



REPORT TO THE PLANNING COMMISSION

AGENDA ITEM NO. VIII.B.
COMMISSION MEETING 06/01/11

June 01, 2011

APPROVED BY

DEPARTMENT DIRECTOR *John Dugan*

FROM: KEVIN FABINO, Planning Manager
Development & Resource Management Department

THROUGH: MIKE SANCHEZ, Planning Manager 
Development Services Division

BY: WILL TACKETT, Planner III 
Development Services Division

SUBJECT: CONSIDERATION OF PROPOSED AMENDMENT TO THE CONDITIONS OF APPROVAL FOR VESTING TENTATIVE TRACT MAP NO. 5461/UGM.

RECOMMENDATION

Staff recommends that the Planning Commission take the following actions:

1. APPROVE findings of Statutory Exemption and No Possibility of Significant Effect for the proposed amendment to the Conditions of Approval for Vesting Tentative Tract Map No. 5461/UGM.
2. APPROVE the proposed amendment to the Conditions of Approval for Vesting Tentative Tract Map No. 5461/UGM as provided within the Revised Conditions of Approval dated June 01, 2011; subject to the findings of Section 12-1028 of the Fresno Municipal Code.

EXECUTIVE SUMMARY

The City of Fresno, Department of Public Utilities and UCP Montecito, LLC., subdivider, have requested authorization to amend the Conditions of Approval for Vesting Tentative Tract Map No. 5461/UGM; pertaining to approximately 66.40 net acres of property located on the north side of East Dakota Avenue between North Armstrong and North Temperance Avenues.

Approval of the proposed amendment to the Conditions of Approval for Vesting Tentative Tract Map No. 5461/UGM will facilitate construction of surface water delivery facilities for the master planned 3-million gallon water storage tank and package surface water treatment facility (T-3 Facility) in southeast Fresno.

For this purpose, the City of Fresno Department of Public Utilities proposes to rescind previous conditions of approval related to: (1) The acquisition of a well site and construction and dedication of a water supply well; (2) The construction of wellhead treatment facilities (if required); and, (3) The dedication of a water supply and treatment site for installation of the aforementioned aboveground water storage and treatment facility (to be constructed by the City), in favor of the imposition of requirements for: (1) The design and construction of a raw water pipeline and appurtenant facilities for the delivery of surface water from the Enterprise Canal (via the Jefferson Canal) to the City of Fresno water storage and treatment facility site; (2) The restriction of annual occupancy approvals for Tract 5461 until either the water storage tank or the pipeline connecting the City of Clovis is completed and operational; and, (3) Provisions for reimbursement of related construction costs.

PROJECT INFORMATION

PROJECT	<p>A 257-lot single family residential subdivision on approximately 66.40 net acres of property to be developed at an overall density of 3.90 dwelling units per acre; and,</p> <p>Construction of a raw water pipeline and appurtenant facilities for the delivery of surface water from the Enterprise Canal (via the Jefferson Canal) to the City of Fresno master planned 3-million gallon water storage tank and package surface water treatment facility (T-3 Facility) site.</p>
APPLICANT	<p>City of Fresno, Department of Public Utilities; and, UCP Montecito, LLC.</p>
LOCATION	<p>North side of East Dakota Avenue between North Armstrong and North Temperance Avenues.</p> <p>(Council District 4, Councilmember Westerlund)</p>
SITE SIZE	<p>Approximately 66.4 net acres.</p>
PLANNED LAND USE	<p>Existing - Low & Medium-Low Density Residential Proposed - Low & Medium-Low Density Residential</p>
ZONING	<p>Existing - R-1/UGM (<i>Single Family Residential District/Urban Growth Management</i>) Proposed - R-1/UGM (<i>Single Family Residential District/Urban Growth Management</i>)</p>
PLAN DESIGNATION AND CONSISTENCY	<p>Pursuant to Table 2 (Planned Land Use and Zone District Consistency Matrix) of the 2025 Fresno General Plan and Section 12-403-B-1 (Zone District Consistency Table) of the FMC, the existing R-1 zone district classification of the subject property and the existing Low and Medium-Low Density Residential planned land use designation for the subject property may be found consistent.</p>
ENVIRONMENTAL FINDING	<p>Finding of Conformity to the Master Environmental Impact Report (MEIR) No. 10130 adopted on August 17, 2009 for development of Tract 5461; and,</p> <p>Findings of Statutory Exemption and No Possibility of Significant Effect for construction of raw water pipeline and appurtenant facilities.</p>

STAFF RECOMMENDATION (1) Approve the findings of Statutory Exemption and No Possibility of Significant Effect for the proposed amendment to the Conditions of Approval; and, (2) Approve the proposed amendment to the Conditions of Approval for Vesting Tentative Tract Map No. 5461/UGM as provided within the Revised Conditions of Approval dated October 27, 2010; subject to the findings of Section 12-1028 of the Fresno Municipal Code.

BORDERING PROPERTY INFORMATION

	Planned Land Use	Existing Zoning	Existing Land Use
North	Low & Medium-Low Density Residential City of Clovis	R-A/UGM <i>(Single Family Residential-Agricultural District / Urban Growth Management)</i> R-1-C (City of Clovis) <i>(Single Family Residential – 9,000 sq. ft.)</i>	Rural Residential & Single Family Residential
South	Low & Medium Density Residential Public Facility / Elementary School	R-A/UGM <i>(Single Family Residential-Agricultural District / Urban Growth Management)</i>	Rural Residential & Agricultural
East	Office Commercial	S-L/UGM <i>(Storage/Limited, Mini Storage Facility District / Urban Growth Management)</i>	Mini Storage
West	Low & Medium-Low Density Residential	R-1/UGM <i>(Single Family Residential District / Urban Growth Management)</i> R-A/UGM <i>(Single Family Residential-Agricultural District / Urban Growth Management)</i>	Vacant & Rural Residential

ENVIRONMENTAL FINDING

The City of Fresno previously conducted an initial study for development of Tract Number 5461 and determined it to be a subsequent project fully within the scope of the Master Environmental Impact Report No. 10130 (“MEIR”) prepared for the 2025 Fresno General Plan (SCH #2001071097). A Finding of Conformity was adopted for Vesting Tentative Tract Map No. 5461 by the Planning Commission of the City of Fresno on August 17, 2009. In addition, construction of the 3-million gallon water storage tank and water treatment facility (T-3 Facility) in southeast Fresno and water transportation facilities have also been previously environmentally assessed by the City of Fresno. Findings of Statutory Exemption under CEQA Guidelines Section 15282(k) were approved for the source of water diversion structure and Gunn No. 386 pipeline crossing the Gould Canal, and Brown No. 113 pipeline crossing Temperance Avenue at the Gould Canal, by the City Council on September 03, 2009. An environmental assessment was also completed and a Mitigated Negative Declaration was prepared for the construction of the 3-million gallon water storage tank and surface water treatment plant, which tiered off of the 2025 Fresno General Plan Master Environmental Impact Report No. 10130 and Mitigated Negative Declaration No. A-09-02/SCH No. 2009051016. Mitigated Negative Declaration No. 2009101089 was adopted by the City Council on December 03, 2009. To the extent the installation of the 24-inch raw water pipeline and appropriate appurtenances from the water diversion structure to the

water storage tank site may not have been assessed, staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Statutory Exemption set forth in CEQA Guidelines, Section 15282(k), which exempts certain projects involving the installation of a new pipeline less than one mile in length. Further, pursuant to CEQA Guidelines section 15061(b)(3), staff has determined with certainty that there is no possibility that this project may have a significant effect on the environment.

BACKGROUND / ANALYSIS

The City of Fresno, Department of Public Utilities and UCP Montecito, LLC., subdivider, have requested authorization to amend the Conditions of Approval for Vesting Tentative Tract Map No. 5461/UGM; pertaining to approximately 66.40 net acres of property located on the north side of East Dakota Avenue between North Armstrong and North Temperance Avenues.

On August 17, 2005 the Fresno City Planning Commission approved Vesting Tentative Tract Map No. 5461/UGM, a proposed 257-lot conventional single family residential subdivision, at an overall density of approximately 3.9 dwelling units per acre.

The City of Fresno Department of Public Utilities proposes to rescind previous conditions of approval related to: (1) The acquisition of a well site and construction and dedication of a water supply well; (2) The construction of wellhead treatment facilities (if required); and, (3) The dedication of a water supply and treatment site for installation of an aboveground water storage and treatment facility (to be constructed by the City), in favor of the imposition of requirements for: (1) The design and construction of a raw water pipeline and appurtenant facilities for the delivery of surface water from the Enterprise Canal (via the Jefferson Canal [see Public Services section herein below for further information regarding conveyance]) to the City of Fresno water storage and treatment facility site; (2) The restriction of annual occupancy approvals for Tract 5461 until either the water storage tank or the pipeline connecting the City of Clovis is completed and operational; and, (3) Provisions for reimbursement of related construction costs.

Section 12-1005.2(d) of the Fresno Municipal Code (FMC) includes provisions and procedures for making "major" revisions to an approved tentative map using the same procedure and findings found in Section 12-1028(b) of the FMC.

In accordance with Section 12-1005.2(d) of the FMC, Section 12-1028(b) of the FMC provides that an amendment to a condition of a tentative map may be initiated by the Director of the Planning and Development Department (Development and Resource Management Department), the Director of Public Works Department, or any subdivider or owner of the real property subject to the tentative map; and, that the decision to approve an amendment to a condition of a tentative map must be approved by the Planning Commission so long as the findings contained within Section 12-1028(b)(4) of the FMC (see findings contained herein below) can be made. Any hearing before the Planning Commission shall be limited in scope to consideration and action of the proposed amendment.

Approval of the proposed amendment to the Conditions of Approval for Vesting Tentative Tract Map No. 5461/UGM will therefore facilitate construction of surface water delivery facilities for the master planned 3-million gallon water storage tank and package surface water treatment facility (T-3 Facility) in southeast Fresno.

Public Services

Located on East Dakota Avenue (just east of North Armstrong Avenue) the T-3 Facility, which is yet to be constructed, is a master planned facility originally identified in the 1996 Metropolitan Water Resources Management Plan (Metro-Plan) as an above-ground, two million gallon steel reservoir and pumping facility.

From 2004-2009 several monitoring wells, production wells, groundwater capacity and quality evaluations have compiled a comprehensive understanding of groundwater in southeast Fresno. These evaluations and studies have revealed that the sustainable groundwater safe yield capacity in southeast Fresno is much lower than that which was anticipated in the 1996 Metro-Plan. By 2007 it was becoming clear that the scope and water supply for the water storage and treatment facility project would need to be changed from groundwater to surface water. The 2009 "Water System Analysis and Modeling for T-3 Water Storage and Treatment" project pre-design report confirmed the need to increase storage from 2 million gallons to 3 million gallons and the addition of 8 million gallons per day (4 million gallons initially) of surface water treatment capacity.

The T-3 Facility is fully funded by reimbursement from developer fees collected or to be collected from the Urban Growth Management (UGM) 501s area. Expanded facility costs associated with increased capacity requirements are expected to be offset by an equivalent reduction in the well and well head treatment infrastructure due to the limited groundwater supply, which is incapable of sustaining current and planned developments.

Although new development has slowed, the T-3 facility project is critical for a number of proposed and existing approved tracts. Several tracts in the area are required to construct various pieces of the T-3 infrastructure in-lieu of constructing well facilities, knowing that the T-3 facility will be their primary source of water. The proposed amendments to the Conditions of Approval for Vesting Tentative Tract Map No. 5461/UGM formalize this subdivision project's obligation for contribution to facility infrastructure.

Pursuant to requests from the Fresno Irrigation District and in order to comply with County Department of Public Health requirements, conveyance of project source water will come from the Enterprise Canal via the Jefferson No. 112 Canal. Water will travel along the open-ditch and piped portions of the Jefferson Canal, from its intersection with the Enterprise Canal to the Gunn No. 386 pipeline, which terminates at a diversion structure on the north side of the Gould Canal. Thereafter, water will be conveyed through the proposed 24" raw water pipeline, under the Gould Canal, to the water storage and treatment facility site.

Land Use Plans and Policies

Objective E-22 of the 2025 Fresno General Plan is aimed toward the management and development of the City of Fresno's water facilities to ensure a safe, economical, and reliable water supply for existing and planned urban development and economic diversification.

Supporting Policy E-22-b directs the City to set adequate and appropriate conditions of approval for each new development proposal to ensure that the necessary potable water production and supply facilities are in place prior to occupancy.

Policy E-22-h requires implementation of appropriate measures consistent with water system policies, including the removal of pump stations from active use, installation of well-head treatment facilities, construction of above-ground storage and surface water treatment facilities, construction of above-

ground storage and surface water treatment facilities, and enhancement of transmission grid mains to ensure adequate water quality and quantity.

Policies E-22-k & E-22-l require implementation of the Fresno Metropolitan Water Resource Management Plan as necessary to ensure adequate water supplies are available for both short and long term needs and that development of peripheral areas will not adversely affect efforts to balance water demand with water supply; and, that new development be evaluated in light of the conclusions and recommendations of the Fresno Metropolitan Water Resource Management Plan (respectively).

The proposed revisions to the Conditions of Approval for Vesting Tentative Tract Map No. 5461/UGM uphold the Water objective and policies of the 2025 Fresno General Plan Public Facilities Element by appropriately conditioning the project with requirements for the provision of water supply facilities necessary to ensure that adequate water supplies are available for both existing and planned development within the area. Furthermore, these requirements support the completion of an above-ground storage and surface water treatment facility as recommended within the General Plan policies.

Additional evaluations and hydraulic studies associated with groundwater supplies have been utilized to supplement and update the conclusions of the Fresno Metropolitan Water Resource Management Plan consistent with the implementation of policies necessary to support the water objective of the 2025 Fresno General Plan

Therefore it is staff's opinion that the proposed project is consistent with respective general and community plan objectives and policies.

Findings Required Pursuant to Section 12-1028 of the Fresno Municipal Code

Section 12-1028 of the FMC requires that a proposed amendment to a condition of a tentative parcel map not be approved unless the Planning Commission makes the following findings:

FINDINGS PER FRESNO MUNICIPAL CODE SECTION 12-1028

i. There are changes in circumstances which make such conditions no longer appropriate or necessary; and,

Finding i: A change in circumstances exists. Due to the discovery of limited groundwater supply in the UGM 501s area, which has been determined to be incapable of sustaining current and planned developments, conditions of approval respective to the requirement for construction of a water supply well necessary to serve the proposed development are no longer appropriate. Alternatively, the imposition of requirements for the design and construction of a raw water pipeline and appurtenant facilities for the delivery of surface water from the Enterprise Canal to the City of Fresno water storage and treatment facility site, in exchange for utilization of water from the treatment facility, is necessary.

ii. The amendments do not impose any additional burden(s) on the present fee owner(s) of the property subject to the map; and,

Finding ii: The proposed amendment will not impose an additional burden on the present fee owner(s) of the property subject to the map because the modifications proposed provide for reimbursement of costs associated with construction requirements imposed upon the present fee owner(s) as a result of the project approval. The subdivider is in agreement with the proposed revisions to the Conditions of Approval dated June 01, 2011.

iii. The map, as amended, is not subject to disapproval under the findings in Government Code Section 66474 and conforms to this Article or Article 12 of Chapter 12 for approving a tentative parcel map.

Finding iii:	The map, as amended is not subject to disapproval under the findings in Government Code Section 66474 and conforms to this Article and Article 12 of Chapter 12 for approving a tentative map. Original conditions of project approval are being rescinded in favor of the imposition of new conditions of approval, which: (1) Are consistent with the applicable general plan; (2) Are suitable for the type and density of development previously approved; (3) Will not cause environmental damage or serious public health problems; and (4) Will not conflict with easements acquired by the public at large, for access through or use of, property within the proposed subdivision.
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iv. The amendment does not affect any previous findings made under Federal and/or State environmental review; and,

Finding iv:	The proposed amendment to the conditions of approval has no potential to affect any previous findings made for the purpose of compliance with the California Environmental Quality Act. All appropriate analyses have been made and mitigation imposed as appropriate to mitigate any potential effects on the environment which may result from the proposed project. Furthermore, original conditions of approval are being rescinded in favor of the imposition of new conditions/requirements, which are deemed to be equivalent or more effective measures to avoid or reduce any potential for significant effect to at least the same degree as, or to a greater degree than, the original measures and will create no more adverse effect of its own than would have the original measures.
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v. The amendments do not alter any right, title, or interest in the real property reflected on the recorded map; and,

Finding v:	The proposed amendment has no potential to alter any right, title, or interest in the real property reflected on the recorded map. The amendment provides the City of Fresno the ability to reimburse the property interests for costs incurred as a result of construction activities required as conditions of approval for the tentative map; and, the City has prepared a First Amendment to the Restated and Amended Subdivision Agreement prepared for the Final Map of Tract No. 5461 for the purpose of outlining obligations, responsibilities and agreements between interests for the purpose of the project.
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vi. If located within the review area of one of the airport specific plans, the amendment shall be subject to the provisions of said plan.

Finding vi:	The proposed project is not located within the defined Airport Review Area of the Fresno Yosemite International Airport and Environs Plan and therefore does not have the potential to, and will not, conflict within any of the goals, objectives, or policies of said plan.
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The subdivision map, subject to the recommended conditions of approval, complies with the design and property development standards of the Zoning Ordinance and local Subdivision Ordinance. Based upon the plans and information submitted by the applicant and the recommended conditions of project approval, staff has determined that these findings can be made.

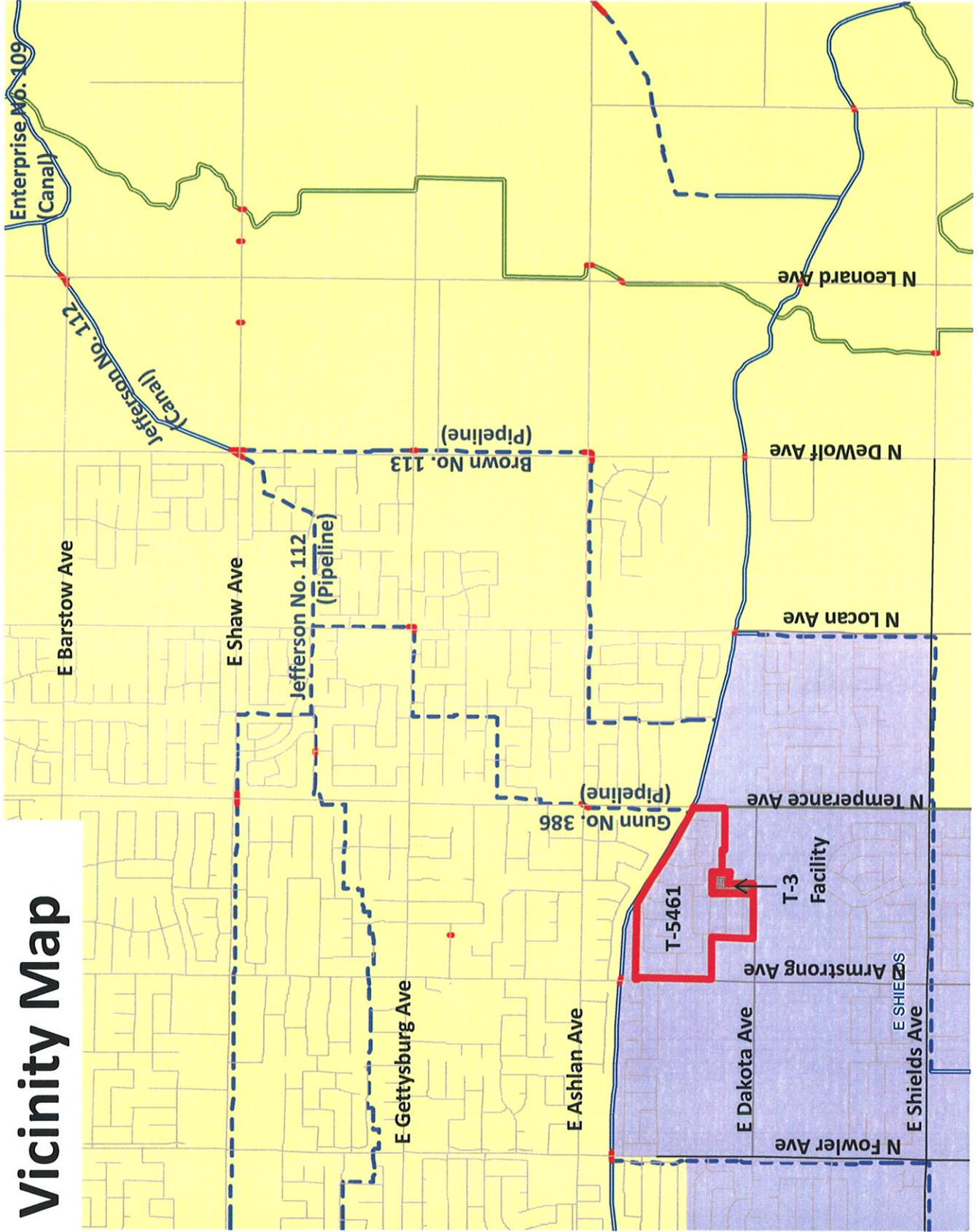
Conclusion

Action by the Planning Commission regarding the proposed amendment to the Conditions of Approval for Vesting Tentative Tract Map No. 5461/UGM is final unless appealed to the City Council.

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the 2025 Fresno General Plan and the McLane Community Plan; its compatibility with surrounding existing or proposed uses; and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment. Upon consideration of this evaluation, it can be concluded that the Revised Conditions of Approval for Vesting Tentative Tract Map No. 5461/GUM dated June 01, 2011 are appropriate for the project.

Attachments: Vicinity Map
2009 Aerial Photograph
Public Hearing Notice Mailing List Vicinity Map
Vesting Tentative Tract Map No. 5461/UGM
Revised Conditions of Approval for Vesting Tentative Tract Map No. 5461/UGM dated June 01, 2011
First Amendment to the Restated and Amended Subdivision Agreement prepared for the Final Map of Tract No. 5461

Vicinity Map





Google

N Highland Ave

E Ashlan Ave

E Shaw Ave

N Leonard Ave

N De Wolf Ave

E Barstow Ave

Shaw Ave

E Gettysburg Ave

Ashlan Ave

Data SIC, NOAA, U.S. Navy, NGA, GEBCO

©2011 Google

S Temperance Ave

N Temperance Ave

Barstow Ave

Gettysburg Ave

Armstrong Ave

N Armstrong Ave

S Fowler Ave

N Fowler Ave

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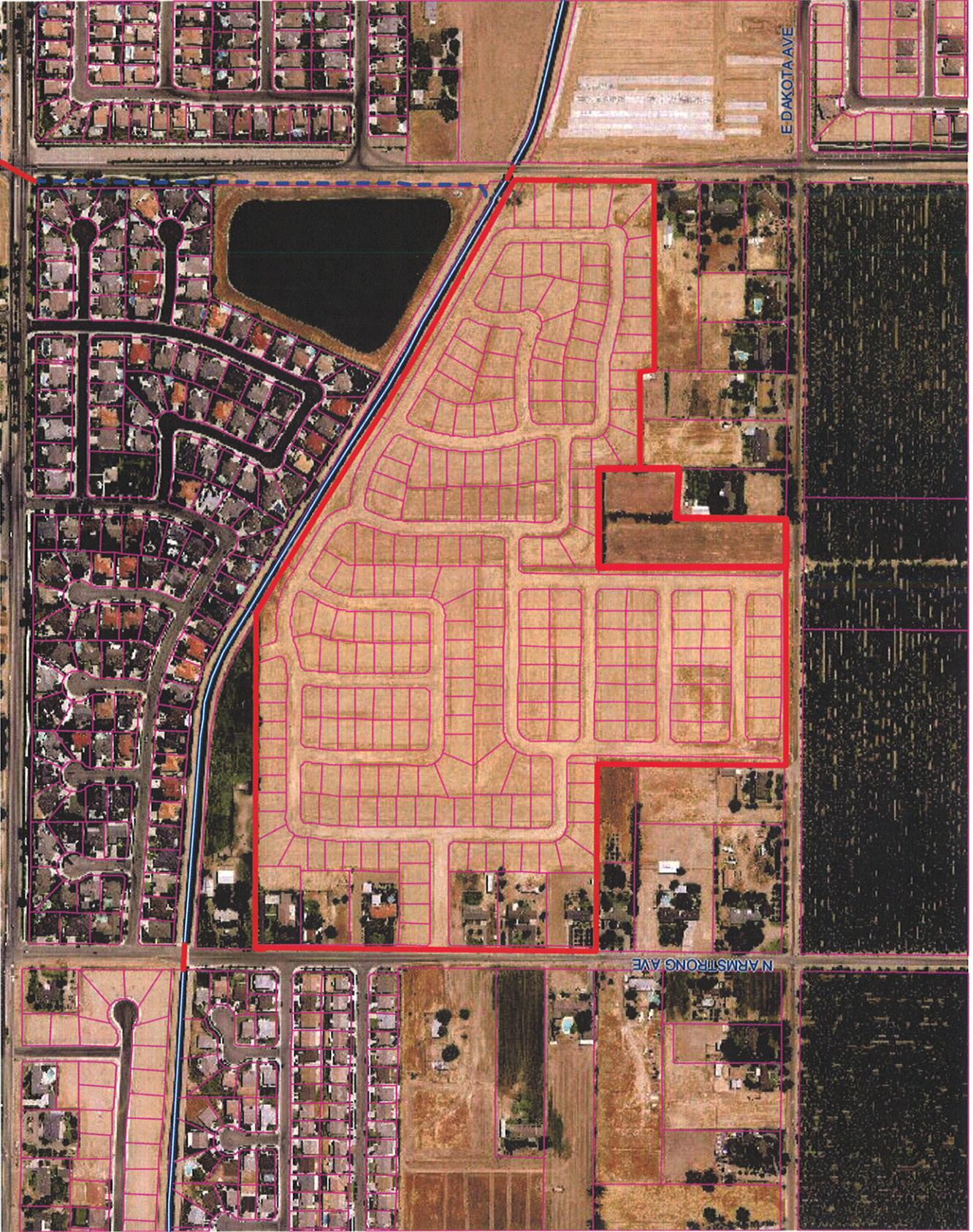


T-5461

T-3 Facility

Data SIO, NOAA, U.S. Navy, NGA, GEBCO

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CITY OF FRESNO
PLANNING AND DEVELOPMENT DEPARTMENT

CONDITIONS OF APPROVAL

August 17, 2005

(Amended by the Planning Commission on June 01, 2011)

VESTING TENTATIVE TRACT MAP NO. 5461/UGM

North of East Dakota Avenue between North Armstrong and North Temperance Avenues

All tentative maps are subject to the applicable provisions of the State Subdivision Map Act, Fresno Municipal Code, City policies, and City of Fresno Standard Specifications. The following specific conditions are applicable to this vesting tentative map. The Urban Growth Management (UGM) Service Delivery Plan requirements are included in the following conditions of approval and are designated by the caption "Urban Growth Management Requirements."

NOTICE TO PROJECT APPLICANT

In accordance with the provisions of Government Code '66020(d)(1), the imposition of fees, dedications, reservations or exactions for this project are subject to protest by the project applicant at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations or exactions imposed on the development project.

GENERAL CONDITIONS

1. Upon conditional approval of Vesting Tentative Tract Map No. 5461/UGM entitled "Exhibit A," dated April 22, 2005, the subdivider may prepare a Final Map in accordance with the approved tentative map. Related Rezone Application No. R-05-02 shall be approved by the City Council to become effective prior to Final Map approval.
2. Submit grading plans and a soils report to the City of Fresno Planning and Development Department for verification prior to Final Map approval (Reference: Sections 12-1022 and 12-1023 of the Fresno Municipal Code). Grading plans shall indicate the location of any required walls and indicate the proposed width of required landscape easements or strips. Approval of the grading plan is required prior to Final Map approval.
3. At the time of Final Map submittal, the subdivider shall submit engineered construction plans to the City of Fresno Public Works, Public Utilities, and Planning and Development Departments for grading, public sanitary sewer system, public water system, street lighting system, public streets, and storm drainage, including other technical reports and engineered plans as necessary to construct the required public improvements and work and applicable processing fees.
4. Engineered construction plans shall be approved by the City prior to the approval of the Final Map. If, at the time of Final Map approval, such plans have not been approved, the subdivider shall provide performance security in an amount established by the City to guarantee the completion of plans.
5. Public utilities easements, as necessary, shall be shown on the Final Map and dedicated to the City of Fresno. Public utility easements beyond the limits of the Final Map, but required as a

condition of development, shall be acquired at the subdivider's cost and shall be dedicated by separate instrument at the time of Final Map approval. The relocation of existing utilities necessitated by the required public improvements shall be paid for by the subdivider. The subdivider is responsible to contact the appropriate utility company for information.

6. Comply with the conditions, policies and standards set forth in the City of Fresno, Municipal Code, Article 10, Chapter 12, ASubdivision of Real Property;@ Resolution No. 68-187,A City Policy with Respect to Subdivisions;@ and City of Fresno Standard Specifications, 2002 Edition, and any amendments thereto.
7. The developer/owner shall pay applicable fees for, but not limited to, plan checks for street improvements and other grading and construction; street trees, street signs, water service, sewerage, and inspections in accordance with the City of Fresno Master Fee Schedule (City Resolution No. 79-606 and No. 80-420) and any amendments, modifications, or additions thereto; and in accordance with the requirements of State law as related to vesting tentative maps.
8. The subdivider shall furnish to the City acceptable security to guarantee the construction of the off-site street improvements in accordance with all applicable provisions of the Fresno Municipal Code and the State Subdivision Map Act. The subdivider shall complete all the public improvements prior to the approval of the Final Map by the City. If, at the time of Final Map approval, any public improvements have not been completed and accepted in accordance with the standards of the City, the subdivider may elect to enter into an agreement with the City to thereafter guarantee the completion of the improvements.
9. As a condition of Final Map approval, the subdivider shall furnish to the City a subdivision guarantee listing all parties having any right, title, or interest and the nature of their interest per State law.
10. Relinquish access rights to North Temperance and East Dakota Avenues from all residential lots which abut these streets and to Lot 73 which abuts North Armstrong Avenue. Ref. Section 12-1011-f-3 of the Fresno Municipal Code.
11. Prior to final map approval, the owner of the subject property shall execute a ARight to Farm@ covenant with the City of Fresno. Said covenant is to run with the land and shall acknowledge and agree that the subject property is in or near agricultural districts located in the County of Fresno and that the residents of said property should be prepared to accept the inconveniences and discomfort associated with normal farm activities. The ARight to Farm@ covenant shall be recorded prior to or concurrent with the recording of the Final Map of Tentative Tract No. 5461/UGM.

Landscaping and Walls

12. Pursuant to 2025 Fresno General Plan Exhibit 9 and Policies E-15-a, E-15-b, E-15-h, E-15-i and E-15-x and in accordance with Policies 3.2.1 and 3.2.2 and 3.2.3 of the 1990 Master Multi-Purpose Trails Manual, within the limits of the tract, the developer/owner shall construct appropriate improvements or provide appropriate security for a bicycle/pedestrian trail with equestrian accommodation of an appropriate width along North Temperance Avenue and along the south side of the Gould Canal. The location and width of the trail may be accommodated

within and including the required public right-of-way and landscape easement located between the curb face and the required solid masonry wall along Temperance Avenue and within and including the required public right-of-way and Outlot "A" between the curb face on East Griffith and East Sussex Ways and the southerly right-of-way of the Gould Canal.

13. Provide a 26-foot landscaped easement (and irrigation system) along the rear property line of all lots which back-onto North Temperance Avenue. Provide a 15-foot landscaped easement (and irrigation system) along the side or rear property lines of all lots which side-onto or back-onto East Dakota Avenue and along the side property line of Lot 73 which sides-onto North Armstrong Avenue . Ref. Section 12-1011-f-3 of the Fresno Municipal Code.

When the grading plan establishes a top of slope beyond the required landscape easement noted and the construction of the required wall is to be established coincident with the top of slope then the required minimum easement width shall be expanded to include the full landscaped area up to the wall location.

14. Maintenance of the required landscape easements along North Temperance, East Dakota and North Armstrong Avenues and Outlots A, B and C may be the responsibility of the City=s Community Facilities District No. 2. Contact the Public Works Department, Engineering Services Division, for information regarding the city=s District and comply with the requirements noted in the memorandum from the Public Works Department, Engineering Services Division, dated April 1, 2005. The property owner shall petition the City for annexation to the City=s District prior to Final Map approval.
15. If the developer/subdivider elects to petition for annexation into the City's Community Facilities District, he/she shall be required to provide the City of Fresno, Department of Public Works, with copies of signed acknowledgments from each purchaser of a lot within the subdivision, attesting to the purchasers understanding that the lot will have an annual maintenance assessment and that he/she is aware of the estimated amount of the assessment. **The developer/subdivider shall execute and record a covenant on each lot providing notice that the subject property is subject to annual payment of the Community Facilities District assessment.**
16. Should the City Council not approve the annexation of such landscape areas into Community Facilities District No. 2, the property owner/developer shall create a homeowner's association for the maintenance of the landscape areas. The proposed Declaration of Covenants, Conditions, and Restrictions (CC&Rs) and the proposed instruments for the homeowners association shall be submitted to the Planning and Development Department for review two weeks prior to Final Map approval. Said documents shall be recorded with the Final Map or alternatively submit recorded documents or documents for recording prior to final acceptance of subdivision improvements. Said documents shall include assignment of responsibility to the owner's association for landscaping and other provisions as stated in the Development Department Guidelines for preparation of CC&Rs dated January 11, 1985.
17. Improvement plans for all required landscaping and irrigation systems shall be submitted to the Planning and Development Department for review prior to Final Map approval.
18. Construct a 6-foot high solid masonry wall along the rear or side property lines of all lots which back onto or side onto North Armstrong and East Dakota Avenues (solid wall to meet the requirements of Section 12-306-H, Fresno Municipal Code). Construct a 12-foot

high solid masonry wall (or approved combination of solid wall and earth berm) along the rear property lines of all lots which back onto North Temperance Avenue. These walls as well as additional flanking walls are required pursuant to the acoustical analysis prepared by Bollard and Brennan, Inc. dated October 15, 2004. Construction plans for required walls showing architectural appearance and location of all walls shall be submitted to the Planning and Development Department for review prior to Final Map approval. Construction plans for required walls showing architectural appearance and location of all walls shall be submitted to the Planning and Development Department for review prior to Final Map approval.

Building Setbacks

19. Building setbacks shall be in accordance with the R-1/UGM zone district and the provisions of Fresno Municipal Code Section 12-207.5-E-1-c as shown on Exhibit AA@ of Tentative Tract Map No. 5461/UGM dated April 22, 2005. There shall be a 10-foot side yard building setback on the "key Lot" side of Lots 78, 118, 183, 207, 229, 232, 240 and 255.

Information

20. Prior to the issuance of building permits for the subdivision, school construction fees shall be paid to the Clovis Unified School District in accordance with the school district=s adopted schedule of fees.
21. The proposed tentative tract map shall be annexed to the City of Fresno concurrent with, or prior to, final tract map approval, pursuant to all required fees and policies of the Fresno County Local Agency Formation Commission and the City of Fresno including any cost incurred to the City of Fresno by the detachment of the property from the Fresno County Fire Protection District.
22. Contact the United States Postal Service, Fresno Office, for the location and type of mailboxes to be installed in this subdivision.
23. Pursuant to Section 66456.1 of the Subdivision Map Act, which states "The right of the subdivider to file multiple Final Maps shall not limit the authority of the local agency to impose reasonable conditions relating to the filing of multiple Final Maps," any multiple final maps filed by the subdivider on this tract shall fully and independently conform to all provisions of Fresno Municipal Code Chapter 12, Article 10, Subdivision of Real Property.
24. The developer/owner shall obtain any and all permits required for the removal or demolition of any existing building or structure located within the subdivision boundaries. The developer/owner shall also obtain any and all permits required for the proper abandonment/closure of any existing water well, septic tank/leach field or cesspool, and irrigation pipeline on the subject property. All such permits shall be obtained prior to commencement of tract grading work, in accordance with Chapter 13 of the Fresno Municipal Code.
25. If archaeological and/or animal fossil material is encountered during project surveying, grading, excavating, or construction, work shall stop immediately.

26. If there are suspected human remains, the Fresno County Coroner shall be immediately contacted (business hours: 559-268-0109; after hours the contact phone number is 559-488-3111 for the Fresno County Sheriff=s Department). If remains or other archaeological material is possibly Native American in origin, the Native American Heritage Commission (phone number 916-653-4082) shall be immediately contacted, and the California Archaeological Inventory/Southern San Joaquin Valley Information Center (phone number: 805-644-2289) shall be contacted to obtain a referral list of recognized archaeologists. An archaeological assessment shall be conducted for the project, the site shall be formally recorded, and recommendations made to the City as to any further site investigation or site avoidance/preservation measures.
27. If animal fossils are uncovered, the Museum of Paleontology at U.C. Berkeley shall be contacted to obtain a referral list of recognized paleontologists. An assessment shall be conducted by a paleontologist; if the paleontologist determines the material to be significant, a recommendation shall be made to the City as to any further site investigation or preservation measures.
28. Apportionment of Special Assessment: If, as part of this subdivision, a division will be made of any lot or parcel of land upon which there is an unpaid special assessment levied under any State or local law, including a division into condominium interest as defined in Section 783 of the Civil Code, the developer/owner shall file a written application with the City of Fresno Director of Public Works, requesting apportionment of the unpaid portion of the assessment or pay off such assessment in full.

If the subdivider elects to apportion the assessment, the application shall contain the following information:

- a. A full description of each assessed lot, parcel or interest to be divided and of how such lot, parcel or interest will be divided;
- b. A request that the Engineer apportion the amount remaining unpaid on the assessment in accordance with applicable law; and
- c. Written consent of the owner(s) of each such lot, parcel, or interest to the requested apportionment.

The application shall be filed prior to the approval of the Final Map(s) by the City and shall be accompanied by a fee in an amount specified in the Master Fee Resolution for each separate lot, parcel, or interest into which the original assessed lot, parcel or interest is to be divided. The fee shall be in an amount sufficient to pay all costs of the City and the Engineer of Work responsible for determining the initial assessment in making the requested apportionment.

29. The subdivider shall comply with Regulation VIII of the San Joaquin Valley Air Quality Pollution Control District for the control of particulate matter and fugitive dust during construction of this project.
30. The subdivider shall obtain any and all permits required for the removal or demolition of any building or structure located within the subdivision boundaries. The developer shall also obtain any and all permits required for the closure of any septic tank, cesspool, or water well. All

permits shall be obtained prior to commencement of such work in accordance with Chapter 13 of the Fresno Municipal Code.

31. Solid waste disposal for the subdivision shall be provided by the City of Fresno. The method of collection to be utilized in this tract shall be subject to approval of the Solid Waste Manager. See the attached memorandum from the Solid Waste Division dated March 30, 2005.

PARK SERVICE

32. Contact the Parks Department for requirements.

Urban Growth Management Requirements

33. The subdivider shall be required to pay the appropriate UGM Park Capital Fee at the time of final map approval. Fee payment may be deferred until time of building permit issuance in accordance with the requirements of Section 12-4.509-C-3 of the Fresno Municipal Code.

FIRE SERVICE

34. Fire service will be provided by City of Clovis Fire Station No. 16. Provide residential fire hydrants and fire flows per Public Works Standards with two sources of water.
35. Access is acceptable as shown. There shall be at least two points of access to the subdivision during construction.

Urban Growth Management Requirements

36. The subdivider shall be required to pay the appropriate Fire Station Capital Fee at the time of final map approval. Fee payment may be deferred until time of building permit issuance in accordance with the requirements of Section 12-4.509-C-3 of the Fresno Municipal Code.
37. Solid waste disposal for the subdivision shall be provided by the City of Fresno. The method of collection to be utilized in this tract shall be subject to approval of the Solid Waste Manager .

STREETS AND RIGHTS-OF-WAY

38. The subdivider shall furnish to the city acceptable security to guarantee the construction of the off-site street improvements in accordance with all applicable provisions of the Fresno Municipal Code and the State Subdivision Map Act.
39. The subdivider shall make provisions for disabled persons in accordance with the Department of Public Works standards and as required by State law. Handicap access ramps are required to be constructed in sidewalks at all corners within the limits of the tract. Where street furniture is located within the sidewalk area (i.e., fire hydrants, streetlights, etc.), a minimum of 48 inches of unobstructed path shall be maintained to satisfy the American Disabilities Act requirements. If necessary, dedicate a pedestrian easement to accommodate for the 4-foot minimum unobstructed path requirement.

40. All of the required street improvements shall be constructed and/or installed in accordance with the City of Fresno Standard Specifications (2002 Edition).
41. The subdivider shall install all existing and proposed utility systems underground in accordance with Fresno Municipal Code Section 12-1011, 8-801 and Resolution No. 78-522/88-229.
42. The subdivider shall construct an underground street lighting system per Public Works Standards E-1 and E-2 within the limits of the tract. Spacing and design shall conform to Public Works Standards for local streets. Height, type, spacing, etc., of standards and luminaires shall be in accordance with Resolutions No. 68-187, 78-522, 81-219 and 88-229 or any modification thereto approved by the City Traffic Engineer prior to Final Map approval. Upon completion of the work by the subdivider and acceptance of the work by the City, the street lighting system shall be dedicated to the City. Submit engineered construction plans to the Public Works Department for approval.
43. All dead-end streets created by this subdivision shall be properly barricaded in accordance with City standards within seven days from the time the streets are surfaced or as directed by the Engineer.
44. The developer shall comply with Rule 8060 of the San Joaquin Valley Air Pollution Control District for the control of fugitive dust requirements from paved and unpaved roads.
45. All required signing and striping shall be done and paid for by the developer/owner. The signing and striping plans shall be done per the current Caltrans standards and shall be submitted along with the street construction, traffic signal and streetlight plans for this tentative map to the Public Works Department.

MAJOR STREETS

North Armstrong Avenue (Collector):

46. Dedicate 47 feet of property from section line for public street purposes, within the limits of this development to meet the current City of Fresno Collector Standards. Reference Public Works Standard P-69.
47. Construct concrete curb, gutter and sidewalk to Public Works Standard P-5. The sidewalk pattern shall be constructed to a 10-foot residential pattern.
48. Construct 20 feet of permanent paving (measured from face of curb) within the limits of this subdivision.
49. Construct an underground street lighting system to Public Works Standard E-1 within the limits of this subdivision. Spacing and design shall conform to Public Works Standard E-8 for collector streets.
50. Relinquish direct vehicular access rights to North Armstrong Avenue from Lot 73.

East Dakota Avenue (Collector):

51. Dedicate 42 feet of property from section line for public street purposes, within the limits of this development to meet the current City of Fresno Collector Standards.
52. Construct concrete curb, gutter and sidewalk to Public Works Standard P-5. The sidewalk pattern shall be constructed to a 10-foot residential pattern.
53. Construct 20 feet of permanent paving (measured from face of curb) within the limits of this subdivision.
54. Construct an underground street lighting system to Public Works Standard E-1 within the limits of this subdivision. Spacing and design shall conform to Public Works Standard E-8 for collector streets.
55. Relinquish direct vehicular access rights to East Dakota Avenue from all lots within this subdivision.

North Temperance Avenue (Expressway)

56. Construct a pedestrian, bike and equestrian trail per the 2025 Fresno General Plan, Master Multi-Purpose Trails Manual and Public Works Standards. Construct an Expressway Barrier Fence per Public Works Standard P-74 and P-75. Dedicate a Multi-Purpose Trail Easement of sufficient width to accommodate the approved cross section.
57. Construct concrete curb and gutter to Public Works Standard P-5. The parkway shall be constructed to a ten foot pattern.
58. Construct 20 feet of permanent pavement within the limits of the tract and transition paving as necessary.
59. Construct a trail lighting system within the limits of this subdivision. Spacing and design shall be submitted for approval of Traffic Engineering.
60. Relinquish direct vehicular access rights to North Temperance Avenue from all lots within this tract.

INTERIOR STREETS

61. Design and construct all curb, gutter, sidewalk (both sides), permanent paving, cul-de-sacs, and underground street lighting systems on all interior local streets to Public Works Standards. Sidewalk patterns shall comply with Public Works API Standards for 50-foot and 54-foot streets.
62. Any temporary dead-end streets created by this subdivision shall be properly barricaded in accordance with Public Works Standard P-44.

Specific Requirements

63. The first order of work shall include a minimum of two points of vehicular access to the major streets for any phase of this development.
64. Vacate all underlying existing streets with the proposed map.
65. Relinquish direct vehicular access rights to the east side of proposed Lot 1 and the west side of proposed Lot 7.
66. Provide "circular" or "hammerhead" driveways for lots 67, 68, 69, 70, 71 and 72. Backing onto North Armstrong Avenue from these lots is prohibited.
67. Provide a corner cut-off area at the intersections of East Sussex Way/ North Armstrong Avenue, East Dakota/North Joshua Avenues and East Dakota/North Holly Avenues in accordance with Section 12-306-H-3-d of the FMC. Corner cut-offs are established to provide an unobstructed view for vehicular and pedestrian traffic approaching an intersection. They are a triangular area formed by the property lines and a diagonal line adjoining points on the property lines, measured a specific distance from the point of their intersection. At the intersections of streets, this distance is 30 feet. The corner cut-off area shall be landscaped (including an irrigation system), and may be included within the City's Community Facilities District.

North Armstrong Avenue (Collector):

68. Dedicate and construct two 17-foot center section travel lanes with 150 foot left turn lanes at all major intersections from the northern limits of the map south to Shields Avenue. An additional 6 feet of paving shall be required adjacent to the left turn lanes. Dedication shall be sufficient to accommodate additional paving and any other grading or transitions as necessary based on a 45 MPH design speed.

East Dakota Avenue (Collector):

69. Dedicate and construct two 13-foot center section travel lanes from the southeastern limits of this subdivision west to Armstrong Avenue. Dedicate and construct a 150 foot left turn lane at Dakota and Armstrong Avenues. An additional 6 feet of paving shall be required adjacent to the left turn lane. Dedication shall be sufficient to accommodate additional paving and any other grading or transitions as necessary based on a 45 MPH design speed.

Urban Growth Management Requirements

70. This Map is in UGM major street zone D-1/E-2; therefore pay all applicable UGM Fees.

Temperance Avenue (Expressway):

71. Dedicate and construct two 17-foot center section travel lanes and construct a raised concrete median within the limits of this subdivision. Dedication shall be sufficient to accommodate additional paving and any other grading or transitions as necessary based on a 55 MPH design speed.

72. Design and construct a Major Street Bridge at the intersection of Temperance and the Gould Canal. Public Works will apply this requirement to a minimum of four other subdivisions with each subdivision being responsible for a fee no greater than 1/5 of the cost of said bridge. Bridge construction shall occur prior to close out of this subdivision or at such time that the City Engineer deems it necessary, whichever occurs first.

SANITARY SEWER SERVICE

The nearest existing sewer main is a 24-inch sewer main in East Shields Avenue east of North Fowler Avenue. The following conditions are required to provide sanitary sewer service to the tract.

73. Extend the existing 24-inch sanitary sewer main in East Shields Avenue to North Armstrong Avenue.
74. Construct a 12-inch sewer main in North Armstrong Avenue, from East Shields Avenue to a point 1,320 feet north of Shields Avenue.
75. Construct a 10-inch sanitary sewer main in North Armstrong Avenue, from the 12-inch sanitary sewer main north to East Dakota Avenue.
76. Construct an 8-inch sanitary sewer main in North Armstrong Avenue from East Dakota Avenue north across the project frontage.
77. Construct an 8-inch sanitary sewer main in East Dakota Avenue from North Armstrong Avenue east across the project frontage.
78. Construct a 24-inch sanitary sewer main in East Shields Avenue from North Armstrong Avenue to 1,500 feet east.
79. Construct an 18-inch sanitary sewer main in East Shields Avenue from the 24-inch sanitary sewer main east to North Temperance Avenue.
80. Construct a 12-inch sanitary sewer main in North temperance Avenue from East Shields Avenue to 1,300 feet north.
81. Construct a 10-inch sanitary sewer main in North Temperance Avenue from the 12-inch sanitary sewer main north to East Dakota Avenue.
82. Construct an 8-inch sanitary sewer main in North Temperance Avenue from East Dakota Avenue north across the project frontage.
83. Sanitary sewer mains shall be extended within the proposed tract to provide sewer service to each lot created.
84. Separate sewer house branches shall be provided to each lot created within the subdivision, including properties fronting onto North Armstrong Avenue.

85. All public sewer facilities shall be constructed in accordance with Public Works Department standards, specifications, and policies.
86. A preliminary sewer layout shall be prepared by the Developer's Engineer and submitted to the Department of Public Utilities for review and conceptual approval prior to submittal or acceptance of the developer's final map and engineered plan and profile improvement drawing for City review.
87. Engineered improvement plans prepared by a Registered Civil Engineer shall be submitted for Department of Public Utilities review and approval for proposed additions to the sanitary sewer system.
88. Abandon all existing on-site private sanitary sewer systems.

Urban Growth Management Requirements

89. Sewer lateral charges are due and shall be paid for the project.
90. Wastewater Facilities Charges are due and shall be paid for the project.
91. The developer shall pay appropriate and reasonable costs as established hereinafter by City Council for Fowler trunk sewer capacity allocated to this project. The developer shall, for the interim period, pay a fee of \$1,000 per living unit or living unit equivalent. Once the fee has been determined, the developer will receive a refund for any fees paid in excess of the adopted fee. Or, the proposed project shall not be permitted service to the existing Fowler trunk sewer and must, therefore, construct a separate sewer pipeline from the project to an approved discharge location with adequate reserve capacity as determined by the City.

WATER SERVICE

There is an existing 12-inch water main in North Armstrong Avenue, adjacent to the subject site. The following conditions are required to provide water service to the tract. Water mains shall be installed before street improvements and paving.

92. Construct a 16-inch water main (including installation of City fire hydrants) in East Dakota Avenue from North Armstrong to North Temperance Avenue.
93. Construct a 14-inch water main (including installation of City fire hydrants) in North Temperance Avenue from East Dakota Avenue north across the project frontage.
94. Water mains (including installation of City fire hydrants) shall be extended within the proposed tract to provide water service to each lot created.
95. Separate water services with meter boxes shall be provided to each lot created.
96. Two independent sources of water, meeting Federal and State Drinking Water Act Standards, are required to serve the tract including any subsequent phases thereof. The two-source requirement may be accomplished through any combination of water main extensions,

construction of supply wells, or other acceptable sources of water supply approved by the Water Systems Manager.

97. All public water facilities shall be constructed in accordance with City of Fresno standards, specifications, and policies.
98. ~~Construct a water supply well(s) on a site(s) dedicated to the City of Fresno. The well(s) shall be capable of producing a flow amount to meet a total demand of 600 gallons per minute, sufficient to serve peak water demand for the project and for fire suppression purposes, or an alternative flow amount that is acceptable to the Public Utilities Director and Fire Department Chief (or their designees). Well sites shall be of a size and at a location acceptable to the Water Systems Manager. The cost of acquiring the well site and construction of the well shall be reimbursed from UGM Water Supply Well Service Area Fund 501s, in accordance with established UGM policies.~~

~~Design and Construct a 24-inch raw water pipeline from the existing supply pipeline at North Temperance Avenue and the Gould No. 97 Canal to the proposed City of Fresno water storage tank site at 6736 East Dakota Avenue. As a result of the maximized hydraulic capacity in the region, occupancy approvals for Tract No. 5461 shall not exceed 72 per year until either the water storage tank or the pipeline connecting the City of Clovis is completed and operational. The cost of construction of the raw water pipeline shall be reimbursed through progress payments under a reimbursement agreement, substantially in the form attached hereto (First Amendment to Restated and Amended Subdivision Agreement Final Map of Tract No. 5461), subject to the approval by the City Council in its sole discretion. In the event that the City Council does not approve such reimbursement agreement on or before August 31, 2011, then the cost of construction will be reimbursed in accordance with established UGM policies.~~

- ~~99. Water well construction shall include wellhead treatment facilities, if required. The cost of constructing wellhead treatment facilities shall be reimbursed from UGM Wellhead Treatment Service Area Fund 501s, in accordance with established UGM policies.~~
- ~~100. Dedicate a water supply and treatment site for installation of an above-ground water storage and treatment facility that will be installed and/or constructed by the City. The site shall be of size and at a location acceptable to the Water Systems Manager for such purposes. The cost of acquiring the site shall be reimbursed from UGM Water Supply Well Service Area 501s, in accordance with established UGM policies~~
101. Existing on-site wells within the boundaries of the proposed development shall be sealed and abandoned in compliance with the California Well Standards, Bulletin 74-90 or current revisions, issued by California Department of Water Resources, and City of Fresno standards.
102. Engineered improvement plans prepared by a Registered Civil Engineer are required for proposed additions to the City Water System.
103. Installation of public fire hydrant(s) is required in accordance with City Standards.

Urban Growth Management Requirements

104. Payment of appropriate water connection charges at the time of final map approval subject to deferral to building permit issuance as appropriate.
105. Payment for installation of wet tie(s), water service(s) and/or meter(s) is required
106. Pay UGM water fees for Water Service Area No. 501S.

URBAN GROWTH MANAGEMENT REQUIREMENTS (GENERAL)

107. The developer of property located within the UGM boundaries shall comply with all sewer, water and street requirements and pay all applicable UGM fees imposed under the Urban Growth Management process (with appropriate credit given for the installation of required UGM improvements) in accordance with the requirements of State Law as related to vesting tentative tract maps.
108. The developer will be responsible for the relocation or reconstruction of any existing improvements or facilities necessary to construct any of the required UGM improvements.

Right-of-Way Acquisition

109. The developer will be responsible for the acquisition of any necessary right-of-way to construct any of the required improvements.
110. Rights-of-way acquisition shall include any rights-of-way necessary for proper drainage, signing, pole relocation, and shoulder grading. In general, this will require right-of-way to be provided approximately 10 feet outside the travel lane. The exact requirement must be determined at the project design stage based on the existing conditions and detailed design information.
111. In the event an acquisition of any easement or right-of-way is necessitated by the subject development, said acquisition will be accomplished prior to Final Map approval. The developer/owner should contact the Real Estate Section of the Public Works Department to receive procedural guidance in such acquisitions.
112. Should such acquisition not be accomplished by the subdivider prior to Final Map approval, the subdivider must request and grant to the City the full authority to attempt acquisition either through negotiation or through its power of eminent domain. The subdivider shall furnish to the City Public Works Department, Engineering Division/ Real Estate Section, an appraisal report or a request for an estimated appraisal amount (to be determined by the City of Fresno Real Estate Section) prior to preparation of a Subdivision Agreement.
113. The subdivider shall submit adequate security in the form of a cash deposit to guarantee payment of all costs associated with the acquisition, including staff time, attorney's fees, appraisal fees, court costs, and all related expenditures and costs necessary to effect the acquisition of such easements or rights-of-way.

FLOOD CONTROL AND DRAINAGE

- 114. The subdivider shall be required to pay any applicable storm drainage fees to comply with Fresno Municipal Code Chapter 13, Article 13.
- 115. The subdivider shall be required to comply with the specific requirements imposed by the Fresno Metropolitan Flood Control District (FMFCD) for the subdivision or any amendments or modifications to those requirements, which may be granted by the FMFCD Board of Directors, pursuant to Section 13-1307 of the Fresno Municipal Code. These requirements are identified in the District=s letter to the Planning and Development Department dated April 14, 2005.
- 116. Any temporary ponding basins constructed or enlarged to provide service to the subdivision shall be fenced in accordance with City standards within seven days from the time the basin becomes operational or as directed by the City Engineer. Temporary ponding basins will be created through a covenant between the City and the Developer prior to Final Map approval. Maintenance of the temporary ponding basin shall be by the Developer until permanent service for the entire subdivision is provided.

SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

- 117. The developer/owner shall comply with the requirements in the letter from the San Joaquin Valley Air Pollution Control District dated March 17, 2005, for Vesting Tentative Tract Map No. 5461/UGM.

FRESNO IRRIGATION DISTRICT

- 118. Comply with the attached correspondence from the Fresno Irrigation District dated March 3, 2005.

FRESNO COUNTY HEALTH

- 119. Comply with the attached correspondence from the Fresno County Department of Community Health dated March 15, 2005.

DEVELOPMENT FEES AND CHARGES

- 120. This project is subject to the following development fees and charges:

PARKS DEPARTMENT	FEE / RATE
a. Street Tree Landscape Plan Review fee	\$56.00
b. Street Tree Installation fee City-installed tree	\$129.00/tree
c. Street Tree Inspection fee Developer-installed tree	\$30.00/tree
d. Maintenance District Plan Review fee	\$176.00

- e. Maintenance District Inspection fee \$305.00
- f. Reinspection fee \$29.00

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT FEE / RATE

- g. Metropolitan Flood Control District fee * Contact FMFCD for new fees.
 Rates increased March 1, 2004.

SEWER CONNECTION CHARGES FEE RATE

- h. Lateral Sewer Charge \$0.10/sq. ft. (to 100-foot depth)
- i. Oversize Charge \$0.05/sq. ft. (to 100-foot depth)
- j. Trunk Sewer Charge \$344/living unit
 Service Area: Fowler
- k. Wastewater Facilities Charge \$2,119/living unit
- l. Copper Avenue Sewer Lift Station Charge n/a
- m. Fowler Trunk Sewer Interim Fee Surety \$1,000/living unit
- n. House Branch Sewer Charge n/a
- o. Millbrook Overlay Sewer n/a

WATER CONNECTION CHARGES FEE RATE

- p. Service Connection Charge Fee based on service(s) and meter(s) sizes specified by owner; fee for service(s) and Meter(s) established by the Master Fee Schedule.
- q. Frontage Charge \$6.50/lineal foot
- r. Transmission Grid Main Charge \$643/gross acre
- s. Transmission Grid Main Bond Debt Service Charge \$243/gross acre
- t. UGM Water Supply Fee \$582/living unit
 Service Area: 501S
- u. Well Head Treatment Fee \$238/living unit

Service Area: 501

v. Recharge Fee \$75/living unit
Service Area: 501

w. 1994 Bond Debt Service \$244/living unit
Service Area: 501

DEVELOPMENT IMPACT FEE

x. Northeast Fresno Policing Area n/a

y. Traffic Signal Charge \$414.69/living unit

URBAN GROWTH MANAGEMENT

FEE RATE/CHARGE*

z. UGM Fire Station Capital Fee \$800/gross acre
Service Area: Undesignated

aa. UGM Park Fee \$2392/gross acre
Service Area: 2

bb. Major Street Charge \$3161/adj. acre
Service Area: D-1/E-2

cc. Major Street Bridge Charge \$304/adj. acre
Service Area: D-1/E-4

dd. UGM Grade Separation Fee n/a

ee. Trunk Sewer Charge n/a
Service Area: Fowler

ff.* Street Acquisition/Construction Charge n/a

**FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
NOTICE OF REQUIREMENTS**

PUBLIC AGENCY

DEVELOPER

Mr. Gil Haro, Planning Manager
 Planning & Development Department
 City of Fresno
 2600 Fresno Street
 Fresno, CA 93721

DUNMORE HOMES
2150 PROFESSIONAL DR. STE. 150
ROSEVILLE, CA 95661
Ph (916)771-7500

MAP NO.	<u>5461</u>	PRELIMINARY FEE(S) (See below)	
DRAINAGE AREA(S)	<u>" BV " " - "</u>	DRAINAGE AREA	<u>" BV " \$359,394.00</u>
DATE	<u>4-14-05</u>	DRAINAGE AREA	<u>" - " -</u>
		TOTAL FEE	<u>\$359,394.00</u>

The proposed development will generate storm runoff which produces potentially significant environmental impacts and which must be properly discharged and mitigated pursuant to the California Environmental Quality Act and the National Environmental Policy Act. The District in cooperation with the City and County has developed and adopted the Storm Drainage and Flood Control Master Plan. Compliance with and implementation of this Master Plan by this development project will satisfy the drainage related CEQA/NEPA impact of the project mitigation requirements.

The proposed development shall pay drainage fees pursuant to the Drainage Fee Ordinance prior to approval of the final map at the rates in effect at the time of such approval. The fee indicated above is based on the tentative map. Contact the FMFCD project engineer prior to approval of the final map for the fee.

Considerations which may affect the fee obligation(s) or the timing or form of fee payment:

- a) Fees related to undeveloped or phased portions of the project may be deferrable.
- b) Fees may be calculated based on the actual percentage of runoff if different than that typical for the zone district under which the development is being undertaken and if permanent provisions are made to assure that the site remains in that configuration.
- c) Master Plan storm drainage facilities may be constructed, or required to be constructed in lieu of paying fees.
- d) The actual cost incurred in constructing Master Plan drainage system facilities is credited against the drainage fee obligation.

TRACT No. 5461

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
NOTICE OF REQUIREMENTS

Page 2 of 4

- e) When the actual costs incurred in constructing Master Plan facilities exceeds the drainage fee obligation, reimbursement will be made for the excess costs from future fees collected by the District from other development.

Approval of this development shall be conditioned upon compliance with these District Requirements.

1. _____ a. Drainage from the site shall be directed to _____
 X b. Grading and drainage patterns shall be as identified on Exhibit No. 1 ~~#-2~~
_____ c. The grading and drainage patterns shown on the site plan conform to the adopted Storm Drainage and Flood Control Master Plan.
2. The proposed development shall construct and/or dedicate Storm Drainage and Flood Control Master Plan facilities located within the development or necessitated by any off-site improvements required by the approving agency:
 X Developer shall construct facilities as shown on Exhibit No. 1 as "Master Plan Facilities to be constructed by Developer".
_____ None required.
3. The following final improvement plans shall be submitted to the District for review prior to final development approval:
 X Grading Plan X Storm Drain Plan X Final Map
 X Street Plan X Water & Sewer Plan _____ Other
4. Availability of drainage facilities:
_____ a. Permanent drainage service is available provided the developer can verify to the satisfaction of the City of Fresno that runoff can be safely conveyed to the Master Plan inlet(s).
_____ b. The construction of facilities required by Paragraph No. 2 hereof will provide permanent drainage service.
 X c. Permanent drainage service will not be available. The District recommends temporary facilities until permanent service is available.
Temporary service is available through _____
_____ d. See Exhibit No. 2.
5. The proposed development:
_____ Appears to be located within a _____ 500 year _____ 100 year flood prone area as designated on the latest Flood Insurance Rate Maps available to the District, necessitating appropriate floodplain management action. See attached Floodplain Policy.
 X Does not appear to be located within a flood prone area.

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
NOTICE OF REQUIREMENTS

Page 3 of 4

**TRACT
No. 5461**

6. The Federal Clean Water Act and the State General Permits for Storm Water Discharges Associated with Construction and Industrial Activities (State General Permits) require developers of construction projects disturbing one or more acres, and discharges associated with industrial activity not otherwise exempt from National Pollutant Discharge Elimination System (NPDES) permitting, to implement controls to reduce pollutants, prohibit the discharge of waters other than storm water to the municipal storm drain system, and meet water quality standards. These requirements apply both to pollutants generated during construction, and to those which may be generated by operations at the development after construction.

a.

State General Permit for Storm Water Discharges Associated with Construction Activities, approved August 1999, (modified December 2002.) A State General Construction Permit is required for all clearing, grading, and disturbances to the ground that result in soil disturbance of at least one acre (or less than one acre if part of a larger common plan of development or sale). Permittees are required to: submit a Notice of Intent to be covered and must pay a permit fee to the State Water Resources Control Board (State Board), develop and implement a storm water pollution prevention plan, eliminate non-storm water discharges, conduct routine site inspections, train employees in permit compliance, and complete an annual certification of compliance.

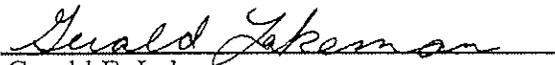
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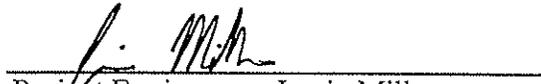
State General Permit for Storm Water Discharges Associated with Industrial Activities, April, 1997 (available at the District Office.) A State General Industrial Permit is required for specific types of industries described in the NPDES regulations or by Standard Industrial Classification (SIC) code. The following categories of industries are generally required to secure an industrial permit: manufacturing; trucking; recycling; and waste and hazardous waste management. Specific exemptions exist for manufacturing activities which occur entirely indoors. Permittees are required to: submit a Notice of Intent to be covered and must pay a permit fee to the State Water Resources Control Board, develop and implement a storm water pollution prevention plan, eliminate non-storm water discharges, conduct routine site inspections, train employees in permit compliance, sample storm water runoff and test it for pollutant indicators, and annually submit a report to the State Board.

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
NOTICE OF REQUIREMENTS

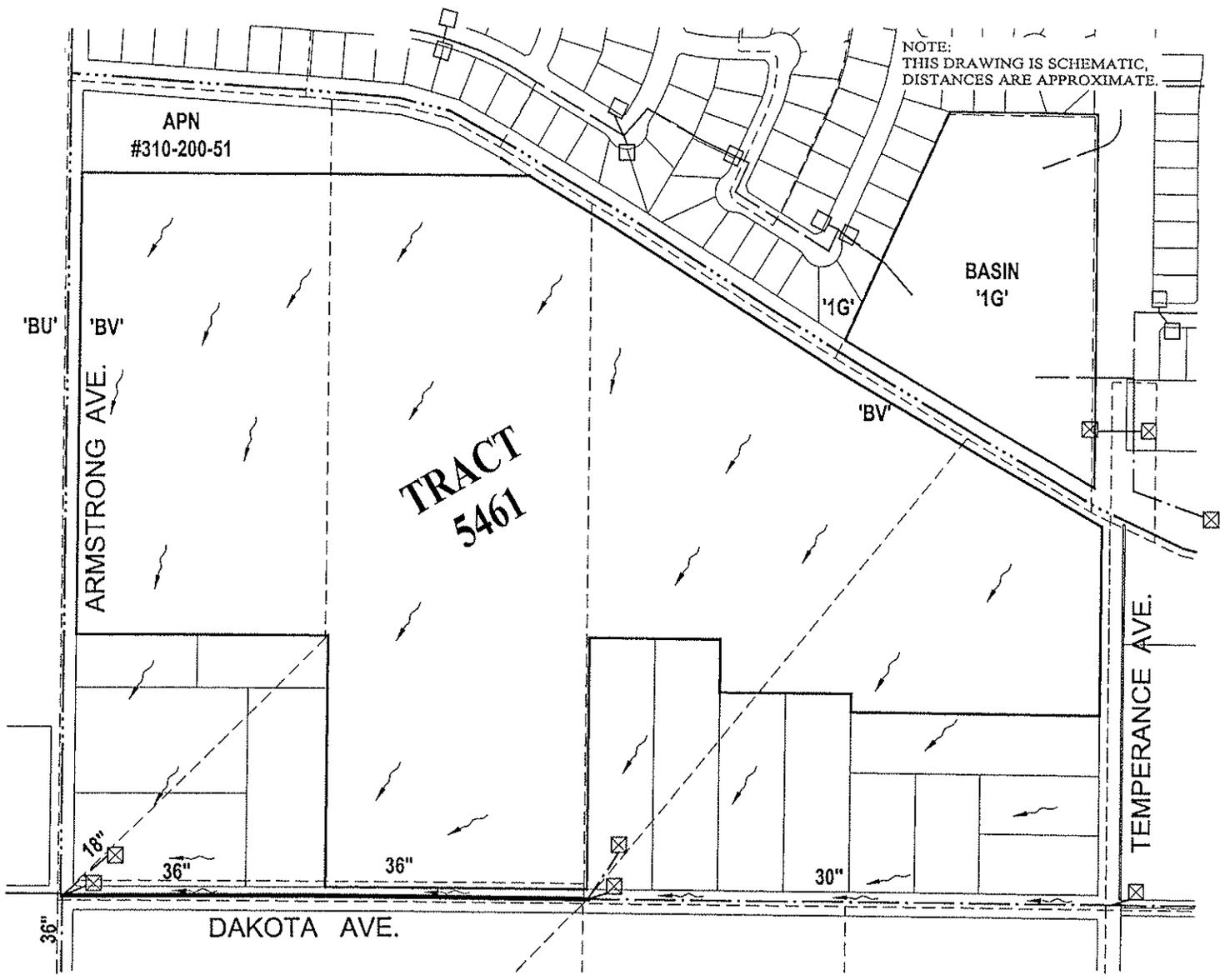
Page 4 of 4

- c. The proposed development is encouraged to select and implement storm water quality controls recommended in the Fresno-Clovis Storm Water Quality Management Construction and Post-Construction Guidelines (available at the District Office) to meet the requirements of the State General Permits, eliminate the potential for non-storm water to enter the municipal storm drain system, and where possible minimize contact with materials which may contaminate storm water runoff.
7. A requirement of the District may be appealed by filing a written notice of appeal with the Secretary of the District within ten days of the date of this Notice of Requirements.
8. The District reserves the right to modify, reduce or add to these requirements, or revise fees, as necessary to accommodate changes made in the proposed development by the developer or requirements made by other agencies.
9. X See Exhibit No. 2 for additional comments, recommendations and requirements.

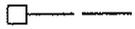
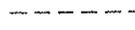

Gerald E. Lakeman,
District Engineer

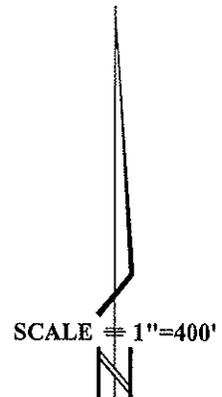

Project Engineer: Jamie Miller

C: PROVOST & PRITCHARD
286 W. CROMWELL AVE.
FRESNO, CA 93711
Ph (559)449-2700



LEGEND

-  Master Plan Facilities To Be Constructed By Developer - Pipeline (size Shown) & Inlet.
-  Existing Master Plan Facilities
-  Future Master Plan Facilities
-  Direction Of Drainage
-  Inlet Boundary
-  Drainage Area Boundary



TRACT 5461
DRAINAGE AREA: "BV"



EXHIBIT NO. 1

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

OTHER REQUIREMENTS
EXHIBIT NO. 2

The cost of construction of Master Plan facilities, excluding dedication of storm drainage easements, is eligible for credit against the drainage fee of the drainage area served by the facilities. A Development Agreement shall be executed with the District to effect such credit. Reimbursement provisions, in accordance with the Drainage Fee Ordinance, will be included to the extent that Developer's Master Plan costs for an individual drainage area exceed the fee of said area. Should the facilities cost for such individual area total less than the fee of said area, the difference shall be paid upon demand to the City or District.

The District recommends a stub street from Tract 5461 to Assessor's Parcel Number (APN) 310-200-51. This is necessary to allow surface drainage from APN 310-200-51 to reach the future Master Plan inlet located within Tract 5461. Additionally, the Developer of Tract 5461 shall grant a drainage covenant for APN 310-200-51 located directly north of Tract 5461 to allow major storm flows from APN 310-200-51 to reach Dakota Avenue. If the stub street is not constructed, then the Developer will be responsible for the construction of a surface flowage channel, and dedication of a Surface Channel easement.

Development No. Tract 5461



San Joaquin Valley Air Pollution Control District

March 17, 2005

Reference No. C20050143

Arnoldo Rodriguez
Planning & Development
2600 Fresno St., Third Floor
Fresno, CA 93721-3604

RECEIVED

MAR 21 2005

Planning Division
Development Department
CITY OF FRESNO

Subject: T-5461, R-05-02, C-05-22 (6708 East Dakota Avenue)

Dear Mr. Rodriguez:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the project referenced above and offers the following comments:

The entire San Joaquin Valley Air Basin is classified non-attainment for ozone and fine particulate matter (PM₁₀). This project will contribute to the overall decline in air quality due to increased traffic and ongoing operational emissions. This project may generate significant air emissions and it will reduce the air quality in the San Joaquin Valley. The project will make it more difficult to meet mandated emission reductions and air quality standards. A concerted effort should be made to reduce project-related emissions as outlined below:

Preliminary analysis indicated that the potential emissions from this project exceed the District's Thresholds of Significance for adverse air quality impacts. These thresholds are 10 tons per year for either of the following two ozone precursor emissions: reactive organic gases (ROG) or oxides of nitrogen (NO_x). The District recommends the preparation of an Air Quality Impact Assessment (AQIA) and a Traffic Impact Study to determine impacts when projects are of this size, unless an analysis has been accomplished for a recent previous approval such as a general plan amendment or zone change. Please indicate to the District if the project has been analyzed and what the results were from any previous study.

The District does not typically recommend quantifying PM₁₀ emissions from construction activities. The District considers that PM₁₀ emissions are reduced to levels considered less-than-significant through compliance with the District's Regulation VIII (Fugitive PM₁₀ Prohibitions) rules. If construction activity is especially intense, or sensitive receptors are nearby, the District recommends applying the enhanced PM₁₀ control measures listed in the *Guide for Assessing and Mitigating Air Quality Impacts (GAMAQI)*. However, construction generated ROG and NO_x may exceed the District's annual ozone precursor thresholds, and may be a significant source of air pollution.

The District recommends using the URBEMIS 2002 program to calculate project area and operational emissions and to identify mitigation measures that reduce impacts. URBEMIS can be downloaded from the South Coast Air Quality Management District's website at: <http://www.aqmd.gov/ceqa/urbemis.html>. If the analysis reveals that the emissions generated by this project will exceed the District's thresholds, this project may significantly impact the ambient air quality if not sufficiently mitigated. The project applicant or consultant is encouraged to consult with District staff for assistance in determining appropriate methodology and model inputs. Questions regarding URBEMIS 2002 should be directed to Hector Guerra at (559) 230-5800.

Based on the information provided, the proposed project will be subject to the following District rules. The following items are rules that have been adopted by the District to reduce emissions throughout the San Joaquin Valley, and are required. Current District rules can be found at – <http://www.valleyair.org/rules/1ruleslist.htm>.

Regulation VIII (Fugitive PM10 Prohibitions)- Regulation VIII (Rules 8011-8081) is a series of rules designed to reduce PM10 emissions (predominantly dust/dirt) generated by human activity, including construction, road construction, bulk materials storage, landfill operations, etc. If a residential project is 10.0 or more acres in area, a Dust Control Plan must be submitted as specified in Section 6.3.1 of Rule 8021. If a residential site is 1.0 to less than 10.0 acres, an owner/operator must provide written notification to the District at least 48 hours prior to his/her intent to begin any earthmoving activities (see section 6.4.1). A compliance assistance bulletin has been enclosed for the applicant. A template of the District's Dust Control Plan is available at: <http://www.valleyair.org/busind/comply/PM10/forms/DCP-Form%20-%2010-14-2004.pdf>

Rule 4102 (Nuisance) applies to any source operation that emits or may emit air contaminants or other materials. In the event that the project or construction of the project creates a public nuisance, it could be in violation and be subject to District enforcement action.

Rule 4103 (Open Burning) regulates the burning of agricultural material. Agricultural material shall not be burned when the land use is converting from agriculture to nonagricultural purposes. In the event that the project burned or burns agricultural material, it would be in violation of Rule 4103 and be subject to District enforcement action.

Rule 4601 (Architectural Coatings) limits volatile organic compounds from architectural coatings. This rule specifies architectural coatings storage, clean up and labeling requirements.

Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations). If asphalt paving will be used, then paving operations of this project will be subject to Rule 4641. This rule applies to the manufacture and use of cutback asphalt, slow cure asphalt and emulsified asphalt for paving and maintenance operations.

Rule 4902 (Residential Water Heaters) limits emission of NOx from residential developments.

Rule 4901 (Wood Burning Fireplaces and Wood Burning Heaters) and **Rule 4902** (Residential Water Heaters) limit the emissions of PM10 and NOx in residential developments. On July 17, 2003, the District's Governing Board adopted amendments to Rule 4901. Construction plans for residential developments may be affected by section 5.3, specifically:

§5.3 Limitations on Wood Burning Fireplaces or Wood Burning Heaters in New Residential Developments.

Beginning January 1, 2004,

5.3.1 No person shall install a wood burning fireplace in a new residential development with a density greater than two (2) dwelling units per acre.

5.3.2 No person shall install more than two (2) EPA Phase II Certified wood burning heaters per acre in any new residential development with a density equal to or greater than three (3) dwelling units per acre.

5.3.3 No person shall install more than one (1) wood burning fireplace or wood burning heater per dwelling unit in any new residential development with a density equal to or less than two (2) dwelling units per acre.

More information about Rule 4901 can be found at our website- www.valleyair.org. For compliance assistance, please contact Mr. Wayne Clarke, Air Quality Compliance Manager, at 230-5968.

The District encourages innovation in measures to reduce air quality impacts. There are a number of measures that could be incorporated into the design/operation of this project to provide additional reductions of the overall level of emissions. (Note: Some of the measures may already exist as City development standards. Any measure selected should be implemented to the fullest extent possible.) The measures listed below should not be considered all-inclusive and remain options that the project proponent should consider:

- Trees should be carefully selected and located to protect the buildings from energy consuming environmental conditions, and to shade paved areas. Structural soil should be used under paved areas to improve tree growth. A brochure has been included for the applicant.
For Structural Soil see <http://www.hort.cornell.edu/uhi/outreach/csc/>
For Tree Selection see <http://www.ufej.org/>
For Urban Forestry see <http://www.coolcommunities.org> <http://wcufre.ucdavis.edu>
http://www.lgc.org/bookstore/energy/downloads/siv_tree_guidelines.pdf
- If transit service is available to the project site, improvements should be made to encourage its use. If transit service is not currently available, but is planned for the area in the future, easements should be reserved to provide for future improvements such as bus turnouts, loading areas, route signs and shade structures. Appropriations made to facilitate public or mass transit will help mitigate trips generated by the project.
- Sidewalks and bikeways should be installed throughout as much of the project as possible to encourage walking and bicycling. Connections to nearby public uses and commercial areas should be made as direct as possible to promote walking for some trips. Pedestrian and bike-oriented design reduces motor vehicle usage and their effects on air quality. Sidewalks and bikeways should be designed to separate pedestrian and bicycle pathways from vehicle paths. Sidewalks and bikeways should be designed to be accommodating and appropriately sized for anticipated future pedestrian and bicycle use. Such pathways should be easy to navigate, designed to facilitate pedestrian movement through the project, and create a safe environment for all potential users (pedestrian, bicycle and disabled) from obstacles and automobiles. Pathways through the project should be built in anticipation of future growth.
- As many energy-conserving features as possible should be included the project. Energy conservation measures include both energy conservation through design and operational energy conservation. Examples include (but are not limited to):
 - Increased energy efficiency (above California Title 24 Requirements)
See <http://www.energy.ca.gov/title24/>.
 - Energy efficient windows (double pane and/or Low-E)
 - High-albedo (reflecting) roofing material. See <http://eetd.lbl.gov/coolroof/>
 - Cool Paving.
See <http://www.harc.edu/harc/Projects/CoolHouston/> , <http://eande.lbl.gov/heatisland/>
 - Radiant heat barrier. See <http://www.eere.energy.gov/consumerinfo/refbriefs/bc7.html>
 - Energy efficient lighting, appliances, heating and cooling systems.
See <http://www.energystar.gov/>
 - Install solar water-heating system(s)
 - Install photovoltaic cells
 - Programmable thermostat(s) for all heating and cooling systems
 - Awnings or other shading mechanism for windows
 - Porch, patio and walkway overhangs
 - Ceiling fans, whole house fans
 - Orient the units to maximize passive solar cooling and heating when practicable
 - Utilize passive solar cooling and heating designs. (e.g. natural convection, thermal flywheels)
See http://www.eere.energy.gov/RE/solar_passive.html
 - Utilize daylighting (natural lighting) systems such as skylights, light shelves, interior transom windows etc. See <http://www.advancedbuildings.org>
 - Electrical outlets around the exterior of the unit(s) to encourage use of electric landscape maintenance equipment
 - Pre-wire the units with high speed modem connections/DSL and extra phone lines
 - Natural gas fireplaces (instead of wood-burning fireplaces or heaters)
 - Natural gas lines (if available to this area) and electrical outlets in backyard or patio areas to encourage the use of gas and/or electric barbecues
 - Low or non-polluting incentives items should be provided with each residential unit (such items could include electric lawn mowers, reel mowers, leaf vacuums, gas or electric barbecues, etc.)
 - Exits to adjoining streets should be designed to reduce time to re-enter traffic from the project site

More information can be found at: <http://www.lgc.org>, <http://www.sustainable.doe.gov/>,
<http://www.consumerenergycenter.org/index.html> <http://www.ciwmb.ca.gov/GreenBuilding/>

- The applicant should implement measures to reduce the amount of vehicle traffic to and from the project area that further reduce air pollution in the valley. This could include providing an information center for residents to coordinate carpooling. Check out the "Spare the Air" section of our website www.valleyair.org
- The project should include as many clean alternative energy features as possible to promote energy self-sufficiency. Examples include (but are not limited to): photovoltaic cells, solar thermal electricity systems, small wind turbines, etc. Rebate and incentive programs are offered for alternative energy equipment. More information can found at- <http://www.dsireusa.org/>, <http://rredc.nrel.gov/>, <http://www.energy.ca.gov/renewables/>
- Construction activity mitigation measures include:
 - Limit traffic speeds on unpaved roads to 15 mph
 - Install sandbags or other erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent
 - Install wheel washers for all exiting trucks, or was off all trucks and equipment leaving the site
 - Install wind breaks at windward side(s) of construction areas
 - Suspend excavation and grading activity when winds exceed 20 mph
 - Limit area subject to excavation, grading, and other construction activity at any one times
 - Use catalyst equipped diesel construction equipment.
 - Minimize idling time (e.g. 10 minute maximum)
 - Limit the hours of operation of heavy duty equipment and/or the amount of equipment in use
 - Replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via a portable generator set)
 - Curtail construction during periods of high ambient pollutant concentrations; this may include ceasing of construction activity during the peak-hour of vehicular traffic on adjacent roadways, and "Spare the Air Days" declared by the District.
 - Implement activity management (e.g. rescheduling activities to reduce short-term impacts)
 - Construction equipment should have engines that are Tier II (if available as certified by the Air Resources Board). Tier I and Tier II (2.5 gram) engines have a significantly less PM and NOx emissions compared to uncontrolled engines. Onsite equipment should be equipped with 1998 or newer engines. Engines built after 1998 are cleaner Tier II engines. To find engines certified by the Air Resources Board, see <http://www.arb.ca.gov/msprog/offroad/cert/cert.php>. This site lists engines by type, then manufacturer. The "Executive Order" shows what Tier the engine is certified as. For more information on heavy-duty engines, please contact Mr. Kevin McCaffrey, Air Quality Specialist, at (559) 230-5831.
 - Off road trucks should be equipped with on-road engines when possible.
 - Light Duty Cars and Trucks should be alternative fueled or hybrids.

District staff is available to meet with you and/or the applicant to further discuss the regulatory requirements that are associated with this project. If you have any questions or require further information, please call me at (559) 230-5800.

Sincerely,



Debbie Johnson
Air Quality Specialist



March 15, 2005

RECEIVED

999999999
LU0010061
PE 2602

Arnoldo Rodriguez
City of Fresno
Development Department
2600 Fresno Street
Fresno, CA 93721

MAR 17 2005
Planning Division
Development Department
CITY OF FRESNO

Dear Mr. Rodriguez:

PROJECT NUMBER: T-5461/R-05-02/C-05-22

PROJECT DESCRIPTION AND LOCATION: A 256-lot single-family residential subdivision; rezone from R-A/UGM to R-1/UGM. The site is 69.7 acres located on the north side of East Dakota Avenue between North Armstrong and North Temperance Avenues.

LIST THE SPECIFIC ADVERSE IMPACTS IN YOUR AREA OF EXPERTISE WHICH MAY RESULT FROM APPROVAL OF THE PROPOSED PROJECT.

PLEASE LIST SPECIFIC MITIGATION MEASURES THAT YOU WOULD RECOMMEND AS CONDITIONS OF PROJECT APPROVAL TO REDUCE ANY SIGNIFICANT ADVERSE IMPACTS.

- AN ENVIRONMENTAL IMPACT REPORT:** The project has the potential to result in significant adverse environmental impacts.
- A NEGATIVE DECLARATION:** The project may have adverse impacts but impacts can be mitigated without further study or are not serious enough to warrant an Environmental Impact Report.
- NEITHER OF THE ABOVE, INSUFFICIENT INFORMATION TO DRAW ANY CONCLUSIONS:** The following additional information should be provided:

Additional Comments:

- The conditions as described in the "Conclusions and Recommendations" section on pages 5 and 6 of the Environmental Noise Analysis should be accepted as mitigation measures for the project. Without these measures the proposed noise sensitive

receivers will be subjected to a level of noise in excess of the City of Fresno Noise Element standards.

- The Environmental Noise Analysis indicates that the noise barrier along Temperance Avenue shall be no less than 12 feet in height. The tract map submitted by the applicant indicates only a 6-foot high wall at that location. A 12-foot wall should be required.
- The Environmental Noise Analysis indicates that the recommended sound wall will not mitigate noise impacts for two-story homes located along Temperance Avenue. It is recommended that two-story homes not be built on lots 196-202, or that a detailed interior noise assessment be conducted, as indicated in the "Conclusions and Recommendations" section of the Environmental Noise Analysis.
- Construction permits for the 256-lot residential subdivision should be subject to assurance of sewer capacity of the Regional Wastewater Treatment Facility. Concurrence should be obtained from the California Regional Water Quality Control Board (RWQCB). For more information, contact staff at (559) 445-5116.
- Construction permits for the 256-lot residential subdivision should be subject to assurance that the City of Fresno community water system has the capacity and quality to serve this project. Concurrence should be obtained from the State Department of Health Services, Division of Drinking Water and Environmental Management (DDWEM). For more information call (559) 447-3300.
- The Fresno County Department of Community Health is concerned that abandoned water wells are not being properly destroyed, particularly with respect to new development projects. As city boundaries expand, community services are provided to areas originally served only by individual domestic and agricultural wells. Improper abandonment of such wells presents a significant risk of contaminating the city's community water supply. For this reason, when development occurs, it is extremely important to ensure the safe and proper destruction of all abandoned water wells.

Prior to destruction of any existing agricultural well(s), a sample of the upper most fluid in the well column should be sampled for lubricating oil. The presence of oil staining around the well may indicate the use of lubricating oil to maintain the well pump. Should lubricating oil be found in the well, the oil should be removed from the well prior to placement of fill material for destruction. The "oily water" removed from the well must be handled in accordance with federal, state and local government requirements. Transportation of these materials on public roadways may require special permits and licensure.

The Department of Community Health is available to provide consultation in cooperation with your city in order to encourage the proper destruction of wells and safeguard our water quality. City staff may contact Ed Yamamoto, Environmental Health Specialist, Water Surveillance Program, at (559) 445-3357 for more information.

- Appropriate measures should be incorporated into the project to minimize potentially significant short-term localized noise impacts to noise sensitive receivers caused by the operation of construction equipment. Construction specifications for the project should require that all construction equipment be maintained according to the manufacturers' specifications, and that noise generating construction equipment be equipped with mufflers. In addition, consideration should be given to limiting noise-generating construction activities to daytime hours as specified in your municipal code.
- The two (2) acre minimum parcel size was originally established by the Regional Water Quality Control Board and incorporated into the Fresno County General Plan with the intent of having a minimum parcel size anywhere in the County that could be expected to support individual water and septic systems. The sizing was designed to meet minimum Regional Water Quality Control Board guidelines for onsite sewage disposal setbacks from wells and to limit the concentration of permanent septic systems and individual water systems in a given area. Lots 67-72 appear to be approximately 1 acre in size. When available, the remaining residences should be required to connect to City water and sewer systems.

The following comments pertain to the demolition of the existing structures:

- Should any of these structures have an active rodent or insect infestation, then the infestation should be abated prior to demolition of the structures in order to prevent the spread of vectors to adjacent properties.
- In the process of demolishing the existing structures, the contractor may encounter asbestos containing construction materials and materials coated with lead based paints.
- If asbestos containing materials are encountered, contact the San Joaquin Valley Air Pollution Control District at (559) 230-6000 for more information.
- If lead based paints are suspected to have been used in these structures, then the contractor hired to demolish the existing structures should contact the following agencies for possible new regulations regarding their removal:

Arnoldo Rodriguez
March 15, 2005
T-5461/R-05-02/C-05-22
Page 2

San Joaquin Valley Air Pollution Control District at (559) 230-6000 for more information.

State of California, Industrial Relations Department, Division of Occupational Safety and Health, Consultation Service (CAL-OSHA) at (559) 454-5302 for more information.

- Any construction materials deemed hazardous as identified in the demolition process must be characterized and disposed of in accordance with current federal, state, and local requirements.
- Should any underground storage tank(s) be found on the premises, the applicant shall apply for and secure an Underground Storage Tank Removal Permit from the Fresno County Department of Community Health, Environmental Health Division. Contact the Certified Unified Program Agency at (559) 445-3271 for more information.

REVIEWED BY:

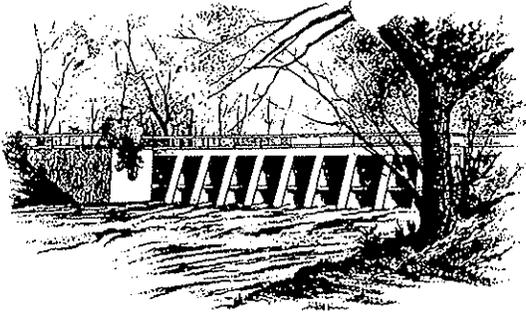
Kathleen Boyer, Environmental Health Specialist III

 (559) 445-3357

kb

cc: Ed Yamamoto, Environmental Health Division

T-5461 Dunmore homes



Your Most Valuable Resource - Water

OFFICE OF
FRESNO
IRRIGATION DISTRICT

PHONE (559) 233-7161
FAX (559) 233-8227
2907 SOUTH MAPLE AVENUE
FRESNO, CALIFORNIA 93725-2218

RECEIVED

March 3, 2005

Mr. Arnaldo Rodriguez
City of Fresno
Planning & Development Department
2600 Fresno Street, Third Floor
Fresno, CA 93721-3604

MAR 07 2005

Planning Division
Development Department
CITY OF FRESNO

RE: VTTM No. 5461, RA No. 05-02, CUP No. C-05-22 -- FID's Gould No. 97 Canal

Dear Mr. Rodriguez:

FID's comments and requests are as follows:

1. FID's Gould No. 97 canal traverses the northeast side of the subject property as shown on the enclosed map.
2. FID requires the applicant grant an exclusive canal easement to FID and concrete line, encase in box culvert or other approved means to protect canal integrity, the Gould No. 97 Canal across the proposed development in accordance with FID standards, and that the applicant enter into an agreement with FID for that purpose. The applicant will need to meet with FID to determine the canal alignment and required canal dimensions.
3. FID requires the applicant submit a grading and drainage plan for FID approval which shows that the proposed development will not endanger the structural integrity of the canal, or result in drainage patterns that will adversely affect FID or the applicant.
4. FID requires its easement be shown on the map with proper recording information, and that FID be made a party to signing all plans which affect its easement and canal/pipeline facility and also be made party to signing the final map.
5. FID requires all trail improvements and easements for trail purposes be outside FID's easement and that no portion of said easements shall be in common use.

Thank you for submitting this for our review. Please feel free to contact me with any questions or concerns at 233-7161 extension 317 or bjohnson@fresnoirrigation.com.

Sincerely,

Bret Johnson
Engineering Technician I

Agencies\City\VTTM5461 RA05-02 C-05-22

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3603

NO FEE – Government Code Section 6103

**FIRST AMENDMENT
TO RESTATED AND AMENDED SUBDIVISION AGREEMENT
FINAL MAP OF TRACT NO. 5461**

THIS FIRST AMENDMENT TO RESTATED AND AMENDED SUBDIVISION AGREEMENT FINAL MAP OF TRACT NO. 5461 (hereinafter the "Amendment") made and entered into as of this _____ day of _____, 2011 (hereinafter the "Effective Date"), amends the Restated and Amended Subdivision Agreement Final Map of Tract No. 5461 (hereinafter the "New Agreement") heretofore entered into between the CITY OF FRESNO, a municipal corporation (hereinafter the "City"), and UCP MONTECITO, LLC, a Delaware limited liability company (hereinafter the "Subdivider"). The City and the Subdivider may hereinafter be individually referred to as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, based upon the Subdivider's anticipated new ownership of the Tract No. 5461 property, a recessionary economy, and the desire of the Parties to forego potential protracted and costly legal proceedings related to the Subdivider's predecessor in interest of the Tract No. 5461 property, the City and the Subdivider entered into the New Agreement, dated February 4, 2010, for completion of certain public works of improvement as Conditions of Approval for the Vesting Tentative Map of Tract No. 5461/UGM, approved by the Planning Commission of the City of Fresno (hereinafter the "Planning Commission") on August 17, 2005 (and including any amendments or modifications thereto), and not yet completed as of the date of approval of the Final Map of Tract No. 5461 by the City Council of the City of Fresno (hereinafter the "City Council") on or about March 27, 2007; and

WHEREAS, the Parties acknowledged and incorporated into the New Agreement the contents of the City Water Division memorandum, dated December 21, 2006, proposing that, due to changing water resources in the vicinity of Tract No. 5461, Conditions of Approval Nos. 98, 99 and 100 be modified by substituting therefore a single condition of approval set forth as follows:

"Construct a 24-inch raw water pipeline, turn-out structure and appropriate appurtenances from the Gould No. 97 Canal to the proposed City of Fresno water storage tank site at 6736 East Dakota Avenue. As a result of the maximized hydraulic capacity in the region occupancy approvals for T 5461 shall not exceed 72 per year until either the water storage tank or the pipeline connecting the City of Clovis is completed and operational. The cost of construction of the raw water pipeline shall be reimbursed in accordance with established UGM policies."

For purposes of this Amendment, the foregoing is hereafter referred to as the "2006 WD Condition;" and

WHEREAS, due to the need for timely completion of the pipeline referenced in the 2006 WD Condition (the "Pipeline"), the Parties desire to modify the New Agreement to expedite completion of the Pipeline and reimburse the Subdivider through progress payments under a reimbursement agreement; and

WHEREAS, on or about June 1, 2011, the Planning Commission approved the amendment of Conditions of Approval Nos. 98, 99 and 100 to the Final Map of Tract No. 5461 by deleting Conditions 99 and 100, and amending No. 98 in its entirety to include the reimbursement agreement attached hereto as **Attachment A** as follows:

Condition of Approval No. "98. Design and construct a 24-inch raw water pipeline from the existing supply pipeline at North Temperance Avenue and the Gould No. 97 Canal to the proposed City of Fresno water storage tank site at 6736 East Dakota Avenue. As a result of the maximized hydraulic capacity in the region, occupancy approvals for Tract No. 5461 shall not exceed 72 per year until either the water storage tank or the pipeline connecting the City of Clovis is completed and operational. The cost of construction of the raw water pipeline shall be reimbursed through progress payments under a reimbursement agreement, substantially in the form attached hereto (First Amendment to Restated and Amended Subdivision Agreement Final Map of Tract No. 5461), subject to the approval by the City Council in its sole discretion. In the event that the City Council does not approve such reimbursement agreement on or before August 31, 2011, then the cost of construction will be reimbursed in accordance with established UGM policies."

For purposes of this Amendment, the foregoing Condition of Approval No. 98 is hereafter referred to as the "2011 WD Condition;" and

WHEREAS, the Subdivider desires that the performance and payment security provided pursuant to Section 9 of the New Agreement continue to constitute the security for the work to be performed for the Pipeline; and

WHEREAS, the City and the Subdivider now desire to modify the New Agreement to (a) substitute the 2011 WD Condition for the 2006 WD Condition, and (b) incorporate the Special Conditions and Cost Reimbursement for the 2011 WD Condition of the Final Map of Tract No. 5461 set forth in **Attachment A** of this Amendment into the New Agreement as if fully set forth therein to the extent they are applicable to the Pipeline; and

WHEREAS, by incorporating into the New Agreement the Special Conditions and Cost

Reimbursement for the 2011 WD Condition set forth in **Attachment A**, the Parties do not desire to change any of the Parties' rights or obligations set forth in the New Agreement.

AGREEMENT

NOW, THEREFORE, the Parties agree that the aforesaid New Agreement be amended as follows:

1. Effective as of the Effective Date, Exhibit C to the New Agreement and the last sentence of Section 26 of the New Agreement are superseded in their entirety by the following: The Parties acknowledge the 2011 WD Condition that modified the Conditions of Approval Nos. 98, 99 and 100 of the Final Map of Tract No. 5461, and the Subdivider agrees to comply with the 2011 WD Condition and complete the Pipeline in accordance with **Attachment A**.

2. Effective as of the Effective Date, the manner of reimbursement for the cost of constructing the Pipeline as set forth in the 2011 WD Condition shall be in accordance with **Attachment A**.

3. The performance and payment security provided pursuant to Section 9 of the New Agreement shall continue to constitute the performance and payment security for the work to be performed for the Pipeline. Such security shall be at the Subdivider's cost and expense and will not be subject to reimbursement by the City hereunder.

4. Insurance coverage required under the New Agreement shall be at the Subdivider's cost and expense and, except for the Professional Liability coverage, will not be subject to reimbursement by the City hereunder.

5. In the event of any conflict between the body of this Amendment and any exhibit or attachment hereto, the terms and conditions of the body of this Amendment shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Effective as of the Effective Date, in the event of any conflict between the body of the New Agreement and **Attachment A**, the terms and conditions of **Attachment A** shall control and take precedence over the terms and conditions expressed within the body of the New Agreement to the extent they are applicable to the performance and construction of the work required in **Attachment A**.

6. Effective as of the Effective Date, the following Section 34 is added to the New Agreement to read as follows:

"34. Except as otherwise expressly provided in this New Agreement, any notice required or intended to be given to either Party under the terms of this New Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the Party to which notice is to be given at the Party's address set forth below or at such other address as the Party may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

City:

City of Fresno
Scott Mozier, P.E., Assistant Director
Department of Public Works
2600 Fresno St.
Fresno, CA 93721-3623
Phone: (559) 621-8811
FAX: (559) 488-1045"

Subdivider:

Union Community Partners
ATTN: W. Allen Bennett
548 W. Cromwell Ave., Suite 104
Fresno, CA 93711
Phone: (559) 439-4464
FAX: (559) 439-4477

7. Effective as of the Effective Date, the following Section 35 is added to the New Agreement to read as follows:

"35. The Subdivider may receive designated fee credits from the City as offsets toward a UGM or development impact fee for construction of certain required infrastructure improvements either as a part of this New Agreement or at some future date. The Subdivider acknowledges and agrees any such fee credits are provided contingent upon the City accepting required infrastructure improvements completely installed by the Subdivider. Until then, and notwithstanding any other provision, the Subdivider expressly agrees the Subdivider has no right to any portion of any fee credit and the Director of Public Works for the City, in the Director's sole discretion, may unilaterally amend this New Agreement effective upon mailed notice to Subdivider to adjust (including adding, reducing or removing) credits at any time prior to acceptance of all required infrastructure improvements by the City. Upon adjustment, the Subdivider shall pay in full any UGM or development impact fees, due from modification of the fee credit, prior to approval of the Final Map or as may be deferred by a fee deferral covenant. If the Final Map has already been approved and there is no applicable fee deferral covenant, all such fees shall be promptly paid by the Subdivider. The City may enforce recovery of such fees in any manner available at law or in equity, including but not limited to private foreclosure and sale of the property in the manner provided in Section 2924 of the California Civil Code or successor statute."

8. Prior to the City's execution of this Amendment, the Subdivider shall provide all new certificates of insurance and applicable endorsements satisfactory to the City's Risk Manager including, without limitation, in a form that meets the requirements of Section 17 of the New Agreement and each of the following:

- (a) The insurance must be in the name of the Subdivider or a third party. If in the name of a third party other than the Subdivider, then such third party must be acceptable to the City's Risk Manager and the insurance must name the Subdivider as a named insured on the Named Insured Schedule under the third party's policy.
- (b) The Certificate Holder on the insurance certificates shall appear as follows:

City of Fresno
Department of Public Works, Construction Management Division
ATTN: Ken Turner, 1721 Van Ness Avenue, Fresno, CA 93721

9. Each exhibit and attachment referenced in this Amendment is, by reference, incorporated into and made a part of this Amendment.

10. Except as otherwise provided herein, the New Agreement entered into by the City and the Subdivider, dated February 4, 2010, remains in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment at Fresno, California, the day and year first above written.

City of Fresno,
a municipal corporation

UCP Montecito, LLC,
a Delaware limited liability company

By: _____
Scott Mozier, P.E., Assistant Director
Department of Public Works

By: UCP, LLC,
a Delaware limited liability
company,
its sole member

ATTEST:
REBECCA E. KLISCH
City Clerk

By: 
Dustin L. Bogue, President
and Chief Operating Officer

By: _____
Deputy

By: 
William J. La Herran
Chief Financial Officer

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: _____
Nancy A. Algier Date
Senior Deputy

Attachments:

- Attachment A – Special Conditions and Cost Reimbursement for the 2011 WD Condition of the Final Map of Tract No. 5461
- Attachment A-1 - Project Description, Professional Services and Professional Services and Construction Elements
- Attachment A-2 - Providers of Professional Services, Cost Estimate, Scope of Work and Project Performance Schedule

ATTACHMENT A
First Amendment ("Amendment")
to Restated and Amended Subdivision Agreement ("New Agreement"),
Final Map of Tract No. 5461, between the City of Fresno ("City")
and UCP Montecito, LLC ("Subdivider")

Special Conditions and Cost Reimbursement
for the 2011 WD Condition of the Final Map of Tract No. 5461

I. BACKGROUND

A. The City Water Division requires the following work under these Special Conditions and Cost Reimbursement for the 2011 WD Condition of the Final Map of Tract No. 5461:

Design and construct a 24-inch raw water pipeline from the existing supply pipeline at North Temperance Avenue and the Gould No. 97 Canal, to the proposed City of Fresno water storage tank site at 6736 East Dakota Avenue. As a result of the maximized hydraulic capacity in the region, occupancy approvals for Tract No. 5461 shall not exceed 72 per year until either the water storage tank or the pipeline connecting the City of Clovis is completed and operational (hereinafter the "Pipeline Condition of Approval").

B. These Special Conditions and Cost Reimbursement for the 2011 WD Condition of the Final Map of Tract No. 5461 shall govern the design and "Construction" of the "Facility" (both as defined in Section 1 of the Special Conditions set forth below).

C. The City and the Subdivider intend by this Amendment to provide for responsibility for the capital costs of the design and Construction of the Facility as a dedicated water pipeline and appurtenances and for the reimbursement of certain of the costs which will be incurred in connection with the Facility. The Parties intend that Construction of the Facility shall provide water service which will satisfy the Pipeline Condition of Approval (as set forth in paragraph A, above), as well as satisfy requirements to provide a source of water which may be related to other Subdivider real property developed or to be developed within the UGM 501s Service Area including the Final Map of Tract No. 5461.

D. It is intended that this Amendment serve as the understanding regarding the terms and conditions for reimbursement solely for the design and Construction of the Facility. It is understood and agreed that these terms and conditions are separate and independent from the terms and conditions entered into between the City and the Subdivider for satisfaction of other conditions of the City for its approval of the New Agreement. The Subdivider shall remain fully liable for all UGM Facility capital costs and fees for all its property developed within the UGM 501s Service Area including, but not limited to, Tract No. 5461. The Subdivider shall not be entitled to any credit on UGM Facility costs and fees resulting from the design and Construction of the Facility.

E. City has estimated a total budget amount of \$384,520.00 (hereinafter the "Budget Allocation") for "Professional Services" (as defined in Section 1 of the Special Conditions set forth below) and Construction of the Facility. As the Subdivider prepares engineering cost estimates, otherwise known as "opinion of probable improvement costs", (hereinafter "Cost Estimate") and Construction timelines for the City's review and acceptance, the Subdivider shall cooperate with the City to bring the Final Cost Estimate (as defined in Section 1 of the Special

Conditions set forth below) within or reasonably close to the Budget Allocation. Any Cost Estimate exceeding the Budget Allocation will be subject to acceptance by the City Council in its sole discretion.

II. SPECIAL CONDITIONS

Section 1. Definitions.

Unless the particular provision or context otherwise requires, the definitions contained in this section shall govern the construction, meaning and application of words and phrases used in this **Attachment A** and in **Attachment A-1** and **Attachment A-2**, and, except to the extent that a particular word or phrase is otherwise specifically defined in this **Attachment A**, the definitions and provisions contained in Sections 1-204 and 1-205 of the Fresno Municipal Code shall also govern the construction, meaning and application of words and phrases used in this **Attachment A** and also **Attachment A-1** and **Attachment A-2**.

(a) "Budget Allocation" means the amount of \$384,520.00 as described in paragraph E above.

(b) "Construction" means the physical erection, assembly, integration, coordination, testing, warranty, securing of permits required and purchasing of all components necessary for a fully functional Facility by a general construction contractor licensed in accordance with the laws of the State of California and acceptable to the City through its City Engineer.

(c) "Cost Estimate" means the Opinion of Probable Improvement Cost (hereinafter the "OPIC") prepared by or at the direction of the Subdivider as required under this **Attachment A**, including detailed cost estimates for Professional Services and Construction.

(d) "Days" means calendar days.

(e) "Effective Date" means the effective date of this Amendment.

(f) "Facility" means fully constructed, permitted and operational water conveyance system and appurtenant facilities, as described in **Attachment A-1**, and further described in the agreed upon Scope of Work, as described in **Attachment A-2**, and the construction documents and change orders accepted by the City Engineer.

(g) "Final Cost Estimate" means the adjusted Cost Estimate accepted by the City and as further defined in Section 2(b)(3)(v) of these Special Conditions.

(h) "Professional Services" means those Professional Services described in **Attachment A-1** and **Attachment A-2** and the Scope of Work, including all services performed by the Subdivider and all expertise, resources and licenses necessary to perform and conduct project management, planning, engineering, design, drafting, construction management, accounting, generation of bid documents, bidding, and securing any easement required by the City to construct the Facility. Professional Services shall be performed by person(s) licensed in accordance with the California Business and Professions Code and for whom the Subdivider has obtained the prior acceptance by the City to perform the respective work.

(i) "Project" means City Project No. J-5359, as described on the seven (7) 24" Raw Water Pipeline plan sheets (dated 8-18-10 and approved by the City Engineer) and further

identified in **Attachment A-1**, and includes the design and construction of a water conveyance system and appurtenant facilities (the "Facility" as defined in Section 1(f) above) including, without limitation, the Professional Services and Professional Services and Construction Elements set forth in **Attachment A-1**.

(j) "Schedule" means a current detailed Design & Construction Schedule showing all events and Construction activity on a monthly basis throughout the duration of the Project. The Schedule is separate from, but shall be consistent with, the Project Performance Schedule set forth in **Attachment A-2**.

(k) "Scope of Work" means the detailed written chronological listing of tasks to be completed by the providers of Professional Services, including a Project Performance Schedule, as set forth in **Attachment A-2**, and for which the Subdivider has obtained written acceptance by the City prior to beginning the work.

Section 2. Subdivider's Obligations.

(a) Subject to Section 18 of these Special Conditions, the Subdivider shall provide and dedicate a complete Facility to the City according to the Scope of Work, Final Cost Estimate, construction documents (i.e., plans and specifications) and the Schedule, each as accepted by the City hereunder. The Subdivider shall be responsible for ensuring procurement by its general construction contractor of all permits, and payment of fees related thereto, that are necessary for the Construction of the Facility. The City will reimburse the Subdivider for those fees paid by the Subdivider for any easement required for the development of the Facility; provided, however, such fees are approved in writing by the City in advance of payment by the Subdivider. The Subdivider shall pay the actual cost of design and Construction of the Facility required by this **Attachment A**.

(b) Order of Work.

(1) Phase I.

(i) Based on the Project description in **Attachment A-1**, the Subdivider has developed and the City has accepted the attached **Attachment A-2** identifying (a) qualified providers of Professional Services; (b) the Cost Estimate for the Professional Services; (c) the detailed Scope of Work of the providers of Professional Services; and (d) a Project Performance Schedule. Any hourly fees shall include a reasonable cost for overhead expenses. The City reserves the right to increase or decrease any of the tasks included in the Scope of Work in **Attachment A-2**, any of the Professional Services and Construction Elements in **Attachment A-1**, and any general construction components and quantities in accordance with available funds. If the City Council has not appropriated funds, or if sufficient funds are not available to complete the Project, the City reserves the right to decrease any of the tasks, Professional Services and Construction Elements or quantities to stay within budget limitations.

(ii) On or before the Effective Date of this Amendment, the Subdivider shall (a) perform any necessary topographic surveys; (b) conduct studies and investigations as necessary to confirm requirements of design; (c) submit schematic design drawings and other documents, for review and acceptance by the City, sufficient to show the concept and scope of the Project and the scale and relationship of Project components; and (d) submit a detailed Cost Estimate (including the previously accepted Cost Estimate for Professional Services in **Attachment A-2**) for Construction to City for its review and acceptance. The Subdivider shall

also provide the City with the Schedule for the City's review and acceptance. The City reserves the right to increase or decrease any of the tasks included in the Scope of Work, any of the Professional Services and Construction Elements in **Attachment A-1** and any general Construction components and quantities in accordance with available funds. If the City Council has not appropriated funds, or if sufficient funds are not available to complete the Project, the City reserves the right to decrease any of the tasks, Professional Services and Construction Elements or quantities to stay within the budget limitations.

(2) Phase II.

(i) Upon the City's acceptance of the Scope of Work, Schedule and Cost Estimate as described in the preceding paragraph (b)(1)(ii) of Phase I, the Subdivider shall continue with Professional Services.

(ii) The Subdivider shall provide the City with any revised Cost Estimate for Construction and three (3) copies of plans and specifications for review and acceptance by the City at ninety percent (90%) completion. Any acceptance by the City shall not constitute a waiver of the Subdivider's responsibility for ensuring that the plans and specifications comply with **Attachment A-1**, and the Schedule and Scope of Work accepted by the City.

(iii) Upon the City's acceptance of the revised Cost Estimate for Construction and the plans and specifications, the Subdivider shall prepare the bid documents for Construction and cause them to include, without limitation, (a) all costs for the Construction of the Facility; (b) a requirement for the payment of prevailing wages in accordance with the California Labor Code for a "public work" as defined therein; (c) the insurance requirements contained in the New Agreement and indemnity requirements contained in this **Attachment A**; (d) a requirement that the bids remain valid for sixty (60) Days from the date of bid opening; (e) a requirement that the Construction is to be substantially completed in accordance with the Schedule accepted by the City; (f) a reservation of the right to reject any and all bids; (g) a reservation of the right to increase or decrease any general Construction components and quantities in accordance with available funds of the City; and (h) a requirement that all warranties and guarantees are to be given to the City for the benefit of the City. The general construction contractor shall be required to hold a valid Class A, State of California, Contractor's License.

(iv) The City reserves the right under this Phase II, to increase or decrease any of the tasks included in the Scope of Work, any of the Professional Services and Construction Elements in **Attachment A-1** and any general construction components and quantities in accordance with available funds. If the City Council has not appropriated funds, or if sufficient funds are not available to complete the Project, the City reserves the right to decrease any of the tasks, Professional Services and Construction Elements or quantities to stay within the budget limitations.

(3) Phase III.

(i) Upon completion of the bid documents and the permit acquisitions, and subject to Section 18 below, the Subdivider shall solicit bids for Construction of the Facility.

(ii) The Subdivider shall competitively bid the general Construction

work with any award to be to the lowest responsive and responsible bidder. Any addendum prepared by the Subdivider during the bid process shall be subject to the City's review and acceptance prior to its issuance by the Subdivider. Promptly after bid opening, the Subdivider will submit to the City the bid results and all subcontractor information submitted by the lowest responsive and responsible bidder. The Subdivider shall not allow the general construction contractor to substitute any subcontractor in place of the subcontractors designated in its bid, without the consent of the City. Such subcontractors will be afforded the rights under California Public Contract Code Section 4107.

(iii) Within thirty (30) Days of the bid opening, the Subdivider shall prepare an adjusted Cost Estimate, based upon the amount of the bid submitted by the lowest responsive and responsible bidder, for the City's review and acceptance. Any acceptance shall be at the City's sole discretion.

(iv) If the bid submitted by the lowest responsive and responsible bidder exceeds the last revised Cost Estimate for Construction accepted by the City in Phase II (or the Cost Estimate for Construction in Phase I, if there was no revised Cost Estimate for Construction in Phase II), the Subdivider shall also prepare and submit to the City within thirty (30) Days of bid opening a proposed change order to the Scope of Work and adjustment to the last revised Cost Estimate for Professional Services to revise the plans and specifications as may be necessary to stay within the last revised Cost Estimate for Construction accepted by the City, and re-bid the Construction work. The City will then have the option of either (a) accepting the adjusted Cost Estimate prepared by the Subdivider pursuant to the preceding paragraph (iii) of this Phase III, (b) accepting the proposed change order and requesting that the Subdivider revise the plans and specifications within fourteen (14) Days as may be necessary to stay within the last revised Cost Estimate for Construction accepted by the City, or (c) terminating the Project. If the City elects for the Subdivider to revise the plans and specifications, then upon their acceptance by the City, the Subdivider shall re-bid the general construction contract under this Phase III. For the purpose of preparing any change order pursuant to this paragraph (iv), in the event the bid submitted by the lowest responsive and responsible bidder exceeded the last revised Cost Estimate for Construction accepted by the City by ten percent (10%), the revisions to the Scope of Work or Scope of Work and plans and specifications shall be at the Subdivider's cost and expense and will not be subject to reimbursement by the City hereunder. This procedure, using the latest accepted Cost Estimate for Construction, shall be repeated until an acceptable bid is received that does not exceed the accepted Cost Estimate of Construction by more than ten percent (10%).

(v) Upon acceptance of the adjusted Cost Estimate by the City pursuant to paragraph (iii) of this Phase III, such accepted adjusted Cost Estimate will constitute the Final Cost Estimate and the Subdivider shall proceed to award and enter into the general construction contract with the lowest responsive and responsible bidder and proceed with Construction in accordance with the Schedule previously accepted by City.

(vi) All change orders to the Scope of Work, Schedule or Construction documents shall be subject to the City Engineer's prior review and acceptance. Only those change orders resulting directly from the City's request for additional work or from discovery of the existence of unforeseen conditions after Construction has begun, may result in a modification of, and increase to, the Final Cost Estimate (also known as the "Guaranteed Maximum Price"). The Subdivider shall conduct the appropriate Professional Services reasonably necessary so that such change orders, if any, will result in retaining the financial viability of the Facility to the City.

(vii) Anyone performing Professional Services under this Amendment shall not be eligible to participate in the competition with any bidder, or as a subcontractor, to prepare a bid or perform any work required of the general construction contractor under the contract to be awarded.

(viii) The City shall be allowed to inspect the Construction site at any time, and the Subdivider shall make all areas of the site available to inspection including, without limitation, any construction trailers or offices at the site and all plans, drawings, schedules, documents, photographs and other documentation relating to the Project. Inspection shall not relieve the Subdivider of its obligation to have furnished material and workmanship in accordance with the Scope of Work and Construction documents accepted by the City. Payment for work completed through periodic progress payments or otherwise shall not operate to waive the City's right to require full compliance with the Scope of Work and Construction documents accepted by the City, and shall in no way be deemed as acceptance of the work paid therefore. The Subdivider's obligation to complete the work in accordance with such Scope of Work and Construction documents shall be absolute, unless the City Engineer expressly agrees otherwise in writing.

(ix) It shall be the responsibility of the Subdivider to coordinate all work done by its contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability if one operation delays another. In no event shall representatives of the City be placed in the position of making decisions that are the responsibility of the Subdivider. It shall further be the responsibility of the Subdivider to give the City Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started. Failure on the part of the Subdivider to notify the City Engineer may cause delay for which the Subdivider shall be solely responsible. Whenever the Subdivider varies the period during which work is carried on each Day, it shall give due notice to the City Engineer so that proper inspection may be provided. If the Subdivider fails to duly notify the City as herein required, any work done in the absence of the City Engineer will be subject to rejection. The inspection of the work shall not relieve the Subdivider of any of its obligations to fulfill the New Agreement and this Amendment as prescribed. Defective work shall be made good, and unsuitable materials may be rejected, notwithstanding the fact that such defective work and unsuitable materials have been previously overlooked by the City Engineer or other City inspector and accepted.

(x) The City reserves the right under this Phase III to increase or decrease any of the tasks included in the Scope of Work, any of the Professional Services and Construction Elements in **Attachment A-1**, and any general Construction components and quantities in accordance with available funds. If the City Council has not appropriated funds, or if sufficient funds are not available to complete the Project, the City reserves the right to decrease any of the tasks, Professional Services and Construction Elements or quantities to stay within the budget limitations.

(c) Invoicing. As the Subdivider incurs expenses in the design and Construction of the Facility, the Subdivider shall provide detailed monthly invoices to the City supported by reasonable proof of the Subdivider's payment of such expenses. Such invoices shall be for work completed and accepted by the City (in the case of Construction work, this shall mean accepted by the City Engineer) and shall include a description of the work performed, status of the work, and accounting of costs and fees incorporated into the invoice, and an estimate of the remaining costs and fees to be incurred to complete the work. With proof of payment,

Subdivider shall attach copies of actual invoices received from suppliers and subcontractors and provide any additional detail upon request of the City. Notwithstanding the above, the Subdivider shall begin invoicing the City no earlier than thirty (30) Days after the Parties execute this Amendment; provided, however, that invoices for the Subdivider's Project Management Fee (i.e., 7% of Construction progress payments), shall begin in conjunction with invoices for Construction progress payments after start of Construction.

(d) Indemnification.

(1) To the furthest extent allowed by law, including California Civil Code Section 2782, the Subdivider shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, the Subdivider or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Amendment. The Subdivider's obligations under the preceding sentence shall apply regardless of whether the City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of the City or any of its officers, officials, employees, agents or volunteers.

(2) If the Subdivider should subcontract all or any portion of the work to be performed under this Amendment, the Subdivider shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph. Notwithstanding the preceding sentence, any subcontractor who is a "design professional," as defined in California Civil Code Section 2782.8, shall, in lieu of paragraph (1) of this Section 2(d), be required to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers to the furthest extent allowed by law, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Amendment.

(3) This Section 2(d) shall survive any expiration or termination of the Project, New Agreement or this Amendment.

(e) Security.

(1) The Subdivider shall provide Performance Security and Payment Security as provided in Section 9 of the New Agreement. Such Security shall be at the Subdivider's cost and expense and will not be subject to reimbursement by the City hereunder.

(2) Upon final completion and acceptance by the City Engineer of the constructed Facility, the following amount, in the form of cash or a certificate of deposit, shall be provided by the Subdivider to the City as security for the guarantee in Section 2(g) below:

plus,

- (i) Five percent (5%) of the first \$50,000 of the Final Cost Estimate;
- (ii) Three percent (3%) of the next \$50,000.00; plus,
- (iii) One percent (1%) of the next \$400,000.00; plus,
- (iv) One-half of one percent (1/2%) of the Final Cost Estimate exceeding \$500,000.00.

(3) Changes in the work or services, or extensions of time, made pursuant to this Amendment, shall in no way release the Subdivider or its surety from their obligations. Notice of such changes or extensions shall be waived by the surety.

(4) All bonds shall be sufficient surety bonds in the form prescribed by the City and shall be issued by such sureties which are admitted insurers (a corporate surety), admitted by the California Insurance Commissioner to conduct business in the State of California. All bonds shall satisfy the requirements stated in California Code of Civil Procedure Section 995.660, except as provided otherwise by law or regulation. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. Should any surety at any time fail to meet these requirements, notice will be given to the City by the Subdivider to that effect. The Subdivider shall require the surety to provide such notice to the Subdivider and the City immediately upon the surety's failure to meet the requirements of a corporate surety in the State of California. No further payments shall be deemed due or shall be made under this Amendment until a new surety shall qualify and be accepted by the City.

(5) If the surety on any bond furnished by the Subdivider is declared bankrupt or becomes insolvent or its right is terminated to conduct business in California, the Subdivider shall, within seven (7) Days thereafter, substitute another bond and surety, which must be acceptable to the City.

(6) Should any bond become insufficient, the Subdivider shall renew the bond within ten (10) Days after receiving notice from the City.

(7) The Subdivider shall obtain the City's written acceptance of all security instruments at the time the security is provided.

(8) Sections 2(e)(2) through 2(e)(8) of these Special Conditions shall survive any expiration or termination of the Project, New Agreement or this Amendment.

(f) **Compliance with Law and Permits.** In providing the services required under this **Attachment A**, the Subdivider shall at all times comply with all applicable laws of the United States, the State of California and the City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of the New Agreement; and shall comply with the conditions of all permits required for the work (including, without limitation, encroachment and street work permits of both City and the County of Fresno, if any).

(g) **Guarantee.** The Subdivider shall guarantee the materials and workmanship of the constructed Facility for a period of one (1) year from completion of the Facility and acceptance by the City Engineer thereof. The Subdivider agrees to correct any defective work

within a reasonable time after being notified, or should the exigencies of the case require repairs or replacements to be made before the Subdivider can be notified or respond to the notification, the Subdivider authorizes the City to proceed to have the defective work corrected and made good at the Subdivider's expense, and the Subdivider will pay, upon the City's demand, the cost therefore including related applicable costs and expenses incurred by the City. Upon expiration of the one (1) year period, the security provided by Subdivider pursuant to Section 2(e)(2), above, shall be released by City to Subdivider pursuant to City's standard procedures, provided Subdivider has corrected all defective work for which Subdivider had been given notice during such one (1)-year period. The release of the security provided by Subdivider pursuant to Section 2(e)(2), above, shall not constitute a one-time partial acceptance of security requirements as authorized by Resolution No. 2008-100, adopted by the City Council on May 6, 2008.

This guarantee shall survive any expiration or termination of the Project, New Agreement or this Amendment.

(h) **Obligation to Perform.** Unless this Amendment or the Project is terminated as provided herein, the Subdivider shall continue to perform its obligations hereunder during, and through resolution of, any dispute that may arise between the Parties. Notwithstanding the forgoing, the Subdivider shall continue to perform those obligations surviving termination of this Amendment.

Section 3. City's Obligations.

(a) Except as otherwise expressly provided in this Amendment, the City shall reimburse the Subdivider for its actual cost of design and Construction of the Facility, within thirty (30) Days of the Subdivider's submittal of an undisputed monthly invoice described in Section 2(c) above and subject to the provisions in this Section 3 and Section 18 below. The total actual cost of the design and Construction of the Facility (including, without limitation, all Professional Services) is guaranteed by the Subdivider not to exceed the amount of the Final Cost Estimate, subject to additions and deductions by change order as provided herein. Such Final Cost Estimate is referred to herein as the Guaranteed Maximum Price. Except as expressly provided in Section 2(b)(3)(vi) above, costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Subdivider without reimbursement by the City.

(b) For each progress payment for Construction, ten percent (10%) will be deducted and retained by the City, and the remainder less the amount of all previous payments will be paid to the Subdivider. The City retains the option, at its discretion, to reduce any retained amount pursuant to this paragraph (b) by payment to the Subdivider upon conditions or otherwise; provided, however, that the percentage retained from the total of all progress payments to date for Construction is never less than five percent (5%) and the Subdivider is not in default under this Amendment. In accordance with provisions of California Public Contract Code Section 22300, the Subdivider may substitute securities for any monies withheld by the City to ensure performance under this Amendment.

(c) One hundred twenty-five percent (125%) of the claim stated in any stop notice received will be withheld by the City in accordance with California Civil Code Section 3186.

(d) Within sixty (60) Days after the completion of the Facility and acceptance by the City Engineer, the retention withheld by the City pursuant to paragraph (b) of this Section 3 will

be released to the Subdivider. In the event of a dispute between the City and the Subdivider, the City may withhold from the final payment an amount not to exceed one-hundred-fifty percent (150%) of the disputed amount.

(e) The City shall monitor and inspect the Construction of the Facility on a regular basis.

Section 4. Public Work and Payment of Prevailing Wages.

The work hereunder constitutes a "public work" as defined in Chapter 1, Part 7, Division 2 of the California Labor Code to which Section 1771 thereof applies, and the Subdivider shall cause the work to be performed as a "public work" and the payment of prevailing wages in accordance with such Chapter of the California Labor Code; and the Subdivider shall fulfill all its duties, if any, under the applicable provision of law pertaining to the maintenance of bonds to secure payment of contractors, including the payment of wages to workers performing the work.

Section 5. Acceptances and Assurances.

(a) The Subdivider shall pay standard City water connection fees for Tract No. 5461 pursuant to the New Agreement.

(b) Any acceptance required or intended to be given by the City to the Subdivider under the terms of this Amendment shall be effective only if given in writing. Except as otherwise expressly provided in this Amendment, any acceptance required or intended to be given by the City to the Subdivider under the terms of this Amendment shall be effective only if given by the City's Department of Public Utilities Director or his/her designee.

Section 6. Enforcement by the City and the Subdivider.

(a) **Specific Performance.** Both the Subdivider's and the City's rights hereunder are of a special and unique kind and character, and if either Party defaults, then the other would not have any adequate remedy at law. Therefore, those rights may be enforced by an action for specific performance and other equitable relief allowed by law.

(b) **Attorney's Fees.** If either Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Amendment, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party its reasonable attorney's fees and legal expenses.

(c) **Alternative Dispute Resolution.** If a dispute arises between the Parties relating to this Amendment, the Parties agree to use the following procedure prior to either Party pursuing other available remedies:

(1) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

(2) If, within thirty (30) Days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually

acceptable neutral person not affiliated with either of the Parties (the "neutral"), seeking assistance in such regard if they have been unable to agree upon such appointment within forty (40) Days from the initial meeting. The fees of the neutral shall be shared equally by the Parties.

(3) In consultation with the neutral, the Parties will select or devise an alternative dispute resolution procedure (hereinafter the "ADR") by which they will attempt to resolve the dispute, and a time and place for the ADR to be held, with the neutral making the decision as to the procedure, and/or place and time (but unless circumstances require otherwise, not later than sixty (60) Days after selection of the neutral) if the Parties have been unable to agree on any of such matters within twenty (20) Days after initial consultation with the neutral.

(4) The Parties agree to participate in good faith in the ADR to its conclusion as designated by the neutral. Any decision by the neutral is non-binding. If the Parties are not successful in resolving the dispute through the ADR, either Party may seek an adjudicated resolution through the appropriate court.

Section 7. Interpretation.

The Parties acknowledge that this Amendment in its final form is the result of the combined efforts of the Parties and that, should any provision of this Amendment be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Amendment in favor of or against either Party, but rather by construing the terms in accordance with their generally accepted meaning.

Section 8. Independent Contractor.

(a) In the furnishing of the services provided for herein, the Subdivider is acting solely as an independent contractor. Neither the Subdivider, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of the City for any purpose. The City shall have no right to control or supervise or direct the manner or method by which the Subdivider shall perform its work and functions. However, the City shall retain the right to administer this Amendment so as to verify that the Subdivider is performing its obligations in accordance with the terms and conditions thereof.

(b) The New Agreement, as amended, does not evidence a partnership or joint venture between the Subdivider and the City. The Subdivider shall have no authority to bind the City absent the City's express written consent. Except to the extent otherwise provided in the New Agreement, as amended, the Subdivider shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, the Subdivider and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. The Subdivider shall be solely liable and responsible for all payroll and tax withholdings and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under the New Agreement, as amended, the Subdivider shall be solely responsible for, indemnify, defend and hold the City harmless from, all matters relating to employment and tax withholdings for and payment of the Subdivider's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance

withholdings, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholdings, taxes and payments; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of the City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of the New Agreement, the Subdivider may be providing services to others unrelated to the City or the New Agreement as amended.

Section 9. Right to Terminate Work.

(a) The City may terminate the work under this **Attachment A** for cause.

(1) In the event of default by the Subdivider, the City shall give fourteen (14) Days written notice to the Subdivider of the City's intent to terminate the work and provide the Subdivider an opportunity to remedy the conditions constituting the default.

(2) It shall be considered a default by the Subdivider if the Subdivider:

(i) Declares bankruptcy, becomes insolvent, assigns its assets for the benefit of its creditors, or is unable to pay debts as they become due;

(ii) Fails to provide materials or workmanship meeting the requirements of this Amendment or fails to correct defective work;

(iii) Disregards or violates provisions of this Amendment;

(iv) Commits continuous or repeated failure to complete the work according to the accepted Schedule;

(v) Fails to provide labor or materials or equipment meeting the requirements of this Amendment;

(vi) Prior to the date the Subdivider is to meet certain Schedule milestones, fails to notify the City of its inability to meet certain Schedule milestones, and fails to obtain the City's agreement to continue the particular milestone date;

(vii) Disregards laws or regulations of any public body having jurisdiction;

(viii) Commits continuous or repeated serious violations of approved or legislated safety plan requirements; or

(ix) Fails to provide a revised document within ten (10) Days of the respective non-acceptance by the City of any Cost Estimate, Schedule, Scope of Work, or plans and specifications.

(3) If the Subdivider fails to remedy the conditions constituting default within the time allowed, the City may then issue a notice of termination.

(4) In the event the work is terminated for cause, the City may take possession of the work and may complete the work by whatever method or means the City may select. The cost of completing the work shall be deducted from the balance which would have

been due the Subdivider had the work not been terminated and the work been completed in accordance with the Construction documents. If such cost is less than the balance which would have been due the Subdivider, the Subdivider shall not have claim to the difference.

(5) Where the work has been so terminated by the City, the termination shall not affect any rights or remedies of the City against the Subdivider then existing or which may thereafter accrue. Any retention or payment of moneys due the Subdivider by the City shall not release the Subdivider from liability.

(b) The City may terminate the Project for convenience when conditions encountered during the Project make it impossible or impractical to proceed, or when the City is prevented from proceeding with the Project by an Event of Force Majeure (as defined in Section 9(d) below), by law, non-appropriation of funding by the City's governing body, or by official action of a public authority (including, without limitation, non-approval of any discretionary permits under Section 18 below, including California Environmental Quality Act (hereinafter "CEQA") documentation, review and approvals). Termination by the City of the Project for such convenience, shall constitute satisfaction by the Subdivider of Pipeline Condition of Approval in paragraph A, above.

(1) The City may terminate, subject to the express terms and conditions set forth below, the Subdivider's performance of work under this Amendment, in whole or, from time to time, in part, if sufficient monies are not appropriated to fund this Amendment. The City shall terminate by delivering to the Subdivider a notice of termination, in writing, specifying the extent of termination and the effective date of termination.

(2) The City may terminate as provided in Section 2(b)(3)(iv) of these Special Conditions. The City shall terminate by delivering to the Subdivider a notice of termination, in writing, specifying the extent of termination and the effective date of termination.

(3) After receipt of the notice of termination, and except as otherwise directed by the City, the Subdivider shall immediately proceed as follows:

(i) Stop work immediately or as specified in the notice;

(ii) Immediately place no further contracts for materials, services, or facilities, except as necessary to complete any portion of the Project not terminated;

(iii) Assign to the City in the manner, at times, and to the extent directed by the City, all right, title, and interest of the Subdivider under orders and subcontracts so terminated, and the City shall have the right, but not the duty, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;

(iv) Immediately terminate all subcontracts to the extent they relate to the Project terminated;

(v) With approval by the City, settle all outstanding obligations arising from the termination of subcontracts, the approval of which will be final for purposes of this clause;

(vi) As directed by the City, transfer the title and deliver to the City, completed or partially completed drawings, plans, calculations, specifications and any other

documents and records that, if the Project had been completed, would be required to be furnished to the City;

(vii) Complete any portion of the Project not terminated; and

(viii) Take any action that may be necessary, or that the City may direct, for the protection and preservation of Project-related property in the possession of the Subdivider and in which the City has or may acquire an interest.

(c) After termination, the Subdivider shall submit a final termination settlement proposal to the City in the form and with the certification prescribed by the City. The Subdivider shall submit the proposal promptly, but not later than sixty (60) Days from the effective date of termination, unless extended in writing by the City upon written request of the Subdivider within this sixty (60) day period. However, if the City determines that the facts justify it, a termination settlement proposal may be received and acted on after sixty (60) Days or any extension thereof. If the Subdivider fails to submit the proposal within the time allowed, the City may, in good faith, determine, on the basis of information available, the fair and reasonable amount, if any, due the Subdivider as a result of the termination, and pay the amount determined. If the Subdivider does not agree that the amount determined by the City is fair and reasonable, and if the Subdivider gives notice of such disagreement to the City within thirty (30) Days of the City's determination, then the amount due shall be determined by non-binding mediation as provided in these Special Conditions, or as determined in a court of law if not resolved by the non-binding mediation.

(d) Neither Party shall be liable for default in the event nonperformance is caused by an occurrence beyond the reasonable control of the Party and without its fault or negligence, such as acts of God or the public enemy, acts of the other Party in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers (each an "Event of Force Majeure"). The Party experiencing such an occurrence shall notify the other Party in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the other Party of the cessation of such occurrence.

(e) This Section 9 shall survive any expiration or termination of the Project, the New Agreement or this Amendment.

Section 10. Severability.

The provisions of this Amendment are severable. If any part of this Amendment is determined, by a court of competent jurisdiction, to be invalid or unenforceable, then the remainder of this Amendment shall remain valid and enforceable and in full force and effect.

Section 11. No Beneficiaries.

No party besides the Subdivider, the City, and their permitted successors and assigns has any rights or remedies under this Amendment.

Section 12. Incorporation.

Each exhibit and attachment referenced in this **Attachment A** is, by reference, incorporated into and made a part of this **Attachment A**.

Section 13. Precedence of Documents.

In the event of any conflict between this **Attachment A** and any exhibit or attachment referenced herein, the terms and conditions of this **Attachment A** shall control and take precedence over the terms and conditions expressed within the referenced exhibit or attachment.

Section 14. Headings.

Section headings are for reference purposes only and do not affect these Special Conditions.

Section 15. Construction.

Unless the context requires otherwise, the masculine gender includes the feminine and neuter, the singular number includes the plural, and the plural number includes the singular.

Section 16. Cumulative Remedies.

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

Section 17. Assignment.

(a) This Amendment is personal to the Subdivider, and there shall be no assignment by the Subdivider of its rights or obligations under this Amendment without the prior written consent of the City, which consent shall not be unreasonably withheld. Any attempted assignment by the Subdivider, its successors or assigns, without such prior written consent shall be null and void.

(b) Subdivider hereby agrees not to assign the payment of any monies due the Subdivider from the City under the terms of this Amendment to any other individual(s), corporation(s) or entity(ies). The City retains the right to pay any and all monies due the Subdivider directly to the Subdivider.

Section 18. Discretionary Governmental Actions.

(a) Certain planning, land use, zoning and other permits and public actions required in connection with the Project including, without limitation, the approval of this Amendment, the environmental review and analysis under CEQA or any other statute, and other transactions contemplated by this Amendment are discretionary government actions. Nothing in this Amendment obligates the City or any other governmental entity to grant final approval of any matter described herein. Such actions are legislative, quasi-judicial, or otherwise discretionary in nature. The City cannot take action with respect to such matters before completing the environmental assessment of the Project under CEQA and any other applicable statutes. The City cannot and does not commit in advance that it will give final approval to any matter. The

City shall not be liable, in law or equity, to the Subdivider or any of its executors, administrators, transferees, successors-in-interest or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.

(b) Except to the extent and purpose of completing Phase I and Phase II under Section 2(b)(1) and Section 2(b)(2) above, respectively, and the reimbursement by the City to the Subdivider for such work under Section 3(b) above, neither the City, nor the Subdivider, nor any of their respective executors, administrators, transferees, successors-in-interest or assigns, shall be bound by the terms of this Amendment related to performance of Phase III under Section 2(b)(3) above or the Construction of the Facility unless and until the City's compliance with CEQA is completed and there is no possibility of a challenge pursuant to CEQA.

(c) The Subdivider shall be solely responsible for, indemnify, defend and hold the City harmless from all matters arising from, resulting from or related to any City action in granting, issuing or approving the Land Use Approval, as defined in the following sentence. For purposes of this Amendment, "Land Use Approval" shall mean any benefit arising from the approval of the Project, dedication and acceptance of any easement related to the Project, and any document prepared pursuant to the Surface Mining and Reclamation Act, CEQA or other law, and where such document is approved in conjunction with such Project approval, dedication, acceptance, or use of the easement for Construction of the Facility. Land Use Approval does not include a ministerial permit.

Section 19. Limitations on the City's Obligations.

The City's obligations to pay the Subdivider are subject to availability of revenue from water utility fees levied on the City's customers, and this obligation is subordinate to the pledge of these revenues to any and all bonded indebtedness of the City. In no event is the City pledging or obligating under this Amendment any other revenues, including the City's General Fund revenues, or any real and personal property taxes, sales taxes or any other tax revenues. Further, neither the full faith and credit nor the taxing power of the City is pledged to the funding of any obligation under this Amendment for this Project. The obligations of the City in this Amendment for this Project do not constitute a liability or obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

Section 20. Maintenance of Records.

Records of the Subdivider's expenses pertaining to its performance hereunder shall be kept on a generally recognized accounting basis. All records pertaining to the Subdivider's performance under this Amendment (including, without limitation, the Subdivider's Professional Services contracts and Construction contract for the Facility) shall be maintained and made available in the City of Fresno to the City or its authorized representative(s) upon request during regular business hours throughout the life of this Amendment and for a period of three (3) years after final payment or for any longer period required by law. In addition, all books, documents, papers, and records of the Subdivider pertaining to its performance hereunder shall be available in the City of Fresno to the City or its authorized representative(s) for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. Notwithstanding the foregoing, a copy of any of the Subdivider's professional services contracts or construction contract for the Facility shall be provided by the Subdivider to the City upon the City's request.

This Section 20 shall survive any expiration or termination of the Project, the New Agreement or this Amendment.

Section 21. Title to Certain Documents and License to Certain Software.

All diagrams, surveys, photographs, plans, drawings and specifications, whether in hard-copy or electronic form, for the Project that are prepared pursuant to this Amendment are and shall, upon preparation, remain the property of the City and shall be turned over to the City upon expiration or termination of the Project, the New Agreement or this Amendment; or upon default by the Subdivider. The Subdivider shall cause all subcontractors or subconsultants who prepare design documents for the Project to assign to the City all rights throughout the world in the nature of copyright and trademark in and to all versions of such design documents. The City shall have the right to distribute or to cause the distribution of such drawings and specifications to third parties as may reasonably be necessary in connection with the Project. The Subdivider shall provide the City with one complete set of CAD/System disk files of drawings and complete disk files of specifications in an electronic format compatible with the City's format. Additionally, the complete right to or perpetual license for all proprietary software, if any, shall be transferred to the City.

Section 22. Confidential Information.

Reports, information, or other data prepared or assembled by the Subdivider pursuant to this Amendment shall not be made available to any individual or organization not associated with the Project by the Subdivider without the prior written approval of the City. During the term of the New Agreement, and thereafter, the Subdivider shall not, without the prior written consent of the City, disclose to anyone not associated with the Project any Confidential Information, as defined in the following sentence. The term "Confidential Information," for purposes of this Amendment, shall include all proprietary and confidential information of the City that does not constitute a public record pursuant to Government Code Section 6250 et seq., including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential with and proprietary to the City.

This Section 22 shall survive any expiration or termination of the Project, the New Agreement or this Amendment.

Section 23. Notices.

Any notice required or intended to be given to either Party under the terms of this Amendment shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the Party to which notice is to be given at the Party's address set forth below or at such other address as the Party may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given

at the time of the mailing thereof.

City:

City of Fresno
Scott Mozier, P.E., Assistant Director
Department of Public Works
2600 Fresno St.
Fresno, CA 93721-3623
Phone: (559) 621-8811
FAX: (559) 488-1045

Subdivider:

Union Community Partners
ATTN: W. Allen Bennett
548 W. Cromwell, Suite 104
Fresno, CA 93711
Phone: (559) 439-4464
FAX: (559) 439-4477

ATTACHMENT A-1

I. PROJECT DESCRIPTION

The Project is City Project No. J-5359 and includes design and construction of a water conveyance system and appurtenant facilities (the "Facility" as defined in Section 1 of **Attachment A**) as approved by the City to include the following:

Design and construct a 24-inch raw water pipeline from the existing supply pipeline at North Temperance Avenue and the Gould No. 97 Canal, to the proposed City of Fresno water storage tank site at 6736 East Dakota Avenue.

The Project includes, without limitation, the following Professional Services and Construction Elements:

II. PROFESSIONAL SERVICES ELEMENTS

Design services including, without limitation, the following:

- Preparation of Plans and Specifications including civil, mechanical, electrical, plumbing, structural and architectural services deemed necessary by the City.
- Geotechnical services as necessary.
- Topographic surveys as necessary.
- Coordination with the Fresno Irrigation District for design of the connection point from the existing supply pipeline at North Temperance Avenue and the Gould No. 97 Canal at the south side of Gould No. 97 Canal.
- Preparation of bid documents and bidding of general construction contract.
- Construction management of the Project, including labor compliance.

Project management including, without limitation, the following:

- Accounting.
- Oversight of professional services contracts.
- Quality assurance.
- Timely payment of labor and materials.
- Payment of City Inspection Fees, Plan Review Fees and Wet-Tie Fees, if any.
- Other support services essential to the design and construction of the Facility.

III. CONSTRUCTION ELEMENTS

- Trenching.
- Pipe Installation and testing.
- Backfill and compaction.
- Construction of all appurtenances as determined necessary by the City.
- Road surfacing as determined necessary by the City and Fresno County.
- Frontage improvements and landscaping, if any, as approved by the City on the final plans.
- Clean up of construction site.
- Obtaining, and paying for, City and County of Fresno encroachment and street work permits as determined necessary by the City.

ATTACHMENT A-2

I. PROVIDERS OF PROFESSIONAL SERVICES AND COST ESTIMATE

UCP Montecito, LLC:	
Project Management Fee*	\$24,500.00**
City Inspection Fees (LS)	0.00
Plan Review Fees (LS)	0.00
Wet-Tie Fees (LS)	0.00
Provost & Pritchard Engineering Group, Inc.:	
Construction Staking (Office and field time)	\$5,500.00
Construction Observation	1,250.00
Construction Administration Services	1,000.00
Meetings and Contract Administration	1,000.00
As-built survey and plan preparation	<u>1,250.00</u>
Total Design and Engineering Services (Not to Exceed)	\$10,000.00***
Total Cost Estimate for Professional Services	\$34,500.00

Notes:

*The Project Management Fee is a lump sum fee based upon seven percent (7%) of the not to exceed construction cost, not including costs for City and County Encroachment Permits. Such fee includes all expenses incurred by UCP Montecito, LLC in performance of the project management services except as otherwise expressly set forth above.

**Represents seven percent (7%) of total not to exceed construction cost of \$350,000.

***Includes all expenses incurred by Provost & Pritchard Engineering Group, Inc. in performance of design and engineering services.

Note: For purposes of the Budget Allocation, the Cost Estimate for Construction is as follows:

Construction (Not to Exceed)	\$350,000.00****
County Encroachment Permit (LS)	0.00
City Encroachment Permit (LS)	<u>20.00</u>
Subtotal	\$350,020.00
Professional Services (Not to Exceed)	<u>\$ 34,500.00</u>
Total Budget Allocation	\$384,520.00

****The Construction cost shall not exceed \$350,000.00 and shall be based on the following final cost break-out as set forth on the following page.

SURFACE WATER CONSTRUCTION BY NELSON (INCLUDING LABOR, OVERHEAD, & PROFIT)

1	2,000	LF	24" C-900 Purple Pipe	\$ 62.00	LF	\$ 155,620
2	1	EA	24" x 8" Blow Off	\$ 6,000.00	EA	\$ 6,000.00
3	4	EA	24" Long-radius 90 degree	\$ 4,500.00	EA	\$ 18,000.00
4	6	EA	60" Structure	\$ 6,500.00	EA	\$ 39,000.00
5	7	EA	24" Tee	\$ 3,000.00	EA	\$ 21,000.00
6	1	EA	24" Mega-Lug & Restraint	\$ 18,000.00	EA	\$ 18,000.00
7	2	EA	24" 45 degree	\$ 1,500.00	EA	\$ 3,000.00
8	3	EA	24" 11.25 degree	\$ 1,500.00	EA	\$ 4,500.00
9	2	EA	24" Gate Valve	\$ 20,000.00	EA	\$ 40,000.00
			TOTAL SURFACE WATER			\$ 305,120

CONSTRUCTION BY NELSON (INCLUDING LABOR, OVERHEAD, & PROFIT)

ADDITIONAL ITEMS FOR SURFACE WATER CONSTRUCTION & CONTINGENCY

1	1	TM	Connect to Existing Pipe w/90 degree	\$ 8,446.59	TM	\$ 8,446.59
2	1	LS	Material Delivery to site	\$ 3,433.60	LS	\$ 3,433.60
3	1	TM	Compaction Testing (Krazan)	\$ 3,400.00	TM	\$ 3,400.00
4	1	LS	Construction Contingency	\$ 29,599.81	LS	\$ 29,599.81
			TOTAL ADDITIONAL ITEMS FOR SURFACE WATER CONSTRUCTION & CONTINGENCY			\$ 44,880.00

CONSTRUCTION TOTAL (Not to Exceed) **\$ 350,000**

II. SCOPE OF WORK

A. PROVOST & PRITCHARD ENGINEERING GROUP, INC.

Surveying

1. Construction surveying of the proposed raw water pipeline alignment.
2. Establish control points with horizontal and vertical values to enhance the topographical survey and ensure compliance with plans provided by Provost & Pritchard Engineering Group, Inc.

Civil Engineering Design Services

1. Design 24-inch raw water pipeline in compliance with City standards. This may include the use of purple pipe (C-905) acceptable to City.
2. Design alignment of raw water pipeline to avoid potential conflicts with existing utilities and private irrigation pipelines and structures. The alignment of the raw water pipeline will also be designed to minimized the impact of the pipeline on existing roadway paving.
3. Coordination meetings (maximum of 8 hours) with City, Fresno Metropolitan Flood Control District, and Fresno Irrigation District staffs to discuss alignment coordination, permits and construction issues.
4. Prepare Opinion of Probable Improvement Cost (OPIC)—i.e., the Cost Estimate.
5. Prepare 24" Raw Water Pipeline plans for City review and approval for construction and/or encroachment permits. The plans consist of the following seven (7) sheets:
 - Cover sheet with construction and special notes (Sheet No. 1 dated 8-18-10 and approved by the City Engineer) 1 sheet
 - Plan and profile and construction details (Sheet Nos. 2 through 7 dated 8-18-10 and approved by the City Engineer) 6 sheets
 - Total 7 sheets
6. Prepare and process, through the City, any Grant of Easement for the raw water pipeline.

B. UCP MONTECITO, LLC

Project Management

1. Accounting, bookkeeping, invoicing and payroll services.
2. Development and administration of Professional Services contract.
3. Coordination with the City.

4. Oversight of construction contract.
5. Bid services.
6. Project coordination and quality assurance.
7. Timely payment of labor and materials.
8. Payment of City Inspection Fees, Plan Review Fees and Wet-Tie Fees, if any.
9. Records maintenance.

Bid Services

1. Prepare bid packages and distribute to potential bidders interested in the Project.
2. Compile and coordinate any addendum with City approval.
3. Schedule a bid opening and provide verification of bidders' credentials.
4. Evaluate bids, including any alternative bid, and provide the City with a recommendation regarding the lowest responsive and responsible bidder.

Construction Administration Services

1. Facilitate and monitor record review and submittal processes.
2. Review work progress in the field prior to contractor invoicing to ensure that appropriate and timely invoicing is achieved.
3. Facilitate and monitor all construction data throughout the term of the contract. This work will include Requests for Information, Requests for Proposals, field directives, contractor cost proposals and assessment, change orders, contract delays, and testing and inspection results.
4. Provide As-Built Plans of the Project and a Notice of Completion of the Project to the City.

Labor Compliance Services

1. Prepare pre-construction prevailing wage labor compliance documents.
2. Review contractor's license and status.
3. Provide weekly review of contractor's certified payrolls.
4. Provide support for any labor-related questions from the contractor or the City.
5. Conduct a total of three (3) on-site employee interviews.

6. Provide a letter to the general contractor regarding any discrepancy or mistake identified upon review of the contractor's or subcontractors' certified payrolls.
7. Provide a final report for verification of a complete certified payroll review and status.

Assumptions

1. There will be no ties into the raw water pipeline between the connection with the existing supply pipeline at North Temperance Avenue and the Gould No. 97 Canal and the City's water storage tank site.
2. The City will allow movement of the raw water pipeline to avoid potential conflicts with utilities and other facilities and structures.
3. Fresno Irrigation District facilities are located at the Gould No. 97 Canal only. All other irrigation systems are privately owned. Any changes to the privately-owned systems will require coordination with the private owners only and not with Fresno Irrigation District officials.

Exclusion

1. Property and boundary surveys.

III. PROJECT PERFORMANCE SCHEDULE

<u>Task</u>	<u>Complete By</u>
1. Obtain City Plan Approvals	June 30, 2011
2. Obtain Bids for Construction from Qualified Contractors	September 16, 2011
3. Begin Construction	October 10, 2011
4. Complete Construction	November 19, 2011
5. Project Completion - Provide Final Documents to the City	December 3, 2011

ACKNOWLEDGMENT

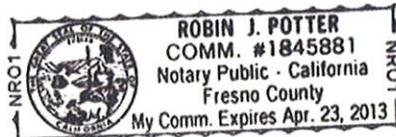
State of California
County of Fresno)

On May 19, 2011 before me, Robin J. Potter, Notary Public
(insert name and title of the officer)

personally appeared Dustin L. Bogue and William J. La Herran,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



Signature Robin J. Potter (Seal)
Notary Public