MRWTP expansion is substantively similar to the Phase Two expansion described in the 1990 EIR. Project alternatives for the expansion are summarized in Section 3 of this document.

Improvements to the City water distribution system will consist of three water storage tanks and related appurtenances, including pump stations, pipelines to connect the water storage tanks to the City’s existing distribution infrastructure, up to 30 control valves on turnouts, and three additional main pipelines to move water throughout the City. While most of these project components were identified in the project description in the 1990 EIR, they were not subjected to a site-specific environmental analysis in that document. In the SEIR, nine
alternative tank sites and seven alternative main pipeline alignments are considered at an equal level of detail to allow flexibility in ultimate design and construction.

As part of the Proposed Project, MID has received approval from the State Water Resources Control Board (SWRCB) for a water transfer to the City of 67,200 afa. This transfer and the associated facilities described above will supply water in support of current and planned growth within the City of Modesto as envisioned in the City and MID’s 2000 Urban Water Management Plan (City of Modesto and Modesto Irrigation District 2000), the City of Modesto Urban Area General Plan (City of Modesto 1995), and the Urban Area General Plan Master EIR (City of Modesto 2003).

CEQA Process

A previous EIR was prepared for the Proposed Project and certified in 1990 (Modesto Irrigation District 1990). MID and the City determined that, because of the additional level of detail known about the project and the potential for changed conditions since the certification of the 1990 FEIR for the MRWTP, the preparation of a subsequent EIR (SEIR) was warranted to disclose any new or significantly more severe impacts associated with the Phase Two project as currently proposed. This SEIR is limited to information and analysis associated with changes in the Proposed Project or the conditions under which the Proposed Project is undertaken that could cause the project to result in new or more severe impacts other than those identified in the 1990 EIR. MID and the City are both lead agencies on this project.

In the SEIR, MID and the City analyzed the Proposed Project based on CEQA and the CEQA Guidelines, and determined that the Proposed Project could have potentially significant effects on the environment, including significant effects that cannot be avoided.

Consistent with CEQA requirements, the Draft SEIR (DSEIR) for the Proposed Project was circulated for a 45-day public comment period (Monday, November 8–Friday, December 24), and two public meetings were held (Wednesday, December 15 at 2 p.m. and 6 p.m.). Although members of the public were invited to voice their comments at these meetings through various means, including multiple newspaper notices, direct mailings, and announcements on MID and the City’s websites, no one attended either meeting. All comments received during the public comment period are addressed in Chapter 2 of the FSEIR. As a result of these comments, the DSEIR was revised, and typographical errors were corrected, as shown in Chapter 3 of the FSEIR.

Concurrent with their respective approvals of the proposed project, the MID Board and the City Council hereby adopt the following findings of fact regarding the significant effects and the alternatives identified in the FSEIR and the
statement of overriding considerations explaining the benefits that outweigh the significant unavoidable impacts identified in the FSEIR.

Pursuant to Public Resources Code Section 21081.6, the MID Board and the City Council are adopting a Mitigation Monitoring and Reporting Plan (MMRP). The MMRP establishes a program to ensure that the adopted mitigation measures identified in the FSEIR will be implemented.
CEQA Requirements

CEQA, Public Resources Code Section 21000 et seq., requires a lead agency to make written findings of project impacts whenever the lead agency decides to approve a project for which an EIR has been certified (Public Resources Code Section 21081). Regarding these findings, Section 15091 of the CEQA Guidelines (Title 14, California Code of Regulations) states, in part:

1. No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
   a. Changes or alterations have been required in, or incorporated into, the project, which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
   b. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
   c. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

2. The findings required by subsection (a) shall be supported by substantial evidence in the record.

The "changes or alterations" referred to in the CEQA Guidelines may be mitigation measures, alternatives to the project, or changes to the project by the project proponent. The MRWTP Phase Two Expansion Project FSEIR identifies mitigation measures that will reduce significant effects of the Proposed Project or mitigate other potential effects that may not be, strictly speaking, environmental effects under CEQA. These mitigation measures will be incorporated into the design of the Proposed Project. A Mitigation Monitoring and Reporting Plan (MMRP) will also be adopted by the MID Board and City Council to ensure that...
the mitigation measures identified in the FSEIR and in these findings will be implemented.

The documents and other materials that constitute the record upon which MID and the City based their decision and these findings can be reviewed at the following locations.

Modesto Irrigation District
1231 Eleventh Street
Modesto, CA 95354
Contact: Greg Dias
(209) 526-7566

City of Modesto
1010 Tenth Street, Suite 4600
Modesto, CA 95353
Contact: Jack Bond
(209) 571-5149

Findings

Findings Regarding Independent Review and Judgment

Each member of the MID Board and the City Council received a complete copy of the FSEIR for the Proposed Project. The MID Board and City Council have independently reviewed and analyzed the FSEIR prior to taking final action with respect to the Proposed Project. Both the MID Board and City Council hereby find that the FSEIR reflects their individual independent judgment.

Findings Regarding the Project

In accordance with CEQA Guidelines Sections 15091, the following findings and supporting facts address each significant environmental impact that has been changed (including adoption of mitigation measures) to avoid or substantially reduce the magnitude of the impact, as identified in the FSEIR. The purpose of the findings is to provide explanations for the determination of significant impacts and conclusions on the level of significance of impacts following implementation of mitigation measures.
Findings Regarding Significant and Unavoidable Impacts

The significant and unavoidable impacts of the Proposed Project are discussed below. These are effects for which either no mitigation is feasible or the mitigation measures included in the FSEIR will lessen the effects but will not result in complete mitigation of the effects to a less-than-significant level.

As lead agencies on the MRWTP Phase Two Expansion Project, MID and the City are both making the following findings.

Aesthetics and Visual Resources

Impact AES-3. Adverse Effect on Views of Open Space During Construction. (City of Modesto facilities)

Construction of the various project components would have a temporary adverse effect on views of open space. Construction activities would introduce heavy equipment, including cranes, dozers, graders, scrapers, and trucks, as well as safety and directional signage into the viewshed of public roadways and residences adjacent to construction areas. Proposed tank sites N-3, W-1, W-2, and W-3 are currently visible from residences in their vicinity. Additionally, due to a high groundwater table, tanks constructed at any of these sites could not be fully buried and would extend at least 10 feet above the grade. This impact is considered significant and unavoidable for proposed tank sites N-3, W-1, W-2, and W-3; impacts would also be considered significant and unavoidable for tank sites N-1 and N-2, if residences within 50 yards of the tank site exist at the onset of construction.

Finding: Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR. This impact is the result of construction and operation of City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments. Because construction of the Proposed Project will result in temporary above ground construction activities that will alter the visual quality of the sites, no feasible mitigation is available to reduce the impact to a less than significant level. Environmental Commitments CS-1-CS-3, as described in the FSEIR, will partially mitigate and minimize visual impacts related to construction activities by screening construction staging areas and limiting construction work hours. However, implementation of these measures would not fully mitigate the temporary aesthetic impacts due to construction to a less than significant level. Accordingly, notwithstanding the implementation of the mitigation measures described above, this impact would remain significant and unavoidable as it relates to residences located within 50 feet of the proposed tank sites. Visual impacts for all other construction sites will be less than significant.
Impact AES-4. Adverse Effect on Views of Open Space During Operation. (City of Modesto facilities)

A 6-million-gallon (MG) water storage tank would be installed at the selected north site, and a 4-MG tank would be installed at each of the selected west and southeast sites. These tanks would be up to 35 feet in height and 250 feet in diameter. The southeast sites are located in existing industrial areas and would therefore not have substantial adverse visual impacts; however, a tank built on any of the other proposed tank sites may potentially obscure existing views of open space. At proposed tank site N-2, the structure may potentially obscure the existing view of the orchard. At the other proposed sites, the structure may obscure the vistas of the open space currently existing on the parcel. Proposed tank sites N-3, W-1, W-2, and W-3 all have existing single-family residences and residential communities as close as 50 to 200 yards. Tank sites N-1 and N-2 could also become surrounded by urban development in the future, as designated by the City’s General Plan. The proximity of existing residences (or future residences, if they were to exist at the time of construction) to the north and west tank sites necessitates the construction of a partially buried tank and the implementation of environmental commitments SD-1–SD-7 to obtain a less than significant impact level. If it is infeasible to partially bury the tank because of cost, a high groundwater table, or other site-specific constraints and an aboveground tank is constructed instead, this impact would be significant and unavoidable.

Finding: Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR. This impact is the result of construction and operation of City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments. Because construction of the Proposed Project will result in new water storage tanks that will alter the visual quality of the sites, no feasible mitigation is available to reduce the impact to a less-than-significant level. Environmental Commitments SD-1–SD-7, as described in the FSEIR, will minimize visual impacts of project facilities by reducing visibility from roads, partially burying the tanks, minimizing glare and reflectivity, shielding lights, using materials consistent with surrounding rural residential areas, and providing screening and landscaping. However, implementation of the measures would not fully mitigate the temporary aesthetic impacts due to construction to a less than significant level. Accordingly, notwithstanding the implementation of the mitigation measures described above, this impact would remain significant and unavoidable.

Agricultural Resources

Impact AG-3: Conflict with Agricultural Uses on Nearby Properties and Long-Term Indirect Conversion of Farmland to Non-Agricultural Use. (MID facilities)

Expansion of the MRWTP would not cause adjacent agricultural lands to be converted to non-agricultural uses. However, the Proposed Project is intended to
facilitate the build-out of the City’s General Plan. As such, it would indirectly contribute to the conversion of the agricultural lands that currently exist in the City’s sphere of influence. The City’s General Plan Master Environmental Impact Report Update (MEIR) (City of Modesto 2003) identified this conversion as significant and unavoidable.

**Finding:** Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR. This impact is the result of construction and operation of MID facilities, selected from two MRWTP expansion options. As mitigation, the City incorporated several measures into its 2003 General Plan to reduce this potential impact, including:

1. Agriculture Policies – Baseline Developed Area
   a. If a subsequent project is within the Baseline Developed Area or Redevelopment Area as identified on the General Plan Growth Strategy Diagram...the project shall be considered to have minimal effect on the conversion of agricultural lands, and no mitigation for that impact is required.

2. Agriculture Policies – Planned Urbanizing Area
   a. The City will not annex agricultural land unless urban development consistent with the General Plan has been approved by the City.
   b. The City shall support the continuation of agricultural uses on lands designated for urban uses until urban development is imminent.
   c. Where necessary to promote planned City growth, the City shall encourage development of those agricultural lands that are already compromised by adjacent urban development or contain property required for the extension of infrastructure or other public facilities, before considering urban development on agricultural lands that are not subject to such urban pressures.
   d. The General Plan should attempt to minimize the loss of agricultural land by having future development be relatively compact and of reasonably high density.

These measures will partially mitigate potential impacts to the long-term indirect conversion of farmland to non-agricultural uses. However, implementation of these measures would not fully mitigate this long-term impact to a less than significant level. Accordingly, notwithstanding the implementation of the mitigation measures described above, this impact would remain significant and unavoidable.
Impact AG-4: Conversion of Prime Farmland to Non-Agricultural Use. (City of Modesto facilities)
The Proposed Project has the potential to convert as much as 10 acres of Prime Farmland to nonagricultural use if one of the sites N-1, N-2, or N-3, and one of the sites W-2 or W-3, are selected and developed. This impact is considered significant and unavoidable. Mitigation Measures AG-4, as set forth in the FSEIR, is hereby adopted and will be implemented as provided in the Mitigation Monitoring and Reporting Program.

Finding: Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR. This impact is the result of construction and operation of City of Modesto water tanks on potential sites N-1, N-2, N-3, W-2, or W-3. Contribution to the California Farmland Conservancy, or an equivalent program, to fund farmland preservation projects in Stanislaus County would serve to compensate for the loss of farmland that directly results from the proposed project. However, preservation of Prime Farmland through agricultural easements on other Prime Farmland parcels would not mitigate the direct loss of Prime Farmland resulting from the project to a less-than-significant level. Accordingly, notwithstanding the implementation of the mitigation measures described above, this impact would remain significant and unavoidable.

The FSEIR further states that the restoration and/or recovery of Prime Farmland from existing urban uses to offset the loss of Prime Farmland would mitigate the loss caused by the proposed project. However, such a measure would be unreasonably costly and inefficient and would, therefore, be infeasible.

Impact AG-5: Conflict with Existing Zoning for Agricultural Use or Williamson Act Contracts. (City of Modesto facilities)
None of the proposed tank sites is designated for agricultural use in the City’s General Plan. However, three sites (sites N-2, N-3, and W-2) are under a Williamson Act contract, which effectively prevents the land from being zoned in any category other than A-2 (general agriculture). According to the County of Stanislaus (2004), facilities for public uses are compatible with Williamson Act contracts and can be constructed on the proposed sites, provided that a permit is obtained. The impact would nonetheless be significant because of the loss of long-term agricultural productivity. Thus far, none of the lands under Williamson Act contract have filed for non-renewal of contract, and the proposed timeline for the project is such that filing for non-renewal would not remove the contract in time to eliminate the impact. This impact is significant and unavoidable. Mitigation Measure AG-4, as set forth in the FSEIR, is hereby adopted and will be implemented as provided in the Mitigation Monitoring and Reporting Program.

Finding: Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR. This impact is the result of construction and operation of City of Modesto water tanks on potential sites N-2, N-3 and W-2. Contribution to the California Farmland Conservancy, or an equivalent program, to fund farmland
preservation projects in Stanislaus County would serve to compensate for the loss of farmland that directly results from the proposed project. However, preservation of Prime Farmland through agricultural easements on other Prime Farmland parcels would not mitigate the direct loss of Prime Farmland resulting from the project to a less-than-significant level. Accordingly, notwithstanding the implementation of the mitigation measures described above, this impact would remain significant and unavoidable.

The FSEIR further states that the restoration and/or recovery of Prime Farmland from existing urban uses to offset the loss of Prime Farmland would mitigate the loss caused by the proposed project. However, such a measure would be unreasonably costly and inefficient and would, therefore, be infeasible.

**Impact AG-6: Conflict with Agricultural Uses on Nearby Properties and Long-Term Conversion of Farmland to Non-Agricultural Use. (City of Modesto facilities)**

Additionally, expansion of the MRWTP would not directly cause adjacent agricultural lands to be converted to non-agricultural uses. However, the Proposed Project is intended to facilitate the build-out of the City’s General Plan. As such, it would indirectly contribute to the conversion of the agricultural lands that currently exist in the City’s sphere of influence. The City’s General Plan MEIR (City of Modesto 2003) identified this conversion as significant and unavoidable.

**Finding: Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR.** This impact is the result of construction and operation of MID facilities, selected from two MRWTP expansion options. As mitigation, the City incorporated several measures into its 2003 General Plan to reduce this potential impact, including:

1. Agriculture Policies – Baseline Developed Area
   a. If a subsequent project is within the Baseline Developed Area or Redevelopment Area as identified on the General Plan Growth Strategy Diagram…the project shall be considered to have minimal effect on the conversion of agricultural lands, and no mitigation for that impact is required.

2. Agriculture Policies – Planned Urbanizing Area
   a. The City will not annex agricultural land unless urban development consistent with the General Plan has been approved by the City.
   
   b. The City shall support the continuation of agricultural uses on lands designated for urban uses until urban development is imminent.
c. Where necessary to promote planned City growth, the City shall encourage development of those agricultural lands that are already compromised by adjacent urban development or contain property required for the extension of infrastructure or other public facilities, before considering urban development on agricultural lands that are not subject to such urban pressures.

d. The General Plan should attempt to minimize the loss of agricultural land by having future development be relatively compact and of reasonably high density.

These measures will partially mitigate potential impacts to the long-term indirect conversion of farmland to non-agricultural uses. However, implementation of these measures would not fully mitigate this long-term impact to a less than significant level. Accordingly, notwithstanding the implementation of the mitigation measures described above, this impact would remain significant and unavoidable.

**Cumulative Long-Term Impacts on Regional Agriculture. (All facilities)**

Over the foreseeable future, development is expected to continue in Stanislaus County, with the bulk of the area's population growth—and hence the bulk of the County's new construction—centered in the vicinity of Modesto, which is expected to continue as the largest city in the County. Continuing development is expected to result in progressive loss of agricultural lands as agricultural open space is converted to suburban/urban residential, commercial, and light industrial uses. Although this loss is identified in both the City's and County's General Plans, it nonetheless represents a significant cumulative impact on agricultural resources and agricultural production in Stanislaus County.

The Proposed Project would result in direct loss of agricultural lands and could also contribute to indirect loss of agricultural lands over time. The MRWTP expansion would not take place on prime farmland or land under Williamson Act contract; however, alternative sites N-1, N-2, N-3, W-2, and W-3 are all located on Prime Farmland, and sites N-2, N-3, and W-2 are presently under Williamson Act contracts. Construction of the City facilities could thus result in the conversion of as much as 10 acres of prime farmland and Williamson Act lands, should these sites be selected. This would constitute a cumulatively considerable contribution to significant regional impacts on agricultural resources, and would be exacerbated by further long-term indirect effects that could result from conflict between new, nonagricultural uses and remaining agricultural production. Mitigation Measure AG-4, as set forth above and in the FSEIR is hereby adopted and will be implemented as provided in the Mitigation Monitoring and Reporting Program.

Finding: Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR. This cumulative impact is the result of both City of Modesto facilities,
selected from nine alternative tank sites and seven alternative main pipeline alignments, and MID facilities, selected from two MRWTP expansion options.

As discussed in the FSEIR, contribution to the California Farmland Conservancy fund or an equivalent program that supports farmland preservation projects in the County would offer an avenue to compensate for the loss of farmland resulting from construction of project facilities. However, it would not fully offset the direct loss of prime farmland on the project sites. Alternatively, farmland could be restored or recovered from existing urban uses to offset the project-related loss, but this would be extremely costly, and would not offer guaranteed success – construction typically alters site drainage and removes or impairs topsoil resources, and restoration of these values would be difficult at best. Moreover, even if successful, farmland recovery would likely create isolated parcels of agricultural land in a predominantly urban area, and thus would not adequately offset the loss of contiguous agricultural lands. Consequently, although at least two approaches would offer partial compensation, no feasible mitigation is available to reduce the cumulative effect on agricultural resources, or to mitigate the proposed project’s contribution to a less-than-significant level. The proposed project’s contribution to this cumulatively significant impact is and will remain considerable, long-term and unavoidable.

Air Quality

**Impact Air-1: Temporary Increase in Construction-Related Emissions During Construction Activities of the MRWTP Expansion. (MID facilities)**

Proposed construction of the MRWTP Expansion would increase fugitive dust and vehicle emissions. Specifically, excavation, grading, and vehicular traffic may generate temporary increases in ROG, NOx, PM10, and ozone precursors. The SJVUAPCD considers PM10 emissions to be the greatest pollutant of concern when assessing construction-related air quality impacts. The environmental commitments may not eliminate all air quality effects and could therefore cause a significant impact because of the area’s current non-attainment and serious non-attainment designations for PM10, and serious non-attainment and extreme non-attainment designations for ozone from the State of California and the EPA, respectively.

**Finding: Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR.** This impact is the result of construction and operation of MID facilities, selected from two MRWTP expansion options. Construction of the Proposed Project will necessarily involve excavation, grading, the use of heavy machinery, and vehicular traffic. Eliminating one or more of these activities would be infeasible in that it would prevent construction of the project.

Environmental Commitments AQ-1, AQ-2, GC-3, GC-6, GC-7, and GC-10, as described in the FSEIR, have been incorporated into the Project and will reduce...
construction-related effects by compliance with SJVUAPCD Regulation VIII, equipment maintenance, landscaping and erosion control, dust suppression, and maintenance of roadway surfaces and community facilities. Implementation of these measures will partially mitigate potential impacts to air quality. However, implementation of these measures would not fully mitigate this impact to a less than significant level. Accordingly, notwithstanding the implementation of the mitigation measures described above, this impact would remain significant and unavoidable.

**Impact Air-2: Emissions During Operation of Standby Generators. (MID facilities)**

Standby diesel generators would be employed to provide a backup power supply for the pump stations in the event of an interruption in the facility’s primary power supply. Although the generators would see limited use for periodic maintenance cycling of the equipment and infrequent short-term emergency operations, they would cause a significant and unavoidable impact due to the fact that they would generate PM10 and ozone precursors, both of which are designated at varying levels of non-attainment at both the federal and state level.

**Finding:** Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR. This impact is the result of operation of MID facilities, selected from two MRWTP expansion options. Under normal operations, the system relies on electric power to run its pumps and other facilities. The diesel generators are specifically needed to provide an orderly shut down of the plant in situations where electric power has been lost. There is no other practical power source for emergency use. For example, installing electric rather than diesel generators is not feasible, as the electric generators would be inoperable in the event of a power failure. There is no feasible mitigation to reduce this impact to a less than significant level and, therefore, this impact is significant and unavoidable.

**Impact Air-4: Growth-Related Vehicle Emissions. (MID facilities)**

An objective of this project is to increase the water treatment to meet future water demands from a growing population. Therefore this project is supporting growth in Modesto by increasing the treated water supply. In conjunction with this population growth, the number of vehicles operated in the Modesto area will also increase and will likely lead to an increased emission of air quality pollutants. Because of the area’s current designations of non-attainment for PM10 and ozone, this increase in vehicle use and the resulting emissions of air quality pollutant emissions would cause a significant and unavoidable indirect impact.

**Finding:** Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR. This impact is the result of construction and operation of MID facilities, selected from two MRWTP expansion options. The City’s 2003 General Plan and General Plan MEIR contain a number of policies and measures designed to reduce vehicle trips, and therefore potential growth-related vehicle emissions. These measures include, among other things, increasing mass transit, incentives for ridesharing, and investments in bike and walking trails. These measures may partially mitigate potential impacts caused by growth-related vehicle emissions.
However, implementation of these measures would not fully mitigate this impact to a less-than-significant level. Accordingly, notwithstanding the implementation of these measures, this impact would remain significant and unavoidable.

**Impact Air-5: Temporary Increase in Construction-Related Emissions During Construction Activities of the City of Modesto Facilities. (City of Modesto facilities)**

Proposed construction of City of Modesto facilities would increase fugitive dust and vehicle emissions. Specifically, excavation, grading, and vehicular traffic at proposed tank sites, associated tank pipelines, and main pipeline alignments may generate temporary increases in ROG, NOx, PM10, and ozone precursors. The SJVUAPCD considers PM10 emissions to be the greatest pollutant of concern when assessing construction-related air quality impacts. The environmental commitments may not eliminate all air quality effects and could therefore cause a significant impact because of the area’s current non-attainment designations for PM10 and ozone. Thus, this impact would be considered significant and unavoidable.

**Finding: Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR.** This impact is the result of construction and operation of City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments. Construction of the Proposed Project will necessarily involve excavation, grading, the use of heavy machinery, and vehicular traffic. Eliminating one or more of these activities would be infeasible in that it would prevent construction of the project.

Environmental Commitments AQ-1, AQ-2, GC-3, GC-6, GC-7, and GC-10, as described in the FSEIR, have been incorporated into the Project and will reduce construction-related effects by compliance with SJVUAPCD Regulation VIII, equipment maintenance, landscaping and erosion control, dust suppression, and maintenance of roadway surfaces and community facilities. Implementation of these measures will partially mitigate potential impacts to air quality. However, implementation of these measures would not fully mitigate this impact to a less than significant level. Accordingly, notwithstanding the implementation of the mitigation measures described above, this impact would remain significant and unavoidable.

**Impact Air-6: Emissions During Operation of Standby Generators. (City of Modesto facilities)**

Operation of standby diesel generators would be employed to provide a backup power supply for the pump stations in the event of an interruption in the facility’s primary power supply. Although the generators would see limited use for periodic maintenance cycling of the equipment and infrequent short-term emergency operations, they would cause a significant and unavoidable impact due to the fact that they could generate PM10 and ozone precursors, both of
which are designated at varying levels of non-attainment at both the federal and state level.

**Finding:** *Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR.* This impact is the result of operation of City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments. Standby generators are necessary for the reliable, continuous operation of the Proposed Project. Under normal operations, the system relies on electric power to run its pumps and other facilities. The diesel generators are specifically needed to ensure continuous operations during situations where electric power has been lost. There is no other practical power source for emergency use. For example, installing electric rather than diesel generators is not feasible—the electric generators would be inoperable in the event of a power failure. There is no feasible mitigation to reduce this impact to a less than significant level and, therefore, this impact is significant and unavoidable.

**Impact Air-8: Growth-Related Vehicle Emissions. (City of Modesto facilities)**

An objective of this project is to increase the water treatment to meet future water demands from a growing population. Therefore this project is supporting growth in Modesto by increasing the treated water supply. In conjunction with this population growth, the number of vehicles operated in the Modesto area will also increase and will likely lead to an increased emission of air quality pollutants. Because of the area’s current designations of nonattainment for PM10 and ozone, this increase in vehicle use and the resulting emissions of air quality pollutant emissions would cause a significant and unavoidable impact.

**Finding:** *Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR.* This impact is the result of construction and operation of City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments.

The City’s 2003 General Plan and General Plan MEIR contain a number of policies and measures designed to reduce vehicle trips, and therefore potential growth-related vehicle emissions. These measures include, among other things, increasing mass transit, incentives for ridesharing, and investments in bike and walking trails. These measures may partially mitigate potential impacts caused by growth-related vehicle emissions. However, implementation of these measures would not fully mitigate this impact to a less-than-significant level. Accordingly, notwithstanding the implementation of these measures, this impact would remain significant and unavoidable.

**Cumulative Short-Term Construction Impacts. (All facilities)**

Operation of the Proposed Project would generate minimal increases in pollutant emissions, primarily associated with infrequent cycling of the standby generators, and a small additional amount of periodic emissions that would be generated by
vehicles used in maintenance and inspection visits. The project's principal direct contribution to cumulative regional air quality issues would likely occur during construction. The construction of project facilities would have the potential to result in increased local generation of PM10 (including PM2.5); ozone precursors in gasoline and diesel vehicle exhaust; and carcinogenic particulates in diesel exhaust. While implementation of environmental commitments and mitigation measures will reduce cumulative air quality impacts, they are not anticipated to entirely eliminate the project's contribution to cumulative effects on air quality in the San Joaquin Valley—specifically to identified problems with PM10 and ozone levels—and the Proposed Project's contribution to this cumulatively significant impact is considerable, short-term, and unavoidable.

**Findings:** Changes or alterations have been required in, or incorporated into, the project, which avoid or substantially lessen the significant environmental effect as identified in the final EIR. This cumulative impact is the result of both City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments, and MID facilities, selected from two MRWTP expansion options. Construction of the Proposed Project will necessarily involve excavation, grading, the use of heavy machinery, and vehicular traffic. Eliminating one or more of these activities would be infeasible in that it would prevent construction of the project.

Environmental Commitments AQ-1, AQ-2, GC-3, GC-4, GC-5, GC-6, GC-7, and GC-10, as described in the FSEIR, have been incorporated into the Project and will reduce the potential pollutant emissions by SJVUAPCD Regulation VIII compliance, equipment maintenance, landscaping and erosion control, dust suppression, and roadway surfaces and community facilities maintenance. In addition, Mitigation Measures CUME1 and CUME2, as described in the FSEIR, are hereby adopted and will be implemented as provided in the Mitigation Monitoring and Reporting Program:

To provide more stringent control of project-related PM10 emissions, **Mitigation Measure CUME1** will require construction contractors to implement the SJVUAPCD's optional and enhanced PM10 control measures. MID and the City will both be responsible for implementing this mitigation. To address the project's contribution to cumulative ozone levels in the San Joaquin Valley, **Mitigation Measure CUME2** will require construction contractors to implement additional measures to reduce emissions of combustion byproducts. MID and the City will both be responsible for implementing this mitigation.

While implementation of Environmental Commitments AQ-1, AQ-2, GC-3, GC-4, GC-5, GC-6, GC-7 and GC-10, and mitigation measures CUME1 and CUME2 will reduce cumulative air quality impacts, they are not anticipated to entirely eliminate the project's contribution to cumulative effects on air quality in the San Joaquin Valley -- specifically to identified problems with PM10 and ozone levels -- and therefore the proposed project's contribution to this cumulatively significant impact is considerable, short-term, and unavoidable.
Population and Housing

Impact POP-2: Substantial Induction of Growth in the City of Modesto. (All facilities)
The Proposed Project would remove a primary obstacle to future growth within the City of Modesto, namely, a reliable source of water supply. For this reason, the project is considered to be growth inducing. The growth associated with the project would be in accordance with the City’s General Plan, which also found growth to be significant and unavoidable. It bears noting that CEQA does not consider growth to be either a positive or negative impact (State CEQA Guidelines Section 15126.2); also, the project would not result in disorderly growth, as it is being conducted in accordance with the City’s General Plan.

Finding: Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR. This impact is the result of both City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments, and MID facilities, selected from two MRWTP expansion options. Construction of the Proposed Project will remove barriers to urban growth resulting from water supply and supply reliability. No feasible mitigation is available to reduce the impact to a less-than-significant level. Therefore, this impact will remain significant and unavoidable.

Noise

Cumulative Short-Term Construction Impacts. (City of Modesto facilities)
Construction of project facilities would generate some level of equipment and traffic noise. Project construction noise would be reduced to the extent feasible by best management practices (BMPs) incorporated in the project, and is not expected to be incrementally significant. However, it could represent a cumulatively considerable contribution to regional noise levels in the City of Modesto. Overall, the Proposed Project’s contribution to this cumulatively significant impact is considerable, short-term, and unavoidable.

Finding: Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the FSEIR. This cumulative impact is the result of City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments. Construction of the Proposed Project will necessarily involve excavation, grading, the use of heavy machinery, and vehicular traffic. Eliminating one or more of these activities would be infeasible in that it would prevent construction of the project.

Environmental Commitments NR-1, NR-2, and NR-3, as described in the FSEIR, have been incorporated into the Project and will reduce construction noise.
impacts by employing noise-reducing construction practices, preparing a detailed Noise Control Plan, and notifying adjacent residences of construction scheduling. Implementation of these measures will partially mitigate potential noise impacts. However, implementation of these measures would not fully mitigate this impact to a less than significant level. Accordingly, notwithstanding the implementation of these mitigation measures, construction-related noise impacts will remain significant and unavoidable.

Findings Regarding Significant Impacts Mitigated to Less-Than-Significant Levels

The MID Board and City Council have determined that, for the following impacts, mitigation measures included in the FSEIR will mitigate the effects of the Proposed Project to a less-than-significant level.

As lead agencies on the MRWTP Phase Two Expansion Project, MID and the City are both making the following findings.

Water Resources

**Impact WR-12: Water Quality Impacts from Increased Drainage. (City of Modesto facilities)**

The proposed tank sites are expected to result in small amounts of increased runoff from the water storage tank areas because of increased amounts of impervious surfaces. The Proposed Project could increase non-storm and storm water runoff, transporting contaminants to adjacent receiving surface waters or groundwater. Anticipated runoff contaminants associated with the Proposed Project include sediment, oil and grease, metals, bacteria, and trash. These contaminants could occur at any of the proposed tank sites. While on-site storage of storm drainage and tank overflows in retention basins will attenuate peak storm flows, all flows may be ultimately discharged to surface water bodies, primarily MID canals.

**Finding:** Changes or alterations required in or incorporated into the Proposed Project will avoid or substantially lessen the above-described significant environmental effect, as identified in the FSEIR. This potential impact is the result of construction and operation of City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments. The following mitigation measures, as set forth in the FSEIR, are hereby adopted and will be implemented as provided in the Mitigation Monitoring and Reporting Program.

**Mitigation Measure WR-12a:** Require regular street sweeping to reduce contaminants entering stormwater runoff. The City of Modesto will be responsible for implementing this mitigation.
Mitigation Measure WR-12b: Require implementation of best management practices (BMPs) on the reservoir tank sites during project operation to improve stormwater quality. The City of Modesto will be responsible for implementing this mitigation.

Mitigation Measure WR-12c: Require appropriate design of retention facilities to minimize contaminants during infiltration. The City of Modesto will be responsible for implementing this mitigation.

Implementation of Mitigation Measures WR-12a, WR-12b, and WR-12c will reduce this water quality impact to a less-than-significant level by intercepting contaminants before they enter the storm drain system.

Cultural Resources

Impact CR-1: Disturbance to Previously Undiscovered Archaeological Resources. (All facilities)

No archaeological resources were located on any part of the MRWTP site or water storage tank sites. Because the tank and main pipeline alignments, as well as the control valve facilities, were located generally along paved street rights-of-way and other public lands, no archaeological resources were identified on any part of these sites. However, boring the main pipelines under Dry Creek, and potentially through Beard Brook Park in the Southern alignment along Oregon Drive, may result in uncovering of buried, previously undiscovered archaeological resources. During excavation, earth-moving, and construction activities on any site, there is a potential for discovery of subsurface archaeological resources that are unknown due to a lack of a surficial component.

Finding: Changes or alterations required in or incorporated into the Proposed Project will avoid or substantially lessen the above-described significant environmental effect, as identified in the FSEIR. This potential impact is the result of both City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments, and MID facilities, selected from two MRWTP expansion options. The following mitigation measure, as set forth in the FSEIR, is hereby adopted and will be implemented as provided in the Mitigation Monitoring and Reporting Program:

Mitigation Measure CR-1: Stopping of work and adoption of appropriate treatment measures if archeological resources are found. MID and the City will both be responsible for implementing this mitigation.

Implementation of Mitigation Measure CR-1 will ensure that cultural resources are protected and preserved, and thereby reduce this cultural resources impact to a less-than-significant level.
**Impact CR-2: Disturbance to Previously Undiscovered Human Remains. (All facilities)**

No known human remains would be impacted as a result of grading or construction at the MRWTP site, water storage tanks, tank pipelines, control valves, and main pipelines. However, the possibility exists for the disturbance of previously unknown human remains below the ground surface. Ground-disturbing activities have the potential to adversely affect unknown archaeological resources, including human remains.

**Finding:** Changes or alterations required in or incorporated into the Proposed Project will avoid or substantially lessen the above-described significant environmental effect, as identified in the FSEIR. This potential impact is the result of both City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments, and MID facilities, selected from two MRWTP expansion options. The following mitigation measure, as set forth in the FSEIR, is hereby adopted and will be implemented as provided in the Mitigation and Reporting Program:

**Mitigation Measure CR-2:** Implementation of specific treatment measures if human remains are found. MID and the City will both be responsible for implementing this mitigation.

Implementation of Mitigation Measure CR-2 will ensure that cultural resources are protected and preserved, and thereby reduce this impact on potential, unknown burials to a less-than-significant level.

**Impact CR-4: Disturbance to Cultural Resources within Archaeological Resources Zones. (All facilities)**

Portions of the Yosemite Boulevard, M&ET Railroad, and Oregon Road portions of the Proposed Project are located within archaeological resource zones as defined in the City of Modesto General Plan (1995). These areas are sensitive due primarily to their location near perennial sources of water. Because these areas are particularly sensitive for cultural resources, it is more likely that disturbance to significant cultural resources may occur. Any disturbance to or destruction of significant cultural resources would be considered a significant impact.

**Finding:** Changes or alterations required in or incorporated into the Proposed Project will avoid or substantially lessen the above-described significant environmental effect, as identified in the FSEIR. This potential impact is the result of both City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments, and MID facilities, selected from two MRWTP expansion options. The following mitigation measures, as set forth in the FSEIR, are hereby adopted and will be implemented as provided in the Mitigation and Reporting Program:
Mitigation Measure CR-4a: Require cultural resources surveys to be conducted in archaeological resources zones prior to construction. MID and the City will both be responsible for implementing this mitigation.

Mitigation Measure CR-4b: Require preparation of a Cultural Resources Treatment Plan. MID and the City will both be responsible for implementing this mitigation.

Implementation of Mitigation Measures CR-4a and CR-4b will ensure that cultural resources are protected and preserved, thereby will reduce this cultural resources impact to a less-than-significant level.

Biological Resources

Impact BIO-2: Potential Loss or Disturbance of Elderberry Shrubs that Provide Habitat for the Valley Elderberry Longhorn Beetle. (City of Modesto facilities)

A total of six elderberry shrubs that could provide suitable habitat for valley elderberry longhorn beetle (VELB) were identified at Tank Sites S-2 and S-3 and near Dry Creek along the Southern main pipeline alignments. The six elderberry shrubs occur within 100 feet of the project features and could be directly and/or indirectly affected by construction activities. Possible direct effects include removal of shrubs during construction. Possible indirect effects on VELB habitat include dust accumulation on elderberry shrubs from ground-disturbing activities, changes in hydrology around elderberry shrubs, and removal of associated woodland species that could result in the subsequent death of the elderberry shrubs and loss of VELB habitat. USFWS considers any ground-disturbing activity within 100 feet of an elderberry shrub within the range of VELB an adverse effect.

Finding: Changes or alterations required in or incorporated into the Proposed Project will avoid or substantially lessen the above-described significant environmental effect, as identified in the FSEIR. This potential impact is the result of construction and operation of City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments. The following mitigation measures, as set forth in the FSEIR, are hereby adopted and will be implemented as provided in the Mitigation and Reporting Program:

Mitigation Measure Bio-2a: Requires preconstruction surveys for valley elderberry longhorn beetle (VELB) and avoidance or compensation for loss of habitat. The City of Modesto will be responsible for implementing this mitigation.

Mitigation Measure Bio-2b: Requires avoidance of VELB habitat with a 100-foot buffer from elderberry plants. The City of Modesto will be responsible for implementing this mitigation.
Mitigation Measure Bio-2c: Requires transplantation of elderberry plants that cannot be avoided during construction. The City of Modesto will be responsible for implementing this mitigation.

Implementation of Mitigation Measures Bio-2a, Bio-2b, and Bio-2c will ensure that VELB habitat will be preserved and protected, and thereby reduce this biological resources impact to a less-than-significant level.

Impact BIO-3: Loss of Foraging Habitat for Swainson’s Hawk, White-tailed Kite, and other Special-Status and Non-Special-Status Migratory Birds and Raptors. (City of Modesto facilities)
Construction activities that occur in nonnative annual grassland, irrigated pasture, and open agricultural fields could result in the permanent loss of up to 15 acres of potential foraging habitat for Swainson’s Hawks, White-tailed Kites, Northern Harriers, and Loggerhead Shrikes and non-special-status migratory birds and raptors. Potential construction on all nine tank sites may comprise removal of foraging habitat for special-status raptors, which is considered a potentially significant impact. DFG identifies permanent loss of foraging habitat within a 10-mile radius of a known Swainson’s Hawk nest site as a significant impact on Swainson’s Hawk and its developing young (California Department of Fish and Game 1994). Eight Swainson’s Hawk nest sites have been previously recorded by DFG (CNDDB 2004) within 10 miles of the project site.

Finding: Changes or alterations required in or incorporated into the Proposed Project will avoid or substantially lessen the above-described significant environmental effect, as identified in the FSEIR. This potential impact is the result of construction and operation of City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments. The following mitigation measure, as set forth in the FSEIR, is hereby adopted and will be implemented as provided in the Mitigation and Reporting Program:

Mitigation Measure Bio-3: Requires biological determination as to whether the site constitutes foraging habitat for Swainson’s Hawks and, if so, preconstruction surveys for Swainson’s Hawks nests within a 10-mile radius of the site. The City of Modesto will be responsible for implementing this mitigation.

Implementation of Mitigation Measure Bio-3 will ensure that foraging habitat for Swainson’s Hawk will be preserved and thereby reduce this biological resources impact to a less-than-significant level.

Impact BIO-4: Potential Disturbance of Nesting Swainson’s Hawks. (City of Modesto facilities)
If Swainson’s Hawks are nesting within 0.5 mile of any of the proposed facility locations, noise generated from construction activities occurring during the breeding season (generally between March 1 and August 15) could cause the disturbance of nesting birds and result in nest abandonment and loss of eggs or nestlings. Take of Swainson’s Hawk, a state-listed threatened species, incidental
to otherwise lawful activities (as defined under the California Endangered Species Act [CESA]), would be considered an adverse impact (through loss of eggs or young) on Swainson's Hawk, and would be a violation of California Fish and Game Code Section 2081 and the Migratory Bird Treaty Act (MBTA).

Finding: Changes or alterations required in or incorporated into the Proposed Project will avoid or substantially lessen the above-described significant environmental effect, as identified in the FSEIR. This potential impact is the result of construction and operation of City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments. The following mitigation measure, as set forth in the FSEIR, is hereby adopted and will be implemented as provided in the Mitigation Monitoring and Reporting Program:

**Mitigation Measure Bio-4:** Requires preconstruction surveys for nesting Swainson's Hawks, and implementation of DFG Guidelines for Swainson's Hawks, if necessary. The City of Modesto will be responsible for implementing this mitigation.

Implementation of Mitigation Measure Bio-4 will ensure that nesting hawks within five miles of the project site will not be disturbed and therefore reduce this biological resources impact to a less-than-significant level.

**Impact BIO-5: Loss of Western Burrowing Owl Nesting and Foraging Habitat. (City of Modesto facilities)**

Construction activities in nonnative annual grassland and agricultural areas would result in the loss of approximately 15 acres of habitat for Burrowing Owl nesting and foraging habitat. If Burrowing Owls are nesting at or within 250 feet from the project facilities, grading and excavation activities could result in the removal of an occupied Burrowing Owl breeding or wintering burrow site or loss of Burrowing Owl adults, young, or eggs, this impact would be considered potentially significant because construction could result in a substantial adverse effect on a special-status species, and would violate the MBTA and Section 3503.5 of the California Fish and Game Code.

Finding: Changes or alterations required in or incorporated into the Proposed Project will avoid or substantially lessen the above-described significant environmental effect, as identified in the FSEIR. This potential impact is the result of construction and operation of City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments. Mitigation Measure Bio-5 will be implemented by the City of Modesto to reduce the impact to a less-than-significant level. The following mitigation measure, as set forth in the FSEIR, is hereby adopted and will be implemented as provided in the Mitigation Monitoring and Reporting Program:

**Mitigation Measure Bio-5:** Requires preconstruction surveys for active Burrowing Owl burrows, and implementation of DFG guidelines for Burrowing
Owl mitigation, if necessary. The City of Modesto will be responsible for implementing this mitigation.

Implementation of Mitigation Measure Bio-5 will protect Burrowing Owl Nesting and Foraging Habitat and will thereby reduce this biological resources impact to a less-than-significant level.

Transportation

Impact TR-4: Temporary Traffic Increases and Potential for LOS Degradation during Construction of Tank and Main Pipelines. (City of Modesto facilities)
The construction of tank and main pipelines would generate traffic consisting of arrival and departure of construction vehicles and equipment, daily commutes by construction workers, and periodic delivery and removal of materials. In addition, the closure of lanes or detouring of traffic would increase delays and congestion. Disruption of roadway traffic conditions would occur along roadways and at intersections. Assuming that 175 feet of pipeline would be installed daily, this disruption would persist 1 to 2 weeks for the shorter tank pipelines and 20 to 25 weeks along the longer main pipelines. Installation of the main pipelines would involve construction activities that could increase traffic or decrease capacity to the point where level of service may approach or exceed established local thresholds. Decreased capacity could result from narrowing or closing roadways. Increased traffic could result from construction vehicles using the roadway or from traffic that has been detoured from adjacent roadways. This effect is more likely and would be more severe at roadway segments and intersections already at or near the established thresholds. This impact applies to all tank and main pipeline alignments.

Finding: Changes or alterations required in or incorporated into the Proposed Project will avoid or substantially lessen the above-described significant environmental effect, as identified in the FSEIR. This potential impact is the result of construction and operation of City of Modesto facilities, selected from nine alternative tank sites and seven alternative main pipeline alignments. The following mitigation measures, as set forth in the FSIE, are hereby adopted and will be implemented as provided in the Mitigation and Reporting Program:

Environmental Commitment TC-1, as described in the FSIE, will mitigate impacts through development and implementation of a Congestion Traffic Control Plan.

Mitigation Measure TR-4, as described in the FSIE, will reduce potential construction impacts by maintaining through-traffic lanes and limiting hours of construction. The City of Modesto will be responsible for implementing this mitigation.
Implementation of Mitigation Measure TR-4 will ensure that minimum LOS standards, as required by the City's 2003 General Plan, are maintained even during temporary periods of construction and will thereby reduce construction traffic impacts to a less-than-significant level.
Introduction

An EIR must describe a range of reasonable alternatives to the project, or the location of the project, which would feasibly obtain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant environmental effects of the project, and evaluate the comparative merits of the alternatives. Even if a project alternative will avoid or substantially lessen any of the significant environmental effects of the project, the decision-maker may reject the alternative if it determines that specific considerations make the alternative infeasible. This section contains brief descriptions of the project alternatives for the Proposed Project that were evaluated in the 1990 MRWTP EIR and the MRWTP Phase Two Expansion Project SEIR. The SEIR addresses alternatives specific to the MRWTP Phase Two Expansion Project that would attain most of the basic project objectives. The findings with respect to alternatives identified in the FSEIR are described below.

Summary of Alternatives

Two alternative MRWTP expansion options, nine alternative locations for the water storage tanks, and seven alternative pipeline alignments, as well as a No Project Alternative and a Delayed Alternative, were evaluated. The evaluation fulfills the CEQA requirement to analyze alternatives for the Proposed Project.

Several alternatives associated with the expansion of the MRWTP were previously analyzed in the 1990 EIR. These included four primary alternatives, several with multiple sub-alternatives, and a No Project Alternative. Primary characteristics of the alternatives included alternate treatment plant locations and methods of conveying water from Don Pedro Reservoir to the treatment plant. There are no changed circumstances that make feasible any alternatives previously identified as unfeasible, or substantially change the conclusions of the No Project analysis provided in the 1990 EIR. For these reasons, these alternatives were not revisited in the SEIR.
1990 EIR Alternatives

The 1990 EIR for the construction of the MRWTP Phase One considered the following project alternatives:

- **No Project**: The alternative assumed continued reliance on groundwater to fulfill all of Modesto's water demands.

- **Alternative A**: Obtain untreated water directly from Modesto Reservoir. This alternative considered four different water treatment plant sites near Modesto Reservoir (Sites A1, A2, A3, and A4).

- **Alternative B**: Locate the water treatment plant on the east side of Modesto, and convey untreated water from Modesto Reservoir to the plant via the MID Main Canal and Lateral 1.

- **Alternative C**: Locate the water treatment plant several miles northeast of Modesto, and convey untreated water via the MID Main Canal.

- **Alternative D**: Locate the water treatment plant on the east side of Modesto (in the same location as Alternative B), and divert water directly from the Tuolumne River downstream of Don Pedro Reservoir. Water releases would use one of three options:
  - **Alternative D1**: No project water would be released as long as the river flow at the diversion point near Modesto was adequate to meet project demands, considering instream flow requirements. Water would be released from Don Pedro Reservoir as necessary to meet project demands.
  - **Alternative D2**: Project water would be diverted from Don Pedro Reservoir to the Modesto Reservoir, released to the Main Canal, and then released into the Tuolumne River at Poletti Spill, east of Waterford.
  - **Alternative D3**: Project water would be released from Don Pedro Reservoir directly into the Tuolumne River in an amount equivalent to that diverted to the water treatment plant.

Alternative A was the alternative that was eventually built in Phase One due to its proximity to Modesto Reservoir, a high-quality water source. This approach required less treatment and fewer miles of open-water laterals than other alternatives.

Although the 1990 EIR considered the above Alternatives for construction of the MID facilities, there are no changed circumstances that make feasible any alternatives previously identified as infeasible, or substantially change the conclusions of the analysis of the No Project Alternative in the 1990 EIR.
No Project Alternative

Under the No Project Alternative, expansion of the MRWTP would not occur, and downstream City facilities would not be constructed. The City would continue to rely on the groundwater and treatment capacity of the Phase One MRWTP, and would require the continued reliance on only the existing downstream water conveyance facilities. The City would likely install additional groundwater wells for this purpose. The No Project Alternative would not result in the construction of additional water storage tanks within the City.

Findings: Specific economic, legal, social or other considerations make this project alternative infeasible. Under the No Project alternative, neither the proposed MID or City facilities would be built. Therefore the impacts described in the Biological Resources, Geology, Soils and Mineral Resources, Hazards and Hazardous Materials, Recreation, and Transportation and Traffic sections of the FSEIR would not occur.

The No Project alternative would not avoid visual or noise impacts as the construction of additional groundwater wells could have a potentially significant impact on the visual quality of surrounding areas and would require additional pumps, both of which could require some level of mitigation in order to reduce impacts. Nor would it avoid the potential impacts, and need for mitigation, associated with fugitive dust and emissions due to construction activities. Under the No Project alternative, the City would continue to develop in accordance with its General Plan and, therefore, the potential growth-related impacts such as the conversion of Prime Farmland to non-agricultural uses, conflicts with agricultural uses on nearby properties, long-term conversion of farmland to non-agricultural use, potential degradation of cultural resources, land use planning conflicts, and increases in population and housing would still occur.

The No Project alternative could result in other significant impacts to water resources, water quality, hydrology and water supply.

The No Project Alternative would fail to satisfy the following objectives of the Project, as identified in the FSEIR:
- Manage the water resources of MID to provide a safe, reliable and sustainable supply for MID’s agricultural and urban customers
- Put MID’s water rights to beneficial use for the benefit of the residents of MID
- Improve water supply reliability for the City
- Increase operational flexibility and reliability in the City’s water transmission and distribution system
- Develop a more comprehensive conjunctive use system for domestic water treatment and delivery, and reduce the City’s reliance on groundwater
Based on the foregoing, the City and MID find that, on balance, the Project is preferable to the No Project Alternative and that the No Project Alternative is not a feasible alternative to the Project as that term is defined in CEQA.

**Delayed Alternative**

Under the Delayed Alternative construction of the project would be delayed indefinitely. In general, problems related to water pressure and operational reliability in the City's system would continue indefinitely until construction occurred. Development in the City of Modesto could be constrained if adequate water supplies or pressures were not available. The City may need to seek out alternative sources of water supply, which could include increased groundwater pumping.

**Findings:** Specific economic, legal, social or other considerations make this project alternative infeasible. Under the Delayed Alternative, the construction of facilities would still occur but would be delayed indefinitely. Many of the impacts of the facilities would be delayed indefinitely until such time as construction occurs and therefore would not be avoided. The impacts described in the Biological Resources, Geology, Soils and Mineral Resources, Hazards and Hazardous Materials, and Recreation sections of the FSEIR would remain the same.

However, the City is anticipated to grow which will bring additional traffic and sensitive receptors in closer proximity to the sites on which the facilities will be located. The increases in population and changes in land use which will occur during this delay period could result in additional impacts in the areas of Aesthetics, Land Use Planning, Noise, Air Quality, and Transportation and Traffic as a result of increased conflicts between urban development and the construction and operation of planned facilities. In addition, the costs of constructing these facilities are expected to increase significantly over time.

Under the Delayed Project alternative, the City's would continue to develop in accordance with its General Plan and, therefore, the potential growth-related impacts such as the conversion of Prime Farmland to non-agricultural uses, conflicts with agricultural uses on nearby properties, long-term conversion of farmland to non-agricultural use, potential degradation of cultural resources, land use planning conflicts, and increases in population and housing would still occur. However, they may occur at a slower pace due to potential delays or constraints associated with the development of additional groundwater sources.

The Delayed Project alternative, could result in other significant impacts to water resources, water quality, hydrology and water supply for the same reasons as set forth under the No Project alternative, above.

The Delayed Project Alternative would fail to satisfy the following objectives of the Project, as identified in the FSEIR:
- Manage the water resources of MID to provide a safe, reliable and sustainable supply for MID's agricultural and urban customers
- Put MID's water rights to beneficial use for the benefit of the residents of MID
- Improve water supply reliability for the City
- Increase operational flexibility and reliability in the City's water transmission and distribution system
- Develop a more comprehensive conjunctive use system for domestic water treatment and delivery, and reduce the City's reliance on groundwater
- Use environmentally sensitive and cost-effective means of achieving the above objectives

Based on the foregoing, the City and MID find that, on balance, the Project is preferable to the No Project Alternative and that the No Project Alternative is not a feasible alternative to the Project as that term is defined in CEQA.

**MRWTP Expansion Options**

MID has considered two options for expansion of the MRWTP – the conventional option and the membrane option. The membrane option would involve construction of microfiltration or ultrafiltration (MF/UF) membrane treatment process. The conventional option would essentially mirror the existing MRWTP facility. The membrane option would occupy a smaller footprint and have a shorter construction duration, and for this reason would result in a reduced level of construction-related impacts relative to the conventional option. Construction-related impacts include dust generation, vehicle emissions, construction-related traffic, and noise. Although the construction-related air quality impacts would be reduced it would not be reduced to a level of insignificance. It is unclear which option will result in less energy consumption or sludge generation. Based on the foregoing, the City and MID find that, on balance, both MRWTP Expansion Options are consistent with and would achieve all the Project objectives, and therefore constitute feasible alternatives as that term is defined in CEQA. Operational impacts of the MRWTP expansion options were found to be less than significant, with the exception of growth inducement related to build-out of the Modesto Urban Area.

**Alternative Water Storage Tank Sites**

The City has considered three areas for water storage tanks, including three alternative sites for each area, and their associated pipelines. The alternatives are summarized below.
North Tank

The proposed 6-million-gallon (MG) North Tank's primary functions are to serve the existing and future land use areas in the northwestern portions of the City, and to convey water to existing areas in the west portion of the City, east of Highway 99, that have a high concentration of inactive wells. The North Tank would be either partially buried or entirely aboveground. Three sites for the North Tank and three tank pipeline alignments are being considered. The North Tank pipeline would connect the North Tank to MID's transmission system at the turnout connection C9.5 located on Coffee Road.

Site N-1, the environmentally superior alternative, is located on the parcel immediately northeast of the intersection of Bangs Avenue and Tully Road. Site N-2 is located on the parcel immediately southeast of the Bangs Avenue and Tully Road intersection. Site N-3 is located approximately 1 mile east of sites N-1 and N-2, just west of McHenry Avenue along Wells Avenue.

Alternative site N-1 avoids impacts to aesthetics identified for alternative site N-3, and would avoid conflicts with Williamson Act contracts identified for alternative sites N-2 and N-3; however, all three sites would result in the conversion of Prime Farmland to non-agricultural uses. Alternative site N-1 would result in potentially significant impacts to transportation services. However, impacts to traffic would be temporary.

West Tank

The proposed new 4-MG West Tank would supplement and enhance Tank 6’s service area of western and downtown Modesto. The West Tank would be either partially buried or entirely aboveground. Three sites for the West Tank and three pipeline alignments are being considered. The West Tank pipeline would connect the West Tank to the MID trunk line to distribute water from the West Tank into the City’s transmission and distribution system.

Site W-1, the environmentally superior alternative, is located immediately adjacent to the western boundary of the existing water storage tank facility site. Site W-2 is located adjacent to MID Lateral No. 4, at the west end of Elm Avenue. Site W-3 is located at the northeast corner of the intersection of South Carpenter Avenue and California Avenue.

Alternative site W-1 would avoid impacts identified for Alternative site W-2 related to conflicts with Williamson Act contracts and conversion of Prime Farmland to non-agricultural use. However, this alternative would result in potentially significant impacts to transportation services, particularly on Carpenter Road where the volume to capacity (V/C) ratio would be higher than Alternatives W-2 and W-3 (V/C for W-1 would be 2.3, versus 2.0 for W-3 and 1.2 for W-2). However, the impacts to traffic would be temporary.
Southeast Tank

The 4-MG South Tank is proposed to better serve the demands in the southeastern region of the City. Additional storage is required in this area to alleviate low-pressure conditions in this section of the City during high-demand periods and to assist with water service to the Empire Area and the residential area north of Yosemite Boulevard and south of Dry Creek. Three potential sites for the Southeast Tank and one pipeline alignment are being considered. The Southeast Tank pipeline would connect the Southeast Tank to the main transmission and distribution system at turnout connection C02 along Yosemite Boulevard.

Site S-1, the environmentally superior alternative, is located within a rail-shipping yard approximately 1,500 feet east of sites S-2 and S-3. Sites S-2 and S-3 are located adjacent to the MID right-of-way (Lateral No. 1) between existing industrial buildings south of Yosemite Boulevard. Site S-2 is on a linear parcel running north-south from Yosemite Boulevard. Site S-3 is on a parcel extending from Garner Road to the west, Leckron Road to the south, and the MID right-of-way to the north.

Alternative site S-1 would avoid potential impacts identified for Alternative sites S-2 and S-3 related to potential biological impacts. There would be no conflicts with Williamson Act contracts or conversion of Prime Farmland. The V/C ratio for traffic along Yosemite Boulevard would fail level of service criteria. However, impacts on traffic would be temporary.

Based on the foregoing, the City and MID find that, on balance, all of the above potential tank sites are consistent with and would achieve all the Project objectives, and therefore constitute feasible alternatives as that term is defined in CEQA.

Alternative Main Pipeline Alignments

The City has considered three alternative main pipeline alignments for each water storage tank area. The alternatives are summarized below.

Three pipelines would be built: the East-West main pipeline, the North-South main pipeline, and the Southern main pipeline. Pipelines would be constructed, to the extent feasible, in conjunction with any proposed roadway improvements.

East-West Main Pipeline

The purpose of the East-West main pipeline is to convey water to the western part of the City, east of Highway 99, from the MID trunk line near Coffee Road.

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1 *Main pipeline* refers to large centralized pipelines.
The two East-West main pipeline alternatives are alignments along Briggsmore Avenue or Orangeburg Avenue. The environmentally superior alternative for the East-West main pipeline is the Orangeburg Avenue alignment.

The Orangeburg alignment would require the shortest construction time. The Orangeburg alignment would require 15 to 16 weeks for construction, while the Briggsmore alignment would require 18 to 19 weeks. A shorter construction period would reduce all construction-related impacts. The Orangeburg alignment also has the smaller construction V/C ratio, 1.1 versus 2.0 from the Briggsmore alignment; therefore it would result in traffic impacts of reduced intensity.

**North-South Main Pipeline**

The purpose of the North-South main pipeline is to convey water to the center of the City from the North Tank site. The two North-South main pipeline alternatives are alignments along Virginia Corridor or Tully Road. These alignments vary depending on which alternative North Tank site is selected. The environmentally superior alternative for the North-South main pipeline is the Virginia Corridor alignment.

The Virginia Corridor alignment would require the shortest construction time – 3 to 4 weeks, as opposed to 10 to 11 weeks required for the Tully Road alignment. A shorter construction period would reduce all construction-related impacts. In addition, traffic impacts would be substantially reduced relative to the Tully alignments since the alignment would be primarily located outside the City streets.

**Southern Main Pipeline**

The purpose of the Southern main pipeline is to convey water from the 24-inch diameter trunk line at the intersection of Lapham Drive and Mitchell Road to the downtown core of the City at the intersection of 7th Street and B Street. Because of the location of the Gallo Winery property on Yosemite Boulevard, there are three alternative alignments for this distribution line; two encroach upon Gallo property, and one does not. The three Southern main pipeline alternatives are alignments along Yosemite Boulevard, Modesto & Empire Traction (M&ET) Railroad, or Oregon Drive. The environmentally superior alternative for the Southern main pipeline is the Oregon Drive alignment.

The Oregon Drive alignment would reduce all construction-related impacts due to a shorter construction period, compared to the Yosemite Boulevard and Modesto & M&ET Railroad alignments. It would also reduce the traffic impacts relative to the other two alignments due to the greater portion constructed off-road.
Based on the foregoing, the City and MID find that, on balance, all of the above potential pipeline alignments are consistent with and would achieve all the Project objectives, and therefore constitute feasible alternatives as that term is defined in CEQA.
Section 4
References


MRWTP Phase Two Expansion Project
Mitigation Monitoring and Reporting Plan

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Table 2. Mitigation Monitoring and Reporting Plan for MRWTP Phase
Two Expansion, Environmental Commitments .................................... follows Table 1
## Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
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<tbody>
<tr>
<td>CEQA</td>
<td>California Environmental Quality Act</td>
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<tr>
<td>FSEIR</td>
<td>final subsequent environmental impact report</td>
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<td>MID</td>
<td>Modesto Irrigation District</td>
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<td>City</td>
<td>City of Modesto</td>
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<td>MRWTP</td>
<td>Modesto Regional Water Treatment Plant</td>
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<td>MMRP</td>
<td>Mitigation Monitoring and Reporting Plan</td>
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<tr>
<td>afa</td>
<td>acre-feet annually</td>
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<td>SWRCB</td>
<td>State Water Resources Control Board</td>
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Mitigation Monitoring and Reporting Plan

Purpose of and Need for Monitoring

In compliance with the California Environmental Quality Act (CEQA), a final subsequent environmental impact report (FSEIR) was prepared for Modesto Irrigation District (MOD) and the City of Modesto’s (City’s) Modesto Regional Water Treatment Plant (MRWTP) Phase Two Expansion Project (Proposed Project). The FSEIR identified potentially significant impacts in the following resource areas. The FSEIR also identified mitigation measures to reduce these impacts to a less-than-significant level, where feasible.

- Aesthetics and Visual Resources
- Agricultural Resources
- Air Quality
- Water Resources
- Noise
- Population and Housing
- Recreation
- Cultural Resources
- Biological Resources
- Transportation

CEQA requires that a lead agency adopt a mitigation monitoring and reporting plan (MMRP) for the revisions the agency has required to a project and the measures it has proposed to avoid or mitigate significant environmental effects (CEQA Guidelines Section 15097). The purpose of the MMRP is to ensure that the project revisions and mitigation measures identified in the FSEIR are implemented and to identify who is responsible for their implementation.

Table 1 of this MMRP, which follows this introductory section, identifies the mitigation measures for the Proposed Project, the parties responsible for implementing and monitoring the mitigation measures, the timing of each mitigation measure, and a summary of the actions necessary to implement and monitor each measure.

Table 2 of this MMRP, which follows Table 1, lists the environmental commitments described as part of Chapter 2, Project Description of the DEIR. Table 2 follows the same format as Table 1 and identifies the parties responsible for implementing and monitoring the environmental commitments, the timing of each environmental commitment, and a summary of the actions necessary to implement each commitment.
Project Description

The Proposed Project includes two main components:

- Expansion of the MRWTP, which would allow MID to provide an additional 33,600 acre-feet annually (afa) of treated domestic water annually to the City.

- Construction of downstream facilities within the City, including water storage tanks, pump stations, distribution pipelines, and pressure-regulating control valves.

The MRWTP will continue to be owned and operated by MID; the downstream facilities will belong to the City. Water from the MRWTP will continue to be conveyed from the MRWTP near Modesto Reservoir to the City water system through an existing water transmission system constructed as part of the Phase One project.

The water treatment plant expansion will occur on the same parcel as the existing MRWTP site. The MRWTP expansion is substantively similar to the Phase Two expansion described in the 1990 EIR.

Improvements to the City water distribution system will consist of three water storage tanks and related appurtenances, including pump stations, pipelines to connect the water storage tanks to the City’s existing distribution infrastructure, up to 30 control valves on turnouts, and three additional main pipelines to move water throughout the City. While most of these project components were identified in the project description in the 1990 EIR, they were not subjected to a site-specific environmental analysis in that document. In this SEIR, nine alternative tank sites and seven alternative main pipeline alignments are considered at an equal level of detail to allow flexibility in ultimate design and construction.

As part of the Proposed Project, MID has filed a petition with the State Water Resources Control Board (SWRCB) for a transfer to the City of 67,200 afa of water. This transfer and the associated facilities described above will supply water in support of current and planned growth within the City of Modesto as envisioned in the City and MID’s 2000 Urban Water Management Plan (City of Modesto and Modesto Irrigation District 2000), the City of Modesto Urban Area General Plan (City of Modesto 1995), and the Master EIR for the City of Modesto General Plan and Related Amendments (City of Modesto 2003).
Mitigation Monitoring Program

This MMRP has been prepared for the Proposed Project in accordance with Public Resources Code 21081.6, which specifies that when a public agency makes findings required by paragraph (1) of subdivision (a) of Section 21081, it “shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment.” Public Resources Code 21081.6 further specifies that the MMRP will “ensure compliance during project implementation.”

This MMRP is intended to ensure the effective implementation of mitigation measures that are within MID and the City’s authority to implement, including monitoring where identified, throughout all phases of development and operation of the Proposed Project.

MID and the City will designate separate individuals for monitoring implementation of their respective portions of the project.
### Table 1. Mitigation Monitoring and Reporting Plan for MRWTP Phase Two Expansion, Mitigation Measures

<table>
<thead>
<tr>
<th>Mitigation Measure</th>
<th>Timing</th>
<th>Implementing Party</th>
<th>Monitoring Party</th>
<th>Monitoring Actions</th>
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<td>Mitigation Measure AG-4: Compensation for Loss of Farmland</td>
<td>Prior to construction on tank sites N-1, N-2, N-3, W-2, or W-3</td>
<td>City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>The City shall obtain documentation of contribution to the California Farmland Conservancy or an equivalent program for farmland preservation in Stanislaus County.</td>
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</table>

The California Farmland Conservancy Program is established under Public Resources Code Section 10200-10277 to promote the long-term preservation of agricultural lands in California through the use of agricultural conservation easements. In addition to funding provided for agricultural easement acquisition, Conservancy grant funds are available for projects which develop policy or planning oriented to agricultural land protection, and for improvements to land already under an agricultural conservation easement (e.g., erosion control, riparian area improvements, etc.). The program is authorized to accept donations from private entities if the Department of Conservation is the designated beneficiary of the donation and it uses the funds for purposes of the program in a county specified by the donor (Public Resources Code Section 10231.5).

The loss of farmland associated with development of tank sites N-1, N-2, N-3, W-2 and W-3 could be partially mitigated through contribution to the Farmland Conservancy Fund, or to an equivalent program for funding farmland preservation in Stanislaus County, as a condition precedent to the issuance of necessary project approvals. The amount of such a contribution would allow the conservation of one acre of farmland in Stanislaus County for each acre of farmland converted by the proposed project, and would reflect the then-current value of an agricultural easement on comparable prime agricultural land of equal size to the acreage of the farmland lost under the proposed project, and a 10% increment for program administration under the Farmland Conservancy Program, or an equivalent program for funding farmland preservation projects in Stanislaus County.

The valuation of such an easement would be determined by the City in consultation with the California Department of Conservation. Where current information on such valuation is not available, the City would need to obtain an appraisal of the valuation of an agricultural easement on comparable agricultural land in the project vicinity to inform the City's determination as to valuation.

Contribution to the California Farmland Conservancy, or an equivalent program, to fund farmland preservation projects in Stanislaus County would serve to compensate for the loss of farmland that directly results from the proposed project. However, preservation of Prime Farmland through agricultural easements on other Prime Farmland parcels would not
Table 1. Mitigation Monitoring and Reporting Plan for MRWTP Phase Two Expansion, Mitigation Measures (Continued)

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<tr>
<th>Mitigation Measure</th>
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**WATER RESOURCES**

**Mitigation Measure WR-12a: Street Sweeping**

To minimize the amount of pollutants entering the storm drain system, water storage tank roadways and other paved areas will be cleaned regularly using street sweeping equipment. Additionally, litter and debris that may accumulate on the project site will be regularly collected and properly disposed of at a landfill in accordance with proper waste disposal procedures. These activities shall be the responsibility of City and/or its contractors.

**Mitigation Measure WR-12b: Best Management Practices to Maximize Storm Water Quality**

BMPs shall be used on the tank sites to maximize storm water quality during project operations. The BMPs shall include a combination of source control and treatment systems, and shall be selected to be consistent with the City’s Comprehensive Stormwater Management Program.

BMPs may include but not be limited to the following:

- Grass strips, high infiltration substrates, and grassy swales shall be used where feasible throughout the tank sites to reduce runoff, serve as bio-filters, and provide initial storm water treatment. This type of treatment would apply particularly to paved areas.

- Physical devices shall be placed at outlets of pipes and channels to reduce the velocity or the energy of exiting water. Outlet protection helps to prevent scour and to minimize the potential for downstream erosion by reducing the velocity or energy of concentrated storm water flows.

- Pervious/porous pavement shall be used to reduce runoff when economically feasible. The pavement is a unique cement-based...
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<th>Mitigation Measure</th>
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<td>Concrete product that has a porous structure which allows rainwater to pass directly through the pavement and into the soil.</td>
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<td>The City and/or its contractors shall select a combination of BMPs that is expected to remove contaminants from storm water discharges. The final selection and design of BMPs shall provide maximum contaminant removal, represent the best available technology that is economically achievable, and shall explicitly identify the expected level of effectiveness at contaminant removal.</td>
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<td>The City and/or its contractors shall inspect following construction to ensure that all identified BMPs have been properly installed. The project shall adopt a regular maintenance and monitoring schedule to ensure that these BMPs function properly during project operations. If necessary, additional BMPs shall be designed and implemented if those originally constructed do not achieve the identified performance standard.</td>
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<td>Mitigation Measure WR-12c: Appropriate Design on Retention Facilities</td>
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<td>All infiltration features shall be constructed to maximize the distance between the base of the infiltration feature and the groundwater table, and in no case shall the bottom of the feature be less than 10 feet above the groundwater table.</td>
<td>During project design and construction on all storage tank sites</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>The City shall design and construct all infiltration features so that the bottom of the feature is not less than 10 feet above the groundwater table.</td>
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<td>CULTURAL RESOURCES</td>
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<td>Mitigation Measure CR-1: Stop work, contact qualified archaeologist, assess significance of the find, and develop appropriate treatment measures.</td>
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<td>If buried archaeological resources, such as chipped or ground stone, historic debris, building foundations, or human bone, are inadvertently discovered during ground-disturbing activities, work will stop in that area and within 100 feet of the find until a qualified archaeologist can assess the significance of the find and, if necessary, develop appropriate treatment measures in consultation with the MID, the City, and other appropriate agencies.</td>
<td>During construction on all project facilities</td>
<td>MID and</td>
<td>MID and</td>
<td>During construction, MID and the City shall stop work if buried archeological resources are found. A qualified archaeologist shall be contacted to assess the significance of the find and develop appropriate treatment measures.</td>
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<td>Mitigation Measure</td>
<td>Timing</td>
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<td>Mitigation Measure CR-2: Stop work, notify county coroner, and notify California Native American Heritage Commission if remains are Native American in origin</td>
<td>During construction on all project facilities</td>
<td>MID</td>
<td>MID</td>
<td>During construction, MID and the City shall stop work if human remains of Native American origin are found. The County Coroner and California Native American Heritage Commission shall be contacted.</td>
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<td>If human remains of Native American origin are discovered during project construction, it is necessary to comply with state laws relating to the disposition of Native American burials, which fall within the jurisdiction of the Native American Heritage Commission (Pub. Res. Code Sec. 5097). If any human remains are discovered or recognized in any location other than a dedicated cemetery, there will be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:</td>
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<td>a. the coroner of the county has been informed and has determined that no investigation of the cause of death is required; and</td>
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<td>b. if the remains are of Native American origin,</td>
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<td>1. the descendants of the deceased Native Americans have made a recommendation to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or</td>
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<td>2. the Native American Heritage Commission was unable to identify a descendant or the descendant failed to make a recommendation within 24 hours after being notified by the commission.</td>
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<td>According to California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100) and disturbance of Native American cemeteries is a felony (Section 7052). Section 7050.5 requires that construction or excavation be stopped in the vicinity of discovered human remains until the coroner can determine whether the remains are those of a Native American. If the remains are determined to be Native American, the coroner must contact the California Native American Heritage Commission.</td>
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<tr>
<td>Mitigation Measure CR-4a: Conduct cultural resources surveys in Archaeological Resources Zones prior to construction</td>
<td>Prior to construction on pipeline alignments on those portions of Yosemite</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>Prior to construction within Archeological Resources Zones, the City shall require a qualified archeologist to conduct cultural resources</td>
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</table>
Table 1. Mitigation Monitoring and Reporting Plan for MRWTP Phase Two Expansion, Mitigation Measures (Continued)

<table>
<thead>
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<td>will be examined by a qualified archaeologist to determine if any cultural resources are present. Any cultural resources located as a result of surveys will be evaluated for listing in the CRHR. If the resource(s) is found to be significant and eligible for listing in the CRHR, Mitigation Measure CR-4b will be implemented.</td>
<td>Boulevard, M&amp;ET Railroad, or Oregon Drive within Archaeological Resource Zones</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>If archeological resources are found during the cultural resources surveys, the City shall prepare a Cultural Resources Treatment Plan to address data recovery excavations.</td>
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</table>

**Mitigation Measure CR-4b: Complete a Cultural Resources Treatment Plan**

If significant resources are found under Mitigation Measure CR-4a, the City will review the pipeline alignment and re-align the portion of the pipe affected or a treatment plan will be prepared prior to onset of construction that will provide detailed research design and methodology for test excavations and archival research to identify and evaluate the resources. The treatment plan will also provide provisions for a complete data recovery excavation. The treatment plan will provide for at least the following activities:

a. **Conduct test excavations and archival research to determine resource significance.** When avoidance is infeasible, the treatment plan will outline how evaluations of potentially significant archaeological resources will be conducted, including archival research and test excavation and evaluation methods necessary to determine eligibility for listing in the CRHR.

b. **Data recovery excavations of significant archaeological resources that cannot be avoided.** If, following identification and evaluation efforts, archaeological sites and historic resources are determined to meet the criteria for inclusion in the CRHR, and avoidance or redesign of the project is not feasible, then research and fieldwork to recover and analyze the data contained in that site will be conducted. This work may involve additional archival and historical research; excavation; analysis of the artifacts, features, and other data discovered; presentation of the results in a technical report; and curation of the recovered artifacts and accompanying data. Native American consultation will continue throughout data recovery efforts.

c. **Treatment of human remains.** The treatment plan will outline the regulatory requirements to be followed when human remains are found.
### Table 1. Mitigation Monitoring and Reporting Plan for MRWTP Phase Two Expansion, Mitigation Measures (Continued)

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<tr>
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<td>(also described above in regulatory framework) and will indicate where burials might be encountered.</td>
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<td><strong>BIOLOGICAL RESOURCES</strong></td>
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<tr>
<td>Mitigation Measure Bio-2a: Conduct Preconstruction Surveys for Valley Elderberry Longhorn Beetle and Avoid or Compensate for Loss of Habitat</td>
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<td>For any construction activity within 100 feet of the six elderberry shrubs at Tank Sites S-2 and S-3 and near Dry Creek along the Southern main pipeline alignments, the City shall hire a qualified biologist to conduct a preconstruction survey of the alignment corridor and document the extent of habitat for the VELB. The information gathered in this survey would include the number of elderberry stems greater than 1 inch in diameter and the number of emergence holes in these stems for each elderberry shrub encountered. If no VELB habitat is found within 100 feet of a project alignment, then no further mitigation is required. The City then would implement the USFWS guidelines for avoiding impacts on the VELB by avoiding construction activities within 100 ft of any elderberry shrub where feasible (Mitigation Measure BIO-2b). Where avoidance is not feasible, the City would obtain authorization from the USFWS pursuant to the ESA, and prepare and implement a mitigation plan consistent with USFWS guidelines to compensate for impacts on the VELB and loss of habitat. USFWS guidelines call for avoidance of VELB habitat wherever possible. When avoidance is not possible, the guidelines direct that all elderberry plants be transplanted to an appropriate site when feasible, and that all stems 1 inch or greater in diameter be replaced by planting replacement plants at appropriate locations in the project vicinity determined in consultation with the resource agencies (Mitigation Measure Bio-2c). The replacement ratio depends on the percentage of affected elderberry shrubs that have beetle emergence holes. The guidelines require the project proponent to monitor the transplanted shrubs and replacement plants for 10 years from the date of transplanting to monitor the success of the mitigation efforts, and replacement would be necessary for plants that do not succeed.</td>
<td>Prior to construction on tank sites S-2 or S-3, and near Dry Creek along the Southern pipeline alignments</td>
<td>City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>Prior to construction, the City shall contract with a qualified biologist to survey and document the location of elderberry shrubs. The City shall implement the measures listed in Mitigation Measure BIO-2b or their functional equivalent, as recommended by the qualified biologist.</td>
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<td>Mitigation Measure</td>
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<td><strong>Mitigation Measures BIO-2b: Avoid and Protect VELB Habitat</strong></td>
<td>During construction on tank sites S-2 or S-3, and near Dry Creek along the Southern pipeline alignments</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>If elderberry shrubs are found within 100 feet of a construction zone, then during construction, the City shall establish a 100-foot buffer around elderberry plants containing stems measuring 1 inch or greater in diameter, where feasible, and implement the measures listed in Mitigation Measure BIO-2b to maintain the buffer zone or their functional equivalent.</td>
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Complete avoidance is assumed when a 100-foot buffer is established and maintained around elderberry plants containing stems measuring 1 inch or greater in diameter at ground level. Firebreaks may not be included in the buffer zone. In buffer areas, construction-related disturbance should be minimized and any damaged area should be promptly restored following construction. The City shall consult the USFWS before any disturbances within the buffer area are considered. The following measures include establishment and maintenance of a buffer zone:

- The City shall hire a qualified biologist to identify and mark all elderberry shrubs with stems 1 inch or more in diameter within 100 feet of the impact area. A 100-foot buffer will be established around all elderberry shrubs, and no construction activities will be permitted within the buffer zone without consultation with USFWS. In areas where encroachment on the 100-foot buffer has been approved by USFWS, no ground-disturbing activities will be permitted within 20 feet of the dripline of each elderberry shrub unless the activity is necessary to complete the project. If no VELB habitat is found within 100 feet of a project alignment, then no further mitigation is required.

- Orange fencing will be placed around all shrubs to avoid inadvertent effects.

- Signs will be erected every 50 feet along the edge of the avoidance area with the following information: “This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment.” The signs will be clearly readable from a distance of 20 feet, and must be maintained for the duration of construction.

- The City’s contractor will present an environmental education program to all construction personnel to brief them on the need to avoid damaging the elderberry shrubs and the possible penalty for not complying with these requirements.

- Any damage done to the buffer area (area within 100 feet of elderberry plants) during construction must be repaired and the area restored. Erosion control must be provided and the area must be revegetated with appropriate native plants.
Table 1. Mitigation Monitoring and Reporting Plan for MRWTP Phase Two Expansion, Mitigation Measures (Continued)

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<tr>
<td>□ Buffer areas must be protected after construction from adverse effects of the</td>
<td>During construction on tank sites S-2 or S-3, and near Dry Creek along</td>
<td>City of Modesto – Deputy Director, Capital</td>
<td>City of Modesto – Deputy Director, Capital</td>
<td>If the proposed project cannot avoid elderberry shrubs by 100 feet, the City shall</td>
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<td>project through measures including fencing, signs, weeding, and removing trash.</td>
<td>the Southern pipeline alignments</td>
<td>Capital Improvement Services</td>
<td>Capital Improvement Services</td>
<td>implement the measures listed in Mitigation Measure BIO-2c or their functional</td>
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<td>□ The use of insecticides, herbicides, fertilizers, or other chemicals that might</td>
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<td>equivalents.</td>
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<td>harm the beetle or its host plant will be prohibited.</td>
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<td>□ Grasses or ground cover will be mowed from July through April to reduce fire</td>
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<td>hazard. No mowing should occur within 5 feet of elderberry plant stems.</td>
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<td>□ The City of Modesto must provide a written description of how the buffer areas</td>
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<td>are to be restored, protected, and maintained after construction is completed.</td>
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<td>□ To prevent inadvertent trimming of elderberry shrubs (habitat for VELB) during</td>
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<td>future maintenance activities, the City will also prepare a Maintenance Plan that</td>
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<td>provides the location of all elderberry shrubs growing near the water storage</td>
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<td>tank sites and along the pipeline corridors. The Maintenance Plan will also</td>
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<td>include a photo and description of an elderberry shrub and information about</td>
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<td>VELB and its legal status and requirements under ESA.</td>
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<td>Mitigation Measures BIO-2c. Transplant Elderberry Shrubs</td>
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<td>If the proposed project cannot avoid elderberry shrubs by 100 feet (or 20 feet</td>
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<td>with USFWS consultation), the following mitigation measures will be implemented:</td>
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<td>□ All elderberry shrubs with one or more stems measuring 1 inch or more in</td>
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<td>diameter that will be directly affected by construction activities (i.e., that</td>
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<td>will be destroyed) will be transplanted to a conservation area.</td>
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<td>□ Each affected shrub will be replaced in a conservation area with elderberry</td>
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<td>seedlings or cuttings at a ratio between 1:1 and 8:1, depending on the diameter</td>
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<td>of the stem at ground level, whether the shrub is located in riparian habitat,</td>
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<td>and whether the shrub has evidence of exit holes.</td>
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<td>□ A mix of native tree/plant species associated with the elderberry shrubs at</td>
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<td>the project site will be planted in the conservation area at ratios of 1:1 for</td>
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<td>elderberry shrubs without exit holes or 2:1 for elderberry shrubs with exit</td>
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<td>holes (native tree/plant species to each elderberry seedling or cutting). A</td>
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<td>mixture of native grasses and forbs should also be planted</td>
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Table 1. Mitigation Monitoring and Reporting Plan for MRWTP Phase Two Expansion, Mitigation Measures (Continued)

Mitigation Measure

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<tbody>
<tr>
<td>Prior to construction on all undeveloped storage tank sites and pipelines outside of existing roadways</td>
<td>City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>Prior to construction, the City shall contract with a qualified wildlife biologist to survey undeveloped tank sites and/or pipelines outside of existing roadways for Swainson's Hawk foraging habitat. If foraging habitat is found, the City shall implement DFG mitigation guidelines or their functional equivalent.</td>
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</tbody>
</table>

- Each transplanted elderberry shrub should have at least 1,800 square feet of area. As many as five additional elderberry seedlings or cuttings and up to five associated natives may also be planted within the 1,800-square-foot transplant area.

**Mitigation Measure BIO-3: Implement the DFG Guidelines for Swainson’s Hawk Foraging Habitat Mitigation**

The City will retain a qualified wildlife biologist to conduct preconstruction surveys for Swainson’s Hawk foraging habitat on undeveloped tank sites and/or pipelines outside of existing roadways. The preconstruction surveys will be conducted to determine whether active Swainson’s Hawk nests are present within 10 miles of the project construction sites and will include, at a minimum, a study of the eight previously recorded nest sites. If the project construction site is not suitable Swainson’s Hawk foraging habitat, then no further mitigation is required. If agricultural habitat is removed within 10 miles of a known, active Swainson’s Hawk nest, the City will compensate to the extent specified by DFG to replace lost foraging habitat. Habitat compensation ratios will depend on the distance of the affected habitat from known, active nests, as specified in DFG mitigation guidelines for Swainson’s hawks. The publication Staff Report Regarding Mitigation for Impacts to Swainson’s Hawk (Buteo swainsoni) in the Central Valley of California, published by DFG (1994), recommends mitigation for the removal of suitable Swainson’s hawk foraging habitat at a ratio determined by the distance to the nearest active nest. The City will implement the measures identified or their functional equivalents, based on the recommendations of the qualified wildlife biologist.

**Mitigation Measure BIO-4: Retain a Qualified Biologist to Conduct a Preconstruction Survey for Nesting Swainson’s Hawk**

If construction is scheduled to occur during the Swainson’s Hawk breeding season (generally March 1–August 15), the City will retain a qualified wildlife biologist to conduct preconstruction surveys for nesting Swainson’s Hawks on undeveloped tank sites and/or pipelines outside of existing roadways. The preconstruction surveys will be conducted to determine whether there is suitable nesting habitat within a 0.5-mile radius of the construction site. If no Swainson’s Hawks are found nesting within the...
<table>
<thead>
<tr>
<th>Mitigation Measure</th>
<th>Timing</th>
<th>Implementing Party</th>
<th>Monitoring Party</th>
<th>Monitoring Actions</th>
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</thead>
<tbody>
<tr>
<td>areas surveyed, then no further mitigation is required. If Swainson’s Hawks are found nesting within a 0.5-mile radius of the construction site, DFG will be consulted to determine whether a no-disturbance buffer would be required until after the young have fledged (as determined by a qualified wildlife biologist). Impact avoidance measures will be conducted pursuant to DFG mitigation guidelines. The City will implement the measures identified or their functional equivalents, based on the recommendations of the qualified wildlife biologist.</td>
<td>roadways</td>
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<td>functional equivalent.</td>
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<tr>
<td>Mitigation Measure BIO-5: Conduct Preconstruction Surveys for Active Burrowing Owl Burrows and Implement the California Department of Fish and Game Guidelines for Burrowing Owl Mitigation, if Necessary</td>
<td>Prior to construction on all undeveloped storage tank sites and all pipeline alignments outside of existing roadways</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>Prior to construction, the City shall contract with a qualified wildlife biologist to survey undeveloped tank sites and/or pipelines outside of existing roadways for active Burrowing Owl burrows. If active burrows are found, the City shall implement DFG mitigation guidelines or their functional equivalent.</td>
</tr>
<tr>
<td>DFG (1994) recommends that preconstruction surveys be conducted to locate active Burrowing Owl burrows in the project area and in a 250-foot-wide buffer zone around the project area. The City will retain a qualified biologist to conduct preconstruction surveys for active burrows on undeveloped tank sites and/or pipelines outside of existing roadways. The preconstruction surveys will include a nesting season survey and a wintering season survey during the year immediately preceding construction. If no Burrowing Owls are detected, then no further mitigation is required. If active Burrowing Owls are detected in the survey area, the City will implement the following measures or their functional equivalents, based on the recommendations of the qualified wildlife biologist.</td>
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<tr>
<td>Occupied burrows will not be disturbed during the nesting season (February 1–August 31).</td>
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<td>When destruction of occupied burrows is unavoidable during the non-nesting season (September 1–January 31), unsuitable burrows will be enhanced (enlarged or cleared of debris) or new burrows created (installing artificial burrows) at a ratio of 2:1 on protected lands approved by DFG. Newly created burrows will follow guidelines established by DFG.</td>
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<td>If owls must be moved away from the project area, passive relocation techniques (e.g., installing one-way doors at burrow entrances) will be used instead of trapping. At least 1 week will be necessary to accomplish passive relocation and to allow owls to acclimate to alternate burrows.</td>
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Table 1. Mitigation Monitoring and Reporting Plan for MRWTP Phase Two Expansion, Mitigation Measures (Continued)

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<tr>
<th>Mitigation Measure</th>
<th>Timing</th>
<th>Implementing Party</th>
<th>Monitoring Party</th>
<th>Monitoring Actions</th>
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<tbody>
<tr>
<td>If active Burrowing Owl burrows are found and the owls must be relocated, the City will offset the loss of foraging and burrow habitat in the project area by acquiring and permanently protecting a minimum of 6.5 acres of foraging habitat per occupied burrow identified in the project area. The protected lands should be located adjacent to the occupied Burrowing Owl habitat in the project area or at another occupied site near the project area. The location of the protected lands will be determined in coordination with DFG. The City will also prepare a monitoring plan and provide long-term management and monitoring of the protected lands. The monitoring plan will specify success criteria, identify remedial measures, and require an annual report to be submitted DFG.</td>
<td>During construction on all storage tank sites and all pipeline alignments on arterial streets</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>The City shall prohibit all contractors from conducting construction on arterial streets during peak traffic periods.</td>
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</tbody>
</table>

If avoidance is the preferred method of dealing with potential impacts, no disturbance should occur within 160 feet of occupied burrows during the nonbreeding season (September 1–January 31) or within 250 feet during the breeding season. Avoidance also requires that at least 6.5 acres of foraging habitat (calculated based on an approximately 300-foot foraging radius of an occupied burrow), contiguous with occupied burrow sites, be permanently preserved for each pair of breeding Burrowing Owls or single unpaired resident bird. The configuration of the protected site will be submitted to DFG for approval.

TRANSPORTATION

Mitigation Measure TR-4: Maintain Traffic Lanes and Limit Hours of Construction

The City of Modesto’s selected contractor will not conduct construction on arterial streets during the peak traffic period, and where feasible, will maintain the existing number of traffic lanes through pipeline construction. For pipeline segments with construction V/C ratios over 1.5 and construction duration that would exceed two weeks, if the contractor is unable to maintain the existing number of traffic lanes through pipeline construction zones, construction activities will be limited to evening hours. This practice applies to the following routes:

1 Construction V/C ratios were calculated for the peak traffic period. For segments with construction V/C ratios between 1.0 and 1.5, the off-peak (midday) construction V/C was not calculated but is anticipated to be close to or below 1.0. For this reason, midday construction for these segments is not anticipated to result in LOS failure and would be allowed.
<table>
<thead>
<tr>
<th>Mitigation Measure</th>
<th>Timing</th>
<th>Implementing Party</th>
<th>Monitoring Party</th>
<th>Monitoring Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carpenter Avenue, south of Maze Boulevard</td>
<td>Prior to and during construction on all project facilities</td>
<td>MID and City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>MID and City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>During construction, MID and the City shall require all contractors to comply with SJVUAPCD Regulation VIII or their functional equivalents.</td>
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<tr>
<td>Yosemite Boulevard, near Codoni Avenue</td>
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<td>Briggsmore Avenue</td>
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</table>

**CUMULATIVE**

Mitigation Measure CUME1: Implement Enhanced Measures to Control PM10 Generation, as Recommended by SJVUAPCD, Regulation VIII (amended 2004)

The City and MID will require construction contractors to implement the SJVUAPCD's optional and enhanced PM10 control measures, listed below, or their functional equivalents.

- Limit traffic speeds on unpaved roads to 15 mph.
- On sites with a slope greater than 1%, install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site.
- Install wind and/or water breaks at windward side(s) of construction areas.
- Suspend excavation and grading activity when Regulation VIII’s 20% opacity limitation is exceeded.
- Ensure that the accumulation of mud or dirt is expeditiously removed from adjacent public streets throughout the duration of construction activities, where such accumulation is visible (the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions).
- Limit the area subject to excavation, grading, or other construction activity at any one time.

These measures will be incorporated into project construction documents (plans and specifications) to ensure that they are contractually enforceable. For each phase of the project, the entity responsible for retaining construction contractors will be responsible for ensuring that these measures are correctly and effectively implemented; MID will be
Table 1. Mitigation Monitoring and Reporting Plan for MRWTP Phase Two Expansion, Mitigation Measures (Continued)

<table>
<thead>
<tr>
<th>Mitigation Measure</th>
<th>Timing</th>
<th>Implementing Party</th>
<th>Monitoring Party</th>
<th>Monitoring Actions</th>
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</thead>
<tbody>
<tr>
<td>CUME2: Require Use of Measures to Reduce Emissions</td>
<td>During construction on all project facilities</td>
<td>MID and City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>MID and City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>During construction, MID and the City shall require all contractors to implement emissions-reducing measures.</td>
</tr>
</tbody>
</table>

The City and MID will require construction contractors to implement the following measures to reduce emissions of combustion byproducts, or their functional equivalents.

- Minimize idling time to 10-minute maximum.
- Limit the hours of operation of heavy-duty equipment and/or the amount of equipment in use to the minimum practical.
- Take steps to curtail construction activity during periods of high ambient pollution concentrations, such as reducing construction activity during the peak hours of vehicular traffic on adjacent roadways.

These measures will be incorporated into project construction documents (plans and specifications) to ensure that they are contractually enforceable. For each phase of the project, the entity responsible for retaining construction contractors will be responsible for ensuring that these measures are correctly and effectively implemented; MID will be responsible during construction of MID facilities, and the City will be responsible during the construction of City facilities.
<table>
<thead>
<tr>
<th>Environmental Commitment</th>
<th>Timing</th>
<th>Implementing Party</th>
<th>Monitoring Party</th>
<th>Monitoring Actions</th>
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<tbody>
<tr>
<td><strong>GENERAL CONSTRUCTION MEASURES</strong></td>
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<tr>
<td>GC-1 - Temporary road striping, signing, traffic lighting, and traffic control will be implemented for residential and business areas affected by construction.</td>
<td>During construction on all storage tank sites and all pipeline alignments</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>During construction, the City shall require all contractors to implement traffic control measures.</td>
</tr>
<tr>
<td>GC-2 - Continuous access and parking provisions will be provided for residences and business areas.</td>
<td>During construction on all storage tank sites and all pipeline alignments</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>During construction, the City shall require all contractors to provide access and parking for residences and businesses.</td>
</tr>
<tr>
<td>GC-3 - Existing landscaping that is removed or damaged during construction will be replaced. Areas without landscaping that are disturbed by construction will be allowed to return to a natural vegetated state. Standard erosion control practices will be implemented in compliance with current state regulations to ensure restoration is successful and to minimize soil loss.</td>
<td>After construction on all project facilities</td>
<td>MID</td>
<td>MID</td>
<td>Following construction, MID and the City shall require contractors to revegetate disturbed landscaping and implement erosion control practices.</td>
</tr>
<tr>
<td>GC-4 - Planned road improvements (e.g., raised medians, turn lanes, street alignments) will be coordinated to minimize disruptions associated with this project and other projects.</td>
<td>Prior to and during construction on all pipeline alignments</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>The City shall coordinate pipeline construction with other planned roadway improvements.</td>
</tr>
<tr>
<td>GC-5 - Work area in residential areas will be restricted to the maximum length of open trench for a given segment at any given time (i.e., 200 to 500 feet).</td>
<td>During construction on all pipeline alignments</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>During construction in residential areas, the City shall restrict the maximum length of open trench.</td>
</tr>
<tr>
<td>GC-6 - Dust suppression and cleanup provisions (e.g., street sweeping, sidewalk cleaning, and debris removal) will be implemented, as needed by the City of Modesto and MID.</td>
<td>During construction on all project facilities</td>
<td>MID</td>
<td>MID</td>
<td>During construction, MID and the City shall require all contractors to implement dust suppression and cleanup.</td>
</tr>
<tr>
<td>Environmental Commitment</td>
<td>Timing</td>
<td>Implementing Party</td>
<td>Monitoring Party</td>
<td>Monitoring Actions</td>
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<tr>
<td>GC-7 - Roadway surfaces damaged by construction activities, including hauling operations, will be restored to preexisting conditions.</td>
<td>After construction on all project facilities</td>
<td>MID and City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>MID and City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>Following construction, MID and the City shall restore roadway surfaces to preexisting conditions.</td>
</tr>
<tr>
<td>GC-8 - A point of contact will be established to handle ongoing public outreach and address construction concerns. Affected residents will be notified prior to onset of construction in their area regarding contact information for this point of contact.</td>
<td>During construction on all pipeline alignments</td>
<td>City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>The City shall establish a point of contact to handle ongoing public outreach and address construction concerns.</td>
</tr>
<tr>
<td>GC-9 - Fact sheets and public updates to inform the community about progress of the project will be provided.</td>
<td>During construction on all project facilities</td>
<td>MID and City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>MID and City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>MID and the City shall distribute fact sheets and public updates about project construction.</td>
</tr>
<tr>
<td>GC-10 - Community facilities affected by construction will be restored to preexisting conditions.</td>
<td>After construction on all project facilities</td>
<td>MID and City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>MID and City of Modesto - Deputy Director, Capital Improvement Services</td>
<td>Following construction, MID and the City shall restore community facilities to preexisting conditions.</td>
</tr>
</tbody>
</table>
### Environmental Commitment

**PIPELINE INSTALLATION IN INTERSECTIONS**

PI-1 – For construction of pipelines in certain intersections, jack-and-bore construction techniques will be implemented when warranted. Jack and bore involves tunneling beneath the intersection such that the intersection itself is not adversely affected, as described previously.

<table>
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<tr>
<th>Timing</th>
<th>Implementing Party</th>
<th>Monitoring Party</th>
<th>Monitoring Actions</th>
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<tbody>
<tr>
<td>During construction of</td>
<td>City of Modesto –</td>
<td>City of Modesto –</td>
<td>During construction of pipelines, the City shall</td>
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<tr>
<td>pipelines at arterial</td>
<td>Deputy Director,</td>
<td>Deputy Director,</td>
<td>implement jack-and-bore construction techniques at</td>
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<tr>
<td>roadway intersections</td>
<td>Capital Improvement</td>
<td>Capital Improvement</td>
<td>arterial roadway intersections.</td>
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**AIR QUALITY**

AQ-1 – The project will comply with San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Regulation VIII to control the generation of construction-related fugitive dust (PM10) emissions during construction activities. SJVUAPCD Regulation VIII is summarized in Table 2-1, San Joaquin Valley Unified Air Pollution Control District Regulation VIII Control Measures for Construction Emissions of PM-10 [of the Draft EIR].

<table>
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<tbody>
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<td>During construction on all</td>
<td>MID</td>
<td>MID</td>
<td>During construction, MID and the City shall require all</td>
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<tr>
<td>project facilities</td>
<td>and</td>
<td>and</td>
<td>contractors to comply with SJVUAPCD Regulation VIII.</td>
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<tr>
<td>City of Modesto –</td>
<td>City of Modesto –</td>
<td>City of Modesto –</td>
<td>During construction, MID and the City shall require all</td>
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<tr>
<td>Deputy Director, Capital</td>
<td>Deputy Director,</td>
<td>Deputy Director,</td>
<td>contractors to comply with SJVUAPCD Regulation VIII.</td>
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<td>Improvement Services</td>
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<td>Capital</td>
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<td>Improvement Services</td>
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</table>

AQ-2 – MID and/or the City, as applicable, will require all construction contractors employed during any phase of project construction to ensure that diesel and gasoline-powered equipment is correctly tuned and maintained according to manufacturer specifications and California air quality regulations. This requirement will be incorporated into project construction documents (plans and specifications) to ensure that it is contractually enforceable. The project applicant will similarly ensure that all vehicles and other equipment used for operation and maintenance activities once the project is on line are tuned and maintained per manufacturer specifications and current California regulations.

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<th>Monitoring Party</th>
<th>Monitoring Actions</th>
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<tr>
<td>During construction on all</td>
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<td>MID</td>
<td>During construction, MID and the City shall require all</td>
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<td>project facilities</td>
<td>and</td>
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<td>City of Modesto –</td>
<td>City of Modesto –</td>
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<td>During construction, MID and the City shall require all</td>
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<td>Deputy Director, Capital</td>
<td>Deputy Director,</td>
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<td>contractors to comply with SJVUAPCD Regulation VIII.</td>
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<td>Improvement Services</td>
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<td>Improvement Services</td>
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**WATER QUALITY PROTECTION MEASURES**

WQ-1 – Because the proposed project is anticipated to result in the disturbance of more than 1 acre, coverage under the Central Valley Regional Water Quality Control Board’s (RWQCB's) NPDES General Permit for Discharges of Storm Water Runoff Associated with Construction Activity (General Construction Permit) will be obtained. Obtaining coverage under the General Construction Permit requires that MID and the City obtain permit coverage and prepare a stormwater pollution prevention

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<th>Monitoring Actions</th>
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<tbody>
<tr>
<td>Prior to and during</td>
<td>MID</td>
<td>MID</td>
<td>MID and the City shall each prepare and implement a</td>
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<tr>
<td>construction on all project</td>
<td>and</td>
<td>and</td>
<td>SWPPP for their respective portions of the project</td>
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<tr>
<td>facilities</td>
<td>City of Modesto –</td>
<td>City of Modesto –</td>
<td>construction to control erosion, sedimentation, and</td>
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<td></td>
<td>Deputy Director,</td>
<td>Deputy Director,</td>
<td>other pollutants during project</td>
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<td>Capital</td>
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<td>Improvement</td>
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</table>
Environmental Commitment plan (SWPPP) for their respective portions of the project.

The SWPPP is required to describe the best management practices (BMPs) that will be implemented to control accelerated erosion, sedimentation, and other pollutants during and after project construction. The specific BMPs that will be incorporated into the erosion and sediment control plan and SWPPP will be determined during the final design phase of the Phase Two project, and will be implemented by the construction contractor in accordance with the RWQCB Field Manual. As a performance standard, these measures selected will represent the Best Available Technology that is economically achievable, and will be selected to achieve maximum sediment removal and water quality protection.

At a minimum, the SWPPP shall provide for the following measures during construction:

- regular and thorough street sweeping program;
- detailed Hazardous Materials Spill Prevention Control and Countermeasure Plan (see environmental commitment WQ-2); and
- pavement inspection and repair program.

WQ-2 - As part of its NPDES General Construction Permit, a Hazardous Material Spill Prevention Control and Countermeasure Plan will be prepared for the use of construction equipment for the proposed project, and will minimize the potential for, and effects from, spills of hazardous, toxic, or petroleum substances during construction of the project. This plan will describe storage procedures and construction site housekeeping practices and identify the parties responsible for monitoring and spill response. The measures and monitoring procedures required under the General Construction Permit will minimize the potential for release of hazardous materials to the environment. The City and/or MID, as applicable, will review and approve the Hazardous Materials Spill Prevention Control and Countermeasure Plan before allowing construction to begin. The project proponent will routinely inspect the action area to verify that the BMPs specified in the plan are properly implemented and maintained, and immediately notify the contractor if there is a noncompliance issue and shall require compliance.

Prior to and during construction on all project facilities

MID and Capital Improvement Services

MID and Capital Improvement Services

MID and the City shall each prepare and implement a Hazardous Materials Spill Prevention Control and Countermeasure Plan for their respective portions of the construction project to minimize spills of hazardous, toxic, or petroleum substances during project construction.
Environmental Commitment

WQ-3 – The federal reportable spill quantity for petroleum products, as defined in the U.S. Environmental Protection Agency’s (EPA’s) Code of Federal Regulations (CFR) (40 CFR 110) is any oil spill that (1) violates applicable water quality standards, (2) causes a film or sheen upon or discoloration of the water surface or adjoining shoreline, or (3) causes a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines.

If a spill is reportable, the contractor’s superintendent would immediately notify the City of Modesto and/or MID, Stanislaus County Department of Environmental Resources, and the California Department of Toxic Substances Control (DTSC), which have spill response and clean-up ordinances to govern emergency spill response. A written description of reportable releases must be submitted to the RWQCB. This submittal must include a description of the release, including the type of material and an estimate of the amount spilled, the date of the release, an explanation of why the spill occurred, and a description of the steps taken to prevent and control future releases. The releases would be documented on a spill report form.

If a reportable spill has occurred and results determine that project activities have adversely affected groundwater quality in excess of water quality standards, a detailed analysis will be performed by a Registered Environmental Assessor to identify the likely cause of contamination. This analysis will conform to American Society for Testing and Materials (ASTM) standards, and will include recommendations for reducing or eliminating the source or mechanisms of contamination. Based on this analysis, the City, MID, and/or their contractors will select and implement measures to control contamination, with a performance standard that groundwater quality must be returned to baseline conditions. These measures will be subject to approval by the City and MID.

NOISE-REDUCING CONSTRUCTION PRACTICES

NR-1 – The construction contractor will employ noise-reducing construction practices such that noise from construction does not exceed applicable City or County noise ordinance limits. Measures that may be used to limit noise may include but are not limited to:

- locating equipment as far as practical from noise-sensitive receptors, including residences and occupied hospital facilities;
<table>
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<tr>
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<tr>
<td>using sound control devices (e.g., properly operating mufflers) on construction equipment and vehicles;</td>
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<td>Services</td>
<td>Services</td>
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<tr>
<td>using noise-reducing enclosures around noise-generating equipment (i.e., engines), and shrouds or shields around impact tools; and</td>
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<tr>
<td>limiting the hours of construction activities to the hours indicated in subsection (b) of section 4-9.103 from the City’s Noise Ordinance (between 9:00 p.m. and 7:00 a.m., daily and 9:00 p.m. and 9:00 a.m. Saturdays, Sundays, and Federal and State holidays) when work is within 150 feet of residences.</td>
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<tr>
<td>NR-2 – The construction contractor will prepare a detailed Noise Control Plan based on the construction methods proposed. This plan will identify specific measurements that will be taken to ensure compliance with the noise limits specified above. The noise control plan will be reviewed and approved by the City/MID before any noise-generating construction activity begins.</td>
<td>Prior to construction on all project facilities</td>
<td>MID and City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>MID and City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>Prior to construction, MID and the City shall require all contractors to prepare a detailed Noise Control Plan.</td>
</tr>
<tr>
<td>NR-3 – Prior to construction, the City will notify residences along the construction areas of the construction schedule in writing. The City will designate a noise disturbance coordinator, who will be responsible for responding to complaints regarding construction noise. The coordinator will determine the cause of the complaint and will ensure that reasonable measures are implemented to correct the problem. A contact telephone number for the noise disturbance coordinator will be conspicuously posted on construction site fences and will be included in the written notification of the construction schedule sent to nearby residents in the identified range. These duties may be delegated to the City’s contractor in the project specifications.</td>
<td>Prior to construction on all storage tank sites and pipeline alignments</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>Prior to construction, the City shall require all contractors to notify residences of the construction schedule and the designated point of contact for construction concerns.</td>
</tr>
<tr>
<td>PALEONTOLOGICAL RESOURCES</td>
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</tr>
<tr>
<td>CR-1 – If paleontological resources are discovered during ground-disturbing activities, the construction contractor shall stop work in that area and within 100 feet of the find until a qualified paleontologist can assess the significance of the find and develop appropriate treatment measures. Treatment may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection, and may also include preparation of a report for publication describing the</td>
<td>During construction on all project facilities</td>
<td>MID and City of Modesto – Deputy Director, Capital Improvement</td>
<td>MID and City of Modesto – Deputy Director, Capital Improvement</td>
<td>During construction, MID and the City shall stop work if paleontological resources are found. A qualified paleontologist shall be contacted to assess the significance of the find and</td>
</tr>
<tr>
<td>Environmental Commitment</td>
<td>Timing</td>
<td>Implementing Party</td>
<td>Monitoring Party</td>
<td>Monitoring Actions</td>
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<tr>
<td>--------------------------</td>
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<tr>
<td>finds. The City or MID, as applicable, shall be responsible for ensuring that the recommendations of the paleontologist regarding treatment and reporting are implemented.</td>
<td></td>
<td>Services</td>
<td>Services</td>
<td>develop appropriate treatment measures.</td>
</tr>
</tbody>
</table>

**HAZARDOUS MATERIALS PHASE 1 SITE ASSESSMENT**

**HM-1** - Prior to constructing project facilities, the City will engage in further investigation of available environmental records of hazardous materials sites to determine whether the project sites pose any risks. For storage tank sites and pipeline alignments, a Phase I site assessment will be conducted in accordance with ASTM standards, and any recommendations to reduce risks associated with hazardous materials contamination given in that assessment will be implemented to the satisfaction of the appropriate hazardous materials agencies before construction begins. If Phase I assessments indicate the potential for contamination within or adjacent to the tank site or pipeline alignment, Phase II studies will be completed before construction begins. Phase II studies will include soil and groundwater sampling and analysis for anticipated contaminating substances. If soil or groundwater contaminated by potentially hazardous materials is exposed or encountered during construction, the appropriate hazardous materials agencies will be notified. A work plan to characterize and possibly remove contaminants may be required by the appropriate hazardous materials agencies.

**HM-2** - MID and the City currently have comprehensive emergency management plans for emergency response to a release or threatened release of any hazardous material used, transported, stored, or handled at the MRWTP or City wells. This plan will be updated to reflect the Phase Two project. In the event of an accidental release, emergency response plans would provide emergency responders with a protocol for containing and disposing of the unintentional release.

**CONSTRUCTION SCREENING**

**CS-1** - Construction staging areas for equipment, personal vehicle parking, and material storage shall be sited as far as possible from major roadways, and locations shall be approved by the City or MID as appropriate. The locations of the staging areas shall be reflected in the contract documents.
Table 2. Mitigation Monitoring and Reporting Plan for MRWTP Phase Two Expansion, Environmental Commitments (Continued)

<table>
<thead>
<tr>
<th>Environmental Commitment</th>
<th>Timing</th>
<th>Implementing Party</th>
<th>Monitoring Party</th>
<th>Monitoring Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>CS-2 – Opportunities for screening staging areas with existing topography and vegetation will be maximized. If chain-link security fencing is placed around such areas, slats or screening of an earth tone or other neutral color should be used unless obstruction of views into the area poses a security concern.</td>
<td>During construction on all project facilities</td>
<td>MID and Capital Improvement Services</td>
<td>MID and Capital Improvement Services</td>
<td>MID and the City shall require all contractors to screen construction staging areas.</td>
</tr>
<tr>
<td>CS-3 – Construction work hours will be limited to reduce construction impacts on residences near the selected downstream facilities locations.</td>
<td>During construction on all project facilities</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>The City shall require all contractors to limit construction work hours in residential areas.</td>
</tr>
</tbody>
</table>

**SITE DESIGN**

SD-1 – To reduce visibility from roads and sensitive land uses, the north and west storage tanks and aboveground pressure valve buildings will be placed well away from the site boundaries. These storage tanks and pressure valves will be designed to conform to the existing character of the surrounding land use through use of matching paint colors, fencing materials, and landscaping. The painting palette for each site will be selected to match the colors and tones of the surrounding neighborhood. Building materials used in the tanks and valves will be selected to match the character of surrounding land uses.

SD-2 – To reduce visibility of the structure’s height and bulk, partial burial of the north and west water storage tanks and/or control valves will be implemented where feasible. If located in aboveground structures, block wall screening and landscaping will be used.

SD-3 – To minimize any effects from introduced light sources and reflected light, all structures and hardware surfaces (with the exception of the southeastern tank) will be finished with paint or other treatments to minimize daytime glare and reflectivity, including components such as grates, railings, piping, roofs, and other metal fixtures. All surfaces
### Environmental Commitment

<table>
<thead>
<tr>
<th>Environmental Commitment</th>
<th>Timing</th>
<th>Implementing Party</th>
<th>Monitoring Party</th>
<th>Monitoring Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>affected by the proposed project will be covered with non-glare surfacing.</td>
<td></td>
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<tr>
<td><strong>SD-4</strong> – To reduce the effects of night illumination, all lights (with the exception of those at the southeastern tank) will be shielded and directed away from sensitive uses and the sky. Lighting will be internally directed with low-level intensity, sufficient only to detect movement within facility grounds. The quantity of lights used shall be the minimum required for property security to minimize incidental light. The lights shall be focused only where needed (such as building entrances) and should not provide a general “wash” of light on building surfaces. Lights shall be cutoff-type fixtures that cast low-angle illumination to minimize incidental spillover of light onto adjacent properties and open space. All lights shall provide good color rendering and natural light qualities. Low-pressure sodium and high-pressure sodium fixtures that are not color-corrected shall not be used. The lighting design shall also meet minimum safety and security standards.</td>
<td>During site design for all tank sites</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>The City shall reduce night illumination from storage tanks through light shielding, low-angle positioning, and color treatment.</td>
</tr>
<tr>
<td><strong>SD-5</strong> – To ensure compatibility with surrounding land uses, gates and fencing consistent with the neighborhood will be installed around the north and west tanks. Gates and fencing that are visible from public roadways should be similar to those existing in nearby rural residential neighborhoods. Appropriate fencing materials would include block wall construction with adequate landscaping around the perimeter of facility walls. Appropriate gate materials include wood or black wrought iron (or aluminum fashioned to mimic iron).</td>
<td>During site design for tank sites N-1, N-2, N-3, W-1, W-2, or W-3</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>The City shall reduce the visibility of the north and west tanks through gate and fencing materials compatible with surrounding land uses.</td>
</tr>
<tr>
<td><strong>SD-6</strong> – A combination of earth berms, landscaping, and/or tree screening along the perimeter of the north and west tank sites will be provided. Trees can be used for screening purposes. (See SD-7 regarding landscaping program)</td>
<td>During site design for tank sites N-1, N-2, N-3, W-1, W-2, or W-3</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>The City shall reduce the visibility of the north and west tanks through earth berms, landscaping, and/or tree screening.</td>
</tr>
<tr>
<td><strong>SD-7</strong> – A landscaping program will be implemented for the north and west tank sites and aboveground pressure valve buildings. The landscaping program should be developed by a licensed landscape architect in cooperation with the project engineer. The primary goal of the program should be to guide location, selection, installation, and maintenance of landscaping along public roadways and around new facilities to screen views, minimize exposed surface area, and maintain consistency with the surrounding character. Species selection should reflect and respect the existing mature plantings associated with residences in the area and the remaining native vegetation. The program should mandate maintenance of</td>
<td>During site design for tank sites N-1, N-2, N-3, W-1, W-2, or W-3</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>City of Modesto – Deputy Director, Capital Improvement Services</td>
<td>The City shall contract with a licensed landscape architect to prepare a landscaping program for the north and west tank sites. The landscaping program shall screen views, minimize exposed surface area, and maintain consistency with surrounding land uses.</td>
</tr>
</tbody>
</table>
Table 2. Mitigation Monitoring and Reporting Plan for MRWTP Phase Two Expansion, Environmental Commitments (Continued)

<table>
<thead>
<tr>
<th>Environmental Commitment</th>
<th>Timing</th>
<th>Implementing Party</th>
<th>Monitoring Party</th>
<th>Monitoring Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>the landscaping for optimum survivorship, vigor, and appearance, including provisions for irrigation, pruning, mulching, and replacement planting. The owner of the facility will be responsible for maintenance of vegetation on the tank sites.</td>
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<tr>
<td>The plant palette of the landscaping shall reflect species that are native and indigenous to the project area. The species used should include trees, shrubs, and an herbaceous understory of varying heights, as well as evergreen and deciduous types. Plant variety will increase the effectiveness of the screen by providing multiple layers, seasonality, more diverse habitat, and reduced susceptibility to disease. Large shrubs that may be used as part of the landscaping for their density and color are Heteromeles arbutifolia (toyoton), Fremontodendron “Ken Taylor” (hybrid flannel bush), Ceanothus “Ray Hartman” (Treasure Island blueblossom), and Cercis occidentalis (western redbud). Potential tree species that may be used for their height and structure include Platanus acerifolia “Bloodgood” (London plane), Sequoia sempervirens ‘Aptos Blue’ (coast redwood), and Quercus suber (cork oak).</td>
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TRAFFIC CONTROL PLAN

TC-1 – The City will require that the contractor prepare and implement a Traffic Control Plan in order to mitigate the project’s construction-related traffic impacts. The Traffic Control Plan will ensure that adequate level of service is maintained, or in areas where level of service standards are not being met, that the project will not further degrade level of service. The Traffic Control Plan will also reduce potential safety hazards and other risks associated with construction activities. The contractor will develop and implement a Traffic Control Plan as part of the overall Construction Management Plan, in accordance with City and Caltrans policies. The Traffic Control Plan will be implemented throughout the course of project construction, and will include the following elements to reduce traffic congestion and improve traffic safety along all impacted roadways.

- Ensure internal coordination on the part of the City regarding construction hours of operation and lane closures. Develop a plan for communicating construction plans with transit providers, emergency service providers, residences, and businesses located in the project vicinity, and anyone else who may be affected by project construction.

- Follow all City guidelines for lane closures caused by construction

<p>| Prior to construction on all pipeline alignments | City of Modesto - Deputy Director, Capital Improvement Services | City of Modesto - Deputy Director, Capital Improvement Services | Prior to construction, the City shall require all contractors to prepare a Traffic Control Plan to mitigate construction-related impacts. The Traffic Control Plan shall include the elements list in Environmental Commitment TC-1. |</p>
<table>
<thead>
<tr>
<th>Environmental Commitment</th>
<th>Timing</th>
<th>Implementing Party</th>
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</thead>
<tbody>
<tr>
<td>Limit lane closures during peak commuting hours to the extent possible. Identify roadway segments or intersections that are at or approaching level of service (LOS) that exceeds local standards, and provide for construction-generated traffic to avoid these locations at the peak periods, either by traveling different routes or by traveling at non-peak times of day. No lane closures will be allowed during peak commuting hours where level of services standards are not currently met.</td>
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<tr>
<td>Install traffic control devices as specified in the California Department of Transportation’s Manual of Traffic Controls for Construction and Maintenance Works Zones (California Department of Transportation 1996).</td>
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<tr>
<td>Require traffic controls in the construction zones, including flag persons wearing bright orange or red vests and using a “Stop/Slow” paddle to control oncoming traffic.</td>
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<td>Require that access to driveways and private roads outside the immediate construction zone be maintained at all times.</td>
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<td>Develop a business notification plan for access to local businesses in and adjacent to the construction zone.</td>
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<td>Provide alternate routes for bicyclists and pedestrians during sidewalk, bike lane, and recreation trail closures.</td>
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<tr>
<td>Provide notification to the public of temporary closures of roadways, sidewalks, bike lanes, and recreation trails. Require that advance notice signs of upcoming construction activities be posted at least 1 week in advance, so that motorists, bicyclists, and pedestrians are able to avoid traveling through the project area during these times.</td>
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<tr>
<td>Consult with emergency service providers and develop an access and circulation plan for use by emergency vehicles when lane closures and/or detours are in effect. If lane closures occur, provide advance notice to local fire and police departments to ensure that alternative evacuation and emergency routes are designed to maintain response times.</td>
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</tbody>
</table>
| Construction warning signs should be posted in accordance with local
Environmental Commitment | Timing | Implementing Party | Monitoring Party | Monitoring Actions
--- | --- | --- | --- | ---
Standards or those set forth in the Manual on Uniform Traffic Control Devices (FHWA 2001), in advance of beginning construction in a particular area and at any intersection that provides access to the construction area;

☐ Require that written notification be provided to all contractor employees regarding appropriate routes to and from the construction site, and the weight and speed limits on local roads used to access the construction site;

☐ Specify that signs be posted at all active construction areas giving the name and telephone number or e-mail address of the City staff person designated to receive complaints regarding construction traffic.
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-516

A RESOLUTION APPROVING THE AMENDED AND RESTATED TREATMENT AND DELIVERY AGREEMENT WITH MODESTO IRRIGATION DISTRICT RELATED TO THE PHASE TWO EXPANSION OF THE MODESTO REGIONAL WATER TREATMENT PLANT, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AUTHORIZING STAFF TO PURSUE IMPLEMENTATION OF THE PHASE TWO EXPANSION OF THE MODESTO REGIONAL WATER TREATMENT PLANT UNDER THE TERMS OF THE AMENDED AND RESTATED TREATMENT AND DELIVERY AGREEMENT, AND APPROVING THE DOWNSTREAM CITY FACILITIES PROJECT AS ANALYZED BY THE FINAL SEIR, INCLUDING THE DESIGN AND CONSTRUCTION OF THE DOWNSTREAM CITY FACILITIES, WHICH INCLUDES STORAGE TANKS, PIPELINES, FLOW CONTROL VALVES, PUMPS, AND ASSOCIATED STRUCTURES, ACQUISITION OF RIGHTS OF WAY AS NECESSARY TO IMPLEMENT THE DOWNSTREAM CITY FACILITIES, AND ANY ACTIVITIES AS NECESSARY TO OBTAIN NECESSARY PERMITS OR AUTHORIZATIONS TO IMPLEMENT THE DOWNSTREAM CITY FACILITIES

WHEREAS, the Council of the City of Modesto approved Resolution No. 92-183 on April 21, 1992, authorizing the original Treatment and Delivery Agreement (TDA) with the Modesto Irrigation District (MID) and the former Del Este Water Company, and

WHEREAS, the amended and restated Treatment and Delivery Agreement contemplates the design, construction, and operation of the Phase Two Expansion of the Modesto Regional Water Treatment Plant (MRWTP), and

WHEREAS, City and MID wish to pursue the design, construction, and operation of the Phase Two Expansion of the MRWTP, and

WHEREAS, City and MID agree that the preliminary costs should be included in the project costs to be financed at a later date, and MID agrees to initially fund certain costs related to preliminary work for the project, and
WHEREAS, MID agrees to provide written notice to City that the time to commence project financing has arrived, and

WHEREAS, City agrees that MID should be reimbursed for certain costs related to preliminary work for the project, and under the terms of the aforementioned agreement, MID is required to obtain City authorization to proceed beyond each major project milestone of the amended and restated Treatment and Delivery Agreement, and

WHEREAS, the Acting Public Works Director recommends approving the amended and restated Treatment and Delivery Agreement with Modesto Irrigation District related to the Phase Two Expansion of the Modesto Regional Water Treatment Plant, and authorizing the City Manager, or designee, to execute the agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the amended and restated Treatment and Delivery Agreement for the Phase Two Expansion of the Modesto Regional Water Treatment Plant.

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

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it hereby authorizes staff to pursue implementation of the Phase Two Expansion of the Modesto Regional Water Treatment Plant under the terms of the amended and restated Treatment and Delivery Agreement.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that it approves the Downstream City Facilities project as analyzed by the Final SEIR, including the design and construction of the Downstream City Facilities, which includes storage tanks, pipelines, flow control valves, pumps, and associated structures, acquisition of
rights of way as necessary to implement the Downstream City Facilities, and any
activities as necessary to obtain necessary permits or authorizations to implement the
Downstream City Facilities.

The foregoing resolution was introduced at a regular meeting of the Council of
the City of Modesto held on the 11th day of October 2005, by Councilmember Dunbar,
who moved its adoption, which motion being duly seconded by Councilmember
Jackman, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney

ATTEST
JEAN ZAHR, City Clerk
A RESOLUTION APPROVING A CAPITAL FACILITIES FEES RIGHT OF WAY REIMBURSEMENT AGREEMENT FOR THE DEDICATION OF RIGHT OF WAY AT THE SOUTHWEST CORNER OF CLARATINA AVENUE AND COFFEE ROAD

WHEREAS, Developer owned a certain tract of land at the southwest corner of Claratina Avenue and Coffee Road in the Coffee-Claratina Specific Plan area of the City of Modesto, commonly known as the Loretelli Manor Subdivision ("Project"); and

WHEREAS, Developer has developed said Project and, as a condition of approval of said development was required to dedicate certain right of way along Claratina Avenue and Coffee Road, a portion of which is set forth and described in Exhibit "A" attached hereto; and,

WHEREAS, on or about March 30, 2004, Developer made all dedications required by the conditions of approval for the Project; and,

WHEREAS, the required dedication included a total amount of right of way of 13,350 square feet of right which was in excess of the standard right of way dedication required under City’s Capital Facilities Fees (CFF) Right of Way Dedication Policy, and

WHEREAS, Developer has requested, and City has agreed, that the Developer be reimbursed for the Excess Dedication at the adopted CFF reimbursement rate of $5.00 per square foot.

NOW, THEREFORE BE IT RESOLVED that the City Council hereby approves the following a Reimbursement Agreement with William and Veronica Loretelli in the amount of $66,760 for 13,350 square feet of right of way located at the southwest corner of Coffee Road and Claratina Avenue
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of October 2005, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, 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
Exhibit A
Engineer's Estimate
Maximum Allowable CFF Reimbursement
Developer: Loretelli
Subdivision: Loretelli Manor

<table>
<thead>
<tr>
<th>Item</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Amount Allocated For Reimbursement by the CFD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clearing &amp; Grubbing (SF)</td>
<td>0</td>
<td>$0.10</td>
<td>$0</td>
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<tr>
<td>Remove Pavement (SY)</td>
<td>0</td>
<td>$2.50</td>
<td>$0</td>
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<tr>
<td>Roadway Excavation (CY)</td>
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<td>$15.00</td>
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<td>Asphalt Concrete (Ton)</td>
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<td>Aggregate Base (Ton)</td>
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<td>Sidewalk (SF)</td>
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<td>Signing and Striping (SF)</td>
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<td>Reconstr Priv. Imp’s (LS)</td>
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<td>Storm Drainage (LS)</td>
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<tr>
<td>Relocate Power Poles (EA)</td>
<td>0</td>
<td>$15,000</td>
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</tbody>
</table>

**Construction Total:** $0

10% Design 10% $0 $0
10% Construction Management 10% $0 $0
Right Of Way (sf) 13350.00 $5 $66,750

**Maximum Allowable CFF Reimbursement:** $66,750

All quantities shall be verified in the field.
Unit costs will be based on the submitted and approved contractor invoices.

Prepared by VMD 5/17/04
WHEREAS, on September 6, 2005, pursuant to a petition filed by Shelter Cove Community Church, Inc. (the “Petitioner”) this City Council adopted a resolution (the “Resolution of Intention”) stating its intention to form City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy) (the “Community Facilities District”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”); and

WHEREAS, a copy of the Resolution of Intention, setting forth a description of the proposed boundaries of the Community Facilities District, the facilities and services to be financed by the Community Facilities District and the rate and method of apportionment of special tax proposed to be levied within the Community Facilities District, is on file with the City Clerk and is incorporated herein by reference; and

WHEREAS, on September 6, 2005, the City Council also adopted a resolution stating its intention to incur bonded indebtedness in an amount not to exceed $150,000,000 for the purpose of financing (i) the cost of purchasing, constructing, expanding, improving or rehabilitating the facilities listed on Appendix A to the Resolution of Intention, and all appurtenances and appurtenant work associated with the foregoing (collectively the “Facilities”) and (ii) the incidental expenses to be incurred in connection with financing the Facilities, including costs associated with the creation of
the Community Facilities District and the issuance of bonds, the establishment and replenishment of bond reserve and special reserve funds (the "Incidental Expenses"); all as more fully described in said resolution; and

WHEREAS, notice was published and mailed as required by law relative to the intention of the City to form the Community Facilities District and to incur bonded indebtedness in an amount not to exceed $150,000,000; and

WHEREAS, there has been filed with the City Clerk a report containing a description of the facilities and services necessary to meet the needs of the Community Facilities District and an estimate of the cost of such facilities as required by Section 53321.5 of the Government Code (the "Report"); and

WHEREAS, the City Council has held a public hearing as required by law to determine whether it should proceed with the formation of the Community Facilities District, issue bonds to pay for the Facilities and the Incidental Expenses and authorize the rate and method of apportionment of special taxes to be levied within the Community Facilities District for the purposes described in the aforesaid resolutions; and

WHEREAS, at said hearing all persons desiring to be heard on all matters pertaining to the formation of the Community Facilities District, the levy of special taxes and the issuance of bonds to pay for the cost of the proposed Facilities and Incidental Expenses were heard, and a full and fair hearing was held; and

WHEREAS, at the public hearing evidence was presented to the City Council on the matters before it, and the proposed special taxes to be levied within the Community
Facilities District was not precluded by a majority protest of the type described in
Government Code Section 53324, and the City Council is sufficiently advised as to all
matters relating to the formation of the Community Facilities District, the levy of the
special taxes and the issuance of bonded indebtedness; and

WHEREAS, there have been fewer than twelve registered voters residing in the
proposed boundaries of the Community Facilities District for the statutory period, and the
qualified electors in the Community Facilities District are the landowners within the
Community Facilities District; and

WHEREAS, on the basis of all of the foregoing, the City Council has determined
at this time to proceed with the establishment of the Community Facilities District and to
call an election therein to authorize (i) the levy of special taxes pursuant to the rate and
method of apportionment of special tax, as set forth in Attachment A hereto, (ii) the
issuance of bonds to pay for the Facilities and the Incidental Expenses, and (iii) the
establishment of an appropriations limit for the Community Facilities District;

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

SECTION 1. The above recitals are true and correct.

SECTION 2. A community facilities district designated “City of Modesto
Community Facilities District No. 2005-1 (Hetch Hetchy)” is hereby established pursuant
to the Act. The City Council hereby finds and determines that all prior proceedings taken
with respect to the establishment of the Community Facilities District were valid and in
conformity with the requirements of law, including the Act. This finding is made in accordance with the provisions of Section 53325.1(b) of the Act.

SECTION 3. The boundaries of the Community Facilities District are established as shown on the map designated “Boundary Map of Proposed City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy),” which map is on file in the office of the City Clerk and, pursuant to Sections 3111 and 3113 of the Streets and Highways Code, was recorded in the Book of Maps of Assessment and Community Facilities Districts in the Office of the County Recorder of Stanislaus County in Book No. 4, at Page 28, as Instrument No. 05-0171573-00.

SECTION 4. The facilities authorized to be provided for the Community Facilities District are those identified as the “Facilities” in the recitals of this resolution and the services authorized to be paid for by the Community Facilities District are those set forth in Appendix A to the Resolution of Intention (the “Services”).

SECTION 5. It is the intention of the City Council, subject to the approval of the qualified electors of the Community Facilities District, to levy the proposed special taxes at the rates set forth in Attachment A hereto on all non-exempt property within the Community Facilities District sufficient to pay for (i) the Services, (ii) the Facilities, (iii) the principal and interest and other periodic costs on the bonds proposed to be issued to finance the Facilities, including the establishment and replenishment of reserve funds, any remarketing, credit enhancement and liquidity facility fees and other expenses of the type permitted by Section 53345.3 of the Act; and (iv) the other Incidental Expenses, including the costs of forming the Community Facilities District and administering the
levy and collection of the special tax and all other administrative costs of the special tax levy and bond issues. The City expects to incur, and in certain cases has already incurred, incidental expenses in connection with the creation of the Community Facilities District, the issuance of bonds, the levying and collecting of the special taxes, the provision of the Services, the completion and inspection of the Facilities and the annual administration of the bonds and the Community Facilities District. The rate and method of apportionment of special tax is described in detail on Attachment A hereto and incorporated herein by this reference, and the City Council hereby finds that Attachment A contains sufficient detail to allow each landowner within the Community Facilities District to estimate the maximum amount that may be levied against each parcel. As described in greater detail in the Report, which is incorporated by reference herein, the special taxes are based generally on area of each parcel of real property within the Community Facilities District (except to the extent that certain single family detached lots may be taxed at the same rate regardless of land area) and, accordingly, is hereby determined to be reasonable. The special tax shall be levied on each assessor’s parcel for a period not to extend beyond fiscal year 2060-61. The special taxes are apportioned to each parcel on the foregoing basis pursuant to Section 53325.3 of the Act, and such special taxes are not on or based upon the ownership of real property. Under no circumstances shall the special taxes against any parcel used for private residential purposes be increased by more than 10% as a consequence of delinquency or default by the owner of any other parcel or parcels within the Communities Facilities District.

The City’s Community Facilities District Administrative Officer, 1010 Tenth Street, Modesto, California 95353, telephone number (209) 577-5211, will be
responsible for preparing annually, or authorizing a designee to prepare, a current roll of special tax levy obligations by assessor’s parcel number and will be responsible for estimating future special tax levies pursuant to Section 53340.2 of the Act.

SECTION 6. In the event that a portion of the property within the Community Facilities District shall become for any reason exempt, wholly or partially, from the levy of the special taxes specified in Attachment A, the City Council shall, on behalf of the Community Facilities District, increase the levy (to the extent necessary and permitted by law and these proceedings) upon the remaining property within the Community Facilities District which is not exempt in order to yield the required debt service payments on any outstanding bonds of the Community Facilities District or to prevent the Community Facilities District from defaulting on any of its other obligations or liabilities. The amount of the special taxes will be set in accordance with the rate and method of apportionment of special tax attached hereto as Attachment A.

SECTION 7. Upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the Streets and Highways Code, a continuing lien to secure each levy of the special taxes shall attach to all non-exempt real property in the Community Facilities District, and this lien shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until collection of the special tax by the Community Facilities District ceases.

SECTION 8. It is hereby further determined that there will be no ad valorem property tax levied on property within the Community Facilities District for the exclusive purpose of paying the principal of or interest on bonds or other indebtedness incurred to
finance the construction of capital facilities which provide the same services to the
territory of the Community Facilities District as are proposed to be provided by the
Facilities to be financed by the Community Facilities District.

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

SECTION 10. Written protests against the establishment of the Community
Facilities District have not been filed by one-half or more registered voters within the
boundaries of the Community Facilities District or by the property owners of one-half
(1/2) or more of the area of land within the Community Facilities District. The City
Council hereby finds that the proposed special taxes have not been precluded by a
majority protest pursuant to Section 53324 of the Act.

SECTION 11. The annual appropriations limit (as defined in Section 8(h) of
Article XIII B of the California Constitution) of the Community Facilities District is
hereby established at $150,000,000.

SECTION 12. An election is hereby called for the Community Facilities District
on the propositions of levying the special taxes on the property within the Community
Facilities District and establishing the appropriations limit for the Community Facilities District pursuant to Section 53325.7 of the Act and shall be consolidated with the election on the proposition of incurring bonded indebtedness, pursuant to Section 53351 of the Act. The language of the proposition to be placed on the ballot is attached hereto as Attachment B.

SECTION 13. The date of the election for the Community Facilities District on the proposition of incurring the bonded indebtedness, authorizing the levy of the special taxes and establishing the appropriations limit for the Community Facilities District shall be October 11, 2005. The City Clerk shall conduct the election. Except as otherwise provided by the Act, the election shall be conducted by personally delivered or mailed ballot and in accordance with the provisions of law regulating elections of the City insofar as such provisions are determined by the City Clerk to be applicable.

The City Council having found that there have been fewer than twelve persons registered to vote within the territory of the Community Facilities District for each of the ninety days preceding the close of the public hearing described above, pursuant to Section 53326 of the Government Code each landowner who is the owner of record on the date hereof or the authorized representative thereof shall have one vote for each acre or portion thereof that he or she owns within the Community Facilities District.

SECTION 14. The preparation of the Report is hereby ratified. The Report, as submitted, is hereby approved and is made a part of the record of the public hearing regarding the formation of the Community Facilities District, and is ordered to be kept on file with the transcript of these proceedings and open for public inspection.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of October, 2005, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOTES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED AS TO FORM:

By: ____________________________
MICHAEL D. MILICH, City Attorney

ATTEST: _________________________
JEAN ZAHR, City Clerk

10/11/05/CMO/T Rocha/Item 24  9  2005-518
ATTACHMENT A

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

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

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

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

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

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

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

“Administrator” means the person or firm designated by the City to administer the Special Taxes according to this Rate and Method of Apportionment of Special Tax.

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

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

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

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

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

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

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

“Bonds” means bonds or other debt (as defined in the Act), whether in one or more series, issued, insured or assumed by CFD No. 2005-1 related to Authorized Facilities.

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

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

“City” means the City of Modesto.

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

“County” means the County of Stanislaus.

“Developed Property” means, in any Fiscal Year, the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“One-Time Facilities Special Tax Requirement” means the amount determined by the City and identified in Attachment 2 of this Rate and Method of Apportionment that is needed to pay facility costs authorized to be funded by CFD No. 2005-1, which will not be paid by the Bonds or Annual Facilities Special Tax.

“Original Parcel” means (i) an Assessor’s Parcel in CFD No. 2005-1 at the time of CFD Formation or added to the CFD upon annexation, as identified in Attachment 2 (which shall be updated after each annexation), (ii) a Successor Parcel that is being further subdivided for purposes of determining the Maximum Special Taxes pursuant to Section C below, or (iii) more than one Assessor’s Parcel proposed to be annexed into the CFD as part of a single annexation, the Maximum Special Taxes assigned to which will be aggregated and redistributed to land uses within such Assessor’s Parcels if such aggregation is requested by the developer processing the annexation and/or preferred at the sole discretion of the City.

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

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

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

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

“Single Family Attached Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of a residential structure consisting of two or more Units that share common walls, including such residential structures that meet the statutory definition of a condominium contained in Civil Code Section 1351.
“Single Family Detached Lot” means an individual numbered lot, which is in its final configuration and for which a building permit may be issued for a single family detached Unit.

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

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

“Subdivision Map” means a Final Map, large lot subdivision map, or other map recorded with the County that results in the subdivision of an Original Parcel into two or more Successor Parcels.

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

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

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

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

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

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

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

B. DATA FOR ANNUAL ADMINISTRATION

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

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

C. CALCULATING MAXIMUM SPECIAL TAXES

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

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

2. **Successor Parcels**

   a. **All Successor Parcels are Single Family Detached Lots**

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

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

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

   b. **No Successor Parcels are Single Family Detached Lots**

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

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

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

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

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

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

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

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

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

**Step 4:** Divide the Maximum Special Taxes from Step 1 by the Acreage calculated in Step 2 to calculate Maximum Special Taxes per acre;

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

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

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

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

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

**D. ESCALATION OF MAXIMUM SPECIAL TAXES**
1. One-Time Facilities Special Tax

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

2. Annual Facilities Special Tax

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

3. Annual Maintenance Special Tax

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

E. METHOD OF LEVY OF THE SPECIAL TAX

1. One-Time Facilities Special Tax

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

2. Annual Facilities Special Tax

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

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

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

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

### 3. Annual Maintenance Special Tax

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

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

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

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

### F. COLLECTION OF SPECIAL TAX

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

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

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

G. EXEMPTIONS

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

H. PREPAYMENT OF SPECIAL TAX

The following definitions apply to this Section H:

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

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

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

"Remaining Facilities Costs" means the Public Facilities Requirements (as defined above), minus costs of Authorized Facilities funded by Outstanding Bonds (as defined above), developer equity, and/or any other source of funding.

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

\[
\text{Bond Redemption Amount} + \text{Remaining Facilities Amount} + \text{Redemption Premium} + \text{Defeasance Requirement} + \text{Administrative Fees and Expenses} - \text{Reserve Fund Credit} = \text{Prepayment Amount}
\]
As of the proposed date of prepayment, the Prepayment Amount shall be determined by application of the following steps:

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

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

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

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

**Step 5.** Multiply the quotient computed pursuant to Step 2 by the amount determined pursuant to Step 4 to compute the amount of Remaining Facilities Costs to be prepaid (the “Remaining Facilities Amount”).

**Step 6.** Multiply the Bond Redemption Amount computed pursuant to Step 3 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (the “Redemption Premium”).

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

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

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

**Step 10.** Determine the costs of computing the prepayment amount, the costs of redeeming Bonds, and the costs of recording any notices to evidence the prepayment and the redemption (the “Administrative Fees and Expenses”).
Step 11. If and to the extent so provided in the indenture pursuant to which the Outstanding Bonds to be redeemed were issued, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the "Reserve Fund Credit").

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

I. INTERPRETATION OF SPECIAL TAX FORMULA

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

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

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

Claratina Avenue

Coffee Road

Hetch-Hetchy

082-004-014
082-005-001
082-005-002
082-006-001
082-006-002
082-006-007
082-007-007

082-004-020
082-005-026
ATTACHMENT 2

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

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

<table>
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<td>$179,046</td>
<td>$100,572</td>
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1. Beginning in January 2007 and each January thereafter, the Maximum One-Time Facilities Special Tax shall be adjusted by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum One-Time Facilities Special Tax shall become effective on the subsequent July 1.

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

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

BALLOT PROPOSITION

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

SPECIAL ELECTION

MEASURE SUBMITTED TO VOTE OF VOTERS: Shall City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy) (the "Community Facilities District") incur an indebtedness and issue bonds in the maximum aggregate principal amount of $150,000,000, with interest at a rate or rates not to exceed the maximum interest rate permitted by law, the proceeds of which will be used to finance the costs of planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of certain water system, wastewater system, storm drain system, transportation system and park improvements and appurtenances and appurtenant work and to finance the incidental expenses associated therewith, all as further provided in the resolution of the Council of the City of Modesto establishing the Community Facilities District (the "Resolution of Formation"), and shall special taxes with a rate and method of apportionment as provided in the Resolution of Formation be authorized to be levied, and shall the annual appropriations limit of Community Facilities District No. 2005-1 (Hetch Hetchy) be established in the amount of $150,000,000?

YES______

NO______
A RESOLUTION DETERMINING IT NECESSARY TO INCUR BONDED INDEBTEDNESS WITHIN THE CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2005-1 (HETCH HETCHY)

WHEREAS, on September 6, 2005, pursuant to a petition filed by Shelter Cove Community Church, Inc., this City Council adopted a resolution stating its intention to form the City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy) (the "Community Facilities District") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"); and

WHEREAS, a copy of said resolution, setting forth a description of the proposed boundaries of the Community Facilities District, the facilities and services to be financed by the Community Facilities District and the rate and method of apportionment of special tax proposed to be levied within the Community Facilities District, is on file with the City Clerk and is incorporated herein by reference; and

WHEREAS, on September 6, 2005, the City Council also adopted a resolution stating its intention to incur bonded indebtedness in an amount not to exceed $150,000,000 for the purpose of financing (i) the cost of purchasing, constructing, expanding, improving or rehabilitating certain storm drain system, water system, sewer system improvements, transportation system and park improvements and all appurtenances and appurtenant work in connection with the foregoing (collectively, the "Facilities") and (ii) the incidental expenses incurred and to be incurred in connection with financing the Facilities, including costs associated with the creation of the
Community Facilities District and the issuance of bonds and the establishment and replenishment of bond reserve and special reserve funds (the "Incidental Expenses"), all as more fully described in said resolution; and

WHEREAS, notice was published and mailed as required by law relative to the intention of the City Council to form the Community Facilities District and to incur bonded indebtedness in an amount not to exceed $150,000,000 within the boundaries of the Community Facilities District; and

WHEREAS, the City Council has held a public hearing as required by law to determine whether it should proceed with the formation of the Community Facilities District, issue bonds to pay for the Facilities and the Incidental Expenses and authorize the rate and method of apportionment of special tax to be levied within the Community Facilities District for the purposes described in the aforesaid resolutions; and

WHEREAS, at said hearing all persons desiring to be heard on all matters pertaining to the formation of the Community Facilities District, the levy of special taxes and the issuance of bonds to pay for the cost of the proposed Facilities and Incidental Expenses were heard, and a full and fair hearing was held; and

WHEREAS, the City Council desires to make the necessary findings to incur bonded indebtedness within the Community Facilities District, to declare the purpose for such indebtedness, and to authorize the submittal of a combined ballot proposition to the qualified electors of the Community Facilities District, being the land owners within the Community Facilities District, all as authorized and required by law;
NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto, acting as the legislative body of the City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy), hereby finds and determines as follows:

SECTION 1. The above recitals are true and correct.

SECTION 2. In order to finance the Facilities and Incidental Expenses, it is necessary to incur bonded indebtedness in a maximum aggregate principal amount not to exceed $150,000,000 within the Community Facilities District.

SECTION 3. The aforesaid bonded indebtedness is to be incurred for the purpose of financing the costs of purchasing, constructing, expanding, improving or rehabilitating the Facilities and financing the Incidental Expenses.

SECTION 4. All of the property within the Community Facilities District, as established pursuant to the Resolution of Formation, with the exception of property exempted from the special tax pursuant to the provisions of the rate and method of apportionment of special tax attached to the Resolution of Formation, shall pay for the bonded indebtedness pursuant to the levy of the special tax authorized by the Resolution of Formation.

SECTION 5. The maximum term of the bonds to be issued shall in no event exceed 40 years; and the bonds shall bear interest at rates (not in excess of the maximum rate permitted by law) determined at the time of sale thereof.

SECTION 6. An election is hereby called for the Community Facilities District on the proposition of incurring bonded indebtedness pursuant to Section 53351 of the Act
and shall be consolidated with the election on the propositions of levying the special
taxes on the property within the Community Facilities District and establishing an
appropriations limit for the Community Facilities District pursuant to Section 53325.7 of
the Act. The language of the proposition to be placed on the ballot is attached hereto as
Attachment A.

SECTION 7. The date of the election for the Community Facilities District on
the proposition of incurring the bonded indebtedness, authorizing the levy of the special
taxes and establishing the appropriations limit for the Community Facilities District shall
be October 11, 2005. The City Clerk shall conduct the election. Except as otherwise
provided by the Act, the election shall be conducted by personally delivered or mailed
ballots and in accordance with the provisions of law regulating elections of the City
insofar as such provisions are determined by the City Clerk to be applicable.

It is hereby found that there have been fewer than twelve persons registered to
vote within the territory of the Community Facilities District for each of the ninety days
preceding the close of the public hearing described above; and, pursuant to Section 53326
of the Government Code, each landowner who is the owner of record on the date hereof
or the authorized representative thereof shall have one vote for each acre or portion
thereof that he or she owns within the Community Facilities District.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of October, 2005, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney
ATTACHMENT A

BALLOT PROPOSITION

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

SPECIAL ELECTION

MEASURE SUBMITTED TO VOTE OF VOTERS: Shall City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy) (the “Community Facilities District”) incur an indebtedness and issue bonds in the maximum aggregate principal amount of $150,000,000, with interest at a rate or rates not to exceed the maximum interest rate permitted by law, the proceeds of which will be used to finance the costs of planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of certain water system, wastewater system, storm drain system, transportation system and park improvements and appurtenances and appurtenant work and to finance the incidental expenses associated therewith, all as further provided in the resolution of the Council of the City of Modesto establishing the Community Facilities District (the “Resolution of Formation”), and shall special taxes with a rate and method of apportionment as provided in the Resolution of Formation be authorized to be levied, and shall the annual appropriations limit of Community Facilities District No. 2005-1 (Hetch Hetchy) be established in the amount of $150,000,000?

YES

NO
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-520

A RESOLUTION CALLING A SPECIAL ELECTION FOR THE CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2005-1 (HETCH HETCHY)

WHEREAS, on this date, this City Council adopted a resolution entitled “A Resolution Establishing City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy), Authorizing the Levy of Special Taxes Therein and Establishing an Annual Appropriations Limit” (the “Resolution of Formation”), which established the City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy) (the “Community Facilities District”), authorized the levy of special taxes therein, and established an annual appropriations limit; and

WHEREAS, on this date, the City Council, acting as the legislative body of the Community Facilities District, also adopted a resolution entitled “A Resolution Determining it Necessary to Incur Bonded Indebtedness Within the City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy),” which declared the necessity to incur bonded indebtedness in the maximum amount of $150,000,000; and

WHEREAS, pursuant to the provisions of said resolutions, propositions to authorize the levy of special taxes within the Community Facilities District, to establish an appropriations limit of the Community Facilities District and to authorize the incurring of bonded indebtedness are to be submitted to the qualified electors of the Community Facilities District as required by the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”);

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto, acting as the legislative body of the City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy), hereby finds and determines as follows:
SECTION 1. Pursuant to the Act the propositions to authorize the levy of special taxes within the Community Facilities District, establish an appropriations limit of the Community Facilities District and authorize the incurring of a bonded indebtedness shall be combined into one ballot proposition and submitted to the qualified electors of the Community Facilities District as provided herein.

SECTION 2. The City Council has heretofore found that fewer than twelve persons have been registered to vote within the territory of the Community Facilities District for the ninety days preceding the close of the public hearing heretofore held by the City Council for the purposes of these proceedings. Accordingly, the vote shall be by the land owners of the Community Facilities District, and each owner of record at the close of such public hearing, or the authorized representative thereof, shall have one vote for each acre or portion of an acre that he or she owns within the Community Facilities District.

SECTION 3. The date of the election shall be October 11, 2005, and the City Clerk shall conduct the election. The election shall be conducted by personally delivered or mailed ballots and in accordance with the provisions of law regulating elections of the City insofar as such provisions are determined by the City Clerk to be applicable. The voted ballots shall be returned to the City Clerk not later than 9:00 p.m. on October 11, 2005; provided that if all of the qualified electors have voted prior to such time, the election may be closed by the City Clerk.

SECTION 4. The form of the ballot for the election is attached hereto as Exhibit A and by this reference incorporated herein. The City Clerk shall cause to be delivered to each of the qualified electors of the Community Facilities District a ballot in said form. Each ballot shall indicate the number of votes to be voted by the respective elector based upon the number of acres of land owned by such elector as set forth above. The identification envelope for return of
the ballot shall be enclosed with the ballot, shall have the postage prepaid and shall contain
(a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating
that the elector is the owner of record, or the authorized representative thereof, and is the person
whose name appears on the identification envelope, (c) the printed name, signature and address
of the elector, (d) the date of signing and place of execution of the declaration described above
and (e) a notice that the envelope contains an official ballot and is to be opened only by the
canvassing board. Analysis and arguments with respect to the ballot proposition are hereby
waived.

SECTION 5. The City Clerk shall accept the ballots of the qualified electors in the
office of the City Clerk to and including 9:00 p.m. on October 11, 2005 whether said ballots shall
be personally delivered or received by mail.

SECTION 6. There is on file with the City Clerk a written instrument executed by the
sole qualified elector of the Community Facilities District requesting a shortening of the time for
the special election in order to expedite the process of formation of the Community Facilities
District and waiving any requirement for analysis and arguments in connection therewith.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of October, 2005, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: ____________________________

       JOAN ZAHN, City Clerk

APPROVED AS TO FORM:

By ________________________________

       MICHAEL D. MILICH, City Attorney
EXHIBIT A
OFFICIAL BALLOT
CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2005-1 (HETCH HETCHY)

October 11, 2005
SPECIAL ELECTION

This ballot is for a special, landowner election. You must return this ballot in the enclosed envelope to the office of the City Clerk of the City of Modesto no later than 9:00 p.m. on October 11, 2005, either by mail or in person. The City Clerk's offices are located at 1010 Tenth Street, Modesto, California 95353.

INSTRUCTIONS TO VOTERS:

To vote on the measure, make a “+,” “x” or other distinguishing mark on the line after the word “Yes” or on the line after the word “No.” If you wrongly mark, tear or deface this ballot, return it to the City Clerk and obtain another.

MEASURE SUBMITTED TO VOTE OF VOTERS: Shall City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy) (the “Community Facilities District”) incur an indebtedness and issue bonds in the maximum aggregate principal amount of $150,000,000, with interest at a rate or rates not to exceed the maximum interest rate permitted by law, the proceeds of which will be used to finance the costs of planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitatig certain real and other tangible property with an estimated useful life of five years or longer, consisting of certain water system, wastewater system, storm drain system, transportation system and park improvements and appurtenances and appurtenant work and to finance the incidental expenses associated therewith, all as further provided in the resolution of the Council of the City of Modesto establishing the Community Facilities District (the “Resolution of Formation”), and shall special taxes with a rate and method of apportionment as provided in the Resolution of Formation be authorized to be levied, and shall the annual appropriations limit of Community Facilities District No. 2005-1 (Hetch Hetchy) be established in the amount of $150,000,000?

YES______
NO______
By execution in the space provided below, you also indicate your waiver of the time limit pertaining to the conduct of the election and any requirement for analysis and arguments with respect to the ballot measure, as such waivers are described and permitted by Sections 53326(a) and 53327(b) of the Mello-Roos Community Facilities Act of 1982.

[NAME]

By ______________________________

Number of Votes: ___
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-521

A RESOLUTION DECLARING THE RESULTS OF A SPECIAL ELECTION AND APPROVING CERTAIN RELATED ACTIONS PERTAINING TO CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2005-1 (HETCH HETCHY)

WHEREAS, this City Council, acting as the legislative body of the City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy) (the “Community Facilities District”), called and duly held an election of the Community Facilities District pursuant to resolutions adopted by the City Council on September 6, 2005 for the purpose of presenting to the qualified electors within the Community Facilities District a proposition (the “Proposition”) for (a) the authorization of bonds in a principal amount not to exceed $150,000,000, (b) the levy of special taxes in accordance with the rate and method of apportionment of special tax set forth in the resolution forming the Community Facilities District and (c) the establishment of an appropriations limit for the Community Facilities District; and

WHEREAS, there has been presented to the City Council a Certificate of the City Clerk as to the Results of the Canvass of the Election Returns, a copy of which is attached hereto as Attachment “A”;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto, acting as the legislative body of the City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy), hereby finds and determines as follows:

SECTION 1. The above recitals are true and correct.
SECTION 2. Two-thirds or more of the votes cast by the qualified electors of the Community Facilities District at the special election held on October 11, 2005 on the Proposition were cast in favor of the Proposition, and the Proposition carried. The City Council, acting as the legislative body of the Community Facilities District, is hereby authorized to issue, from time to time as it determines appropriate, bonds for the benefit of the Community Facilities District for the purposes set forth in the Proposition and to take the necessary steps to levy the special taxes authorized by the Proposition.

SECTION 3. The City Clerk is hereby authorized and directed to execute and cause to be recorded in the office of the County Recorder of Stanislaus County a notice of special tax lien in the form required by law, said recording to occur no later than fifteen days following adoption of this Resolution.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of October, 2005, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Juan Zabala, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
ATTACHMENT “A”

CERTIFICATE OF CITY CLERK
AS TO RESULTS OF THE CANVAS OF ELECTION RETURNS

STATE OF CALIFORNIA

COUNTY OF STANISLAUS

As City Clerk of the City of Modesto, I do hereby certify that I have examined the returns of the special election for City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy) (the “Community Facilities District”). With my concurrence, the election was conducted on October 11, 2005. On or prior to said date I had mailed or personally delivered a ballot to the landowner listed on the latest equalized assessment roll prepared by the Stanislaus County Assessor prior to October 11, 2005 or otherwise known by me to own the property within the boundaries of the Community Facilities District. The landowner was given one vote for each acre, or portion thereof, that the landowner owns within the Community Facilities District.

I further certify that the results of said election and the number of votes cast for and against the Proposition are as follows:

YES: 18

NO: 0

TOTAL NUMBER OF VOTES CAST: 18

Dated this 11th day of October, 2005.

Jean Zahr,
City Clerk of the City of Modesto
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-522

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO CALLING AN ELECTION FOR THE PURPOSE OF SUBMITTING THE LEVY OF THE CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2004-1 (VILLAGE ONE #2) SPECIAL TAXES TO THE QUALIFIED ELECTORS OF THE TERRITORY PROPOSED TO BE ANNEXED TO THE DISTRICT (ANNEXATION NO. 9)

WHEREAS, this Council did, on September 6, 2005, adopt its Resolution No. 2005-424 (the "Resolution of Intention to Annex") to indicate its intention to annex certain territory to the City’s Community Facilities District No. 2004-1 (Village One #2) (the "District") and authorize the levy of the District special taxes within the territory proposed to be annexed (the “Annexed Territory”), pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code, commonly known as the “Mello-Roos Community Facilities Act of 1982” (the “Act”), and set a hearing thereon; and

WHEREAS, pursuant to the Act, this Council did, by its Resolution No. 2004-681, adopted on December 14, 2004, clarify the Rate and Method of Apportionment with respect to the Maximum Special Taxes to be generated by a parcel that has been rezoned, and

WHEREAS, pursuant to the Act, this Council did, by its Resolution No. 2004-683, adopted on December 14, 2004 (“Resolution of Creation of Tax Zone #2), create Tax Zone #2 within the District; and

WHEREAS, the One-Time Facilities Special Tax component of the special taxes is higher in Tax Zone #2 than in Tax Zone #1, and

WHEREAS, the Annexed Territory will be annexed to and subject to the special taxes in Tax Zone #2, and
WHEREAS, notice of the hearing was duly published as required by law, as evidenced by the proof of publication on file with the City Clerk; and

WHEREAS, a map of the Annexed Territory, entitled “Annexation Map No. 9 of Community Facilities District No. 2004-1 (“Village One #2) of the City of Modesto, County of Stanislaus, State of California,” was recorded on September 8, 2005, in the Office of the County Recorder of the County of Stanislaus, in Book 4 of Maps of Assessment and Community Facilities Districts, at page 27; and

WHEREAS, at the time and date set for the hearing (October 11, 2005) pursuant to the Resolution of Intention to Annex, this Council held the public hearing on Tuesday, October 11, 2005, as required by the Act, related to the proposed annexation and the levy of the District special taxes for Tax Zone #2 within the Annexed Territory, and all other matters set forth in the Resolution of Intention to Annex; and

WHEREAS, at the hearing all persons desiring to be heard on all matters pertaining to the proposed annexation and the levy of the District special taxes for Tax Zone #2 within the Annexed Territory, and all other matters set forth in the Resolution of Intention to Annex, including all interested persons for or against the proposed annexation to the District and the levy of the District special taxes for Tax Zone #2 within the Annexed Territory were heard and considered, and a full and fair hearing was held thereon; and

WHEREAS, at the hearing evidence was presented to this Council on the matters before it, and this Council, at the conclusion of the hearing, was fully advised as to all matters related to the proposed annexation and the levy of the District special taxes for Tax Zone #2 within the Annexed Territory, and all other matters set forth in the Resolution of Intention to Annex; and
WHEREAS, written protests against the proposed annexation and the levy of the District special taxes for Tax Zone #2 within the Annexed Territory have not been filed with the City Clerk by 50 percent or more of the registered voters or six registered voters, whichever is more, residing within the District or residing within the Annexed Territory, or the owners of one-half or more of the land in the District, or in the Annexed Territory; and

WHEREAS, the Stanislaus County Registrar of Voters has certified there are less than 12 registered voters residing in the Annexed Territory; accordingly, the qualified electors are the landowners; and

WHEREAS, the City Clerk, being the Council’s designated election official for purposes of the election herein called, has concurred in the election date herein set forth for the election;

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

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. All prior proceedings taken with respect to the annexation of the Annexed Territory to the District, and the levy of the District special taxes for Tax Zone #2 within the Annexed Territory were valid and in conformity with the requirements of the Act. This determination shall be final and conclusive upon all persons.

SECTION 3. The proposed annexation of the Annexed Territory to the District and the levy of the District special taxes for Tax Zone #2 within the Annexed Territory have not been precluded by majority protest pursuant to Section 53339.5 of the Act.

SECTION 4. As stated in the Resolution of Intention to Annex, it is the intention of this Council, subject to the approval of the qualified electors of the Annexed Territory, to annex the Annexed Territory to the District and levy the District special taxes for Tax Zone #2 within the
Annexed Territory. Upon such approval the Council will be authorized to levy the District special taxes for Tax Zone #2 within the Annexed Territory.

SECTION 5. A special election is hereby called at which the question of levying the District special taxes for Tax Zone #2 within the Annexed Territory shall be submitted to the qualified electors of the Annexed Territory. The election shall be held in accordance with and subject to the Act, all of the terms of which shall, unless waived as herein provided, be applicable to such election. The ballot measure shall be substantially in the form attached hereto as Exhibit A.

SECTION 6. Fewer than 12 persons have been registered to vote within the Annexed Territory for each of the 90 days preceding the close of the hearing referenced herein. Accordingly, the vote shall be by the landowners of the Annexed Territory, and each such landowner shall have one vote for each acre or portion thereof that he or she owns within the Annexed Territory. The ballots shall be distributed by mail with return postage prepaid, or by personal service, to each landowner, all as provided in Section 53326 of the Act.

Since the City Clerk has received an appropriate waiver of time limits and other requirements pertaining to the conduct of the election by the owner of all of the land in the Annexed Territory (the “Landowner”), the election shall be held on the 11th day of October 2005. The election shall be conducted by the City Clerk in the manner required by this resolution, the Act and applicable laws.

The hour on such date when the ballots are required to be received in the office of the City Clerk is noon, Pacific Time. If all qualified electors have voted prior to such time, the election shall be closed.
SECTION 7. In accordance with Section 53327(b) of the Act, analysis and arguments, as required by Section 53327(a) of the Act are hereby waived, as the City Clerk has received the unanimous consent to such waivers from the Landowner.

SECTION 8. The publication of this Resolution as notice of the special election is hereby waived as the City Clerk has received the unanimous consent to such waiver from the Landowner.

SECTION 9. The Annexed Territory shall constitute a single election precinct for the purpose of holding the election.

SECTION 10. The City Clerk is hereby authorized to take any and all steps necessary for the holding of the election, and to perform and render all services and proceedings incidental to and in connection with the election.

SECTION 11. The City Clerk shall canvass the returns and certify the results of the election to this Council. If two-thirds or more of the votes cast are in favor of levying the District special taxes for Tax Zone #2 in the Annexed Territory, this Council may thereafter, order the annexation of the Annexed Territory to the District and levy the District special taxes in the Annexed Territory in the amount and for the purposes specified in Resolution No. 2004-199 adopted by this Council on April 6, 2004 (the “Resolution of Formation”). The Special Tax will be levied only at the rate and apportioned only in the manner specified in the Resolution of Formation, as clarified by the City Council on December 14, 2004 (Resolution No. 2004-681) and at the rates set forth in Tax Zone #2 created by the City Council on December 14, 2004 (Resolution No. 2004-683).
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th of October 2005, 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

APPROVED AS TO FORM:

By: _______________________
MICHAEL D. MILICH, City Attorney
SAMPLE
OFFICIAL BALLOT

BALLOT NO. _____

CITY OF MODESTO
COMMUNITIES FACILITIES DISTRICT NO. 2004-1
(VILLAGE ONE #2)
ANNEXATION NO. 9
SPECIAL TAX ELECTION
October 11, 2005

___% OF LAND IN TERRITORY PROPOSED TO BE ANNEXED TO DISTRICT
NUMBER OF VOTES ENTITLED TO BE CAST _____
(VOTER MAY REMOVE AND RETAIN THIS STUB)

INSTRUCTIONS TO VOTERS

To vote, make a mark (x) in the voting area to the right of the word “YES” or “NO.”

All distinguishing marks or erasures are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, telephone the Office of the City Clerk of the City of Modesto for instructions as soon as possible at (209) 577-5398, Monday through Friday, between the hours of 9:00 a.m. and noon

MARK YOUR CHOICE IN THIS MANNER ONLY: ☒
MEASURE SUBMITTED TO VOTE OF VOTERS

Proposition A. Shall special taxes for Tax Zone #2, with maximum rates, method of apportionment, and manner of collection as provided in Exhibit A to the City’s Resolution No. 2004-683, entitled “A Resolution of the City Council of the City of Modesto Creating Tax Zone #2 in Community Facilities District No. 2004-1 (Village One #2), Approving an Increase in the One-Time Facilities Special Tax Therein, and Approving Updates of the Rate and Method of apportionment of Special Taxes for the District”, adopted by the City Council of the City of Modesto on December 14, 2004, which is incorporated herein by this reference, be levied within the territory proposed to be annexed to Tax Zone #2 of the City of Modesto Community Facilities District No. 2004-1 (Village One #2) pursuant to the City’s Resolution No. 2005-424, entitled “A Resolution of the City Council of the City of Modesto of Intention to Annex Territory to Community Facilities District No. 2004-1 (Village One #2) and to Authorize the Levy of Special Taxes therein (Annexation No. 9)” adopted by the City Council of the City of Modesto on September 6, 2005, for the purposes set forth in Resolution No. 2004-199, entitled “A Resolution of the City Council of the City of Modesto of Formation, Establishing City of Modesto Community Facilities District No. 2004-1 (Village One #2), Authorizing the Levy of Special Taxes within the District, Preliminarily Establishing an Appropriations Limit for the District, and Calling an Election for the Purpose of Submitting the Levy of the Special Taxes and the Establishment of the Appropriations Limit to the Qualified Electors of the District”, adopted by the City Council of the City of Modesto on April 6, 2004, which is incorporated herein by this reference?

BALLOT NO. _____

___% of land in territory proposed to be annexed to District
THIS BALLOT HAS A VALUE OF ___ VOTES
MODesto city council
Resolution No. 2005-523

A resolution of the city council of the city of modesto canvassing the results of the October 11, 2005, election held within the territory proposed to be annexed to City of Modesto Community Facilities District No. 2004-1 (Village One #2), and ordering annexation of the territory to the district (Annexation No. 9)

WHEREAS, this council is conducting proceedings pertaining to the annexation of certain territory to the City's Community Facilities District No. 2004-1 (Village One #2) (the "District") and the levy of the District special taxes (the "District Special Taxes") within such territory, as described in its Resolution No. 2005-424, entitled "A Resolution of the City Council of the City of Modesto of Intention to Annex Territory to Community Facilities District No. 2004-1 (Village One #2) and to Authorize the Levy of Special Taxes therein (Annexation No. 9)" adopted on September 6, 2005, pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code, commonly known as the "Mello-Roos Community Facilities Act of 1982" (the "Act"); and

WHEREAS, pursuant to the Act, this Council did, by its Resolution No. 2004-681, adopted on December 14, 2004, clarify the Rate and Method of Apportionment with respect to the Maximum Special Taxes to be generated by a parcel that has been rezoned, and

WHEREAS, pursuant to the Act, this Council did, by its Resolution No. 2004-683, adopted on December 14, 2004 ("Resolution of Creation of Tax Zone #2), create Tax Zone #2 within the District, and

WHEREAS, the territory to be annexed will be subject to the tax rates in Tax Zone #2,

WHEREAS, the owners of all the property within the territory proposed to be annexed to the District waived those provisions related to the timing and conduct of the election referenced...
in Sections 5, 6, 7 and 8 of this Council’s Resolution No. 2005-522, adopted on October 11, 2005, and, as a result, this Council called an election within the territory proposed to be annexed to the District (the “Election”) for October 11, 2005, or as soon thereafter as practicable, relative to the foregoing; and

WHEREAS, on October 11, 2005, the Election was held; and

WHEREAS, the City Clerk has certified that at the Election the proposition of levying the District Special Taxes within the territory proposed to be annexed to the District was approved by more than two-thirds (2/3) of the votes cast at the Election;

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

SECTION 1. The Election was duly and validly conducted in conformity with all applicable laws pertaining thereto. It is hereby determined that the owners of the territory proposed to be annexed is as set forth in the Certificate of City Clerk as to Distribution of Official Ballots, submitted to this Council and on file with the City Clerk.

SECTION 2. The ballot proposition presented to the qualified electors of the territory proposed to be annexed at the Election received at least two-thirds (2/3) of the votes cast at the Election. A copy of the City Clerk’s certificate of election results is attached.

SECTION 3. Pursuant to Section 53339.8 of the Act, it is hereby ordered that the territory proposed to be annexed to the District pursuant to Resolution No. 2005-424 be annexed to and be a part of the District with full legal effect, and that the District Special Taxes be levied within the territory so annexed as set forth in the Resolution of Creation of Tax Zone #2.

SECTION 4. The City Clerk is hereby directed to enter this resolution on the minutes of this City Council, which shall constitute the official declaration of the result of the Election.
SECTION 5. The City Clerk is further authorized and directed to record an amendment to the Notice of Special Tax Lien with the County Recorder of the County of Stanislaus, within 15 days from the date hereof, in accordance with the provisions of Sections 3114.5 and 3117.7 of the California Streets and Highways Code.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of October 2005, 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

APPROVED AS TO FORM:

By: ________________________________

MICHAEL D. MILICH, City Attorney
CERTIFICATE OF CITY CLERK

I, JEAN ZAHR, City Clerk of the City of Modesto, hereby certify that, pursuant to Resolution No. 2005-522, A Resolution of the City Council of the City of Modesto Calling an Election for the Purpose of Submitting the Levy of the City of Modesto Community Facilities District No. 2004-1 (Village One #2) Special Taxes to the Qualified Electors of the Territory Proposed to be Annexed to the District (Annexation No. 9) adopted on September 6, 2005, by the City Council of the City of Modesto, I did conduct the Special Tax Election on October 11, 2005, and that the election was conducted by mail or in person at the City Hall of the City of Modesto.

I further certify that the following shows the full text of the measure submitted to the voters at the election and the full and true totals of all votes cast for and against the measure.

**Proposition A.** Shall special taxes for Tax Zone #2, with maximum rates, method of apportionment, and manner of collection as provided in Exhibit A to the City's Resolution No. 2004-683, entitled "A Resolution of the City Council of the City of Modesto Creating Tax Zone #2 in Community Facilities District No. 2004-1 (Village One #2), Approving an Increase in the One-Time Facilities Special Tax Therein, and Approving Updates of the Rate and Method of apportionment of Special Taxes for the District", adopted by the City Council of the City of Modesto on December 14, 2004, which is incorporated herein by this reference, be levied within the territory proposed to be annexed to Tax Zone #2 of the City of Modesto Community Facilities District No. 2004-1 (Village One #2) pursuant to the City's Resolution No. 2005-424, entitled "A Resolution of the City Council of the City of Modesto of Intention to Annex Territory to Community Facilities District No. 2004-1 (Village One #2) and to Authorize the Levy of Special Taxes therein (Annexation No. 9)" adopted by the City Council of the City of Modesto on September 6, 2005, for the purposes set forth in Resolution No. 2004-199, entitled "A Resolution of the City Council of the City of Modesto of Formation, Establishing City of Modesto Community Facilities District No. 2004-1 (Village One #2), Authorizing the Levy of Special Taxes within the District, Preliminarily Establishing an Appropriations Limit for the District, and Calling an Election for the Purpose of Submitting the Levy of the Special Taxes and the Establishment of the Appropriations Limit to the Qualified Electors of the District", adopted by the City Council of the City of Modesto on April 6, 2004, which is incorporated herein by this reference?

TOTAL VOTES CAST: YES 71  NO 0

JeZahr
City Clerk of the City of Modesto

Dated: 10/14, 2005

Exhibit A to 2005-523 Resolution - Canvassing (Annexation No. 9 to CFD No. 2004-1)
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-524

A RESOLUTION APPROVING A NEW LEASE AGREEMENT WITH THE MODESTO GARDEN CLUB FOR CITY-OWNED PROPERTY AT 622 14TH STREET, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, two properties at 618 and 622 14th Street were donated to the City to be used for civic purposes, and

WHEREAS, for several years, the City has had a lease agreement with the Modesto Garden Club for the property at 622 14th Street; the Garden Club has been responsible for all improvements to the property, as well as any possessor taxes, and

WHEREAS, rent has been $1 annually; in exchange for use of the property, the Garden Club has provided many beautification projects throughout the City, including the downtown flower pots and hanging baskets, the garden at the Senior Citizens Center, and most notably, the flower clock on the Modesto Centre Plaza grounds; in addition, the Garden Club has made many improvements to the structure and grounds of the property at 622 14th Street, primarily through volunteer labor and in-kind services, and

WHEREAS, the current lease expires in 2006; rather than wait until it expires, City staff and the Modesto Garden Club are interested in entering into a new lease at this time to not only more appropriately recognize the contributions of the Garden Club, but also to assure the Club that its investment into the property on 14th Street will be protected, and

WHEREAS, the terms of the proposed lease will include an initial term of twenty-five (25) years, with two twenty-five (25) year options and a final twenty-four (24) year option, an annual meeting between City staff and the Garden Club to review and discuss
projects and concerns, an annual presentation to the City Council on the activities of the Garden Club, and the addition of performance standards to allow termination of the leases if the Club ceases to exist, ends its community services, or significantly reduces its level of service, and

WHEREAS, the Safety and Communities Committee met on February 28, 2005, and supported the recommendation to enter into a new lease with the Modesto Garden Club; the Committee requested that the agreement provide for the Garden Club to inform the City of its civic beautification activities,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a new lease agreement with the Modesto Garden Club for City-owned property at 622 14th Street for an initial term of twenty-five (25) years, with two twenty-five (25) year options and a final twenty-four (24) year option.

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 October 2005, 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, Jackman, Keating, Marsh, O’Bryant,
           Mayor Ridenour

NOES:    Councilmembers: None

ABSENT:  Councilmembers: Hawn

APPROVED AS TO FORM:

By:      MICHAEL D. MILICH, City Attorney

Attest:  JEAN ZAHR, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-525

A RESOLUTION APPROVING A SECOND AMENDMENT TO THE CONTRACT FOR CONSULTANT SERVICES WITH MAZE & ASSOCIATES FOR ADDITIONAL WORK AT A COST NOT TO EXCEED $25,375, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AMENDMENT

WHEREAS, on April 6, 2004, the Modesto City Council, by Resolution 2004-171 entered into an original contract with Maze & Associates to perform non-audit services for the City, and

WHEREAS, on January 25, 2005, the Modesto City Council adopted Resolution 2005-044 approving execution of a First Amendment to the stated contract with Maze & Associates, to perform additional, non-audit services for the City, and

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

WHEREAS, the City has requested Maze & Associates to perform additional work in addition to the originally contracted work, namely, to prepare the Annual Report of Financial Transactions required by the State Controller, at a price not to exceed $21,475 for the three subsequent fiscal years 2005, 2006, and 2007; and, to perform agreed-upon procedures in connection with implementation of Government Accounting Standards Board Statement 45 formalizing treatment of liability for retiree health benefits, and

WHEREAS, this additional work increases the total contract price to an amount not to exceed $113,870, and
WHEREAS, the contract for these services requires Modesto City Council approval for such additional work, and

WHEREAS, at its October 3, 2005, 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 a Second Amendment to the Agreement for Consultant Services with Maze & Associates, authorizing the additional work proposed, at a cost not to exceed $25,375.

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 October 25, 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

Attest: ____________________________
JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

By ____________________________
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-526

A RESOLUTION AUTHORIZING THE PURCHASING SUPERVISOR TO FORMALLY SOLICIT REQUEST FOR BIDS, FOR THE ACQUISITION OF HIGH ACCURACY, HIGH-RESOLUTION ORTHO-PHOTOGRAPHY (AERIAL PHOTOGRAPHY), FOR A TOTAL ESTIMATED COST OF $100,000

WHEREAS, the City of Modesto last obtained high resolution, ortho-rectified aerial photography in March 2001, and

WHEREAS, the benefits of using the City’s current aerial photography are diminishing, and

WHEREAS, this is due to the growth and change of our city landscape, which is not reflected in that one-time snapshot taken in March 2001, and

WHEREAS, continued Citywide growth and change require the need for periodic aerial photography updates, and

WHEREAS, aerial photography is utilized by nearly all of the City’s departments including Police, Fire, Public Works, Community and Economic Development, Recreation and Neighborhoods, Finance, and the City Manager’s Office, and

WHEREAS, the general public and development community would also have the ability to review the imagery via our public GIS enabled web site (http://www.modestogov.com/gis), and

WHEREAS, updating our inventory of current aerial photography will provide staff with a current view of land use patterns and the overall growth of our City, and

WHEREAS, current imagery is necessary to accurately depict, locate, assess, inventory, or analyze land use/land use patterns, vacant lands, built vs. natural
environments, transportation and utilities infrastructure and, buildings inventory throughout our City, and

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

WHEREAS, the Finance Committee reviewed this request on September 26th, 2005, and recommended that it be presented to the full Council on consent,

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

SECTION 1. The City Clerk is hereby authorized to call for public competitive sealed bids for the acquisition of high accuracy, high-resolution ortho-photography (aerial photography), 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 by the Purchasing Division and a report submitted to Council.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of October, 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney

ATTEST: JEAN ZAHR, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2005-527

A RESOLUTION APPROVING THE PURCHASE, MAINTENANCE, OPERATING AND REPLACEMENT COSTS OF ONE NEW FULLY EQUIPPED COMMUNITY SERVICES OFFICER (CSO) TRUCK

WHEREAS, the Community Service Officers (CSO) provide significant services to the Police Department and the community and are called upon to handle a multitude of calls requiring them to carry a significant amount of equipment with them at all times, and

WHEREAS, after an analysis of the CSO’s duties and responsibilities, it was determined that a pick-up truck with extra cab was required to transport items of evidence to and from the crime scenes and Police Department facilities, and

WHEREAS, the CSO vehicle fleet is at capacity, therefore if any CSO vehicle needs repair or is damaged a shortage of vehicles is created, and

WHEREAS, the addition of this vehicle will fill the CSO vehicle fleet and meet the deployment needs of the Operations Division, and

WHEREAS, the Modesto Police Department is in need of this equipment for the most effective response and utilization of our Community Service Officers, and

WHEREAS, the City will amend the Modesto Police Department’s 2005/2006 budget by $45,588.76 from general fund reserves for the purchase, maintenance, operating and replacement costs of one new fully-equipped CSO truck, and

WHEREAS, the Finance Committee unanimously supported this action at its meeting of September 26, 2005,
NOW, THEREFORE, BE IT RESOLVED that the Council hereby
approves the purchase, maintenance, operating and replacement costs of one new fully-
equipped Community Services Officer (CSO) truck at the estimated cost of $45,588.76.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby
authorized to execute the necessary documents to implement the provisions of this
resolution.

The foregoing resolution was introduced at a special meeting of the Council of the
City of Modesto held on the 25th day of October 2005, by Councilmember Jackman, who
moved its adoption, which motion being duly seconded by Councilmember Marsh, was
upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:
By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2005-528

A RESOLUTION AMENDING THE FISCAL YEAR 2005/06 BUDGET BY $45,588.76 FROM GENERAL FUND RESERVES TO PURCHASE ONE COMMUNITY SERVICE OFFICER (CSO) TRUCK

WHEREAS, the Community Service Officers (CSO) provide significant services to the Police Department and the community and are called upon to handle a multitude of calls requiring them to carry a significant amount of equipment with them at all times, and

WHEREAS, having CSOs in the field with all the necessary equipment helps to free sworn police officers from calls for service once the situation has been stabilized and no further threat to officers or the public exist, and

WHEREAS, this fully-equipped CSO truck would provide the most effective response and utilization of our Community Service Officers (CSOs), and

WHEREAS, the City will amend the Modesto Police Department’s 2005/2006 budget by $45,588.76 from general fund reserves to purchase and operate one new fully-equipped CSO truck, and

WHEREAS, the Finance Committee unanimously supported this action at its meeting of September 26, 2005.

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

Appropriate:

<table>
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<th>To:</th>
<th>Amount</th>
<th>Description</th>
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<td>Annual Operating Costs</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$45,588.76</strong></td>
<td></td>
</tr>
</tbody>
</table>

10/25/05/Police/G Savelli /Item No 11 1 2005-528
Revenue:
From: General Fund Reserves

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

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 25th day of October 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL  
RESOLUTION NUMBER 2005-529  

A RESOLUTION APPROVING THE TRANSFER OF FUNDS IN THE AMOUNT OF $40,000 FOR THE ACQUISITION OF OFFICE EQUIPMENT FOR THE GANG INTELLIGENCE TASK FORCE, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE NECESSARY DOCUMENTS  

WHEREAS, the City of Modesto Police Department, in partnership with other law enforcement agencies including Stanislaus County Sheriff’s Department, Ceres Police Department, Stanislaus Probation Department, California State Parole, and the Stanislaus County District Attorney’s Office, comprise the Gang Intelligence Task Force, and  

WHEREAS, the Modesto Police Department has made a long-term commitment to aggressively combat the proliferation of criminal gangs in our community, and  

WHEREAS, the City of Modesto’s Gang Intelligence Task Force currently resides in a portable building at 250 E. Hackett Rd and has outgrown this facility, and  

WHEREAS, the City of Ceres has offered the Task Force the long-term use of unused office space at the Ceres Police Department, 2727 3rd St., Ceres, and  

WHEREAS, this office space is offered at no cost to the member agencies of the Task Force, and  

WHEREAS, the $43,000 Asset Forfeiture Funds will be used for the Gang Intelligence Task Force to purchase office equipment for the new facility, and  

WHEREAS, the Gang Intelligence Task Force member agencies will be invoiced for their share of the cost of this project and recovered monies will be returned to the Asset Forfeiture Trust Fund, and
WHEREAS, the Safety and Communities Committee unanimously supported this action at its meeting of October 3, 2005,

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby approves the $43,000 transfer of funds for the acquisition of office equipment for the Gang Intelligence Task Force.

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

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 25th day of October, 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: Jean Zahr
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NUMBER 2005-530

A RESOLUTION AMENDING THE FISCAL YEAR 2005/06 BUDGET TO RECOGNIZE REVENUE AND APPROPRIATE FUNDS TO TRANSFER FUNDS FOR THE ACQUISITION OF OFFICE EQUIPMENT FOR THE GANG INTELLIGENCE TASK FORCE

WHEREAS, the City of Modesto Police Department, in partnership with other law enforcement agencies including Stanislaus County Sheriff’s Department, Ceres Police Department, Stanislaus Probation Department, California State Parole, and the Stanislaus County District Attorney’s Office comprise the Gang Intelligence Task Force, and

WHEREAS, the City of Modesto’s Gang Intelligence Task Force currently resides in a portable building at 250 E. Hackett Rd and has outgrown this facility, and

WHEREAS, the City of Ceres has offered the Task Force the long-term use of unused office space at the Ceres Police Department, 2727 3rd St., Ceres, and

WHEREAS, this office space is offered at no cost to the member agencies of the Task Force, and

WHEREAS, the $43,000 Asset Forfeiture Funds will be used for the Gang Intelligence Task Force to purchase office equipment for the new facility, and

WHEREAS, the Gang Intelligence Task Force member agencies will be invoiced for their share of the cost of this project and recovered monies will be returned to the Asset Forfeiture Trust Fund, and

WHEREAS, the Safety and Communities Committee unanimously supported this action at its meeting of October 3, 2005,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that the 2004/05 Operating Budget is hereby amended as follows:

**Appropriate:**

To: 0100-190-1941-5000 $43,000 Police Investigative Services

**Revenue:**

From: 0100-190-1941-7202 $43,000 Seized Forfeitures

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

The foregoing resolution was introduced at a special meeting of the Council of the
City of Modesto held on the 25th day of October 2005, by Councilmember Jackman, who
moved its adoption, which motion being duly seconded by Councilmember Marsh, was
upon roll call carried and the resolution adopted by the following vote:

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

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: Hawn

**ATTEST:**

JEAN ZAHR City Clerk

**APPROVED AS TO FORM:**

By: MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-531

A RESOLUTION APPROVING AN AGREEMENT WITH STANISLAUS COUNTY OFFICE OF EDUCATION IN THE AMOUNT OF $44,678 FOR THE PROVISION OF ONE MODESTO POLICE OFFICER AT PETERSEN ALTERNATIVE CENTER FOR EDUCATION (P.A.C.E.) CAMPUS AND TRAINING, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the Stanislaus County Office of Education requires one Modesto Police Officer to provide direct law enforcement services, exercise and training and act as a School Police Officer at Petersen Alternative Center for Education (P.A.C.E.) campus, and

WHEREAS, the Modesto Police Department can provide a specially trained, uniformed police officer who will take any enforcement action at the school site, if warranted, and

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

WHEREAS, the term of this agreement is August 22, 2005 to June 30, 2006, and

WHEREAS, the City shall be compensated by Stanislaus Office of Education in the amount of $44,678 for the services of this Modesto Police Officer, and

WHEREAS, THE City will match the amount of $44,678 in partnership with the Stanislaus County Office of Education,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the agreement with Stanislaus County Office of Education in the amount of $44,678 for the provision of one Modesto Police Officer at Petersen Alternative Center for Education (P.A.C.E.).
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 October 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney

ATTEST: 
JEAN ZAHR, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-532

A RESOLUTION APPROVING A WATER MAIN REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND WILLIAM LYON HOMES, A CALIFORNIA CORPORATION, RELATED TO THE REMOVAL OF 418 LINEAL FEET OF 8” WATER LINE AND THE INSTALLATION OF 1340 LINEAL FEET OF A 12” WATER MAIN AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, WILLIAM LYON HOMES, a California Corporation (“Developer”), is in the process of developing a 314 – lot subdivision on property located at the northeast and southeast corners of Fine Avenue and Floyd Avenue, commonly known as Falling Leaf Subdivision (“Subdivision”), and

WHEREAS, in connection with the development of the Subdivision, Developer is required to remove 418 lineal feet of 8” water line and install 1340 linear feet of a 12” water main and appurtenances thereto, located in Floyd Avenue, between Fine Avenue and Claus Road. The Improvements are designed to serve a large portion of the Village One Specific Plan area, and

WHEREAS, the Improvements will serve other properties in addition to Subdivision, the other properties have or will pay fees to the City to assist in paying the cost of constructing the Improvements and the owners of said other properties have not participated in constructing the Improvements, and

WHEREAS, Developer has requested, and City has agreed that Developer be reimbursed for the actual costs required to construct the Improvements, and

WHEREAS, City will inspect the construction of the Improvements and will accept the Improvements as part of City’s public water system,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the agreement between the CITY OF MODESTO and WILLIAM LYON HOMES, a California Corporation, related to the reimbursement for the removal of 418 lineal feet and the installation of 1340 lineal feet of 12" water main in the amount of $101,504.80 is hereby approved.

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 October 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-533

A RESOLUTION APPROVING A 5-YEAR AGREEMENT WITH STOTT OUTDOOR ADVERTISING OF CHICO, CA. TO SELL AND MAINTAIN ADVERTISING ON THE EXTERIORS OF ALL MODESTO AREA EXPRESS (MAX) URBAN SERVICE BUSES FOR A MINIMUM PAYMENT TO THE CITY OF $6,750 PER MONTH OR 35% OF STOTT'S NET ADVERTISING REVENUE, WHICHEVER AMOUNT IS GREATER AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

WHEREAS, the City of Modesto’s Modesto Area Express (MAX) transit system operates approximately 46 buses within the Modesto urban area, and

WHEREAS, a market appears to exist for the placement of advertising on the exteriors of MAX buses, and

WHEREAS, the City Council authorized Public Works Department staff to issue a Request for Proposals (RFP) for the sale, placement and maintenance of advertising on the exteriors of MAX buses in exchange for payment to the City by the selected contractor, and

WHEREAS, three firms submitted proposals in response to the RFP, and

WHEREAS, Stott Outdoor Advertising was selected for award of the contract by a staff selection committee based on criteria included in the RFP, and

WHEREAS, the Economic Development Committee (EDC) approved award of the contract to Stott Outdoor Advertising at its meeting on September 12, 2005, and

WHEREAS, by an agenda report to the City Council dated October 3, 2005, from the Public Works Director, City staff recommended to the Council that it award a contract to Stott Outdoor Advertising for the sale, placement and maintenance of advertising on the exteriors of MAX buses,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby approves a 5-year agreement with Stott Outdoor Advertising of Chico, Ca. to sell and maintain advertising on the exteriors of all Modesto Area Express (MAX) urban service buses for a minimum payment to the City of $6,750 per month or 35% of Stott’s net advertising revenue, whichever amount is greater.

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 October 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-534

A RESOLUTION APPROVING AN AGREEMENT WITH LARRY WALKER ASSOCIATES FOR THE DEVELOPMENT AND IMPLEMENTATION OF A STORMWATER MANAGEMENT PROGRAM FOR A ONE-YEAR AGREEMENT IN AN AMOUNT NOT TO EXCEED $332,288, WITH ONE (1) ONE-YEAR EXTENSION OPTION IN AN AMOUNT NOT TO EXCEED $193,000, FOR A TOTAL AGREEMENT AMOUNT NOT TO EXCEED $525,288 AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT

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

WHEREAS, the NPDES permit establishes the requirements for reducing pollutant runoff into the City’s storm drains, and

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

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

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

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

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

WHEREAS, staff solicited RFPs from 84 firms and formally advertised the RFP, and

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

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

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

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

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

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

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

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

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

WHEREAS, due to the perceived irregularities in the proposal review process, Council authorized rejection of all existing bids and issuance of a new RFP in Resolution No. 2005-438, and

WHEREAS, upon re-issuance of this RFP, staff received three proposals, and

WHEREAS, a panel consisting of two staff members, Mike Gurello from the City of Manteca, and Courtney Vasquez from the City of Stockton interviewed all consultants, and

WHEREAS, Councilmember Janice Keating also observed the consultant interviews, and

WHEREAS, upon completion of the evaluation process, it was determined that Larry Walker Associates is the most-qualified firm based on the total RFP evaluation score, interview evaluation results and costs evaluations,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an agreement with Larry Walker Associates for the development and implementation of a Stormwater Management Program for a one year period in an amount not to exceed $332,288, with an option for a one (1) one-year extension in an amount not to exceed $193,000, for a total agreement amount not to exceed $525,288.

BE IT FURTHER RESOLVED that the Council hereby authorizes the City Manager, or his designee, to execute the agreement on behalf of the City.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of October 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: 
JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

BY: MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-535

A RESOLUTION AUTHORIZING A TRANSFER OF MONIES TOTALING $289,776 FROM THE SEWER FUND RESERVE TO THE COMPOST FUND RESERVE FOR EXPENDITURES INCURRED IN FISCAL YEAR 2004-05, AND THEREBY ESTABLISHING A COMPOST FUND RESERVE IN THE AMOUNT OF $197,049

WHEREAS, the Sewer Fund has fully funded the Compost Facility since it began operations in 1997 at an average cost of $600,000 per fiscal year, and

WHEREAS, this funding was deemed appropriate because the Compost Facility provided a viable method for reusing biosolids, which are generated as part of the wastewater treatment process, and

WHEREAS, with improved efficiencies in the wastewater treatment process over time, the need for co-composting biosolids has been reduced, and

WHEREAS, in July 2004, Council, by adoption of Resolution 2004-367, separated the Compost Facility from the Sewer Fund and established Compost Operations as a separate Enterprise Fund, and

WHEREAS, more than half of the funding for the newly-created Compost Enterprise was to be provided via revenues from tip fees to the garbage haulers for processing yard waste collected in the green “toters”, and

WHEREAS, these costs would be passed on to the ratepayers via the garbage bill, and

WHEREAS, Forestry and Pruned Refuse services performed by City crews were also to be assessed tip fees for waste materials taken to the Compost Facility, and
WHEREAS, because budgets were already in place for FY 2004-05 at the time the Compost Facility became an enterprise, Council authorized Pruned Refuse and Forestry tip fees be paid by the Sewer Fund for 2004-05, and

WHEREAS, biosolids utilized in the co-composting process would also be assessed tip fees and paid for by the Sewer Fund, and

WHEREAS, the Sewer Fund’s portion of these estimated revenues in the form of tip fees from Biosolids ($6.50/ton), Pruned Refuse ($18.35/ton) and Forestry ($18.35/ton), totaled $297,773, and

WHEREAS, Compost was moved to a separate Enterprise Fund on July 1, 2005, and

WHEREAS, the Compost Budget was increased during the course of the fiscal year to reflect increased expenditures primarily for equipment replacement, an item that was not fully funded when Compost resided in the Sewer Fund, and

WHEREAS, the Sewer Fund supported these equipment expenditures via a “transfer in” to the Compost Fund in the amount of $150,000, and

WHEREAS, the Fleet Replacement Fund also provided a transfer in of $99,119 to the Compost Fund, and

WHEREAS, even though expenditures exceeded those adopted in FY 2004-05, revenues also exceeded those adopted due to tip fees charged to the garbage haulers and increased compost/co-compost sales, and

WHEREAS, additional revenues, beyond those reflected in the July 2004 staff report to Council, in the amount of $78,726 for FY 2004-05 were generated through
assessment of a tip fee on materials brought to the facility from collection programs in the City of Stockton, and

WHEREAS, a total of 15,972 tons of Pruned Refuse and Forestry materials were processed at the Compost Facility during FY 2004-05 and no tipping fees were collected, and

WHEREAS, the resulting tip fees owed to the Compost Fund by the Sewer Fund total $289,776, and

WHEREAS, per Council’s July 2004 direction, these funds need to be moved to a Compost Reserve Account, and

WHEREAS, the transfer of these funds will offset a deficit of $92,727 from FY 2004-05 and will result in a positive cash flow to the Compost Fund of $197,049, and

WHEREAS, at its meeting of September 26, 2005, the Finance Committee approved this request and further recommended approval to Council,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes a transfer of monies totaling $289,776 from the Sewer Fund Reserve (6210-800-8000-8003) to the Compost Fund Reserve (6290-800-8000-8003) for expenditures incurred in Fiscal Year 2004-05, and thereby establishing a Compost Fund Reserve in the amount of $197,049.

BE IT FURTHER RESOLVED that City staff is hereby authorized to make the necessary budget adjustments in coordination with the Finance Department.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto, held on the 25th day of October 2005, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED AS TO FORM:

By

MICHAEL D. MILICH, City Attorney

ATTEST: 

JEAN ZAHR City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-536

A RESOLUTION AMENDING THE COMPOST FUND FISCAL YEAR 2005-06
REVENUE AND EXPENSE BUDGETS TO INCLUDE PAYMENT OF RENTAL
FEES TO THE SEWER FUND IN THE AMOUNT OF $18,000 ANNUALLY AND
TO MORE ACCURATELY REFLECT ANTICIPATED REVENUES

WHEREAS, the Sewer Fund has fully funded the Compost Facility since it began
operations in 1997 at an average cost of $600,000 per fiscal year, and

WHEREAS, this funding was deemed appropriate because the Compost Facility
provided a viable method for reusing biosolids, which are generated as part of the
wastewater treatment process, and

WHEREAS, with improved efficiencies in the wastewater treatment process over
time, the need for co-composting biosolids has been reduced, and

WHEREAS, in July 2004, Council, by adoption of Resolution 2004-367,
separated the Compost Facility from the Sewer Fund and established Compost
Operations as a separate Enterprise Fund, and

WHEREAS, more than half of the funding for the newly-created Compost
Enterprise was to be provided via revenues from tip fees to the garbage haulers for
processing yard waste collected in the green “toters”, and

WHEREAS, these costs would be passed on to the ratepayers via the garbage bill,
and

WHEREAS, Forestry and Pruned Refuse, services performed by City crews, were
also to be assessed tip fees for waste materials taken to the Compost Facility, and

WHEREAS, Compost was moved to a separate Enterprise Fund on July 1, 2005,
WHEREAS, even though expenditures exceeded those adopted in FY 2004-05, revenues also exceeded those adopted due to tip fees charged to the garbage haulers and increased compost/co-compost sales, and

WHEREAS, additional revenues, beyond those reflected in the July 2004 staff report to Council, in the amount of $78,726 for FY 2004-05 were generated through assessment of a tip fee on materials brought to the facility from collection programs in the City of Stockton, and

WHEREAS, actual revenues for 2004-2005 were substantially different than those adopted in the 2005-2006 Compost budget, and

WHEREAS, expenditures adopted for the 2005-2006 Compost budget did not include rental of the Compost site from the Sewer Fund, and

WHEREAS, staff has estimated a value of $18,000 per year for rental of the Compost site, and

WHEREAS, at its meeting of September 26, 2005, the Finance Committee approved this request and further recommended approval to Council,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes a budget amendment to increase the Compost Fund expense budget by $18,000 (6290-480-5222-0215) and to adjust the revenue budget to more accurately reflect 2004-2005 actuals, as follows:

<table>
<thead>
<tr>
<th>Total Expenditures</th>
<th>Adopted 2005-2006 Budget</th>
<th>Amended Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compost Sales</td>
<td>$ 990,000</td>
<td>$ 1,008,000</td>
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<tr>
<td>Co-compost Sales</td>
<td>$ 250,000</td>
<td>$ 405,000</td>
</tr>
<tr>
<td>Harvest Quest</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>Tip Fee Biosolids</td>
<td>$ 8,000</td>
<td>$ -</td>
</tr>
<tr>
<td>Stockton Tip Fees</td>
<td>$ -</td>
<td>$ 146,800</td>
</tr>
<tr>
<td>Tip Fee Pruned Refuse/Forestry</td>
<td>$ 129,509</td>
<td>$ 91,750</td>
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<tr>
<td>Tip Fee Haulers</td>
<td>$ 732,715</td>
<td>$ 522,975</td>
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<tr>
<td>Interfund Labor Charges</td>
<td>$ 23,579</td>
<td>$ 23,580</td>
</tr>
<tr>
<td>Total Revenues</td>
<td>$ 1,143,803</td>
<td>$ 1,190,105</td>
</tr>
</tbody>
</table>
BE IT FURTHER RESOLVED that City staff is hereby authorized to make the necessary budget adjustments in coordination with the Finance Department.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto, held on the 25th day of October 2005, by Councilmember Dunbar, who moved its adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED AS TO FORM:

By [Signature]
MICHAEL D. MILICH, City Attorney

ATTEST: [Signature]
JEAN ZAHR, City Clerk
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-537


WHEREAS, a financial analysis has been completed and it has been determined that certain adjustments are required to the Capital Improvement Budget of the City of Modesto for the Fiscal Year 2005-2006, and

WHEREAS, specific projects have unspent budgets as of July 1, 2005 which need to be reallocated into FY 2005-2006, and

WHEREAS, additional revenues for fiscal year 2005-2006 have been identified,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that existing projects and new projects which are referenced in the Amended 2005-2006 Capital Improvement Program under the CIP Budget by Fund section of the budget document hereby be re-appropriated into the FY 2005-06 budget.

BE IT FURTHER RESOLVED that additional revenues, which are referenced in the Amended 2005-2006 Capital Improvement Program under the Revenues by Source section of the budget document, hereby be recognized.

BE IT FURTHER RESOLVED that the Finance Director or his designee, is hereby authorized to take the necessary steps to implement the provisions of this resolution.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of October, 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: 
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:
By: 
MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-538


WHEREAS, on November 1, 1997, the City executed a Service Agreement with Modesto Garbage Company, Inc., D.B.A. Modesto Disposal Service, which was then a subsidiary of USA Waste of California, which later acquired Waste Management and changed the name of the corporate parent to Waste Management, for a term through January 1, 2007, and

WHEREAS, while the term of this Service Agreement with Waste Management was for 10 years, due to concerns about the corporation's problems in other cities, the City Council added a provision to the Service Agreement to allow the City to terminate the agreement on January 1, 2004, if the City found the company did not meet certain performance standards to the satisfaction of the City, and

WHEREAS, pursuant to Modesto Municipal Code Section 5-5.33, the City Council held a public hearing, on Thursday, November 13th, 2003, at 5:30 p.m. in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which hearing the Council heard a report from City staff detailing that over a 3-year period, the company had violated multiple provisions of Section b.1. of their Service Agreement, and

WHEREAS, at said hearing, having considered evidence presented by staff as well as testimony from the Company and members of the public, the Council terminated the Service Agreement with Waste Management (D.B.A. Modesto Disposal Service)
effective January 1, 2004, authorized the City Manager to execute a one (1) year Interim Agreement with Waste Management allowing them to continue providing service through January, 2005, authorized the City Manager to extend the Interim Agreement for a total of two, one (1) year extensions if the company fully complies with the service requirements of the City, and required Waste Management to compensate the City for staff time expended in the resolution of customer service complaints, and

WHEREAS, the Interim Agreement required the City to review Waste Management's performance at 9-month intervals to determine whether the company was making progress in complying with the terms and conditions of the Agreement, and

WHEREAS, as a result of the first 9-month review, the Interim Agreement was extended through January, 2006, and

WHEREAS, staff has conducted the second, 9-month review, and believes that the performance improvements reflected by the service logs and the improved operations at Waste Management's transfer station warrant a second, one (1) year extension of the Interim Agreement, and

WHEREAS, at its July 11, 2005, meeting, staff presented a recommendation to the Economic Development Committee that the City Manager be authorized to execute a second, one (1) year extension of the Interim Agreement, through January 1, 2007, and that the City conduct a final performance review in January, 2006, and return to the Council with a recommendation on whether or not the City should enter into negotiations with Waste Management on a new, longer term contract, go out to bid at the end of the additional year, or allocate Waste Management's Service Area to the other collection companies, and
WHEREAS, at its July 11, 2005, meeting, the Economic Development Committee voted unanimously to approve this recommendation,

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

1. Accepts staff's report on Waste Management's performance during the period of October 1, 2004, through June 30, 2005, and

2. Authorizes the City Manager to execute a second, one (1) year extension of the Interim Agreement, through January 1, 2007, and

3. Directs staff to conduct a third performance review in January, 2006, and return to the Council with a recommendation on whether or not the City should either enter into negotiations with Waste Management on a new, longer term contract, go out to bid at the end of the additional year, or allocate Waste Management's Service Area to the other collection companies.
The foregoing resolution was introduced at a public meeting of the Council of the City of Modesto held on the 25th day of October 2005, by Councilmember Marsh, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By Michael D. Milich, City Attorney
A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF JOE MENDOZA FROM THE EQUAL OPPORTUNITY/DISABILITY COMMISSION AND HUMAN RELATIONS COMMISSION

WHEREAS, JOE MENDOZA was appointed a joint member of the Equal Opportunity/Disability Commission and Human Relations Commission on April 5, 2005, and

WHEREAS, JOE MENDOZA has tendered his resignation from the aforementioned committee,

NOW, THEREFORE, BE IT RESOLVED that the resignation of JOE MENDOZA from the Equal Opportunity/Disability Commission and Human Relations Commission 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 JOE MENDOZA for his service to the community.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney
A RESOLUTION ACCEPTING WITH REGRET THE RESIGNATION OF AMY CHRISTENSEN FROM THE EQUAL OPPORTUNITY/DISABILITY COMMISSION

WHEREAS, AMY CHRISTENSEN was appointed a member of the Equal Opportunity/Disability Commission on April 5, 2005, and

WHEREAS, AMY CHRISTENSEN has tendered her resignation from the aforementioned committee,

NOW, THEREFORE, BE IT RESOLVED that the resignation of AMY CHRISTENSEN from the Equal Opportunity/Disability Commission 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 AMY CHRISTENSEN 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 1st day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-541

A RESOLUTION AMENDING THE
FISCAL YEAR 2004-2005 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 2004-2005,

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

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

The foregoing resolution was introduced at a regular meeting of the Council of the
City of Modesto held on the 1st day of November 2005, by Councilmember Jackman, who
moved its adoption, which motion being duly seconded by Councilmember Dunbar, was
upon roll call carried and the resolution adopted by the following votes:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: JEAN ZAHN, City Clerk

APPROVED AS TO FORM:

By: MICHAEL D. MILICH, City Attorney
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Traice Madison
Telephone No.: 1-5855
Department: Finance
Fund Title: Gas Tax

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

Fund-Agency-Organization-Object | Appr Unit | Current | Increase/ (Decrease) | Revised | Description of Object
--- | --- | --- | --- | --- | ---
**DEPARTMENTAL REVENUES**
FROM 06-0700-480-4617-8005 | | | $133,794 | $133,794 | Gas Tax Reserves
TO 06-0700-480-4617-8005 | | | $133,794 | $133,794 | Gas Tax Reserves

**APPROPRIATIONS**
FROM 06-0700-800-8000-8003 | 700R | ($133,794) | ($133,794) | Gas Tax Contingency
TO 06-0700-480-4617-8099 | 4617V | $133,794 | $133,794 | ABS Savings Carryover

**COMMENTS/JUSTIFICATION**
This monthly adjustment is for the streets maintenance organization. In FY05, Streets had a savings of $133,794. Since streets funding was made up funding sources other than Gas Tax, savings should be carried over to the current fiscal year continue streets maintenance. This savings was from Org 4612, but a new organization (4617) was created as a multi-year org for future years.

**AUTHORIZATION (check if required)**
SIGNATURE DATE
ADMIN SVCS OFFICER/ADMIN ANALYST II ________________________ 29-Sep-05
DEPUTY DIRECTOR (Public Works) ________________________
DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT (Allocation of Dept Appr to Line-Item Level) ________________________
FINANCE DIRECTOR (Transfers to/from Internal Service Charges) (All items requiring City Manager's Approval) ________________________
CFF/CFD ADMINISTRATOR ________________________
CITY MANAGER (Transfers between Budgeted Activities of Departments within Funds) (Appropriation of Unbudgeted Dept Revenues) (Salary lines movement in or out) ________________________

PW: AT Template 7/28/05
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Yvette Ramos
Telephone No.: 75249
Department: Finance
Fund Title: Capital Grants

Council Action Date: 
Resolution Number: 

**FY: 05-06**
Transfer No. _________________

**Monthly Adjustment October 21, 2005**

<table>
<thead>
<tr>
<th>Fund-Agency-Organization</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/Decrease</th>
<th>Revised Budget</th>
<th>Description of Object</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DEPARTMENTAL REVENUES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>FROM</strong></td>
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<td><strong>TO</strong></td>
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</tr>
</tbody>
</table>

| **APPROPRIATIONS**       |           |                |                   |               |                       |
| **FROM**                 |           |                |                   |               |                       |
| MY-2300-160-E710-6010    | E710      | $2,000         | ($2,000)          | 17,913        | Installation of Lighted Crosswalk |
| MY-2300-160-E710-6041    | E710      | 26,000         | (8,087)           |               | Design, City Forces, Reserves |
| 06-700-800-8000-8003     | 0700R     |               | ($8,571)          |               |                       |
| **TO**                   |           |                |                   |               |                       |
| MY-2300-160-E710-6070    | E710      | $18,658        | $18,658           |               | Equipment, Reserves     |
| 06-2300-800-8000-8003    | 2300R     | $8,571         |                  |               |                       |

**TRANSFERS BETWEEN FUNDS**

| **FROM** |                   |                  |                  |               |                       |
| MY-0700-700-E710-7230   | $8,571         |                  |                  | $ Sent from 0700    |

| **TO** |                   |                  |                  | $ received by 2300 |
| MY-2300-700-E710-9070   | $8,571         |                  |                  |                       |

**AUTHORIZATION (check if required) SIGNATURE DATE**

| ADMIN SVCS OFF/ADMIN ANALYST II |         |         |       |
| DEPUTY DIRECTOR (Public Works Dept) |       |         |       |
| DEPARTMENT DIRECTOR | AUTHORIZED ASSISTANT (Allocation of Dept Appr to Line-Item Level) |       |       |
| FINANCE DIRECTOR (Transfers to/from Internal Service Charges) | (All items requiring City Manager's Approval) |       |       |
| CFDF/CFD ADMINISTRATOR When necessary for CIP |                       |       |       |
| CITY MANAGER (Transfers between Budgeted Activities of Departments within Funds) | (Appropriation of Unbudgeted Dept Revenues) |       |       |
| (Transfers into Personnel Services) |                                           |       |       |

Labor and materials came in higher than budgeted. A budget adjustment is needed for this increase which will be supplemented by a transfer from the gas tax of $8,571.

Pw. AT winter fund template 7/28/2005
REQUEST FOR BUDGET ADJUSTMENT

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

Fund Title: Water

Council Action Date: ____________________________
Resolution Number: ____________________________

FY: 05-06
Transfer No.: ____________________________

<table>
<thead>
<tr>
<th>October Monthly Adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund-Agency-Org-Object</td>
</tr>
<tr>
<td>--------------------------</td>
</tr>
<tr>
<td>DEPARTMENTAL REVENUES</td>
</tr>
<tr>
<td>FROM</td>
</tr>
<tr>
<td>MY-6180-430-W708-4354</td>
</tr>
<tr>
<td>TO</td>
</tr>
<tr>
<td>APPROPRIATIONS</td>
</tr>
<tr>
<td>FROM</td>
</tr>
<tr>
<td>TO</td>
</tr>
<tr>
<td>FY-6180-430-W708-6010</td>
</tr>
</tbody>
</table>

COMMENTS/JUSTIFICATION

Modesto Rancho Encantado (a division of Del Valle Capital Corporation) paid $20,000 to go towards capacity and hydraulic impact studies pertaining to their Galas development. This adjustment is to amend the FY06 CIP to increase the project amount by the same amount and correct AT 111 and 84 incorrectly entered.

AUTHORIZATION (check if required) SIGNATURE DATE

ADMIN SVCS OFFICER/ADMIN ANALYST II

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

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

CFF/CFD ADMINISTRATOR

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

PUBLIC WORKS 7/28/05
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Tracie Madison/Julie Her
Telephone No.: 1-5855
Department: Public Works

Fund Title: Water

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

DEPARTMENTAL REVENUES

<table>
<thead>
<tr>
<th>Fund-Agcy-Org-Object</th>
<th>Appr Unit</th>
<th>Current Budget</th>
<th>Increase/ (Decrease)</th>
<th>Revised Budget</th>
<th>Description of Object</th>
</tr>
</thead>
<tbody>
<tr>
<td>FROM MY-6180-430-W368-8121-03</td>
<td></td>
<td>$700,000</td>
<td></td>
<td>$700,000</td>
<td>PCE Settlement</td>
</tr>
<tr>
<td>TO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

APPROPRIATIONS

| FROM | |
| TO MY-6180-430-W268-6041 | W430 | $700,000 | $700,000 | City Forces Construction |

MONTHLY ADJUSTMENT Oct 05

COMMENTS/JUSTIFICATION
This budget amendment is being made to 1) recognize revenue received (from various settlements associated with the PCE Litigation), in the amount of $700,000; 2) amend the FY06 CIP to increase the CIP budget for project account W368 by that same amount in order to mitigate PCE problems associated with Well #21. This action is being taken in order to provide the necessary funding to cover expenses associated with bringing the well back on-line as a viable water source.

AUTHORIZATION (check if required) SIGNATURE DATE
ADMIN SVCS OFFICER/ADMIN ANALYST II ____________________________ 10/10/05
DEPUTY DIRECTOR (Public Works) ____________________________ 10/10/05
DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT (Allocation of Dept Appr to Line-Item Level) ____________________________ 10/10/05
FINANCE DIRECTOR (Transfers to/from Internal Service Charges) ____________________________ 10/10/05
CFF/CFD ADMINISTRATOR ____________________________ 10/10/05
CITY MANAGER (Transfers between Budgeted Activities of Departments within Funds) ____________________________ 10/10/05
(Appropriation of Unbudgeted Dept Revenues) ____________________________ 10/10/05
(Salary lines movement in or out) ____________________________ 10/10/05
REQUEST FOR BUDGET ADJUSTMENT

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

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

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

DEPARTMENTAL REVENUES
FROM

MY-6180-480-W336-4354-05 | | $1,000,000 | Developer Contribution-del Valle

TO

APPROPRIATIONS
FROM

TO

MY-6180-480-W336-6051 | W336 | $1,000,000 | $1,000,000 | Finance Contingency

COMMENTS/JUSTIFICATION

Developers have contributed $1M to be used exclusively for funding Fairview Interim Water improvements. These improvements will be held in a separate subfund of the Water Fund for tracking purposes and given the CIP #W336 for the Tank 6, 7 and 8 system strengthening. The payment has been deposited and this adjustment is to request we amend the FY06 CIP budget to appropriate the $1,000,000 toward the project since the work is time sensitive. This CIP will be used to exclusively track costs associated with the improvements outlined in the Agreement.

AUTHORIZATION (check if required) SIGNATURE DATE
ADMIN SVCS OFFICER/ADMIN ANALYST II Julie Hender 10-10-05
DEPUTY DIRECTOR (Public Works)
DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT
(Allocation of Appr to Line-Item Level)
FINANCE DIRECTOR
(Transfers to/from Internal Service Charges)
(All items requiring City Manager’s Approval)
CFO/CFD ADMINISTRATOR
CITY MANAGER
(Transfers between Budgeted Activities of Departments within Funds)
(Appropriation of Unbudgeted Dept Revenues)
(Salary lines movement in or out)

PW: AT Template 7/28/05
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Julie Hendee
Telephone No.: 22241
Department: Public Works
Fund Title: Airport Operating Fund

Fund: Agency-Object | Appt. Unit | Current Budget | Increase/Decrease | Revised Budget | Description of Object
---|---|---|---|---|---
FROM MY-6310-800-8000-8002 | 6310R | | ($49,000) | ($49,000) | Airport Operating Reserve Fund
TO 6310-440-4412-4XXX | 5XXXC | | $49,000 | $49,000 | Replace Roof

COMMENTS/JUSTIFICATION

This budget adjustment is being made to transfer funds from Airport Operating Reserve to the Airport Operating Budget to provide the necessary funding for the re-roofing of two airport buildings on the General Aviation side of the Medina City/County Airport. This transaction will require the establishment of a 5000 object in the Airport Operating Organization for the purpose of tracking these project funds.

AUTHORIZED (check if required) | SIGNATURE | DATE
---|---|---
ADMIN SVCS OFF/ADMIN ANALYST II | Julie Hendee | 10-10-05
DEPUTY DIRECTOR (Public Works Dep.)/MANAGER | | 10-10-05
DEPARTMENT DIRECTOR | | 10-10-05
AUTHORIZED ASSISTANT | | 10-10-05
FINANCE DIRECTOR | | 10-10-05
(All item requiring City Manager's Approval)
CFO/CPD ADMINISTRATOR | | 10-10-05
CITY MANAGER | | 10-10-05
(Transfers between Budgeted Activities of Departments within Funds)
(Transfer of Unbudgeted Dept. Revenues)
(Transfer into Personnel Services)

PW: AT w/Grant Template 7/25/2005
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: Tracie Madison
Telephone No.: 1-5855
Department: Public Works
Fund Title: Water Fund

DEPARTMENTAL REVENUES
FROM
TO

APPROPRIATIONS
FROM
06-6100-440-5015-0235 6100C $65,253 ($200) $65,053 Professional Svc Water CIP Div
06-6100-480-5009-0235 5009C $87,700 ($200) $87,500 Professional Svc Water Ops
06-6100-800-8000-8003 6100R ($400) ($400) Water Fund Contingency
06-0100-800-8000-8003 0100R ($400) ($400) General Fund Contingency

TO
06-6100-800-8000-8003 6100R $400 $400 Water Fund Contingency
06-0100-800-8000-8003 0100R $400 $400 General Fund Contingency

06-0100-430-4302-0255 4302C $284 $400 $684 Public Works Admin Service Credit

TRANSFERS BETWEEN FUNDS
FROM
06-6100-700-4302-7010 4302G $400 $400 Transfer for Insurance Certificate

TO
06-0100-700-4302-9610 $400 $400 Transfer for Insurance Certificate

COMMENTS/JUSTIFICATION
Beginning Oct 2005 thru Jan 06. The Finance Department will begin providing staff support for the insurance certificate program. In order to cover the additional costs of the .75 FTE AOA II Finance will be service crediting Public Works. This adjustment is to move the necessary budget into the 0255 City Forces object to cover additional costs until January.

AUTHORIZATION (check if required) SIGNATURE DATE
ADMIN SVCS OFF/ADMIN ANALYST II [signature] 29-Sep-05

DEPUTY DIRECTOR (Public Works Dept) [signature] 9/30/05

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)

CFE/CFD ADMINISTRATOR When necessary for CIP

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

PW: AT w/interfund Template 7/28/2005
REQUEST FOR BUDGET ADJUSTMENT

Contact Person: __________________________  Council Action Date: Budget adjustments (Oct 12)
Telephone No.: __________________________  Resolution Number: __________________________
Department: __________________________
Fund Title: __________________________

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

**DEPARTMENTAL REVENUES**

**FROM**

<table>
<thead>
<tr>
<th>TO</th>
<th>abcd</th>
<th>(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>7210-480-5814-4909</td>
<td>To be determined by Fleet after Purchase (abcd)</td>
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</table>

**APPROPRIATIONS**

**FROM**

<table>
<thead>
<tr>
<th>FROM</th>
<th>1300-190-M168-6040</th>
<th>M168</th>
<th>$1,831,430</th>
<th>($160,000)</th>
<th>(1)</th>
<th>$1,671,430</th>
<th>Reduce CIP project by $160k</th>
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</table>

<table>
<thead>
<tr>
<th>TO</th>
<th>abcd</th>
<th>(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0100-190-1977-0218</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7210-480-5814-5272</td>
<td>Establish 5000 acct in Fleet</td>
<td></td>
</tr>
<tr>
<td>7210-800-8000-8003</td>
<td>To be determined by Fleet after Purchase (abcd)</td>
<td></td>
</tr>
</tbody>
</table>

**TRANSFERS BETWEEN FUNDS**

**TO**

<table>
<thead>
<tr>
<th>TO</th>
<th>n/a</th>
<th>$160,000</th>
<th>$30,000</th>
<th>2t</th>
<th>$30,000</th>
<th>Transfer fr Gen Fd to Fleet</th>
</tr>
</thead>
<tbody>
<tr>
<td>7210-700-5814-9010</td>
<td>Cancel GF transfer to project</td>
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<td></td>
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<tr>
<td>1300-700-M168-9010</td>
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**FROM**

<table>
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<tr>
<th>FROM</th>
<th>0100-700-M168-7721</th>
<th>1300g</th>
<th>$160,000</th>
<th>($160,000)</th>
<th>(1)</th>
<th>$30,000</th>
<th>Transfer fr Gen Fd to Fleet</th>
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</thead>
<tbody>
<tr>
<td>0100-700-5814-7721</td>
<td>Cancel GF transfer to project</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>0100-700-M168-7130</td>
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</tr>
</tbody>
</table>

**COMMENTS/JUSTIFICATION**

MPD requires a tractor to continue construction progress at the Training site. The tractor will cost approximately $30k. MPD would like the tractor to be set up in the fleet replacement inventory to be maintained by fleet personnel. Vehicle s/b purchased from a vehicle acquisition account and not from the CIP.

---

**AUTHORIZATION (check if required)**

<table>
<thead>
<tr>
<th>DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT</th>
<th>SIGNATURE</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Allocation of Dept Appr to Line-Item Level)</td>
<td></td>
<td></td>
</tr>
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</table>

**FINANCE DIRECTOR**

<table>
<thead>
<tr>
<th>(Transfers to/from Internal Service Charges)</th>
<th>(All items requiring City Manager's Approval)</th>
</tr>
</thead>
</table>

**CITY MANAGER**

<table>
<thead>
<tr>
<th>(Transfers between Budgeted Activities of Departments within Funds)</th>
<th>(Appropriation of Unbudgeted Dept Revenues)</th>
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<tbody>
<tr>
<td>(Transfers into Personnel Services)</td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Contact Person:</th>
<th>Tina Rocha</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone No.:</td>
<td>Ext. 75321</td>
</tr>
<tr>
<td>Department:</td>
<td>Office of the City Manager</td>
</tr>
<tr>
<td>Fund Title:</td>
<td>Carver-Bangs/Pelandale-Snyder CFD No. 1998-2</td>
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</table>

| FY: 05-06 | Resolution Number: N/A |

### DEPARTMENTAL REVENUES

<table>
<thead>
<tr>
<th>Fund-Agency-Org-Object</th>
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<tr>
<td>FROM</td>
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<td></td>
<td></td>
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<tr>
<td>TO</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
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</tr>
</tbody>
</table>

### APPROPRIATIONS

| FROM | | | | | |
|------| | | | | |
| TO | $77,740.47 | | | | |
| TOTAL | | | | | |

| FROM | | | | | |
|------| | | | | |
| TO | | | | | |
| TOTAL | | | | | |

### COMMENTS/JUSTIFICATION

This will allow the CFD to reimburse Big Valley Grace Community Church for bike path right-of-way dedication and the installation of bike path fencing. There is no general fund impact.

### AUTHORIZATION (check if required)

<table>
<thead>
<tr>
<th>DEPARTMENT DIRECTOR or AUTHORIZED ASSISTANT</th>
<th>SIGNATURE</th>
<th>DATE</th>
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<tbody>
<tr>
<td>(Allocation of Dept Appr to Line-Item Level)</td>
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| FINANCE DIRECTOR | |
|------------------| |
| (Transfers to/from Internal Service Charges) | |
| (All items requiring City Manager's Approval) | |

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

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Budget Office Form (Oct 2001) gh
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-542

A RESOLUTION AUTHORIZING THE AWARD OF BID AND CONTRACT FOR TWO (2), NEW, CURRENT YEAR/MODEL, CHEVROLET TAHOE VEHICLES FROM AMERICAN CHEVROLET OF MODESTO, CA., FOR AN ESTIMATED TOTAL COST OF $59,694.62

WHEREAS, the Public Works Department-Fleet Services Division has requested the purchase of two (2), new, current year/model, Chevrolet Tahoe vehicles, and

WHEREAS, the vehicles will be used by the Modesto Fire Department to replace two (2), Ford Explorers that have met their useful life expectancy, and

WHEREAS, the Tahoe’s will carry equipment for fire investigations, and

WHEREAS, Resolution No. 2005-381 authorized the Purchasing Supervisor to solicit bids for new vehicles and heavy equipment throughout FY 05/06 through various competitive processes, with the Purchasing Division coming back to Council for award authorization, and

WHEREAS, the Purchasing Division solicited formal bids for two (2), new, current year/model, Chevrolet Tahoe vehicles on Request for Bid (RFB) 0506-08, and

WHEREAS, nine (9) vendors were solicited for the RFB, and

WHEREAS, there were no responses to the formal RFB by the October 4, 2005 bid due date, and

WHEREAS, the Purchasing Division staff contacted solicited vendors and asked why they did not respond to the RFB, and

WHEREAS, vendors did not respond because of product availability, and they could not supply vehicles which met technical specifications, and
WHEREAS, they also indicated the model/year availability window from the factory could not be met, and

WHEREAS, the Purchasing Division and the Fleet Services staff went to the Chevrolet web site to see what local vendors had stock on the Chevrolet Tahoes, and

WHEREAS, a verbal solicitation was made to those vendors who had Tahoes that met bid specifications, and

WHEREAS, the Purchasing Division and the Fleet Services staff were able to obtain three (3) bids for the Chevrolet Tahoe vehicles, and

WHEREAS, the total cost of the two (2), new, current year/model, Chevrolet Tahoe vehicles is approximately $59,694.62 including freight and sales tax, and

WHEREAS, American Chevrolet of Modesto, CA., was deemed to be the lowest responsive and responsible bidder, and

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

WHEREAS, this request for award of bid and contract conforms to City Code, and

WHEREAS, funds are available in account number 7210-480-5814-5256 and 7210-480-5814-5264 (FLEET EQUIP. REPLACEMENT) in the amount of $59,694.62 for two (2), new, current year/model, Chevrolet Tahoe vehicles,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby authorizes the award of bid and contract for two (2), new, current year/
model, Chevrolet Tahoe vehicles to American Chevrolet of Modesto, CA., for an estimated total cost of $59,694.62.

BE IT FURTHER RESOLVED that the Purchasing Supervisor is hereby authorized to issue a purchase order to American Chevrolet in the approximate amount of $59,694.62 toward the purchase of said two (2), new, current year/model, Chevrolet Tahoe vehicles.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-543

A RESOLUTION APPROVING A HOUSING MAINTENANCE PROGRAM
LOAN FOR JEANETTA AYERS, SECURED BY HER HOME AT 2617
MCADOO AVENUE, MODESTO IN THE AMOUNT OF $97,657

WHEREAS, the City of Modesto offers Housing Maintenance Program loans to
qualified residents through the Revolving Loan Fund, which was originally funded
through the federal Department of Housing and Urban Development (HUD), and

WHEREAS, the Stanislaus County Public Guardian’s (PG) office was given
temporary conservatorship of Ms. Jeanetta Ayers in February 2005, and she was removed
from her home and placed in other housing, and

WHEREAS, the home was filled with junk and debris, inside and out, and

WHEREAS, the County contacted the City about using the Housing Maintenance
Program for Ms. Ayers, and

WHEREAS, the home is located at 2617 McAdoo in Highway Village, known as
mandatory target area #5, and

WHEREAS, the house was inspected by the Building Inspector and a Notice and
Order was recorded against the property, and

WHEREAS, during the last conservatorship hearing in August, the court asked
the City and County to proceed with a plan for rehabilitation of the property, and

WHEREAS, the next hearing is scheduled for November 9, 2005, and the City’s
loan approval will be contingent on court approval that the PG remain as conservator
during the housing rehabilitation project, and
WHEREAS, the City will recommend to the court that upon completion of the project and the return of Ms Ayers to the home, that the County remain as conservator for at least 24 months, and

WHEREAS, after the 24-month period the City could request the Court to keep the PG as conservator if the property is not being maintained, and

WHEREAS, the work to be done includes a new roof, installation of central heat and air, a complete interior and exterior remodel, including a complete kitchen and bath, and

WHEREAS, because of the condition of the property the loan amount includes a 10% contingency for unforeseen construction needs and includes re-payment to the City for costs already incurred under the Advance Payment Agreement, and

WHEREAS, because Ms. Ayer’s social security income is less than 50% of Median Area Income she is eligible for a deferred payment loan, and

WHEREAS, the property is free and clear, excepting a lien placed by the City in 1996 for property clean up, and

WHEREAS, this lien will be paid through the City’s new loan; therefore, the new loan will be in first position on the property, and

WHEREAS, since the estimated value of the home after rehab is $275,000 to $300,000, the loan-to-value is low, (35% or lower), which puts the City in a secure position in this investment, and

WHEREAS, the loan would be a deferred payment loan at 3% interest, due in 50 years or when Ms. Ayers is no longer living in the home, the loan documents will require bi-annual inspections of the property, and the loan approval will be contingent on court
approval that the Stanislaus County Public Guardian’s office remain conservator of Ms. Ayers until completion of the housing rehabilitation project, and

WHEREAS, the Housing Rehabilitation Loan Committee met on October 6, 2005, and supported the recommendation to approve a Housing Maintenance Program loan for Jeanetta Ayers, secured by her home at 2617 McAdoo Avenue, Modesto in the amount of $97,657,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that the Council hereby approves a Housing Maintenance Program loan for Jeanetta Ayers, secured by her home at 2617 McAdoo Avenue, Modesto in the amount of $97,657.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

Attest: Jean Zahr, City Clerk

APPROVED AS TO FORM:

By: Michael D. Milich, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-544

A RESOLUTION APPROVING AN AMENDMENT TO AGREEMENT WITH STANTEC CONSULTING FOR ADDITIONAL WORK IN THE AMOUNT OF $75,000, TO COMPLETE THE STORM DRAIN MASTER PLAN AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AMENDMENT TO AGREEMENT

WHEREAS, the City of Modesto awarded the Storm Drain Master Plan (SDMP) contract to Stantec Consulting, Inc., (Stantec), in the amount of $422,170 on August 27, 2002, and

WHEREAS, the SDMP will develop a Citywide, comprehensive Storm Drain Master Plan to properly address the many storm drainage issues facing the City, and

WHEREAS, during the period in which the SDMP is being prepared by Stantec, the City may elect to solicit additional minor input, analysis and recommendations from Stantec, and

WHEREAS, additional tasks requested by the City are required to complete work related to the SDMP beyond the scope of the original agreement in order to: 1) prepare a separate analysis covering the Northeast Area Offsite Watershed; 2) provide an amended version of the draft version of the SDMP dated July 2003 in order to assist the City with addressing current MID issues and concerns regarding acceptance of additional City storm drainage in their facilities; and 3) provide additional reviews and updates pertinent to the SDMP, and

WHEREAS, City desires to pay the amount of the additional work provided by Stantec, which is $75,000.00, and execute an Amendment to Agreement for Consultant Services with Stantec in said amount, and
WHEREAS, the Acting Public Works Director recommends approving the Amendment to Agreement with Stantec Consulting to perform the additional tasks requested by the City required to complete work related to the SDMP,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto hereby approves the Amendment to Agreement with Stantec Consulting for additional work in the amount of $75,000, to complete the Storm Drain Master Plan.

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 1st day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

ATTEST: [Signature]

JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By [Signature]

MICHAEL D. MILICH, City Attorney
MODESTO CITY COUNCIL
RESOLUTION NO. 2005-545

A RESOLUTION AMENDING THE CURRENT CAPITAL IMPROVEMENT BUDGET IN ORDER TO FULLY FUND THE AMENDMENT TO AGREEMENT WITH STANTEC CONSULTING BY (1) RETURNING $75,000 FROM 6280-430-A213-6010 (STORM DRAINAGE SYSTEM ANALYSIS) TO RESERVES ACCOUNT 6280-800-8000-8003; AND (2) REAPPROPRIATION OF THAT SAME $75,000 FROM RESERVES TO 6280-440-A231-6010 (STORM DRAIN MASTER PLAN)

WHEREAS, in August 2002, the City began a project to develop a Citywide, comprehensive Storm Drain Master Plan (SDMP) to properly address the many storm drainage issues facing the City, and

WHEREAS, the City has deemed additional work to be important to the completion of the SDMP that was not included in the original project scope, and

WHEREAS, certain budgetary transactions are necessary to fully fund said Amendment to Agreement as there is insufficient revenue available in the CIP Account 6280-440-Q231-6010 “Storm Drain Master Plan” to fund the Amendment to Agreement in the amount of $75,000, and

WHEREAS, $75,000 is to be returned to reserves Account 6280-800-8000-8003 from CIP Account 6280-430-A213-6010 “Storm Drainage System Analysis,” and

WHEREAS, that same $75,000 is to be reappropriated from reserves to the CIP Account 6280-440-Q231-6010 “Storm Drain Master Plan,”

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto hereby approves funding transfers as set forth herein to fully fund the Amendment to Agreement with Stantec Consulting for engineering services for the SDMP project.
The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of November 2005, by Councilmember Jackman, who moved its adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the resolution adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

ATTEST: 
JEAN ZAHR, City Clerk