1. CLOSED SESSION.  6:00 PM

(Members of the public may address the City Council / Redevelopment Agency on the following closed session items. Speakers are limited to a five (5) minute presentation. Detailed guidelines are posted on the Council Chamber informational table.

A. Conference with Labor Negotiators, Pursuant to Government Code Section 54957.6, Agency Designated Representatives: City Manager Rath, City Attorney Vaughn, Human Resources Director Mallonee, Legal Counsel Tuffo; Interim Police Chief Knapp, Fire Chief Quintini, City Treasurer Brazil, Brent Kuhn, Vavrinek, Trine, Day & Co. LLP; Employee Organizations: Los Banos Police
Officers Association (LBPOA), Los Banos Police Sergeants Association (LBPSA), Los Banos Police Dispatchers/Community Services Officers Association (LBPDCSOA), Los Banos Fire Fighters Association (LBFFA).

2. CALL TO ORDER. 7:00 PM
3. PLEDGE OF ALLEGIANCE.
4. ROLL CALL: (City Council and Redevelopment Agency Board Members)
   Faria __, Sousa __, Stone __, Villalta __, Jones __
5. CONSIDERATION OF APPROVAL OF AGENDA.
6. PRESENTATIONS.
   A. Girl Scouts Make the World a Better Place Week Proclamation.
   B. Welcome Home Vietnam Veterans Day Proclamation.
   C. Cesar Chavez Day Proclamation.
7. PUBLIC FORUM. (Members of the public may address the City Council / Redevelopment Agency Members on any item of public interest that is within the jurisdiction of the City Council / Redevelopment Agency; includes agenda and non-agenda items. No action will be taken on non-agenda items. Speakers are limited to a five (5) minute presentation. Detailed guidelines are posted on the Council Chamber informational table.)
8. CONSIDERATION OF APPROVAL OF CONSENT AGENDA. (Items on the Consent Agenda are considered to be routine and will be voted on in one motion unless removed from the Consent Agenda by a City Council / Redevelopment Agency Member.)
   A. Check Register for #120775 – #121053 in the Amount of $2,290,170.41.
      Recommendation: Approve the check register as submitted.
      Recommendation: Approve the minutes as submitted.
   C. Street Closure Request to Hold the Annual Cesar Chavez Day March and Rally on Saturday, March 27, 2010 from 12:00 p.m. to 1:00 p.m. Starting at Los Banos City Hall and Ending at The City Park on Pacheco Boulevard with Road Usage in the Downtown Area to Include Parts of J and 7th Streets.
      Recommendation: Approve the request as submitted.
D. Street Closure Request for the Los Banos Chamber of Commerce to Hold the Annual Downtown Spring Street Faire on Saturday, April 17, 2010 from 5:00 a.m. – 6:00 p.m. In the Downtown Area to Close Main Street from “K” Street to “H” Street and Close through Traffic on I Street and J Street.

Recommendation: Approve the street closure request as submitted.

E. City Council Resolution No. 5218 – Authorizing Entering Into a Lease Agreement Between the City of Los Banos and Marlene Pennington for Rental of the Ranchwood Park Facility Located at 515 Stonewood Drive for the Purpose of Providing Pre-School and Child Care Services.

Recommendation: Adopt the resolution as submitted.

F. City Council Resolution No. 5219 – Approving the 2010/2011 Transportation Planning Work Program and Comprehensive Planning Work Program and Budget for Merced County Association of Governments (MCAG) and Allocating $111,377 to the 2010/2011 Fiscal Year For the Annual MCAG Contract.

Recommendation: Adopt the resolution as submitted.

G. City Council Resolution No. 5220 – Authorizing the Public Works Director to Sign Master Agreement and Future Agreements Relating to State and Federal Transportation Projects.

Recommendation: Adopt the resolution as submitted.


Recommendation: Adopt the resolution as submitted.


A. City Council Resolution No. 5222 – Adopting a Revised Budget for the 2009/2010 Fiscal Year as it Pertains to the Landscaping and Lighting Assessment Districts.

Recommendation: Receive staff report and adopt the resolution as submitted.

11. REDEVELOPMENT AGENCY UPDATE.

12. ADVISEMENT OF PUBLIC NOTICES. (Three Reports)

13. CITY MANAGER / EXECUTIVE DIRECTOR REPORT.
14. CITY COUNCIL / REDEVELOPMENT AGENCY MEMBER REPORTS.
   A. Tom Faria
   B. Joe Sousa
   C. Elizabeth Stone
   D. Mike Villalta
   E. Mayor Tommy Jones

15. MISCELLANEOUS INFORMATION IN CITY COUNCIL PACKET, NO ACTION NECESSARY.

16. ADJOURNMENT.
   A. Adjourn to 6:00 p.m., Thursday, March 18, 2010 to Attend a Workshop to Discuss the Innovation Place Incubator Project in the City Council Chambers, 520 J Street, Los Banos, California.

I hereby certify under penalty of perjury under the laws of the State of California, that the foregoing agenda was posted on the City Hall bulletin board not less than 72 hours prior to the meeting.

Lucille L. Mallonee, City Clerk
Dated this 12th day of March 2010
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Total for Valid Checks: 2,290,170.41

Total Valid Checks: 245
Total Void Checks: 3
Total Checks: 248

Break in Check Sequence due to the following
Check # 120893-120922, 120942 (Payroll Checks)
The following closed session item was held prior to the City Council Meeting at 6:00 p.m.

CLOSED SESSION – CONFERENCE WITH LABOR NEGOTIATORS, PURSUANT TO GOVERNMENT CODE SECTION 54957.6, AGENCY DESIGNATED REPRESENTATIVES: CITY MANAGER RATH, CITY ATTORNEY VAUGHN, HUMAN RESOURCES DIRECTOR MALLONEE, LEGAL COUNSEL TUFFO; INTERIM POLICE CHIEF KNAPP, FIRE CHIEF GUINTINI, CITY TREASURER BRAZIL, JOE AQUIRAR, VAVRINEK, TRINE, DAY & CO. LLP; EMPLOYEE ORGANIZATIONS: LOS BANOS POLICE OFFICERS ASSOCIATION (LBPOA), LOS BANOS POLICE SERGETANTS ASSOCIATION (LBPSA), LOS BANOS POLICE DISPATCHERS/COMMUNITY SERVICES OFFICERS ASSOCIATION (LBPDCSOA), LOS BANOS FIRE FIGHTERS ASSOCIATION (LBFFA). Informational item only, no action taken.

CALL TO ORDER: Mayor Jones called the City Council / Redevelopment Agency Meeting to order at the hour of 7:00 p.m.

PLEDGE OF ALLEGIANCE. Interim Police Chief Knapp led the pledge of allegiance.

ROLL CALL – MEMBERS OF THE CITY COUNCIL / REDEVELOPMENT AGENCY PRESENT: Tom Faria, Joe Sousa, Elizabeth Stone, Mike Villalta, and Tommy Jones

STAFF MEMBERS PRESENT: City Attorney Vaughn, City Clerk/Human Resources Director Mallonee, City Treasurer/Accountant II Brazil, City Manager Rath, Fire Chief Guintini, Interim Police Chief Knapp, Public Works Director/City Engineer Fachin, Planning Director Fitzgerald, Redevelopment Agency Director Post, and Information Technology Director Spalding.

CONSIDERATION OF APPROVAL OF AGENDA: Motion by Stone, seconded by Sousa to approve the agenda as submitted. The motion carried by the affirmative action of all City Council / Redevelopment Agency Members present.

PRESENTATIONS PROCLAMATION RECOGNIZING RON INGRAM. Mayor Jones presented the proclamation to Mr. Ingram, former Airport Advisory Commissioner, who spoke of his service on the Airport Commission, encouraged others to apply for vacancies when they are open, be a part of a service club, and stated that nothing will make you feel as good as giving something back to your community.
PUBLIC FORUM: MEMBERS OF THE PUBLIC MAY ADDRESS THE COUNCIL ON ANY ITEM OF PUBLIC INTEREST THAT IS WITHIN THE JURISDICTION OF THE CITY; INCLUDES AGENDA AND NON-AGENDA ITEMS. NO ACTION WILL BE TAKEN ON NON-AGENDA ITEMS. SPEAKERS ARE LIMITED TO A FIVE (5) MINUTE PRESENTATION. DETAILED GUIDELINES ARE POSTED ON THE COUNCIL CHAMBER INFORMATIONAL TABLE. EILEEN FORTE, Los Banos, spoke on behalf of Gene Forte who was prevented from speaking at the public forum due to a restraining order that the Mayor had enacted against him, read an electronic message that was posted online and addressed to Mr. Forte from Anthony Donaldson, and attempted to play a recorded audio message; JOE COX, Los Banos, reminded the community about the March 17, 2010 complementary breakfast for senior citizens; ANTHONY DONALDSON, Los Banos, spoke of his regretful words towards Gene Forte and presented an apology to Mr. Forte, his fellow peers, his family, and anyone who may have been affected negatively by his words; LARRY LEONARDO, City of Los Banos Airport Advisory Commission Chairperson, thanked Mayor Jones for presenting the proclamation to Mr. Ingram and thanked Mr. Ingram for his leadership and service to the Commission and to the community; LEO _ [last name was not clear] on behalf of Jong Park of Total Fashion, spoke of how Mr. Park was recently almost cited for displaying blankets outside his business and would like to know what he can do in order to put the blankets back up and inquired if the new sign ordinance provision would allow for him to put his blankets up; Mayor Jones referred Mr. Leo and Mr. Park to address their questions to Planning staff after the Council meeting; KEITH SNOW, Los Banos, spoke of the need to forgive people's actions and to take responsibility for actions, an ad that he will be putting in the Los Banos Enterprise regarding his campaign to run for mayor, having learned a lot about the City, the need for more volunteers, and the need to create revenue; NIKKI TUFT, Los Banos and Allied Waste Services, spoke regarding Spring cleanup event being held on April 3, 2010 from 7:00 a.m. to 2:00 p.m. at Ranchwood Park and at the Fairgrounds, also hosting the first ever City of Los Banos community reuse event to recycle while preserving local resources at the Fairgrounds at that time, Los Banos proving to be a leader in their recycling efforts, and encouraged all to participate; NIECHI DOMINGUEZ, Los Banos and Chairperson of the Cesar Chavez Day event, spoke of the Cesar Chavez Day events going on March 27, 2010 at Pacheco Park and encouraged all to come out and take part in the event; GENEVA BRETT, Los Banos, spoke regarding her trip to Washington, D.C. on behalf of the Buffalo Soldiers and Los Banos Chamber of Commerce, thanked several of those that support these efforts, wonderful opportunity to be part of American history, AM Los Banos at Country Waffles on March 4, 2010 at 7:30 a.m. is a Chamber of Commerce event, and a Milliken Museum Society fundraiser on Friday, March 5, 2010 at Miller and Lux; DAVID OFWONO, President of the Los Banos Buffalo Soldiers Association, spoke of a three day event regarding the Buffalo Soldiers historical trail on May 20, 2010 beginning at the lumbar gate of the Presidio of San Francisco, this being an opportunity to promote diversity, the need to do something special in Los Banos for this historical trail, invited all to participate in this event, and having already begun planning for the 2012 event; SURJIT RANDHAWA, Los Banos, spoke of being currently enrolled in the Neighborhood Stabilization Program, having been given permission to look for a home and found one but it needs too many repairs to be eligible for the program, would like to sit down with representatives tomorrow, and the rules changing
every few days; Mayor Jones advised Mr. Randhawa to speak with Redevelopment Agency Director Post. No one else came forward to speak and the public forum was closed.

**CONSIDERATION OF APPROVAL OF CONSENT AGENDA.** Motion by Stone, seconded by Sousa to approve the consent agenda as follows: Check Register for #120547 – #120774 in the Amount of $820,777.64; City Council / Redevelopment Agency Meeting Minutes: October 21, 2009, November 4, 2009, November 18, 2009, December 16, 2009, February 17, 2010; City Council Resolution No. 5211 – Authorizing Entering into a Lease Renewal Agreement with Sagouspe Enterprises LLC for an Airport Ground Lease at the Los Banos Municipal Airport; City Council Resolution No. 5212 – Approving the Purchase of a Home Located at 1920 Aspen Court (APN 431-210-016) with Neighborhood Stabilization Program Funding, Not to Exceed $110,000; City Council Resolution No. 5213 – Approving the Purchase of a Home Located at 160 Toscano Court (APN 082-420-092) with Neighborhood Stabilization Program Funding, Not to Exceed $98,000; City Council Resolution No. 5214 – Approving the Purchase of a Home Located at 351 N. Santa Ana (APN 082-391-017) with Neighborhood Stabilization Program Funding, Not to Exceed $100,000; City Council Resolution No. 5215 – Approving the Purchase of a Home Located at 827 Olivewood Drive (082-292-010) with Neighborhood Stabilization Program Funding, Not to Exceed $125,235; City Council Resolution No. 5216 – Approving the Purchase of a Home Located at 1444 Nottingham Circle (424-135-003) with Neighborhood Stabilization Program Funding, Not to Exceed $126,720; City Council Resolution No. 5127 – Approving the Purchase of a Home Located at 808 La Mesa Court (082-503-011) with Neighborhood Stabilization Program Funding, Not to Exceed $100,000; Los Banos Redevelopment Agency Resolution No. 2010-01 – Approving a Month to Month Lease Agreement Between Los Banos Redevelopment Agency and Mountain Crisis Services for Police Annex Office Space. The motion carried by the affirmative action of all City Council / Redevelopment Agency Members present.

**REDEVELOPMENT AGENCY UPDATE.** Redevelopment Agency Director Post thanked Council for their approval of the resolutions to purchase homes with Neighborhood Stabilization Program (NSP) funds, spoke regarding the process going, meeting our goal of spending 75% of the funding by March 31, 2010, the community center construction being 54% complete and the rain causing some setbacks but we are still on target for June completion date, purchasing as much furniture for the community center locally as possible, currently up to 20 bookings with 14 paid deposits, Habitat for Humanity having been able to purchase 7 homes with their funding, lobbying in Washington D.C. next week to do economic development outreach for the community of Los Banos; Mayor Jones commended Redevelopment Agency Director Post for a great job on the NSP; Council Member Faria spoke of NSP working well and wanted to make sure Mr. Randhawa’s concerns were addressed; Redevelopment Agency Director Post spoke of having been in contact with Mr. Randhawa, his need to work with the MCAG contact, her suggestions for Mr. Randhawa on what he may do, and how she needs to remain unbiased; Council Member Faria spoke regarding an email he received from an individual who was trying to buy a house that the City had purchased; City Manager Rath explained that situation and Redevelopment Agency
Director Post spoke in more detail to the process of buying these homes through Fanny Mae and Freddie Mac and the requirements for NSP; Council Member Faria inquired about double bookings at the community center and wanted to ensure that an event serving alcohol in one room would not affect another booking in another room with minors; Redevelopment Agency Director Post explained security requirements on these events.

ADVISEMENT OF PUBLIC NOTICES (No Report).

CITY MANAGER / EXECUTIVE DIRECTOR REPORT. City Manager Rath spoke regarding Merced County’s Recreation Department and PG&E partnering with the City to hold a movie night in August, Ann McCauley raising over $2,200 for this movie night, Comcast donating another $2,000, looking at doing a second movie night this summer, and asked Public Works Director/City Engineer Fachin to report on the movie that will be shown; Public Works Director/City Engineer Fachin announced the plans to show the movie Up on August 28, 2010, the movie is being shown through the County with funding by PG&E; City Manager Rath spoke regarding his upcoming trip to Washington D.C. for One Voice with Merced County Association of Governments (MCAG), Redevelopment Agency Director Post and Council Member Stone to lobby for transportation funding, grant funding, Highway 152 bypass, meeting with Congressman Cardoza and other legislators and their staff, and this being the time of year where all the other counties and cities and trying to get earmarks on bills and legislative acts.

CITY COUNCIL / REDEVELOPMENT AGENCY MEMBER REPORTS.

MIKE VILLALTA: Spoke of the Breakfast for Seniors at 8:30 a.m. on March 17, 2010, the spring cleanup and reuse event on April 3, 2010, the Caesar Chavez Day event on March 27, 2010, Buffalo Soldiers event being a way to honor and recognize them, encouraged students to send a letter to Congress and be a part of the congressional record and in those efforts to contact the Chamber of Commerce, and being glad to see Mr. Ingram recognized with a proclamation tonight.

TOM FARIA: Apologized to the Golden Agers for being unable to serve because he attended the African children’s choir, spoke of the Milliken Museum breakfast on March 5, 2010 at 7:00 a.m., Arbor Day celebration at Southbrook Park at 4:00 p.m. on March 5, 2010, Cesar Chavez Day event on March 27, 2010, Los Banos High School and Los Banos Junior High School band spring concert on March 24, 2010, drive thru dinner fundraiser also being held on March 24, 2010, many fundraisers currently taking place because of so many programs being cut and losing funding, spring clean up event on April 3, 2010, building code complaints regarding citizens putting up sheds that meet code but are of poor quality and would like to see if the City can control the quality, Buffalo Soldiers coming to town on May 21, 2010 and offered his services, and encouraged all to participate.

JOE SOUSA: Spoke of the Arbor Day event on March 5, 2010, this being the 18th year that the City has received Tree City USA recognition, kids getting involved in art work for the event, senior breakfast being a benefit to attend and could pick up on a lot of
pointers for energy rates and how to conserve, thanked staff for their efforts on the community center, it will be a beautiful icon for this City, and glad to see this it being booked up this far in advance.

ELIZABETH STONE: Thanked Redevelopment Agency Director Post and would like to never underscore what are are doing to help those become homeowners through NSP who may not otherwise be able to, a lot of competition with investors buying homes, spoke regarding Arbor Day celebration is being held at Southbrook Park at 4:00 p.m. on March 5, 2010, a graffiti abatement project that is being put together with students from Los Banos High School and service groups on April 7, 2010, monetary prize for the club or group that can cover the most graffiti, and the annual Hobbs run in the preliminary stages to honor the memory of Dustin Hobbs and Giovanni Caropreso being held on April 10, 2010.

MAYOR TOMMY JONES: Spoke of the senior breakfast and thanked Mr. Joe Cox for putting it together; thanked Mr. Ingram and his wife for what they do in volunteering to help the community, Arbor Day event on March 5, 2010 at 4:00 p.m., graffiti abatement event and encouraged all to come out to cleanup the community, will really be a wake up call and a day of fun, always participates in the annual Hobbs run and requested that Mayor Pro Tem Sousa participate this year, thanked staff for their efforts on the movie night, Buffalo Soldiers event and he will offer extra credit for those that write letters to Congress for the historical trail efforts, invited Merced County Supervisor O'Banion to come forward; Merced County Supervisor O'Banion spoke regarding how he is also attending the One Voice trip to Washington D.C., the County is still running, going to be a situation this year that we have never seen before, will not vote to close a library in Merced County, and not being much construction starting up in the County; Mayor Jones pointed out that Los Banos High School teacher Ms. Latta is present with her government class, and thanked Mr. Donaldson who came forward with an apology at the public forum and expressed his appreciation for Mr. Donaldson to make things right after making a mistake.

ADJOURNMENT. The meeting was adjourned at 8:07 p.m.

APPROVED:

Tommy Jones, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk
TO: Mayor and City Council Members  
FROM: Mark B. Knapp, Interim Chief of Police  
DATE: March 17, 2010  
SUBJECT: Cesar Chavez Day March and Rally - Road Usage Request  
TYPE OF REPORT: Consent Agenda  
Recommendations: 
Approve road usage for rally and march. Co-sponsor march.  
Background: 
To accommodate the Annual Cesar Chavez Day March and Rally, organizers request authorization for the related road usage. This event will be on Saturday, March 27, 2010, starting at approximately 12:00 p.m. and ending no later than 1:00 p.m. The march will start at Los Banos City Hall and end at the City Park on Pacheco Boulevard. Road usage in the downtown area will include parts of J and 7th Streets.  
Discussion: 
The Cesar Chavez March and Rally is an annual event, and has been supported by the City in past years.  
Fiscal Impact: 
Minor costs under $500.  
Reviewed By:  
Steve Rath, City Manager
A PLAN FOR PEACE
UN PLAN PARA LA PAZ

On March 27th 2010, individuals along with community-based organizations, would like to invite the Los Banos community and surrounding towns to celebrate the Birthday of Cesar Chavez. Cesar Chavez was a human rights leader that inspired a movement to organize a farm workers union.

Starting with a march at 12 noon from the Los Banos City Hall on 6th and J Street to Pacheco Park on Pacheco Blvd. (Hwy 152). The celebration will consist of artists, speakers, and poets commemorating Cesar Chavez. Performing also will be Azteca danzantes, farm worker musicians, and teatro performers honoring Cesar Chavez's commitment to the struggle of the farm worker. Most importantly, this program will commemorate Cesar Chavez's commitment to non-violence and his leadership as a true peacemaker.

The Los Banos Community and the Cesar Chavez Day Committee is calling for all our surrounding communities to become inspired and participate in this great historical commemoration.

El 27 de Marzo 2010, Individuos junto con Organizaciones de la comunidad quieren invitar a Los Banos Y Los Pueblos cercanos para celebrar Y Honrar El Cumpleanos de Cesar Chavez. Cesar Chavez fue un lider pro-derechos humanos quien inspire un movimento para organizar un sindicato de campesinos.

Empezando con una marcha A las doce de mediodía, desde city hall de Los Baños en la esquina de las calles seis y J. al Parque Pacheco (por la Pacheco y la Siete). La celebración consistirá en diversos artistas, oradores y poetas conmemorando a Cesar Chavez. También habrá danzantes Aztecas, músicos campesinos, presentaciones de teatro honrando el compromiso de Cesar Chavez a la lucha pro-campesino. Y, mas importante, el programa conmemorará el compromiso de Cesar Chavez a la no-violencia y su liderazgo como un verdadero hombre de paz.

La comunidad de Los Baños y el comité de Cesar Chavez hacen un llamado a todos los pueblos cercanos a que se inspiren y participen en este evento histórico.
TO: Mayor and City Council Members
FROM: Mark B. Knapp, Interim Chief of Police
DATE: March 17, 2010
SUBJECT: Street Closure Request for Chamber of Commerce – Downtown Spring Street Faire

TYPE OF REPORT: Consent Agenda

Recommendation:
Authorize street closure.

Background:
The Los Banos Chamber of Commerce is requesting the following street closures on Saturday, April 17, 2010, from 5:00 a.m. through 6:00 p.m. They ask permission to close Main Street from "K" Street to "H" Street and close through traffic on I Street and J Street. This request would allow the Chamber of Commerce to hold their annual Downtown Spring Street Faire. Please refer to attached letter presented by Chamber of Commerce Director John Whala.

Discussion:
The Downtown Spring Street Faire is an annual event, providing a local event that benefits both citizens and business owners.

Fiscal Impact:
Police overtime costs of approximately $700 - $1,000. Fairly minor equipment and Public Works costs.

Reviewed By:

Steve Rath, City Manager
Los Banos City Council  
520 J Street  
Los Banos, CA 93635  

Dear Council Members:  

The Los Banos Chamber of Commerce is requesting the following street closures on Saturday, April 17, 2010 from 5:00 AM through 6:00 PM.  

We request the following closures:  
- Main Street from 'K' Street to 'H' Street  
- Close to through traffic: I Street and J Street.  

The purpose of the closures is to produce the annual Downtown Spring Street Faire that will take place from 8:30 am to 4:00 pm.  

Though closed to through traffic, parking will be allowed on I, J and H Streets to accommodate patrons of downtown businesses open that day.  

Separate activities during the event:  
- The Rotary Club will be putting on a breakfast at the Miller and Lux Building from 7:00 am to 11:00 am.  
- Portable restrooms will be provided 100' west of Main Street on J Street.  
- You will be notified of any other subsequent activities as they come about.  

We intend to attend the March 17th City Council Meeting and will be pleased to answer any questions at that time.  

Sincerely Yours,  

John Whala  
Executive Director  
Los Banos Chamber of Commerce  
(209) 826-2495  
lbcofc@pacbell.net
TO: Honorable Mayor & City Council Members
FROM: Mark Fachin, P.E., Public Works Director/City Engineer
DATE: March 17, 2010
SUBJECT: Lease Agreement between the City of Los Banos and Marlene Pennington for the Ranchwood Park Facility located at 515 Stonewood Drive for the purpose of providing Pre-School and Child Care Services

TYPE OF REPORT: Consent

Recommendation:
That the City Council adopt the Resolution authorizing the Mayor to execute a lease agreement with Marlene Pennington for the Ranchwood Park Facility located at 515 Stonewood Drive for the purpose of providing pre-school and child care services.

Background:
Marlene Pennington, of Pennington’s Little Friends, contacted the City of Los Banos Public Works Department, inquiring as to the availability of a City building to manage her child care business. Ms. Pennington has been in business providing child care for over 28 years in Los Banos. She advised staff that due to the current downturn in the economy, she would like to downsize her business. The Ranchwood Park Facility meets Ms. Pennington’s needs and she is requesting the City enter into a five year lease agreement for rental of the facility.

Discussion:
A lease agreement between the City of Los Banos and Marlene Pennington for the leasing of the Ranchwood Park Facility located at 515 Stonewood Drive for the purpose of providing pre-school and child care services has been prepared for the Council’s review and adoption, if so deemed. The following are the main points of the lease agreement:
1) The term of the lease will be five years, commencing on April 1, 2010.

2) The lease rent will be $1,400.00 per month for the first year, to be increased by 5% per year, per the agreement.

3) A security deposit of $1,400.00 is required by the agreement.

4) All required licenses, permits, or other governmental authorization are to be provided and maintained by the Lessee for the intended purpose, as stated in the lease.

5) The Lessee shall, at its own cost and expense, procure and maintain public liability insurance and premise damage insurance, as stated in the lease.

Currently, the estimated yearly revenue that the Ranchwood Park Facility generates, as based on the last twelve month period, is:

a) Building Rental $5,360.00
b) Contracted Kung Fu Class $2,286.50

Total Yearly Revenue $7,646.50

The first year revenue for this facility that will be generated by this lease is $16,800.00.

The Public Works Department is currently relocating the one contracted Kung Fu class to a different City facility, and future rental requests for this building will also be directed to a different City facility.

**Fiscal Impact:**
$92,808.00 will be received into the General Fund as a result of this five year lease agreement.

**Reviewed by:**

[Signature]

Steve Rath, City Manager

**Attachments:**
Lease Agreement
Resolution
LEASE AGREEMENT BETWEEN
THE CITY OF LOS BANOS AS LESSOR AND MARLENE PENNINGTON AS
LESSEE
[Ranchwood Park Facility]

Preamble

THIS LEASE is entered into on March __, 2010 by and between the CITY OF LOS BANOS, a California municipal corporation, (referred to in this lease as "Lessor") and the MARLENE PENNINGTON, an individual (referred to in this lease as “Lessee”).

Lessor for and in consideration of the rent to be paid by Lessee and of the covenants and provisions to be kept and performed by Lessee under this lease, hereby leases to Lessee, and Lessee agrees to lease from Lessor, the following: the real property and improvements commonly known as the Ranchwood Park Facility located at 515 Stonewood Drive, in the City of Los Banos, County of Merced, California, ("the Premises") consisting of approximately 2500 sq.ft. +/- of indoor space and approximately 5580 sq.ft. +/- of outdoor space (consisting of a fenced in turf area, and a playground area with playground equipment.).

ARTICLE 1. TERM OF LEASE

Section 1.01. Term. The term of this lease is five years and shall commence on April 1, 2010, ("Commencement Date"), and end on March 31, 2015 ("Term"), unless terminated earlier pursuant to the provisions of this lease.

Section 1.02. Holding Over. In the event Lessee holds over and continues in possession of the Premises after expiration of the Original Term, Lessee's continued occupancy of the Premises shall be considered a month-to-month tenancy subject to all the terms and conditions of this lease.

Section 1.03. Early Termination Option. Each party shall have the right to prematurely terminate this Lease (the "Termination Option") at the expiration of any of the first four years of the term of this Lease, subject to the following terms and conditions:

(a) The party exercising the early termination option must give the other party no less than one hundred twenty days advance written notice prior to the expiration of any of the first four years (twelve month periods) of the term of this Lease, of that party's election to exercise this Termination Option ("Lessee's Termination Notice"), time being of the essence; and

(b) If either party properly exercises this Termination Option, the Lease shall expire without further notice on the last day of the yearly term (twelve month period) in which the notice was exercised ("Early Termination Date") and neither party shall thereafter have any further rights or obligations accruing after said Early Termination Date, except those which by the provisions of this Lease expressly survive the expiration of the Lease Term. Rent shall thereafter be payable as scheduled through the Early Termination Date.
ARTICLE 2. RENT

Section 2.01. Rent. Lessee agrees to pay to Lessor during the term of this lease rent as follows:

1. $1,400.00 per month on the first day of each and every month, commencing on the first day of April, 2010, during the first year of the term of this lease.

2. $1,470.00 per month on the first day of each and every month, commencing on the first day of April, 2011, during the second year of the term of this lease.

3. $1,543.00 per month on the first day of each and every month, commencing on the first day of April, 2012, during the third year of the term of this lease.

4. $1,620.00 per month on the first day of each and every month, commencing on the first day of April, 2013, during the fourth year of the term of this lease.

5. $1,701.00 per month on the first day of each and every month, commencing on the first day of April, 2014, during the fifth year of the term of this lease.

In the event rent is not paid within 5 days after due date, Lessee agrees to pay a late charge of $100.00, plus interest at the rate of 10% per annum on the delinquent amount. Lessee further agrees to pay $50.00 for each dishonored bank check. The late charge period is not a grace period, and Lessor is entitled to make written demand for any rent if not paid when due.

Section 2.02. Security Deposit. Lessee shall also pay to Lessor a "Security Deposit" in the amount of $1,400.00. The security deposit will be held by Lessor without interest as security for the full and faithful performance by Lessee of its obligation hereunder, and may be co-mingled with other monies of Lessor. In the event of default by Lessee, Lessor may use all or any part of the security deposit for the payment of any unpaid rent or for any other monies owed by Lessee to Lessor. Upon the termination of this Lease, any portion of the security deposit not so used or applied shall be returned to Lessee, provided Lessee faithfully performs its obligations hereunder, by mail within a reasonable time after the termination of this Lease. The security deposit shall not be applied by the Lessee toward the last month's rent.

ARTICLE 3. USE OF PREMISES

Section 3.01. Permitted Use. During the term of this lease, Lessee shall use the Premises solely for the purpose of providing pre school and child care services and uses ancillary thereto and for no other purpose without the prior written consent of Lessor which shall not be unreasonably witheld.

Section 3.02. Approvals and Licensing. If any license, permit, or other governmental authorization is required for the services and/or activities provided by Lessee in connection with the use or occupancy of the Premises or any portion of the Premises, Lessee shall procure and maintain said approvals and licenses throughout the term of this lease. Failure to procure and maintain said approvals and licenses throughout the term of this lease shall be deemed a material breach of the lease.
Lessee shall notify Lessor immediately upon suspension or revocation of any license, permit, or other governmental authorization.

Section 3.03. Compliance With Laws. Lessee shall, at Lessee’s own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal relating to any use and occupancy of the Premises, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. The violation of any such statute, ordinance, regulation, or requirement shall constitute grounds for termination of this lease by Lessor.

Section 3.04. Prohibited Uses. Lessee shall not use or permit the Premises or any portion of the Premises to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Furthermore, Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises or any part of the Premises.

ARTICLE 4. UTILITIES

Section 4.01. Utilities. Lessee shall pay or cause to be paid, and hold Lessor and Lessor’s property including the Premises free and harmless from all charges for the furnishing of gas, water, electricity, telephone service, and other public utilities to the Premises during the lease’s term, including the removal of garbage and rubbish from the Premises during the term of this lease.

ARTICLE 5. MAINTENANCE ALTERATIONS AND REPAIRS

Section 5.01. Condition of Premises. Lessee accepts the Premises, as well as the Improvements located on the Premises, in their present condition and stipulates with Lessor that the Premises and Improvements are in good, clean, safe, and tenantable condition as of the date of this lease. Lessee further agrees with and represents to Lessor that the Premises have been inspected by Lessee, that it has received assurances acceptable to Lessee by means independent of Lessor or any agent of Lessor of the truth of all facts material to this lease, and that the Premises are being leased by Lessee as a result of its own inspection and investigation and not as a result of any representations made by Lessor or any agent of Lessor except those expressly set forth in this lease.

Section 5.02. Maintenance by Lessor. (a) Lessor shall, at its own cost and expense, maintain in good condition and repair the structural elements of the Building and the electrical, plumbing, heating, ventilation, and air conditioning systems. For purposes of this section, “structural elements” shall mean the exterior roof, exterior walls, structural supports, and foundation of the Building. Lessor shall not be liable for any damages to Lessee or the premises of Lessee resulting from Lessor’s failure to make any repairs required by this section unless written notice of the need for those repairs has been given to Lessor by Lessee and Lessor has failed for a period of 30 days after receipt of the notice, unless prevented by causes not the fault of the Lessor, to make the needed repairs. Notwithstanding anything in this section to the contrary, Lessee shall promptly reimburse Lessor for the full cost of any repairs made pursuant to this section required because of the negligence or other fault, other than
normal and proper use, of Lessee or its employees or agents. Lessor shall be responsible for maintaining the landscaping, parking lot, and all common areas.

Section 5.03. Maintenance by Lessee. Lessee shall be responsible for monitoring and maintaining the cleanliness of all indoor and outdoor space used by Lessee. Lessee shall at its own cost and expense keep and maintain all portions of the Premises and all Improvements located on the Premises in good order and repair and in as safe and clean a condition as they were when received by Lessee from Lessor, reasonable wear and tear excepted. Lessee’s obligation to repair shall specifically include necessary repairs to the interior walls, floor coverings, ceilings, painting and maintenance of interior walls, the interior and exterior portions of all doors, plate glass, for the Premises.

Section 5.04. Alterations and Liens. Lessee shall not make or permit any other person to make any alterations to the Premises or to any Improvements on the Premises without the prior written consent of Lessor. Lessor shall not unreasonably withhold this consent. Lessee shall keep the premises free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted on the Premises at the instance or request of Lessee. Furthermore, any and all alterations, additions, improvements, and fixtures, except furniture and trade fixtures, made or placed in or on the Premises by Lessee or any other person shall on expiration or earlier termination of this lease, become the premises of Lessor and remain on the Premises. Lessor shall have the option, however, on expiration or termination of this lease, of requiring Lessee, at Lessee’s sole cost and expense, to remove any or all such alterations, additions, improvements, or fixtures from the Premises.

Section 5.05. Inspection by Lessor. Lessee shall permit Lessor or Lessor’s agents, representatives, or employees to enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether Lessee is complying with the terms of this lease, for the purpose of doing other lawful acts that may be necessary to protect Lessor’s interest in the Premises, or for the purpose of performing Lessor’s duties under this lease.

Section 5.06. Surrender of Premises. On expiration or earlier termination of this lease, Lessee shall promptly surrender and deliver the Premises to Lessor in as good condition as they are now at the date of this lease, excluding reasonable wear and tear, and repairs required to be made by Lessor under this lease.

ARTICLE 6. INDEMNITY AND INSURANCE

Section 6.01. Indemnification. Lessee shall defend, indemnify, and hold harmless Lessor, its principals, officers, employees, agents, and volunteers from and against any claims, losses, injuries, suits, or judgments and from any and all liability for any and all claims, losses, injuries, suits, or judgments filed or brought by any and all persons (including, without limitation, attorney’s fees, disbursements and court costs) because of, arising from or resulting from, or in connection with the conduct by Lessee of any program, activity or service in, on, or about the premises, or because of or arising from any negligent and or willful act or omission, its principals, officers, agents, employees, volunteers or subcontractors, or in any way connected with the Premises or with any improvements or personal property on the Premises, or some condition of the Premises or some building or improvement on the Premises. The obligation of Lessee imposed by this paragraph shall not apply to any claims, losses, injuries, suits, actions, or judgments, or any liability for any claim, loss, injury, suit,
action or judgment solely attributable to one or more negligent acts or omissions, or to willful or intentional misconduct of Lessor, its principals, officers, agents, employees, volunteers or subcontractors.

Section 6.02. Public Liability and Premises Damage Insurance. Lessee shall, at its own cost and expense, procure and maintain during the entire term of this lease public liability insurance and premises damage insurance insuring Lessor against loss or liability caused by or connected with Lessee’s occupation and use of the Premises under this lease in amounts not less than:

(a) $1,000,000 for injury to or death of one or more persons as a result of any one accident or incident; and

(b) $1,000,000 for damage to or destruction of any property of others.

The insurance required under this section shall be issued by a responsible insurance company or companies authorized to do business in California and shall be in a form reasonably satisfactory to Lessor. Lessee shall within 10 days of the date of this lease, deposit with Lessor a certificate showing that insurance to be in full force and effect.

Section 6.03. Cancellation Requirements. Each of the insurance policies shall be in a form reasonably satisfactory to Lessor and shall carry an endorsement that, before changing or canceling any policy, the issuing insurance company shall give Lessor at least 30 days’ prior written notice. Duplicate originals or certificates of all such insurance policies shall be delivered to Lessor.

ARTICLE 7. DEFAULT, ASSIGNMENT, AND TERMINATION

Section 7.01. Restriction Against Subletting or Assignment. Lessee shall not encumber, assign, or otherwise transfer this lease, any right or interest in this lease, or any right or interest in the Premises or any of the Improvements that may now or hereafter be constructed or installed on the Premises without first obtaining the express written consent of Lessor. Lessee shall not sublet the Premises or any part of the Premises or allow any other person, other than Lessee’s agents, servants, and employees, to occupy the Premises or any part of the Premises without the prior written consent of Lessor. A consent by Lessor to one assignment, one subletting, or one occupation of the Premises by another person shall not be deemed to be a consent to any subsequent assignment, subletting, or occupation of the Premises by another person. Any encumbrance, assignment, transfer, or subletting without the prior written consent of Lessor, whether voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of Lessor, terminate this lease. The consent of Lessor to any assignment of Lessee’s interest in this lease or the subletting by Lessee of the Premises or parts of the Premises shall not be unreasonably withheld.

Section 7.02. Default Defined. The occurrence of any of the following shall constitute a material default and breach of this lease by Lessee:
(a) Any failure by Lessee to pay the rent or to make any other payment required to be made by Lessee under this lease (when that failure continues for 3 days after written notice of the failure is given by Lessor to Lessee).

(b) The abandonment or vacation of the Premises by Lessee (the absence of Lessee from or the failure by Lessee to conduct business on the Premises for a period in excess of 14 consecutive days shall constitute an abandonment or vacation for purposes of this lease).

(c) A failure by Lessee to observe and perform any other provision of this lease to be observed or performed by Lessee, when that failure continues for 30 days after written notice of Lessee’s failure is given by Lessor to Lessee; provided, however, that if the nature of that default is such that it cannot reasonably be cured within 30-day period, Lessee shall not be deemed to be in default if Lessee commences that cure within the 30-day period and thereafter diligently prosecutes it to completion.

(d) The making by Lessee of any general assignment for the benefit of creditors; the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, it is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of Lessee’s assets located at the Premises or of Lessee’s interest in this lease, when possession is not restored to Lessee within 30 days; or the attachment, execution, or other judicial seizure of substantially all of Lessee’s assets located at the Premises or of Lessee’s interest in this lease, when that seizure is not discharged within 30 days.

Section 7.03. Termination of Lease and Recovery of Damages. In the event of any default by Lessee under this lease, in addition to any other remedies available to Lessor at law or in equity, Lessor shall have the right to terminate this lease and all rights of Lessee hereunder by giving written notice of the termination. No act of Lessor shall be construed as terminating this lease except written notice given by Lessor to Lessee advising Lessee that Lessor elects to terminate the lease. In the event Lessor elects to terminate this lease, Lessor may recover from Lessee:

(a) The worth at the time of award of any unpaid rent that had been earned at the time of termination of the lease;

(b) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination of the lease until the time of award exceeds the amount of rental loss that Lessee proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term of this lease after the time of award exceeds the amount of rental loss that Lessee proves could be reasonably avoided; and

(d) Any other amount necessary to compensate Lessor for all detriment proximately caused by Lessee’s failure to perform its obligations under this lease.

Section 7.04. Lessor’s Right to Continue Lease in Effect.
(a) If Lessee breaches this lease and abandons the Premises before the natural expiration of the term of this lease, Lessor may continue this lease in effect by not terminating Lessee's right to possession of the Premises, in which event Lessor shall be entitled to enforce all its rights and remedies under this lease, including the right to recover the rent specified in this lease as it becomes due under this lease. For as long as Lessor does not terminate this lease, Lessee shall have the right to assign or sublease the Premises with the Lessor's prior written consent. Lessor shall not unreasonably withhold consent.

(b) No act of Lessor, including but not limited to Lessor's entry on the Premises, efforts to relet the Premises, or maintenance of the Premises, shall be construed as an election to terminate this lease unless a written notice of that intention is given to Lessee or unless the termination of this lease is decreed by a court of competent jurisdiction.

Section 7.05. Lessor's Right to Relet. In the event Lessee breaches this lease, Lessor may enter on and relet the Premises or any part of the Premises to a third party or third parties for any term, at any rental, and on any other terms and conditions that Lessor in its sole discretion may deem advisable, and shall have the right to make alterations and repairs to the Premises. Lessee shall be liable for all of Lessor's costs in reletting, including but not limited to remodeling costs necessitated by any modifications made by Lessee and required for the reletting. In the event Lessor relets the premises, Lessee shall pay all rent due under and at the times specified in this lease, less any amount or amounts actually received by Lessor from the reletting.

Section 7.06. Lessor's Right to Cure Lessee Defaults. If Lessee breaches or fails to perform any of the covenants or provisions of this lease, Lessor may, but shall not be required to, cure Lessee's breach. Any sum expended by Lessor, with the then maximum legal rate of interest, shall be reimbursed by Lessee to Lessor with the next due rent payment under this lease.

Section 7.07. Cumulative Remedies. The remedies granted to Lessor in this Article shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law or provided in this lease.

Section 7.08. Waiver of Breach. The waiver by Lessor of any breach by Lessee of any of the provisions of this lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee either of the same or another provision of this lease.

ARTICLE 8. MISCELLANEOUS

Section 8.01. Discrimination Prohibited. Neither Lessee nor any officer, employee, or agent of Lessee shall discriminate in the employment of persons providing services on the premises in any facility the use of which is authorized by this Agreement on account of race, color, national origin, ancestry, religion, sex, physical handicap, or medical condition, in violation of any federal or state law.

Section 8.02. Force Majeure--Unavoidable Delays. If the performance of any act required by this lease to be performed by either Lessor or Lessee is prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, restrictive governmental laws or regulations, or any other cause except financial inability that is not the fault of the party required to
perform the act, the time for performance of the act will be extended for a period equivalent to the
period of delay, and performance of the act during the period of delay will be excused.

Section 8.03. Attorneys’ Fees. If any litigation is commenced between the parties to this lease
concerning the Premises, this lease, or the rights and duties of either in relation to the Premises or to
this lease, the party prevailing in that litigation shall be entitled to, in addition to any other relief that
may be granted in the litigation, a reasonable sum as and for its attorneys’ fees in that litigation that
are determined by the court in that litigation or in a separate action brought for that purpose.

Section 8.04. Notices. Except as otherwise expressly provided by law, any and all notices or
other communications required or permitted by this lease or by law to be served on or given to either
party to this lease by the other party to this lease shall be in writing and shall be deemed duly served
and given when personally delivered to the party to whom they are directed, or in lieu of personal
service, when deposited in the United States mail, first-class postage prepaid, addressed to:

Lessor
City of Los Banos
520 J Street
Los Banos, CA 93635

Lessee
Marlene Pennington
3572 San Francisco Court
Merced, CA 95348

Either party, Lessor or Lessee, may change its address for the purpose of this section by giving written
notice of that change to the other party in the manner provided in this section.

Section 8.05. Binding on Successors. This lease shall be binding on and shall inure to the
benefit of the successors and assigns of Lessor and Lessee, but nothing in this section shall be
construed as a consent by Lessor to any assignment of this lease or any interest therein by Lessee
except as provided this lease.

Section 8.06. Partial Invalidity. If any provision of this lease is held by a court of competent
jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this lease shall
remain in full force and effect unimpaired by the holding.

Section 8.07. Sole and Only Agreement. This instrument constitutes the sole and only
agreement between Lessor and Lessee respecting the Premises, the leasing of the Premises to Lessee,
or the lease term created under this lease, and correctly sets forth the obligations of Lessor and Lessee
to each other as of its date. Any agreements or representations respecting the Premises or their leasing
by Lessor to Lessee not expressly set forth in this instrument are null and void.

Section 8.08. Time of Essence. Time is expressly declared to be of the essence in this lease.

Section 8.09. No Partnership or Joint Venture. Nothing in this lease shall be construed to
render Lessor in any way or for any purpose a partner, joint venturer, or associate in any relationship
with Lessee other than that of Lessor and Lessee, nor shall this lease be construed to authorize either to
act as agent for the other.
IN WITNESS THEREOF, this Agreement was executed by the parties thereto on the date set forth above.

LESSEE:

By: ____________________________
    Marlene Pennington

LESSOR:
CITY OF LOS BANOS,

By: ____________________________
    Tommy Jones, Mayor

ATTEST:

____________
Lucille Mallonee, City Clerk

APPROVED AS TO FORM:

________________
William A. Vaughn
City Attorney
RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS AUTHORIZING ENTERING INTO A LEASE AGREEMENT BETWEEN THE CITY OF LOS BANOS AND MARLENE PENNINGTON FOR RENTAL OF THE RANCHWOOD PARK FACILITY

WHEREAS, Marlene Pennington has requested the City of Los Banos enter into a lease agreement for rental of the Ranchwood Park Facility for child care use; and

WHEREAS, the term of the lease is five years, commencing on April 1, 2010 and ending on March 31, 2015; and

WHEREAS, commencing on April 1, 2010, Marlene Pennington agrees to pay $1,400.00 per month during the first year of lease, and to a 5% increase each subsequent year, as described in the terms of lease; and

WHEREAS, said lease agreement, as presented, has been prepared by the City Attorney of the City of Los Banos; and

WHEREAS, the City Council of the City of Los Banos designates the Mayor to sign and execute the lease agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Los Banos does hereby approve the lease agreement between the City of Los Banos and Marlene Pennington, and the designation of the Mayor to sign and execute the lease agreement as presented.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on the 17th day of March 2010, by Council Member _____ who moved its adoption, which motion was duly seconded by Council Member _____ and the Resolution adopted by the following vote:

AYES:  
NOES:  
ABSENT:  

APPROVED:

__________________________
Tommy Jones, Mayor
ATTEST:

Lucille L. Mallonee, City Clerk
Recommendation:
That the City Council adopt the Resolution approving the 2010/2011 Transportation Planning Work Program and Comprehensive Planning Work Program and Budget for MCAG and allocate $111,377 to the 2010/2011 Fiscal Year for the annual MCAG Contract.

Background:
The City Of Los Banos contracts with the Merced County Association of Governments (MCAG) on an annual basis to provide a variety of services ranging from overseeing transportation funds to grant research and writing.

As the Regional Transportation Planning Agency and Metropolitan Planning Organization, MCAG is the primary transportation facilitator in Merced County. Responsibilities range from acquiring priority projects to assuring money accepted for transportation has been properly utilized. MCAG must also be in the forefront of coordinated regional transportation planning activities, and to do so, requires program support. Work elements of the Transportation Planning Work Program seek to maintain a quality improvement program and provide additional means to successfully accomplish the goals and objectives established by the MCAG Governing Board.
The Comprehensive Planning Work Program deals with those elements of the MCAG operation not directly related to transportation, although transportation may be involved in each of the Comprehensive Planning Work Elements.

Los Banos joins the other incorporated cities within Merced County in contracting with MCAG to provide services under these Work Programs. Contributions are based upon a formula using each city’s population. With a population of 36,198, as provided by the Department of Finance as of 1/1/09, the City of Los Banos' contribution would be 14.12% of the overall cost for service. This amounts to $11,603 for regular activities; $18,824 for transportation services; and $15,950 for the City’s One Voice contribution. Total for this portion of the contract would be $46,377. Last year’s contract for this work was $46,406.

In addition to the above listed contracted services, MCAG will be administering and implementing one City of Los Banos grant. The grant is the $2.4 million Neighborhood Stabilization Program (NSP). This MCAG service amounts to $65,000. This fee will be paid for out of the grant. Total for the MCAG contract is $111,377.

Approval is requested of the 2010/2011 Work Program and budget, as submitted by MCAG.

Discussion:
In contracting with MCAG, the City of Los Banos would receive the following major services:

1. Transportation services including:
   a. SB 375 Model Development
   b. San Joaquin Valley Blueprint
   c. Alternate Modes Plan
2. Geographic Information System and Website
3. Grant Administration Program
4. One Voice Legislative Strategy
5. Merced County Regional Waste Management Authority Board
6. Transit Joint Powers Authority for Merced County
7. Neighborhood Stabilization Program (NSP) Administration

These items are defined in the MCAG Program Summaries included in this packet. In addition, other services are defined under each of the Work Program summaries.
Fiscal Impact:
Funding for this contract would be allocated as follows:

1) $46,377 in the Membership and Dues section of the Administrative Budget FY 2010/2011; and

2) $65,000 in the NSP Grant Fund FY 2010/2011 (paid with NSP grant funds).

Reviewed by:

[Signature]

Steve Rath, City Manager

Attachments:
Letter from MCAG Executive Director Jesse Brown
Work Program Transportation Planning
Work Program Comprehensive Planning
Resolution
February 23, 2010

Steve Rath, City Manager
City of Los Banos
520 J Street
Los Banos, CA 93635

Dear Mr. Rath:

At their February 18, 2010 meeting, the MCAG Governing Board authorized the transmittal of the FY 2010/2011 Work Program to each member jurisdiction for ratification. The work program is scheduled for adoption by the MCAG Governing Board at their May 20, 2010 meeting. Action by your City Council/Board of Supervisors is requested by April 30, 2010. Please notify Terrie Hagins at (209) 723-3153 ext 317, MCAG Staff, of OWP ratification date and action by your City Council/Board of Supervisors.

Enclosed for submittal to your City Council/Board of Supervisors is a draft summary of the MCAG work program, budget, and membership dues schedule for FY 2010/2011.

The work program identifies each element’s objective, personnel and funding requirements, and funding source. The major emphasis area of this year’s work program are described below:

**Transportation**

**SR 99 Merced Project Study Report:** Caltrans will lead the preparation of a project study report that will scope out options for the future improvement of SR 99 from the Mission Interchange north through Merced to the southern SR 99 project boundary of the Atwater/Merced Expressway. MCAG, City of Merced, and County of Merced staff will participate on a project development team that will review and provide direction on this project during its 18-24 month development.

**SB 375 Model Development:** SB 375 tasks MCAG as the Metropolitan Planning Organization (MPO) with the responsibility of preparing “Sustainable Community Strategy-SCS” (future land use scenario) that integrates land use and transportation to achieve green house gas goals set by the California Air Research Board (CARB). The first such SCS is scheduled to be included in MCAG’s 2014 Regional Transportation Plan. Each of the other seven MPO’s in the San Joaquin Valley have the same requirement and are on the same schedule. A coordinated and, for the most part, state funded effort will continue to develop and upgrade computer models that will be used to prepare and evaluate the Sustainable Community Strategy options for their ability to meet CARB emission reduction targets.
San Joaquin Valley Blueprint: The Blueprint program will be entering its 5th year. Fresno COG has assumed the administrative lead coordination the efforts of the eight-valley councils-of-government through this process. The goal is a unified vision and strategy for achieving a valley-wide plan for regional land use, transportation, economic development, and other key components important to valley residents through the year 2050. A major product of the coming year will be a “tool box” of policies and programs for local agencies to choose from should they choose to achieve San Joaquin Valley Blueprint Principles.

Alternate Modes Plan: Pedestrian, bicycle, and park-and-ride facilities will be evaluated on a community and countywide basis to identify critical linkages and missing links between home-work, home-school, home-shopping/medical. Safe routes to school options will also be identified.

Yosemite Area Regional Transportation System (YARTS): Merced County, Mariposa County, and Mono County formed YARTS as a three-county transit service Joint Powers Authority in 1999. YARTS has contracted with MCAG for transit management, marketing, and administrative support. MCAG is fully reimbursed for its personnel and support costs.

Geographic Information System (GIS)

Since 1991, MCAG’s not-for-profit corporation, Merced Data Special Services, Inc. (MDSS) has maintained a countywide Geographic Information System that includes parcel, general plan, and zoning maps. This system is as an element of the work program funded with federal and state transportation funds. This data system is free to MCAG jurisdictions. There will be no separate maintenance cost for MCAG member jurisdictions for these maps or thematic layers. MCAG staff provides training and hosts a users group for member agencies. This program also maintains an interactive website that is accessible to the member agencies and the general public.

Each jurisdiction may contract with MCAG to provide additional services as they may require.

Grant Administration Program

The grant writing and administration program provides these services to member agencies. The program has a staff of 2.5 regular positions, a program manager, and 1.5 grant writer/administrators. Past policy has been to fund the equivalent of the program manager position with member contributions, LTF planning, and Regional Solid Waste Management Agency funds. The remaining positions are funded through contracts with member jurisdictions. These contracts include CDBG (housing rehabilitation) and other program administration. The remaining positions are funded through contracts with member jurisdictions. These contracts include administering grants such as CDBG and HOME for housing rehabilitation, First Time Homebuyers and other program administration.

One Voice Legislative Strategy

Our State and Federal legislative program will be entering its 7th year. Workshops will be held in the fall with the Governing Board, Technical Review Board, and our private sector partners to revise and update the strategies. Our One Voice delegation will present the state and federal legislative programs to our respective delegations in Sacramento and Washington D.C.
Transit Joint Powers Authority for Merced County

The Amended and Restated Joint Powers Agreement of the Transit Joint Powers Authority is scheduled to become effective July 1, 2010. The Executive Director and the Transit Manager are in the process of evaluating alternative staffing arrangements that will maximize the use of existing staff resources from both the Transit Agency and MCAG for the most effective and efficient use of available capabilities and funds.

Regional Waste Management Authority for Merced County

The MCAG Governing Board serves as the policy board for the Regional Solid Waste Management Agency. MCAG staff supports that Board and the Local (Resource/Recovery) Task Force. MCAG staffs the countywide public information and education programs addressing both non-hazardous and hazardous materials, and administers resource recovery projects funded by the State on behalf of the cities and county.

BUDGET

The budget assumes a reduction in staff from 19 to 18 equivalent regular employees. The retirement at the end of February 2010 of our Public Information Officer, Candice Steelman, will be filled through internal promotion and the existing transportation planning position will not be replaced.

No cost of living adjustment is proposed for the salary schedule. Merit pay increases are budgeted and may be awarded if personnel performance merits.

Federal Transportation Planning funds, ($868,899-FHWA, $68,846-FTA) available through TEA-LU provides the majority of funding for the transportation program.

Local Transportation Funds, required for match and to fund federally non-eligible costs, are proposed at $133,360, no change from last year. Transportation Development Act Administrative funding is proposed to remain the same as last year at $62,100.

Local Contributions remain at the same level as last year at $82,200.

The One Voice Legislative Program is funded through local contributions on a per capita basis, no change from the current year, at $113,000. No State or Federal funds may be used for the lobbyist or associated staff time or travel costs.

The Solid Waste Public Education work element is proposed at $112,700, no increase.

No other significant changes in other budget line items are proposed, other than those noted above.
APPROVAL SCHEDULE

This document has been submitted to State, Federal, and Regional Transportation and Air Quality Agencies. This group will meet with MCAG staff March 16, 2010 to provide their comments.

Each City and Merced County is requested to approve the FY 10/11 MCAG Budget and Work Program during March /April.

The Draft FY 10/11 Work Program and Budget are scheduled for submittal to the MCAG Board at their May 20, 2010 meeting.

Jesse B. Brown
Executive Director
**Summary:** As Regional Transportation Planning Agency and Metropolitan Planning Organization, MCAG is the primary transportation facilitator in Merced County. Responsibilities are many, from acquiring priority projects to assuring money accepted for improving transportation has been properly utilized. MCAG must also be in the forefront of coordinated regional transportation planning activities, and to do so effectively requires the correct tools and program support. Work elements of the Transportation Planning Work Program seek to maintain a quality improvement program and provide additional means to successfully accomplish the goals and objectives established by the MCAG Governing Board.

1200 CITIZEN PARTICIPATION/INTERGOVERNMENTAL COORDINATION

**Purpose:** To help the public understand issues and processes that affect the regional transportation system in Merced County. To inform and report to residents throughout the county, along with other interested parties, of all the services and products that MCAG provides. To expand citizen participation in the planning process. To act as a liaison between government agencies and member entities, and bring that cooperative viewpoint to the public.

**Staff Time:** 17 Person Months

**Funding:** FHWA PL Carryover, FTA Sec. 5303, LTF Planning, RIP, MCAG Other- $283,721

1460 REGIONAL TRANSPORTATION PLAN (RTP)

**Purpose:** To promote a coordinated regional transportation planning process through the development and implementation of a Regional Transportation Plan.

**Staff Time:** 5.25 Person Months

**Funding:** RIP - $77,000

1470 AIR QUALITY PLANNING

**Purpose:** To inform and advise MCAG and member agencies on air quality issues and policies; to ensure that MCAG's transportation plans, programs, and projects conform to the most recent air quality requirements; and to coordinate effectively with other government agencies on these matters.

**Staff Time:** 2 Person Months

**Funding:** FTA Sec. 5303, RIP - $26,000
1520  **FEDERAL TRANSPORTATION IMPROVEMENT PROGRAM (FTIP)**

**Purpose:** To maintain a Federal Transportation Improvement Program (FTIP) based on an objective project selection prioritization process and to program for funding the most cost-effective and environmentally sound transportation projects based upon policies and actions identified in the Regional Transportation Plan.

**Staff Time:** 6.75 Person Months

**Funding:** RIP - $90,000

1530  **TRAFFIC MODELING**

**Purpose:** To maintain and update the traffic model used for the transportation planning programs.

**Staff Time:** 3.25 Person Months

**Funding:** FHWA PL Carryover, LTF Planning, - $39,000

1538  **HIGH SPEED RAIL COORDINATION**

**Purpose:** To monitor high speed rail planning activities within the San Joaquin Valley to further the achievement of the goals, objectives, and regulations of the Federal Transportation Act, in coordination and cooperation with regional and state transportation agencies.

**Staff Time:** 2.25 Person Months

**Funding:** FTA Sec. 5303, RIP, LTF Planning - $53,000

1548  **PAVEMENT MANAGEMENT SYSTEM**

**Purpose:** To implement and maintain a countywide Pavement Management System.

**Staff Time:** 3.25 Person Months

**Funding:** FHWA PL Carryover, LTF Planning - $38,500
**1560 SAN JOAQUIN VALLEY TRANSPORTATION COORDINATION**

*Purpose:* To coordinate the transportation and air quality planning activities within the San Joaquin Valley Nonattainment Area to further the achievement of the goals and objectives of the Federal Transportation Act and the Federal Clean Air Act, in coordination and cooperation with regional and state transportation and air quality planning and regulatory agencies.

*Staff Time:* 5.5 Person Months

*Funding:* FTA Sec. 5303, RIP, LTF Planning - $125,000

**1565 LEGISLATIVE PLAN**

*Purpose:* To educate local public and private sector personnel regarding state and federal legislative issues, projects, and programs that may affect the transportation planning and implementation process.

*Staff Time:* 3.5 Person Months

*Funding:* RIP, LTF Planning - $48,344

**1570 SHORT RANGE TRANSIT PLAN (SRTP)**

*Purpose:* Update and prepare a Short-Range Transit Plan identifying needs, service improvements, and a financial plan.

*Staff Time:* 1.75 Person Month

*Funding:* Discretionary Planning Grant, MCAG Other - $123,200

**1610 GEOGRAPHIC INFORMATION SYSTEM (GIS) MAINTENANCE**

*Purpose:* The purpose of the GIS Maintenance element is the annual collection, editing and maintenance of GIS data from various sources to support MCAG’s transportation planning elements. This data is vital for maps and analysis for the Regional Transportation Plan, Regional Transportation Impact Fee, Federal and State Transportation Improvement Plans, and other transportation related projects. The data is also used to update the Traffic Model and Pavement Management System.

*Staff Time:* 28 Person Months

*Funding:* FHWA PL Carryover, RIP- $352,100
1630 GIS WEB PAGE/INTERNET APPLICATION

Purpose: To maintain a GIS Website for downloading and displaying maps produced by MCAG and to increase functionality of the GIS Maps Online application. This application utilizes MDSS data and is usable by all member jurisdictions and the public.

Staff Time: 2.5 Person Months

Funding: FHWA PL Carryover, RIP - $70,200

1645 SAN JOAQUIN VALLEY BLUERPRINT

Purpose: The San Joaquin Valley Regional Blueprint will provide a planning process and products to support long-range planning for the eight San Joaquin Valley MPO's and compliment the work of the San Joaquin Valley Partnership.

Staff Time: 2.25 Person Months

Funding: Blueprint Planning Grant, RIP, - $103,228

1655 REGIONAL TRANSPORTATION IMPACT FEE (RTIF)

Purpose: To administer a regional transportation impact fee (RTIF) program consistent with state law (Government Code 66000) that will mitigate new development's impact upon the regional transportation system.

Staff Time: .25 Person months

Funding: RTIF - $8,000

1665 REGIONAL TRANSPORTATION IMPROVEMENT PROGRAM (RTIP)

Purpose: To coordinate local planning efforts with other regional, State, and Federal agencies, and to monitor and respond to policies that will affect the development and the implementation of the Regional Transportation Plan and the Regional Transportation Improvement Program. To monitor the implementation of State Transportation Improvement Program projects in Merced County, including project delivery, timely use of funds, and compliance with State law and the California Transportation Commission’s guidelines.

Staff Time: 4.5 Person Months

Funding: RIP - $102,648
1670 RIDESHARE PROGRAM

Purpose: To encourage and promote improved air quality, congestion reduction, and energy conservation by the reduction of single-occupancy vehicle trips through the implementation of a Rideshare matching program designed to provide alternatives for commuters within Merced County.

Staff Time: 1.5 Person Months plus contract with Commute Connections for Ride Matching Services

Funding: CMAQ - $89,415

1672 SB 375 MODEL IMPROVEMENT

Purpose: To upgrade the traffic, land use, and air quality modeling capabilities to adhere to the requirements of SB 375.

Staff Time: 3.25 Person Months

Funding: FHWA PL Carryover, RIP - $45,000

1674 ALTERNATIVE MODES PLANNING

Purpose: To prepare pedestrian, bicycle, and park-and-ride plans to identify needed pedestrian, bicycle and carpooling/vanpooling improvements to encourage alternative modes of transportation.

Staff Time: 7.5 Person Months

Funding: FHWA PL Carryover, RIP $145,600

1680 TRANSPORTATION EXPENDITURE PROGRAM

Purpose: Update the Transportation Expenditure Plan for Merced County through an aggressive public participation process.

Staff Time: 2.25 Person Months

Funding: LTF Planning - $98,000

1685 TRANSPORTATION DEVELOPMENT ACT FUND ADMINISTRATION

Purpose: To administer the allocation of monies from the Local Transportation Fund (LTF) and State Transit Assistance Fund (STAF) to member entities.

Staff Time: 2.5 Person Months

Funding: TDA Admin - $62,100
Summary: The Comprehensive Planning Work Program deals with those work elements of the MCAG operation not directly related to transportation, although transportation may be involved in each of the Comprehensive Planning Work Elements.

1810 GRANT DEVELOPMENT

Purpose: To provide grant writing services to MCAG member jurisdictions, other public agencies, and the Recycling Market Development Zone. To provide a directory of grant resources through the MCAG website.

Staff Time: 7.5 Person Months

Funding: Solid Waste Enterprise, LTF Planning, MCAG Other - $82,200

1815 GRANT ADMINISTRATION

Purpose: To assist in the implementation of MCAG’s Grant Development Program. This work element also provides funding for the management of all other grant-related services provided by MCAG to member jurisdictions.

Staff Time: 1 Person Months

Funding: MCAG Other - $20,000

1824 CONTINUUM OF CARE PLAN UPDATE

Purpose: To provide comprehensive planning services to the region to attract resources with which to create economic self-sufficiency for Merced County homeless persons.

Staff Time: 5 Person Months

Funding: Merced County, City of Merced - $50,000
1953 LOS BANOS NSP DOWN PAYMENT ASSISTANCE PROGRAM ADMINISTRATION

Purpose: To administer and implement the City of Los Banos’ Neighborhood Stabilization Program (NSP). These funds will be used as down payment assistance for the purchase of foreclosed homes. The State of California allocated $1.6 million to the City of Los Banos.

Staff Time: 10.5 Person Months

Funding: City of Los Banos - $65,000

1970 GIS MAPPING

Purpose: To provide GIS related services to MCAG member jurisdictions on an as-needed basis.

Staff Time: .75 Person Months

Funding: MCAG Other - $10,000

1975 ABANDONED VEHICLE ABATEMENT (AVA)

Purpose: The purpose of this program is to establish a Service Authority for the abatement of abandoned vehicles in Merced County pursuant to Section 22710 VC. MCAG will setup and administer the Abandoned Vehicle Abatement program. The program is scheduled to begin on July 1, 2009. The $1 fee collected by DMV on each vehicle registration will begin to be collected and expenses can be incurred at that time. Money received by the Authority shall be distributed quarterly to participating agencies according to the agreed upon formula.

Staff Time: .5 Person Months

Funding: MCAG Other - $6,000

1980 SERVICE AUTHORITY FOR FREEWAY EMERGENCIES (SAFE) / 511

Purpose: To maintain and upgrade a Service Authority for Freeway Emergencies (SAFE) call box program in Merced County; also, to participate in a San Joaquin Valley plan to establish 511 call service for travelers.

Staff Time: 1.25 Person Months

Funding: SAFE - $139,500
1984 HIGHWAY 165/99 PROJECT STUDY REPORT

Purpose: To prepare a Project Study Report for the SR 165/99 connection and corridor in accordance with the regulations and guidelines espoused in the Transportation Equity Act for the 21st Century.

Staff Time: 1 Person Months

Funding: TEA III, RIP - $72,000

1986 ATWATER/MERCED EXPRESSWAY PROJECT

Purpose: This work element will develop an institutional and financial strategy to implement the Atwater/Merced Expressway.

Staff Time: 2 Person Months

Funding: RTIF - $92,000

1987 HIGHWAY 99 ATWATER FREEWAY PROJECT STUDY REPORT

Purpose: To prepare a Project Study Report for the SR 99 from milepost 21.3 to 24.0 through the City of Atwater in accordance with the regulations and guidelines espoused in the Transportation Equity Act for the 21st Century.

Staff Time: .5 Person Months

Funding: City of Atwater, RIP - $117,300

1990 ONE VOICE LEGISLATIVE PROGRAM

Purpose: To advocate for or against state and federal legislative projects, programs, and policies that would affect the residents of Merced County.

Staff Time: 1.25 Person Months

Funding: Member Contributions, MCAG Other - $135,000
2100  **SOLID WASTE POLICY BOARD ADMINISTRATION**

*Purpose:* To assist in the implementation of the Merced County Integrated Waste Management Plan and the Source Reduction and Recycling Elements, through the provision of administrative and planning assistance to the Solid Waste Advisory Board and the Solid Waste Enterprise.

*Staff Time:* 1.5 Person Months

*Funding:* Solid Waste Enterprise - $30,000

2200  **SOLID WASTE POLICY BOARD REGIONAL RECYCLING AND PUBLIC EDUCATION PROGRAM**

*Purpose:* Initiated in 1991, this element provides a countywide public education program that promotes awareness and education to residents of Merced County regarding the importance of participation in source reduction, recycling, and other diversion efforts. The element also follows guidelines for these activities as outlined in each jurisdiction's Source Reduction and Recycling Element (SRRE), on file with the California Integrated Waste Management Board (CIWMB). The SRRE is required as a result of the 1989 Integrated Waste Management Act, which requires each jurisdiction to reduce the amount of tonnage going to the landfill.

The Solid Waste Policy Board Regional Recycling and Public Education Program provides outreach services appropriate to all segments of the community and jurisdictions. In addition, the program provides technical support, as requested by jurisdictions and public agencies, in the promotion of new and existing programs related to the establishment and administration of recycling, hauling contracts, and proper disposal of unwanted materials.

*Staff Time:* 12.5 Person Months

*Funding:* Solid Waste Enterprise, Solid Waste Enterprise Carryover $112,700

2210  **CRV RECYCLING – DOC GRANT FUNDED – JURISDICTION PROJECTS**

*Purpose:* To assist in the implementation of California Department of Conservation (DOC) grant funded programs meant to promote the recycling of CRV containers and litter abatement. These programs are selected by member jurisdictions and must have measurable results.

*Staff Time:* 1 Person Months

*Funding:* DOC - $45,000
3100 TRANSIT JOINT POWERS AUTHORITY FOR MERCED COUNTY
TRANSIT ADMINISTRATION

Purpose: To provide administrative assistance, grant preparation, and quarterly reporting to the Federal Transit Administration and Caltrans on behalf of the Transit Joint Powers Authority for Merced County (TJPAMC).

Staff Time: 9 Person Months

Funding: TJPAMC - $131,000

4100 MERCED DATA SPECIAL SERVICES (MDSS) ACTIVITIES

Purpose: To provide a legal entity whereby products related to services already provided by MCAG may be sold to the public. Those products currently include specialized maps provided by the GIS department and advertising on the www.yosemite.com website.

Staff Time: 3.75 Person Months

Funding: MDSS - $42,000

6100 YOSEMITE AREA REGIONAL TRANSPORTATION SYSTEM (YARTS) MANAGEMENT ACTIVITIES

Purpose: Provide planning and administrative services, through contract, to the Yosemite Area Regional Transportation System (YARTS) Joint Powers Authority, including oversight of all of the day-to-day operations of the transit system.

Staff Time: 15.25 Person Months

Funding: YARTS - $272,564
# OVERALL BUDGET
## Fiscal Year 2010/2011
### Merced County Association of Governments

<table>
<thead>
<tr>
<th>INCOME</th>
<th>FY 2009/10 BUDGETED</th>
<th>FY 2010/11 BUDGETED</th>
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## OVERALL BUDGET
Fiscal Year 2010/2011
Merced County Association of Governments

### INCOME

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<th>1-1-09 Percent</th>
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<td>$8,879</td>
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<td>1.95%</td>
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<td>31.41%</td>
<td>$25,959</td>
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<td>$38,516</td>
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<td>100.00%</td>
<td>$113,000</td>
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| 5304 Transit Technical Planning (Yarts) | $92,500 | $92,500 |
| Local Other                 | $347,001 | $108,000 |
| County Transit LTF          | $12,000  | $23,200 |
| MDSS, Inc.                  | $62,500  | $42,000 |
| YARTS Authority             | $141,348 | $180,064 |
| **TOTAL**                   | **$9,302,738** | **$3,402,320** |
## OVERALL BUDGET
### Fiscal Year 2010/2011
### Merced County Association of Governments

<table>
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<tr>
<th>INCOME</th>
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10000 Salaries & Employee Benefits
10110 Salaries & Wages-Permanent $1,343,470 $1,320,000
10111 Overtime-Permanent Employees $ - $ -
10150 Salaries & Wages-Extra Help $65,000 $157,300
10210 Retirement $201,520 $197,900
10220 FICA $10,000 $13,000
10230 Medicare $28,000 $24,000
10300 Insurance-Employee Group $304,000 $276,000
10350 Insurance-Unemployment $19,000 $5,500
10360 Insurance-Workman’s Comp. $90,000 $24,000
**Subtotal** $2,060,990 $2,017,700

20000 Services & Supplies
20600 Communications $14,000 $14,000
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21000 Insurance-Other $28,500 $28,500
21200 Maintenance-Equipment $6,000 $6,000
21210 Maintenance-Equipment-Auto $500 $500
21300 Maintenance-Structure $2,000 $2,000
21500 Membership $8,500 $8,500
21700 Office Expense-General $62,750 $52,750
21701 Office Expense-Equipment $1,000 $1,000
21800 Professional & Special Services $2,226,078 $743,226
21805 Professional & Special Services-Audit $57,500 $57,500
21900 Publications & Legal Notices $1,250 $1,250
22000 Rents & Leases-Equipment $30,000 $32,000
22100 Rents & Leases-Structure & Grounds $19,394 $19,394
22305 Special Department Expense $138,000 $321,500
22500 Transportation & Travel $63,500 $36,000
22600 Utilities $12,000 $12,000
**Subtotal** $2,680,472 $1,345,620

70000 Contingencies
74000 Provision for Contingencies $6,000 $6,000

80000 Fixed Assets
83700 Equipment $20,000 $33,000

**Total Budget Unit 91100** $4,767,462 $3,402,320
## Transportation Planning

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### Subtotal Transportation

- **FHWA PL:** $1,580,056
- **FTA Sec. 5303:** $988,899
- **TDA Admin:** $68,848
- **LTF Planning:** $62,100
- **SAFE:** $123,360
- **5304 Transit Planning:** $100,000
- **Discretionary Planning Grant:** $514,784
- **RIP:** $8,000
- **RTIF:** $89,415
- **CMAQ:** $0
- **TDA III:** $0
- **City of Los Banos:** $0
- **MCAG:** $144,652

### Comprehensive Planning

- **FHWA PL:** $62,200
- **FTA Sec. 5303:** $50,000
- **TDA Admin:** $65,000
- **LTF Planning:** $129,000
- **SAFE:** $139,500
- **5304 Transit Planning:** $14,400
- **Discretionary Planning Grant:** $57,600
- **RIP:** $66,000
- **RTIF:** $50,000
- **CMAQ:** $6,000
- **TDA III:** $66,000
- **City of Los Banos:** $6,000
- **MCAG:** $139,500
- **Staff Months:** 105.00

### Subtotal Comprehensive Planning

- **FHWA PL:** $1,422,284
- **FTA Sec. 5303:** $988,899
- **TDA Admin:** $68,848
- **LTF Planning:** $62,100
- **SAFE:** $123,360
- **5304 Transit Planning:** $123,360
- **Discretionary Planning Grant:** $57,600
- **RIP:** $66,000
- **RTIF:** $50,000
- **CMAQ:** $6,000
- **TDA III:** $66,000
- **City of Los Banos:** $6,000
- **MCAG:** $533,964

### TOTAL MCAG PROGRAM

- **FHWA PL:** $3,402,320
- **FTA Sec. 5303:** $988,899
- **TDA Admin:** $68,848
- **LTF Planning:** $62,100
- **SAFE:** $123,360
- **5304 Transit Planning:** $123,360
- **Discretionary Planning Grant:** $57,600
- **RIP:** $66,000
- **RTIF:** $50,000
- **CMAQ:** $6,000
- **TDA III:** $66,000
- **City of Los Banos:** $6,000
- **MCAG:** $1,078,616

*Utilizes Carryover Funds*
## MERCED COUNTY ASSOCIATION OF GOVERNMENTS
### FY 2010/2011
### MEMBER CONTRIBUTION SCHEDULE

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* Dept of Finance as of 1-1-09, Report E-1
** LTF includes $10,000 for Grant Writing Support.
RESOLUTION NO. ___


WHEREAS, the City of Los Banos contracts with MCAG on an annual basis to provide a variety of services ranging from overseeing transportation funds to grant research and writing; and

WHEREAS, in contracting with MCAG to provide services under these work programs, contributions from each jurisdiction are based upon a formula using the city’s population; and

WHEREAS, the City of Los Banos’ contract with MCAG for Fiscal Year 2010/2011 is $111,377; and

WHEREAS, in contracting with MCAG, the City of Los Banos will receive the following major services: 1) Transportation services including SB 375 Model Development, San Joaquin Valley Blueprint, and Alternate Modes Plan; 2) Geographic Information System and Website; 3) Grant Administration Program; 4) One Voice Legislative Strategy; 5) Merced County Regional Waste Management Authority Board; 6) Transit Joint Powers Authority for Merced County; and 7) Neighborhood Stabilization Program (NSP) Administration.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Los Banos does hereby approve the 2010/2011 Transportation Planning Work Program and Comprehensive Planning Work Program and Budget for MCAG and allocates $111,377 to the 2010/2011 Fiscal Year for the Annual MCAG Contract.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on the 17th day of March 2010, by Council Member _____ who moved its adoption, which motion was duly seconded by Council Member _____ and the Resolution adopted by the following vote:
AYES:  
NOES:  
ABSENT:

APPROVED:  

Tommy Jones, Mayor

ATTEST:  

Lucille L. Mallonee, City Clerk
Agenda Staff Report

TO: Mayor & City Council
FROM: Mark Fachin, P.E., Public Works Director/ City Engineer
DATE: March 17, 2010

SUBJECT: Department of Transportation Master Agreement and ARRA Projects Program Supplemental Agreements associated with administering Federal and State Funded Transportation Projects

TYPE OF REPORT: Consent Agenda

Recommendation:

The Public Works Department is requesting that the City Council authorize the Public Works Director to sign documents such as the attached Master Agreement and Program Supplemental Agreements. In addition authorize the Public Works Director to sign future Department of Transportation Documents such as Master Agreements, Program Supplemental Agreements, Exchange Agreements and/or Fund Transfer Agreements and/or any amendments thereto with the California Department of Transportation.

Discussion:

The Public Works Department, in its pursuit to secure American Recovery and Reinvestment Act (ARRA) funding, received a packet for the California Department of Transportation stating that a new Master Agreement with Caltrans along with Program Supplemental Agreements for ARRA Projects ESPL-5160(016) and ESPL5160(017) be executed in order to release the ARRA funding. These are several street overlay projects throughout the City of Los Banos. The Master Agreement states how the City will apply, administer, and close out current and future State and Federally funded
Projects. The Program Supplemental Agreements are related directly to the two ARRA Projects the City has pursued.

It is anticipated that this agreement, once in place, will cover the administering of future grants that the City will apply for relating to the California Department of Transportation. Many of the types of documents stated above are sent to the Public Works Department with time sensitive periods in which to execute these documents. By authorizing the Public Works Director to sign and execute the documents this will insure timely submittals to the California Department of Transportation.

**Fiscal Impact:**

There is no fiscal impact relating to authorizing the Public Works Director to sign these documents. However by not executing these documents state and federal funds will not be available to the City of Los Banos including the current authorized ARRA projects amount of $1,439,476.00.

**Reviewed by:**

Steve Rath, City Manager

**Attachments:**

Exhibit A: Master Agreement Administering Agency-State Agreement for Federal Aid Projects

Exhibit B: Program Supplemental Agreement for Project # ESPL5160 (017)

Exhibit C: Program Supplemental Agreement for Project # ESPL5160 (016)

Exhibit D: Authorizing Resolution
February 10, 2010

Mr. Mark Fachin
Interim Public Works Director
City of Los Banos
411 Madison Avenue
Los Banos, CA 93635

Attn: Mr. Gary Hutsell

Dear Mr. Fachin:

Enclosed are two originals of the Administering Agency-Federal Master Agreement No. 10-5160R, Program Supplement Agreement No. 008-N and an approved Finance Letter for the subject project. Please retain the signed Finance Letter for your records.

The Master Agreement has been revised to incorporate the various changes in regulations and policies. Please sign both copies of these two Agreements and return them to this office, Office of Local Assistance - MS1 within 90 days from the date of this letter. If the signed Agreements are not received back in this office within 90 days, funds will be disencumbered and/or deobligated. Alterations should not be made to the agreement language or funding. Attach your local agency's certified authorizing resolution that clearly identifies the official authorized to execute the agreements. A fully executed copy of the agreement will be returned to you upon ratification by Caltrans. No invoices for reimbursement can be processed until the agreement is fully executed.

Your prompt action is requested. If you have questions, please contact your District Local Assistance Engineer.

Sincerely,

BILL SANDOVAL, Chief
Office of Project Implementation - North
Division of Local Assistance

Enclosure

c: DLA AE Project Files
(10) DLAE - Sinaren Pheng
This AGREEMENT, is entered into effective this ______ day of _________, 2009, by and between the City of Los Banos, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation (Caltrans), hereinafter referred to as "STATE, and together referred to as "PARTIES" or individually as a "PARTY."

RECITALS:

1. WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and subsequent Transportation Authorization Bills to fund transportation programs. These transportation programs include, but are not limited to, the Surface Transportation Program (STP), the Congestion Mitigation and Air Quality Improvement Program (CMAQ), the Transportation Enhancement Program (TE), Highway Safety Improvement Program (HSIP) and the Highway Bridge Program (HBP) (collectively the "PROGRAMS"); and

2. WHEREAS, the Legislature of the State of California has enacted legislation by which certain federal-aid funds may be made available for use on local transportation related projects of public entities qualified to act as recipients of these federal-aid funds in accordance with the intent of federal law; and

3. WHEREAS, before federal-funds will be made available for a specific program project, ADMINISTERING AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the ADMINISTERING AGENCY when receiving federal funds for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:
ARTICLE I - PROJECT ADMINISTRATION

1. This AGREEMENT shall have no force or effect with respect to any program project unless and until a project-specific Program Supplement to this AGREEMENT for federal-aid projects, hereinafter referred to as "PROGRAM SUPPLEMENT", has been fully executed by both STATE and ADMINISTERING AGENCY.

2. The term "PROJECT", as used herein, means that authorized transportation related project and related activities financed in part with federal-aid funds as more fully-described in an "Authorization/Agreement Summary" or "Amendment/Modification Summary", herein referred to as "E-76" or "E-76 (AMOD)" document authorized by STATE or the Federal Highway Administration (FHWA).

3. The E-76/E-76(AMOD) shall designate the party responsible for implementing PROJECT, type of work and location of PROJECT.

4. The PROGRAM SUPPLEMENT sets out special covenants as a condition for the ADMINISTERING AGENCY to receive federal-aid funds from/through STATE for designated PROJECT. The PROGRAM SUPPLEMENT shall also show these Federal Funds that have been initially encumbered for PROJECT along with the matching funds to be provided by ADMINISTERING AGENCY and/or others. Execution of PROGRAM SUPPLEMENT by the PARTIES shall cause ADMINISTERING AGENCY to adopt all of the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of ADMINISTERING AGENCY, and with written concurrence by STATE, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of ADMINISTERING AGENCY.

5. ADMINISTERING AGENCY agrees to execute and return each project-specific PROGRAM SUPPLEMENT within ninety (90) days of receipt. The PARTIES agree that STATE may suspend future authorizations/obligations and invoice payments for any on-going or future federal-aid project performed by ADMINISTERING AGENCY if any project-specific PROGRAM SUPPLEMENT is not returned within that ninety (90) day period unless otherwise agreed by STATE in writing.

6. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of Federal Funds encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all of the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.

7. Federal, State and matching funds will not participate in PROJECT work performed in advance of the approval of the E-76 or E-76 (AMOD), unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT. ADMINISTERING AGENCY agrees that it will only proceed with the work authorized for that specific phase(s) on the project-specific E-76 or E-76 (AMOD). ADMINISTERING AGENCY further agrees to not proceed with future phases of PROJECT prior to receiving an E-76 (AMOD) from STATE for that phase(s) unless no Further Federal funds are needed or for those future phase(s).
8. That PROJECT or portions thereof, must be included in a federally approved Federal Statewide Transportation Improvement Program (FSTIP) prior to ADMINISTERING AGENCY submitting the "Request for Authorization".

9. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

10. If PROJECT is not on STATE-owned right of way, PROJECT shall be constructed in accordance with LOCAL ASSISTANCE PROCEDURES that describes minimum statewide design standards for local agency streets and roads. LOCAL ASSISTANCE PROCEDURES for projects off the National Highway System (NHS) allow STATE to accept either the STATE's minimum statewide design standards or the approved geometric design standards of ADMINISTERING AGENCY. Additionally, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, materials sampling and testing quality assurance programs that meet the conditions described in the then current LOCAL ASSISTANCE PROCEDURES.

11. If PROJECT involves work within or partially within STATE-owned right-of-way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual and Highway Design Manual and where appropriate, an executed cooperative agreement between STATE and ADMINISTERING AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. ADMINISTERING AGENCY and its contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE rights of way or work which affects STATE facilities.

12. When PROJECT is not on the State Highway System but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the PARTIES may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.

13. If PROJECT is using STATE funds, the Department of General Services, Division of the State Architect, or its designee, shall review the contract PS&E for the construction of buildings, structures, sidewalks, curbs and related facilities for accessibility and usability. ADMINISTERING AGENCY shall not award a PROJECT construction contract for these types of improvements until the State Architect has issued written approval stating that the PROJECT plans and specifications comply with the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

14. ADMINISTERING AGENCY will advertise, award and administer PROJECT in accordance with the current LOCAL ASSISTANCE PROCEDURES unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT.
15. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. While consultants may perform supervision and inspection work for PROJECT with a fully qualified and licensed engineer, ADMINISTERING AGENCY shall provide a full-time employee to be in responsible charge of each PROJECT.

16. ADMINISTERING AGENCY shall submit PROJECT-specific contract award documents to STATE's District Local Assistance Engineer within sixty (60) days after contract award. A copy of the award documents shall also be included with the submittal of the first invoice for a construction contract by ADMINISTERING AGENCY to: Department of Transportation, Division of Accounting Local Programs Accounting Branch, MS #33, PO Box 942874, Sacramento, California 94274-0001.

17. ADMINISTERING AGENCY shall submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure by ADMINISTERING AGENCY to submit a "Report of Expenditures" within one hundred eighty (180) days of project completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current LOCAL ASSISTANCE PROCEDURES.

18. ADMINISTERING AGENCY shall comply with: (i) section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (ii) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (iii) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

19. The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit A attached hereto) and the NONDISCRIMINATION ASSURANCES (Exhibit B attached hereto). ADMINISTERING AGENCY further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of PROJECT-related work shall incorporate Exhibits A and B (with third party's name replacing ADMINISTERING AGENCY) as essential parts of such agreement to be enforced by that third party as verified by ADMINISTERING AGENCY.
ARTICLE II - RIGHTS OF WAY

1. No contract for the construction of a federal-aid PROJECT shall be awarded until all necessary rights of way have been secured. Prior to the advertising for construction of PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract. 

2. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right of way for a PROJECT, including, but not limited to, being clear as certified or if said right of way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with Federal and State laws. The furnishing of right of way as provided for herein includes, in addition to all real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of relocation costs and damages to remainder real property not actually taken but injuriously affected by PROJECT. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights of way were not available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.

3. Subject to STATE approval and such supervision as is required by LOCAL ASSISTANCE PROCEDURES over ADMINISTERING AGENCY's right of way acquisition procedures, ADMINISTERING AGENCY may claim reimbursement from Federal Funds for expenditures incurred in purchasing only the necessary rights of way needed for the PROJECT after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.

4. When real property rights are to be acquired by ADMINISTERING AGENCY for a PROJECT, said ADMINISTERING AGENCY must carry out that acquisition in compliance with all applicable State and Federal laws and regulations, in accordance with State procedures as published in State's current LOCAL ASSISTANCE PROCEDURES and STATE's Right-of-Way Manual, subject to STATE oversight to ensure that the completed work is acceptable under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

5. Whether or not federal-aid is to be requested for right of way, should ADMINISTERING AGENCY, in acquiring right of way for PROJECT, displace an individual, family, business, farm operation, or non-profit organization, relocation payments and services will be provided as set forth in 49 CFR, Part 24. The public will be adequately informed of the relocation payments and services which will be available, and, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from his/her dwelling or to move his/her business or farm operation without at least ninety (90) days written notice from ADMINISTERING AGENCY. ADMINISTERING AGENCY will provide STATE with specific assurances, on each portion of the PROJECT, that no person will be displaced until comparable decent, safe and sanitary replacement housing is available within a reasonable period of time prior to displacement, and that ADMINISTERING AGENCY's relocation program is realistic and adequate to provide orderly, timely and efficient relocation of PROJECT- displaced persons as provided in 49 CFR,
6. ADMINISTERING AGENCY shall, along with recording the deed or instrument evidencing title in the name of the ADMINISTERING AGENCY or their assignee, shall also record an Agreement Declaring Restrictive Covenants (ADRC) as a separate document incorporating the assurances included within Exhibits A and B and Appendices A, B, C and D of the AGREEMENT, as appropriate.
ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.

2. Upon ADMINISTERING AGENCY’s acceptance of the completed federal-aid construction contract or upon contractor being relieved of the responsibility for maintaining and protecting PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for PROJECT in a manner satisfactory to the authorized representatives of STATE and FHWA and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE and FHWA. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future federal-aid projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE and FHWA. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE’s concurrence.

3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.
ARTICLE IV - FISCAL PROVISIONS

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the California Transportation Commission (CTC).

2. STATE'S financial commitment of Federal Funds will occur only upon the execution of this AGREEMENT, the authorization of the project-specific E-76 or E-76 (AMOD), the execution of each project-specific PROGRAM SUPPLEMENT, and STATE's approved finance letter.

3. ADMINISTERING AGENCY may submit signed duplicate invoices in arrears for reimbursement of participating PROJECT costs on a monthly or quarterly progress basis once the project-specific PROGRAM SUPPLEMENT has been executed by STATE.

4. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six (6) months commencing after the funds are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six (6) month period.

5. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

6. Invoices must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

7. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursement of actual allowable PROJECT costs already incurred and paid for by ADMINISTERING AGENCY.

8. An Indirect Cost Rate Proposal and Central Service Cost Allocation Plan and related documentation are to be provided to STATE (Caltrans Audits & Investigations) annually for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect cost incurred within each fiscal year being claimed for federal reimbursement.

9. Once PROJECT has been awarded, STATE reserves the right to de-obligate any excess Federal Funds from the construction phase of PROJECT if the contract award amount is less than the obligated amount, as shown on the PROJECT E-76 or E-76 (AMOD).

10. STATE will withhold the greater of either two (2) percent of the total of all Federal Funds encumbered for each PROGRAM SUPPLEMENT or $40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.
11. The estimated total cost of PROJECT, the amount of Federal Funds obligated, and the required matching funds may be adjusted by mutual consent of the PARTIES hereto with a finance letter, a detailed estimate, if required, and approved E-76 (AMOD). Federal-aid funding may be increased to cover PROJECT cost increases only if such funds are available and FHWA concurs with that increase.

12. When additional federal-aid funds are not available, ADMINISTERING AGENCY agrees that the payment of Federal Funds will be limited to the amounts authorized on the PROJECT specific E-76 / E-76 (AMOD) and agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.

13. ADMINISTERING AGENCY shall use its own non-Federal Funds to finance the local share of eligible costs and all expenditures or contract items ruled ineligible for financing with Federal Funds. STATE shall make the determination of ADMINISTERING AGENCY's cost eligibility for federal fund financing of PROJECT costs.

14. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.

15. Federal and state funds allocated from the State Transportation Improvement Program (STIP) are subject to the timely use of funds provisions enacted by Senate Bill 45, approved in 1997, and subsequent STIP Guidelines and State procedures approved by the CTC and STATE.

16. Federal Funds encumbered for PROJECT are available for liquidation for a period of seven (7) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. State funds encumbered for PROJECT are available for liquidation only for five (5) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. Federal or state funds not liquidated within these periods will be reverted unless an Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance (per Government Code section 16304). The exact date of fund reversion will be reflected in the STATE signed finance letter for PROJECT.

17. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

18. ADMINISTERING AGENCY agrees to comply with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
19. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items and (b) those parties shall comply with federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving PROJECT funds as a contractor or sub-contractor under this AGREEMENT shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

20. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under OMB Circular A-87, 48 CFR, Chapter 1, Part 31 or 49 CFR, Part 18, are subject to repayment by ADMINISTERING AGENCY to STATE. Should ADMINISTERING AGENCY fail to reimburse moneys due STATE within thirty 30 days of demand, or within such other period as may be agreed in writing between the PARTIES hereto, STATE is authorized to intercept and withhold future payments due ADMINISTERING AGENCY from STATE or any third-party source, including but not limited to, the State Treasurer, the State Controller and the CTC.

21. Upon written demand by STATE, any overpayment to ADMINISTERING AGENCY of amounts invoiced to STATE shall be returned to STATE.

22. Should ADMINISTERING AGENCY fail to refund any moneys due STATE as provided hereunder or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty 30 days of demand, or within such other period as may be agreed to in writing between the PARTIES, STATE, acting through the State Controller, the State Treasurer, or any other public entity or agency, may withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may withhold approval of future ADMINISTERING AGENCY federal-aid projects.

23. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 22, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

24. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover State funds improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.
ARTICLE V
AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records when determined to be necessary or appropriate and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of ARTICLE V.

2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item for the PROJECT. The accounting system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.

3. For the purpose of determining compliance with Title 21, California Code of Regulations, Chapter 21, section 2500 et seq., when applicable, and other matters connected with the performance of ADMINISTERING AGENCY’s contracts with third parties, ADMINISTERING AGENCY, ADMINISTERING AGENCY’s contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such AGREEMENT and PROGRAM SUPPLEMENT materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of final payment to ADMINISTERING AGENCY under any PROGRAM SUPPLEMENT. STATE, the California State Auditor, or any duly authorized representative of STATE or the United States, shall each have access to any books, records, and documents that are pertinent to a PROJECT for audits, examinations, excerpts, and transactions and ADMINISTERING AGENCY shall furnish copies thereof if requested.

4. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of OMB Circular A-133 if it receives a total of $500,000 or more in Federal Funds in a single fiscal year. The Federal Funds received under a PROGRAM SUPPLEMENT are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205, Highway Planning and Research.

5. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY’s annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with OMB Circular A-133.

6. ADMINISTERING AGENCY shall not award a construction contract over $10,000 or other contracts over $25,000 (excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f) on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.
7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain all of the provisions of ARTICLE IV, FISCAL PROVISIONS, and this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING RECORDS RETENTION AND REPORTS, and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractors.

8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner as required of all other PROJECT expenditures.

9. In addition to the above, the pre-award requirements of third-party contractor/consultants with ADMINISTERING AGENCY should be consistent with LOCAL ASSISTANCE PROCEDURES.
ARTICLE VI - FEDERAL LOBBYING ACTIVITIES CERTIFICATION

1. By execution of this AGREEMENT, ADMINISTERING AGENCY certifies, to the best of the signatory officer's knowledge and belief, that:

   A. No federal or state appropriated funds have been paid or will be paid, by or on behalf of ADMINISTERING AGENCY, to any person for influencing or attempting to influence an officer or employee of any STATE or federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any STATE or federal contract, including this AGREEMENT, the making of any STATE or federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any STATE or federal contract, grant, loan, or cooperative contract.

   B. If any funds other than federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this AGREEMENT, grant, local, or cooperative contract, ADMINISTERING AGENCY shall complete and submit Standard Form-LLL, "Disclosure Form to Rep Lobbying," in accordance with the form instructions.

   C. This certification is a material representation of fact upon which reliance was placed when this AGREEMENT and each PROGRAM SUPPLEMENT was or will be made or entered into. Submission of this certification is a prerequisite for making or entering into this AGREEMENT imposed by Section 1352, Title 31, United States Code. Any party who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

2. ADMINISTERING AGENCY also agrees by signing this AGREEMENT that the language of this certification will be included in all lower tier sub-agreements which exceed $100,000 and that all such sub-recipients shall certify and disclose accordingly.
ARTICLE VII - MISCELLANEOUS PROVISIONS

1. ADMINISTERING AGENCY agrees to use all State funds reimbursed hereunder only for transportation purposes that are in conformance with Article XIX of the California State Constitution and the relevant Federal Regulations.

2. This AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

3. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this AGREEMENT, shall act in an independent capacity and not as officers, employees or agents of STATE or the federal government.

4. Each project-specific PROGRAM SUPPLEMENT shall separately establish the terms and funding limits for each described PROJECT funded under the AGREEMENT. No federal or state funds are obligated against this AGREEMENT.

5. ADMINISTERING AGENCY certifies that neither ADMINISTERING AGENCY nor its principals are suspended or debarred at the time of the execution of this AGREEMENT. ADMINISTERING AGENCY agrees that it will notify STATE immediately in the event a suspension or a debarment occurs after the execution of this AGREEMENT.

6. ADMINISTERING AGENCY warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the work actually performed, or in STATE's discretion, to deduct from the price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

7. In accordance with Public Contract Code section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two (2) year period because of ADMINISTERING AGENCY's failure to comply with an order of a federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.

8. ADMINISTERING AGENCY shall disclose any financial, business, or other relationship with STATE, FHWA or FTA that may have an impact upon the outcome of this AGREEMENT. ADMINISTERING AGENCY shall also list current contractors who may have a financial interest in the outcome of this AGREEMENT.

9. ADMINISTERING AGENCY hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of PROJECT under this
10. ADMINISTERING AGENCY warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the work actually performed, or to deduct from the PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE's Contract Officer who may consider any written or verbal evidence submitted by ADMINISTERING AGENCY. The decision of the Contract Officer, issued in writing, shall be conclusive and binding on the PARTIES on all questions of fact considered and determined by the Contract Officer.

12. Neither the pending of a dispute nor its consideration by the Contract Officer will excuse ADMINISTERING AGENCY from full and timely performance in accordance with the terms of this AGREEMENT.

13. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by, under or in connection with any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the ADMINISTERING AGENCY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

14. Neither STATE nor any officer or employee thereof shall be responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under this AGREEMENT.

15. STATE reserves the right to terminate funding for any PROJECT upon written notice to ADMINISTERING AGENCY in the event that ADMINISTERING AGENCY fails to proceed with PROJECT work in accordance with the project-specific PROGRAM SUPPLEMENT, the bonding requirements if applicable, or otherwise violates the conditions of this AGREEMENT and/or PROGRAM SUPPLEMENT, or the funding allocation such that substantial performance is significantly endangered.
16. No termination shall become effective if, within thirty (30) days after receipt of a Notice of Termination, ADMINISTERING AGENCY either cures the default involved or, if not reasonably susceptible of cure within said thirty (30) day period, ADMINISTERING AGENCY proceeds thereafter to complete the cure in a manner and time line acceptable to STATE. Any such termination shall be accomplished by delivery to ADMINISTERING AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, ADMINISTERING AGENCY and STATE shall meet to attempt to resolve any dispute. In the event of such termination, STATE may proceed with the PROJECT work in a manner deemed proper by STATE. If STATE terminates funding for PROJECT with ADMINISTERING AGENCY, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under the PROGRAM SUPPLEMENT and/or STATE approved finance letter prior to termination, provided, however, ADMINISTERING AGENCY is not in default of the terms and conditions of this AGREEMENT or the project-specific PROGRAM SUPPLEMENT and that the cost of PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY.

17. In case of inconsistency or conflicts with the terms of this AGREEMENT and that of a project-specific PROGRAM SUPPLEMENT, the terms stated in that PROGRAM SUPPLEMENT shall prevail over those in this AGREEMENT.

18. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

19. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT by their duly authorized officers.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By____________________________
____________________________
Chief, Office of Project Implementation
Division of Local Assistance

Date ________________________

City of Los Banos

____________________________
____________________________
Representative Name & Title
(Authorized Governing Body Representative)

Date ________________________
1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry; or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.
(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.
EXHIBIT B

NONDISCRIMINATION ASSURANCES

ADMINISTERING AGENCY HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS; and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which ADMINISTERING AGENCY receives federal financial assistance from the Federal Department of Transportation. ADMINISTERING AGENCY HEREBY GIVES ASSURANCE THAT ADMINISTERING AGENCY will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, ADMINISTERING AGENCY hereby gives the following specific assurances with respect to its federal-aid Program:

1. That ADMINISTERING AGENCY agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

2. That ADMINISTERING AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

ADMINISTERING AGENCY hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That ADMINISTERING AGENCY shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. That where ADMINISTERING AGENCY receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where ADMINISTERING AGENCY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That ADMINISTERING AGENCY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the ADMINISTERING AGENCY with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates ADMINISTERING AGENCY for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates ADMINISTERING AGENCY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which ADMINISTERING AGENCY retains ownership or possession of the property.

9. That ADMINISTERING AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that ADMINISTERING AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That ADMINISTERING AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.
11. ADMINISTERING AGENCY shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. ADMINISTERING AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of STATE assisted contracts. ADMINISTERING AGENCY'S DBE Race-Neutral Implementation Agreement is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved DBE Race-Neutral Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31 USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to ADMINISTERING AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on ADMINISTERING AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.
APPENDIX A TO EXHIBIT B

During the performance of this Agreement, ADMINISTERING AGENCY, for itself, its assignees and successors in interest (hereinafter collectively referred to as ADMINISTERING AGENCY) agrees as follows:

(1) Compliance with Regulations: ADMINISTERING AGENCY shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: ADMINISTERING AGENCY, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. ADMINISTERING AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by ADMINISTERING AGENCY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: ADMINISTERING AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to ADMINISTERING AGENCY's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of ADMINISTERING AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, ADMINISTERING AGENCY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts ADMINISTERING AGENCY has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of ADMINISTERING AGENCY's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to ADMINISTERING AGENCY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.
(6) Incorporation of Provisions: ADMINISTERING AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. ADMINISTERING AGENCY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event ADMINISTERING AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, ADMINISTERING AGENCY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, ADMINISTERING AGENCY may request the United States to enter into such litigation to protect the interests of the United States.
APPENDIX B TO EXHIBIT B

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that ADMINISTERING AGENCY will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the ADMINISTERING AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto ADMINISTERING AGENCY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on ADMINISTERING AGENCY, its successors and assigns.

ADMINISTERING AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

1. that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (and);

2. that ADMINISTERING AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (and);

3. that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns' as such interest existed prior to this deed.

* Reverter clause and related language to be used only when it is determined that such a clause is
necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX C TO EXHIBIT B

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7(a) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY and its assigns.

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.
APPENDIX D TO EXHIBIT B

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7 (b) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY, and its assigns.

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.
This Program Supplement hereby incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on / / and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by State of any funds derived from sources noted below obligated to this project, the Administering Agency accepts and will comply with the Special covenants or Remarks set forth on the following pages.

PROJECT LOCATION:
Various locations in city of Los Banos. "West I street" from SR 152 to Fourth Street."H St" from 7Th st. to Sr 152."Stonewood Drive" from Burlwood Ct to Overland Avenue. San Luis St

TYPE OF WORK: Asphalt Concrete Overlay

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CITY OF LOS BANOS

STATE OF CALIFORNIA
Department of Transportation

Chief, Office of Project Implementation
Division of Local Assistance

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer

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1. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

2. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the DistrictLocal Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

3. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.
SPECIAL COVENANTS OR REMARKS

4. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award or with submittal of the ADMINISTERING AGENCY's first invoice for the construction contract, whichever is earlier.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Please refer to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

5. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

6. The Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is
incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

7. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Excluded Parties List System (EPLS).

8. This project is financed, in whole or in part, with federal funds from the American Recovery and Reinvestment Act of 2009 (Recovery Act). ADMINISTERING AGENCY agrees:

1) Statutory provisions contained in Chapter 1 of Title 23 United States Code (U.S.C.) are applicable to all Recovery Act funded projects,

2) Costs incurred prior to the date of authorization are NOT eligible for reimbursement with federal Recovery Act funds,

3) Federal Prevailing Wage Rate requirements apply to all Recovery Act funded construction projects regardless of location (including projects on local roads and rural minor collectors, and Transportation Enhancement projects outside the highway right of way). ADMINISTERING AGENCY agrees to include the appropriate wage rate information in the contract and also include a contract provision that overrides the general applicability provisions in form FHWA-1273, Sections IV and V,

4) To expend and invoice for all Recovery Act funds prior to using other funds, and

5) To comply with the reporting requirements, terms and conditions set forth in Sections 1201 and 1512 of the Recovery
SPECIAL COVENANTS OR REMARKS

Act and as designated by the STATE. Failure to comply will result in retentions from progress payments due ADMINISTERING AGENCY and/or other sanctions,

6) Recovery Act funds are available for liquidation only until September 30, 2015 when the remaining balance of Recovery Act funds will expire. ADMINISTERING AGENCY agrees to submit an invoice for the balance of project Recovery Act funds (if any) to the STATE prior to July 1, 2015.
Attention: City of Los Banos

FINANCE ITEMS

<table>
<thead>
<tr>
<th></th>
<th>TOTAL COST OF WORK</th>
<th>FEDERAL PART.</th>
<th>FED. REIMB.</th>
<th>FEDERAL C240</th>
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<td>0.00%</td>
<td>$5,667.00</td>
<td>$690,143.00</td>
</tr>
</tbody>
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100.00%

This Finance Letter was created based on specific financial information provided by the responsible local agency. The following encumbrance history is prepared by Local Assistance Accounting Office and is provided here for local agency's information and action.

Signature: Shannon Miooch
Title: Senior Area Engineer
Telephone No: (916)653-6750

Remarks:

ACCOUNTING INFORMATION - ESPL-5160(017)

<table>
<thead>
<tr>
<th>Fund</th>
<th>Program</th>
<th>Fed/State</th>
<th>Encumbrance Amount</th>
<th>Approp Year</th>
<th>Expenditure Amount</th>
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</table>
February 10, 2010

Mr. Mark Fachin
Interim Public Works Director
City of Los Banos
411 Madison Avenue
Los Banos, CA 93635

Attn: Mr. Gary Hutsell

Dear Mr. Fachin:

Enclosed are two originals of the Program Supplement Agreement No. 009-N to Administering Agency-State Agreement No. 10-5160R and an approved Finance Letter for the subject project. Please retain the signed Finance Letter for your records.

Please note that federal funding will be lost if you proceed with future phase(s) of the project prior to getting the "Authorization to Proceed" with that phase.

Please review the covenants and sign both copies of this Agreement and return both to this office, Office of Project Implementation - MS1 within 60 days from the date of this letter. If the signed Agreements are not received back in this office within 60 days, funds will be disencumbered and/or deobligated. Alterations should not be made to the agreement language or funding. Attach your local agency's certified authorizing resolution that clearly identifies the project and the official authorized to execute the agreement. A fully executed copy of the agreement will be returned to you upon ratification by Caltrans. No invoices for reimbursement can be processed until the agreement is fully executed.

In accordance to Government Code 16304, Federal funds appropriated by the State budget are available for liquidation only for seven years and the State funds are available only for five years. The attached Finance Letter shows these deadlines as the "Reversion Date". Please ensure that your invoices are submitted at least 60 days prior to the reversion date to avoid any lapse of funds. If your agency is unable to seek reimbursement by this date you may request an extension through a Cooperative Work Agreement (CWA). A CWA is subject to the final approval of the State Department of Finance. If approved, the CWA may extend the deadline for up to one year for federal funds and up to three years for State funds.

Please note that Government Code 16304 does not supersede any other more restrictive expenditure deadlines.

Your prompt action is requested. If you have questions, please contact your District Local Assistance Engineer.

Sincerely,

BILL SANDOVAL, Chief
Office of Project Implementation - North
Division of Local Assistance

Enclosure

c: DLA AE Project Files
(10) DLAE - Sinaren Pheng
This Program Supplement hereby incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on / / and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by State of any funds derived from sources noted below obligated to this project, the Administering Agency accepts and will comply with the Special covenants or Remarks setforth on the following pages.

PROJECT LOCATION:
Fourth St, From HWY 152 to H ST; Seventh St From HWY 152 to K St; J St From 5th, 6th, 7th to Hwy 152; I Street from 7th St to HWy 152

TYPE OF WORK: Asphalt Concrete Overlay

<table>
<thead>
<tr>
<th>Estimated Cost</th>
<th>Federal Funds</th>
<th>Matching Funds</th>
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<td>OTHER</td>
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CITY OF LOS BANOS

STATE OF CALIFORNIA
Department of Transportation

by ____________________________

Date _________________________

Attest: _________________________
Title _________________________

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer ____________________________ Date 1-29-10

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Statutes</th>
<th>Item</th>
<th>Year</th>
<th>Program</th>
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<td>898-F</td>
<td>$743,666.00</td>
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</table>
SPECIAL COVENANTS OR REMARKS

1. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

2. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the DistrictLocal Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

3. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.
SPECIAL COVENANTS OR REMARKS

4. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award or with submittal of the ADMINISTERING AGENCY's first invoice for the construction contract, whichever is earlier.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Please refer to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

5. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

6. The Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is
SPECIAL COVENANTS OR REMARKS

incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

7. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Excluded Parties List System (EPLS).

8. This project is financed, in whole or in part, with federal funds from the American Recovery and Reinvestment Act of 2009 (Recovery Act). ADMINISTERING AGENCY agrees:

1) Statutory provisions contained in Chapter 1 of Title 23 United States Code (U.S.C.) are applicable to all Recovery Act funded projects,

2) Costs incurred prior to the date of authorization are NOT eligible for reimbursement with federal Recovery Act funds,

3) Federal Prevailing Wage Rate requirements apply to all Recovery Act funded construction projects regardless of location (including projects on local roads and rural minor collectors, and Transportation Enhancement projects outside the highway right of way). ADMINISTERING AGENCY agrees to include the appropriate wage rate information in the contract and also include a contract provision that overrides the general applicability provisions in form FHWA-1273, Sections IV and V,

4) To expend and invoice for all Recovery Act funds prior to using other funds, and

5) To comply with the reporting requirements, terms and conditions set forth in Sections 1201 and 1512 of the Recovery
SPECIAL COVENANTS OR REMARKS

Act and as designated by the STATE. Failure to comply will result in retentions from progress payments due ADMINISTERING AGENCY and/or other sanctions.

6) Recovery Act funds are available for liquidation only until September 30, 2015 when the remaining balance of Recovery Act funds will expire. ADMINISTERING AGENCY agrees to submit an invoice for the balance of project Recovery Act funds (if any) to the STATE prior to July 1, 2015.
## FINANCE LETTER

**Date:** 02/08/2010  
**Agency:** 10-MER-D-LBNS  
**Project No:** ESPL-5160(016)  
**EA No:** 10-966903

**Attention:** City of Los Banos

### FINANCE ITEMS

<table>
<thead>
<tr>
<th>Contract Items:</th>
<th>TOTAL COST</th>
<th>FEDERAL PART</th>
<th>FED. REIMB</th>
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<td></td>
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</tr>
</tbody>
</table>

| Construction     | $710,294.00 | $710,294.00 | 100.00%    | $710,294.00 | $0.00 |
| Agency Construction Engineering | $33,372.00 | $33,372.00 | 100.00%    | $33,372.00 | $0.00 |

**Totals:**  
- $743,666.00  
- $743,666.00  
- 0.00%  
- $743,666.00  
- $0.00

This Finance Letter was created based on specific financial information provided by the responsible local agency. The following encumbrance history is prepared by Local Assistance Accounting Office and is provided here for local agency's information and action.

**Signature:** Shannon Mlooch

**Title:** Senior Area Engineer

For questions regarding finance letter, contact:

- **Printed Name:** Shannon Mlooch
- **Telephone No:** (916)653-6750

### ACCOUNTING INFORMATION - ESPL-5160(016)

<table>
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<tr>
<th>Fund</th>
<th>Program</th>
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<th>Encumbrance Amount</th>
<th>Approp Year</th>
<th>Expenditure Amount</th>
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</tr>
</thead>
<tbody>
<tr>
<td>09RF</td>
<td>ARRA STP URBAN 2008</td>
<td>F</td>
<td>$743,666.00</td>
<td>2008</td>
<td>$0.00</td>
<td>06/30/15</td>
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</table>
RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS
AUTHORIZING THE PUBLIC WORKS DIRECTOR TO SIGN MASTER
AGREEMENT AND FUTURE AGREEMENTS RELATING TO STATE
AND FEDERAL TRANSPORTATION PROJECTS

WHEREAS, the City of Los Banos is eligible to receive Federal and/or State
funding for certain transportation projects, through the California Department of
Transportation and

WHEREAS, Master Agreements, Program Supplemental Agreements, Fund
Exchange Agreements and/or Fund Transfer agreements need to be executed with the
California Department of Transportation before such funds could be claimed and

WHEREAS, City Street Overlay Projects Program Supplemental Agreements for
ESPL5160(016) and ESPL5160(017) need to be executed and

WHEREAS, the City of Los Banos wishes to delegate authorization to execute
these agreements and any amendments thereto, that the Public Works Director be
authorized to execute all Master Agreements, Program Supplemental Agreements,
Fund Exchange Agreements, Fund Transfer Agreements and/or any amendments
thereto with the California Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Los
Banos does hereby authorize the Public Works Director to execute all Master
Agreements, Program Supplemental Agreements, Fund Exchange Agreements, Fund
Transfer Agreements and/or any amendments thereto with the California Department of
Transportation.

The foregoing Resolution was introduced at a regular meeting of the City Council
of the City of Los Banos held on the 17th day of March 2010, by Council Member
_____ who moved its adoption, which motion was duly seconded by Council Member
_____ and the Resolution adopted by the following vote:

AYES: 
NOES: 
ABSENT: 

ATTEST: 
APPROVED: 

Lucille L. Mallonee, City Clerk

Tommy Jones, Mayor
TO: Mayor & City Council Members

FROM: Lucy Mallonee, CMC
City Clerk/Human Resources Director

DATE: March 17, 2010

SUBJECT: Approval of a Tentative Agreement of a Memorandum of Understanding (MOU) between the City of Los Banos and the Los Banos Fire Fighters Association (LBFFA)

TYPE OF REPORT: Agenda Item

Recommendation:
Adopt the Resolution approving the Tentative Agreement of a MOU between the City of Los Banos and the LBFFA.

Discussion:
On April 1, 2009 the City Council adopted Resolution No. 5128 which allowed for an extension of the then current MOU with the LBFFA through January 31, 2010. The City has bargained in good faith with the LBFFA and has reached agreement on a new MOU through January 31, 2011.

Attached is a resolution and the Tentative Agreement for your review and consideration of approval.

Fiscal Impact:
A savings of $91,429.4 from April 1, 2010 through January 31, 2011.

Attachments:
Resolution
RESOLUTION NO. ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS APPROVING A MEMORANDUM OF UNDERSTANDING (MOU) BY AND BETWEEN THE CITY OF LOS BANOS AND THE LOS BANOS FIRE FIGHTERS ASSOCIATION (LBFFA)

WHEREAS, the City Council of the City of Los Banos has received a request to approve a Memorandum of Understanding by and between the City of Los Banos and the Los Banos Fire Fighters Association (LBFFA); and

WHEREAS, the Memorandum of Understanding will be in effect from March 17, 2010 to January 31, 2011.

NOW, THEREFORE, BE IT RESOLVED that the Memorandum of Understanding by and between the City of Los Banos and the LBFFA is hereby approved as submitted as “Exhibit A” respectively.

PASSED AND ADOPTED this ___ day of ___ 2010, at a regular meeting of the City Council by the following vote:

AYES: Council Members
NOES: None
ABSENT: None

APPROVED:

______________________________
Tommy Jones, Mayor

ATTEST:

______________________________
Lucille L. Mallonee, City Clerk
TENTATIVE AGREEMENT
BETWEEN
CITY OF LOS BANOS
AND
LOS BANOS FIRE FIGHTERS' ASSOCIATION

March 12, 2010

The following document contains the Tentative Agreement between the parties, subject to ratification and approval of the parties. The salaries, hours, fringe benefits and working conditions set forth have been mutually agreed upon by the designated bargaining representatives of the City of Los Banos (hereinafter called “City”) and Los Banos Fire Fighter Association (hereinafter called “LBFFA” or “Association”) and will apply to all employees covered by the Memorandum of Understanding (MOU) between the City and the Association. Language in the MOU between the parties not changed by this Tentative Agreement will remain unchanged. The parties agree that any and all Tentative Agreements are hereby incorporated. Any outstanding proposals not agreed to are hereby withdrawn by the parties.

This Tentative Agreement is subject to ratification by Association membership and approval by the City Council of the City of Los Banos.

FOR THE CITY

FOR ASSOCIATION

Dated: 3-12-10

Dated: 3/12/10
Implementation dates listed herein are contingent upon ratification by March 17, 2010. This offer sunsets on March 17, 2010 if ratification does not occur by that date.

**Term:** February 1, 2010 – January 31, 2011 (1 year)

**Medical Insurance:** Limited to PEMHCA minimum monthly employer contribution (currently $105 per month)

**Cafeteria Plan:** Effective April 1, 2010 – June 30, 2010:
- Dental/vision reimbursement per City resolution continues
- **Current Employees** (for ee’s enrolled in City health plans):
  City contribution = HMO premium, minus PEMHCA contribution, plus life insurance premium, minus the equivalent of 2.5% of the individual employee’s salary (pre-tax)
- **New Hires** (for ee’s enrolled in City health plans): City contribution = 
  100-90-80 formula (previously proposed dollar amounts minus 2.5% of salary)
  *Employee Only: TBD*
  *Employee plus One: TBD*
  *Employee plus Family: TBD*

Effective July 1, 2010:
- Dental/vision reimbursement program ($875 per year) discontinued, all remaining funds forfeited
- **Current Employees** (for ee’s enrolled in City health plans):
  City contribution = HMO premium, minus PEMHCA contribution, plus life insurance premium, plus up to a maximum of $72.92 per month for dental and vision coverage premiums, minus the equivalent of 2.5% of the individual employee’s salary (pre-tax)
- **New Hires** (for ee’s enrolled in City health plans): City contribution = 
  100-90-80 formula (previously proposed dollar amounts minus 2.5% of salary)
  *Employee Only: TBD*
  *Employee plus One: TBD*
  *Employee plus Family: TBD*

**Additional terms of Cafeteria Plan:**
- Dental, vision and life enrollment effective July 1, 2010 is mandatory.
- Employees may opt out of health coverage upon proof of enrollment in a group plan, and will receive a cafeteria plan contribution of $385 per month.
• For new hires, when PEMHCA minimum contribution is increased, cafeteria plan contributions will be decreased by a corresponding amount.

Pension: Effective April 1, 2010, employee pays full employee contribution (9%)

Employees hired before date of city adoption of resolution to establish 2nd tier for pension:
• 3% at 50 pension formula

Employees hired before date of city adoption of resolution to establish 2nd tier for pension:
• 3% at 55 pension formula

Retiree Health: Limited to PEMHCA minimum monthly employer contribution (currently $105 per month)

Health Svngs Plan: Employees hired before October 1, 2002:
• Full health premium for coverage of choice minus PEMHCA contribution from date of retirement to date of Medicare eligibility
• Upon Medicare eligibility, supplemental plan premium minus PEMHCA contribution
• City will remove non-vesting language

Employees hired October 1, 2002 – March 16, 2010:
• Tiered contribution based on years of service
• City will remove non-vesting language

Employees hired on or after March 17, 2010:
• City contribution of $50 per month during employment, matched by $50 per month employee contribution
• Not vested

Step Increases: Effective July 1, 2010, freeze step increases

Salaries: The parties agree to go to an hourly rate. Both an hourly rate and monthly salary will be reflected in the MOU. The parties agree to meet and confer over the appropriate hourly rate as calculated based on the current monthly salary.

Effective upon agreement between the parties as to the appropriate hourly rate, the City agrees to count sleep time as hours worked.

Promotions: Promotion results in at least a 5% increase above current rate of pay
Work Schedule: Continuation of 48/96 work schedule
Shifts will be 48 hours in length

Sick Leave: Regular Employees receiving full salary and benefits from the City are considered entitled employees for the purpose of Sick Leave and Vacation accrual.

Regular Employees on a 56 hour workweek earn Sick Leave at the rate of 11.2 hours for each calendar month of full-time service to the City. Sick Leave accrual for periods shorter than one calendar month will be pro-rated on the basis of actual service time during that partial month.

Vacation: Regular Employees on a 56 hour workweek earn Vacation Leave, beginning with the date of hire, in accordance with the following guidelines. Vacation Leave accrual for periods shorter than one calendar month will be pro-rated on the basis of actual service time during that partial month.

- Regular Employees with five (5) full years of service or less earn 9.3 hours Vacation Leave for each full calendar month of employment.
- Regular Employees who have completed from five (5) to fifteen (15) full years of service earn 14 hours Vacation Leave for each full calendar month of employment.
- Regular Employees who have completed over fifteen (15) full years of service earn 19.12 hours Vacation Leave for each calendar month of employment.

Vacation Leave may be accumulated and saved in accordance with the following guidelines:

- Employees who have less than five (5) full years of service may save a maximum of 224 hours;
- Employees who have from five (5) to fifteen (15) full years of service may save a maximum of 336 hours;
- Employees who have in excess of fifteen (15) full years of service may save a maximum of 448 hours.

Should any employee exceed the maximum accrual of vacation, accrual will cease until vacation accrual reduces to below the maximum amount allowed.

The parties will meet to discuss how sick leave and vacation accrued up until the date of this agreement will be handled.
Holidays: In lieu of holidays, employees on a 56 hour workweek will be paid 134.4 holiday hours per year, to be paid on a pay period basis. Payments will be handled in accordance with CalPERS regulations.

Compensatory Time: Employees are permitted to accumulate a maximum amount of one hundred twenty (120) hours compensatory time. Employees may cash out compensatory time in excess of eighty (80) hours, up to a total of forty (40) hours maximum cash out annually, to be paid on December 20th.

Overtime: The City will provide Overtime Compensation for all time worked in excess of 182 hours during an established Twenty-Four (24) Day Work Period to those Fire Fighters who are assigned to shifts (work periods) longer than eight (8) consecutive hours (24 – 48 hour shifts).

Discipline: The City will comply with the Firefighter Procedural Bill of Rights.

Education Incentive Accept Association proposal for clean up
/Certificate Pay:

Management Rights: Agree with Association counter proposal, with addition of “in accordance with legal requirements” at end of provision

Grievance Procedure:

Purpose: The purpose of the Grievance Procedure is to provide for fair and prompt review and resolution of issues affecting labor relations.

Grievance Defined: A grievance will be defined as an alleged violation of the MOU.

Step 1: Informal Grievance: Within 14 calendar days of the occurrence of the act(s) that constitute the grievance, an employee will discuss the grievance with his/her immediate supervisor, who will investigate and attempt to resolve the matter. The supervisor will give the employee a verbal reply within 14 calendar days after the discussion. If the employee is not satisfied with the reply, he or she may proceed to Step 2.

Step 2: Formal Grievance: Any grievance not resolved at Step 1 may be submitted in writing to the Department Head no later than 14 calendar days after the date of the supervisor’s verbal reply.
Formal Employee Grievances will be submitted on the prescribed form (Employee Grievance Report).

Upon receipt of the Employee Grievance Report, the Department Head will conduct a thorough review of the circumstances giving rise to the Grievance, including a meeting with the employee who initiated the Grievance.

At the time of such meeting, which shall be scheduled no later than seven (7) calendar days from the date the Department Head received the Employee Grievance Report, the employee may bring with him/her one (1) advisor of his/her choice to assist in presentation of his/her concerns. Electronic or mechanical recording of the hearing is permitted by any participant.

Within ten (10) calendar days after the date of the Grievance Hearing the employee initiating the Grievance will be provided with a written response (Finding on Employee Grievance) which sets forth the Department Head’s findings on the Grievance and specifies what, if any, action will be taken to correct the problem. Exception: In those situations where additional review is required, the employee shall be given written notice of this fact within the normal ten (10) day response time and follow-up notices of delay by the conclusion of each subsequent ten (10) day period thereafter until such time as the Findings are completed.

Step 3: Grievance Appeal: If an employee is dissatisfied with the initial Finding on Employee Grievance, he/she may appeal the decision to the City Manager.

To exercise their right to appeal a Finding on Employee Grievance, employees must file a written request with the City Manager by no later than five (5) calendar days from the date of receipt of the Step 2 Findings on Employee Grievance. The request for Appeal shall include: copies of the original Employee Grievance Report, Findings on Employee Grievance, and a cover letter setting forth the specific reasons the employee disagrees with the decision reached with regard to his/her Grievance. Failure to submit the required material within the specified time period shall be considered as a waiver of the employee's right to Appeal.

Upon receipt of a Grievance Appeal, the City Manager shall conduct a thorough review of circumstances giving rise to the Grievance, including a meeting with the employee initiating the Grievance within no later than ten (10) calendar days from the date the City Manager received the employee's Grievance Appeal.
The decision of the City Manager will be final and binding. The City Manager’s decision will be limited as follows:

- The decision will neither add to, detract from, nor modify the language of the MOU.
- The decision will be confined to the precise issue(s) the grievance has raised at Step 1.
- Any monetary award in favor of the grievant may not exceed wages or benefits that the grievant has actually lost as a result of the matters alleged in the grievance. In no event will any grievance award include any compensatory damages or attorneys’ fees.

**Time Limits:** Any grievance shall be deemed settled when it is not appealed to the next step within the specified time limit, unless an extension of time to a definite date has been mutually agreed upon in writing. Any grievance that the grievant fails to timely move to the next step will be deemed resolved on the basis of the last disposition.

**Minimum Staffing:** The City will provide a minimum staffing of four firefighters. Volunteers will not be used to satisfy minimum staffing except to cover overtime shifts.

Volunteers will be used in the following circumstances:
(1) OES shifts, when paid staff have been offered the opportunity to work out of class, and
(2) When no one else from the applicable rank is available to work an overtime shift

**Overtime Hiring:** The parties agree to meet and confer over a procedure for overtime hiring.

**Call Back:** Training time will count toward hours worked.

**Residency Reqmt:** Employees will live within 5 miles of City limits to provide for sufficient response time.

**Working out / class:** Compensation for move-up assignments in the amount of 5% will apply after the employee has worked in the higher classification for a minimum of 48 hours within a 24 day work cycle.

The 48 hour waiting period will not apply for working out of class on an OES/ strike team.
Acting Appointment Pay will apply in accordance with City policy (60 day period worked before the higher rate of pay will apply.)

Pending approval by the Fire Chief, qualified employees wishing to work voluntary overtime in a class lower than their current class may volunteer to do so and will be compensated at one and one half times the highest hourly rate for the lower classification.

**Uniforms:**

The City will report uniform expenses to CalPERS in accordance with applicable regulations.

The City will provide up to 5 Fire Department t-shirts, one Fire Department collared sweatshirt, and one pair of safety boots or shoes as needed, to be determined by the Fire Chief.
TO: Mayor & City Council Members  
FROM: Finance Department  
DATE: March 17, 2010  
SUBJECT: Mid Year Budget Review and Approval of Resolution Pertaining to Certain Landscaping and Lighting Assessment Districts  

TYPE OF REPORT: Agenda Item

Recommendation:
Adopt Resolution as submitted.

Background:
A mid year financial report is prepared in order to highlight 2009-2010 fiscal year revenues and expenditures to determine if the City is on track or if adjustments need to be made during the year. It may also be useful in preparing for the upcoming budget year. This report focuses on the City’s general fund revenues with highlights on the top revenue sources and departmental expenditures.

Discussion:
The attached midyear report focuses on the current budget year status. The City is within it’s expenditures that were budgeted except for certain Landscaping and Lighting Assessment Districts, and there are concerns that should be discussed for the upcoming year with General fund revenues. During the Council Meeting, staff would like to discuss the impact of the state of the economy on the upcoming fiscal budget year.

Attached please find a Resolution for your review and consideration of approval pertaining to a budget amendment for certain Landscaping and Lighting Assessment Districts for 2009-2010 budget.
**Fiscal Impact:**

Reduction to expenditures in the amount of $495,361.00.

**Reviewed by:**

[Signature]

Steve Rath, City Manager

**Attachments:**

Midyear Budget Report
Resolution
OVERVIEW
This overview covers the 3rd Quarter of the 2009-10 fiscal year for the City of Los Banos.

GENERAL FUND
General Fund Financial Condition: With over 50% of the year complete, General Fund revenues are at 46.6% of projections in comparison of 54.5% for 2008-09 and 63% from 2007-08 FY. Expenditures are at 65% in comparison with 75% for 2008-09 and 77% from 2007-08.

Currently there is a structural budget deficit in the General Fund of $1,200,000 for Fiscal Year 2009-10. The main cause of this deficit is due to the following reasons:

1. **Key revenues sources are off by approximately $1.5 million from the approved budget**

The following 10 revenue sources account for 75% of total general fund revenues received in the second quarter. By focusing on these 10 top revenues, we can get a better understanding of our position. Overall, these key revenues are underperforming as projected in the 2009-10 approved budgets.

- **Property Tax in lieu of Sales Tax.** This is the triple flip exchange from the state equivalent 25% of our sales tax. Payments are anticipated in January and May of each year. In January, the City received $269,318, 33% of our anticipated revenues. This amount represents a decline in revenue of approximately $250,000 or 45% from budgeted revenue.

- **Property Tax.** We did not receive an apportionment for 2009-10 property tax until January. The amount received was $1.1 million or 41%. The estimated SERAF for the City of Los Banos RDA property tax for the 2011 FY is $1.2 million. This amount represents a shortfall of $225,000 from the approved 2009-10 budget.

- **Sales Tax.** The past two years, there has been an auditing procedure change for the City; we now accrue the first two months to the prior fiscal year. The State of California allocates sales tax revenue on a quarterly basis in arrears, so that revenues for the first quarter we have received reflects only four months of revenues. As of the 3rd quarter the city has only collected 58% of its budgeted Sales Tax as opposed to 70% in the previous year.

- **Documentary Stamp Tax.** This tax is imposed on transfer of property. The second quarter of last year the City received $59,760 in documentary stamp taxes. This represents a decline in revenue of approximately $25,000 or 15% from budgeted revenue. This is mainly due to the lack of housing sales.

- **Property tax in Lieu of VLF Fees.** The City receives increased property tax revenues to compensate for the reduction in revenues associated with the car-tax. Payments are anticipated in January and May of each year. The January payment was $1.5 million, 56% of anticipated revenues.

- **VLF Fees.** The City has collected only 38% of the fees and there will be a shortfall of approximately $25,000 from budgeted revenues.
• **Franchise Fees.** The City has collected only 28% of the fees and there will be a shortfall of approximately $55,000 from budgeted revenues.

• **Transient Occupancy Tax (TOT).** Hotel taxes are received on a quarterly basis. The first payment for this fiscal year was due on October 31st. The City has collected approximately $11,000 less than the 2008-09 fiscal year.

• **Building Fees.** These fees consist of zoning and planning fees and reimbursable costs. City has collected only 48% of the fees and there will be a shortfall of approximately $25,000 from budgeted revenues.

2. **Key cost savings have been delayed.** Other saving measures have been implemented by the Finance Department.

- The cost savings to personnel cost have been delayed due to on-going labor negotiations.

- It should be noted that transfers to the Retiree Benefits Internal Service funds were suspended by the finance department. This represents a cost saving of $444,283.50 to the General Fund.

**Fiscal Controls over Deficit Spending**

Due to the recent deficit spending, the finance department is requesting that the City Council enact a 2% of General Fund Revenues as the required operating reserved equity balance in the General Fund. This will enable the Finance department to utilize this fiscal control in the upcoming 2010-11 budget.

**Assessment District**

**Assessment District Financial Condition**

Currently several of the Assessment Districts have deficit fund balances. The Finance department has worked with the Public Works Department to stop any deficit spending. The proposed Budget Amendment will finalize this process.

**Impact to the other funds**

Approximately 5-10% of the maintenance and water cost that had been recorded in the Assessment Districts have been transferred to the General Fund, the Water Fund and the Wastewater Fund.

**Budget Adjustments Approved by Council**

1. The City Council amended the Fiscal Year 2009-2010 budget and transfer 7 police officers salaries and benefits out of the General Fund and into Fund 236, Measure P Public Safety Augmentation Police Fund in the amount of $360,000 utilizing Measure A funding which allows building and structure reserve funds to be used for personnel. Net impact: $360,000 benefit to the General Fund.

**Budget Adjustments Needing Approval by Council**

1. Decrease in the Landscaping and Lighting Assessment District expenditures for maintenance in the amount of $495,361.00 for Council approval.

This summary is based on detailed information produced by the City's financial management system. If you would like additional information, or have any questions about the report, please call the Finance Department at 827-7000.
RESOLUTION NO. ________

A RESOLUTION OF THE CITY OF LOS BANOS
ADOPTING A REVISED BUDGET FOR THE 2009-
2010 FISCAL YEAR (FY) AS IT PERTAINS TO
THE LANDSCAPING AND LIGHTING
ASSESSMENT DISTRICTS

WHEREAS, the City Council of the City of Los Banos has been presented an amendment to the 2009-2010 Fiscal Year Landscaping and Lighting Assessment Districts budget; and

WHEREAS, the City Council of the City of Los Banos may adjust the overall appropriation levels in each fund at any time during the 2009-2010 FY by action to amend the budget.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Los Banos hereby amends the 2009-2010 FY Landscaping and Lighting Assessment District budget as shown in Exhibit A as attached.

BE IT FURTHER RESOLVED that within each fund in Exhibit A, the original adopted expenditures are revised.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on the 17th day of March 2010, by Council Member __________ who moved for its adoption, which motion was duly seconded by Council Member __________, and the Resolution was adopted by the following vote.

AYES:
NOES:
ABSENT:

APPROVED:

______________________________
Tommy Jones, Mayor

ATTEST:

______________________________
Lucille L. Mallonee, City Clerk
### Los Banos Gardens District #3 - Fund 273

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### St. Francis Estates District #6 - Fund 276

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### Valley Meadows & Bedford District #7 - Fund 277

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The total net loss for St. Francis Estates District #6 for 2009-10 is $9,737.
### Landscape/Lighting Districts
#### 2009-2010 Budget Amendment

### Jo-Lin Manor & Rancho De Amigos District # 9 - Fund 279

<table>
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### Los Banos Creek Shopping Center District # 10 - Fund 280

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### Meadowlands District # 11 - Fund 281

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### Verona/Mission Estates District # 12 - Fund 282

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# Exhibit A

## Landscape/Lighting Districts

### 2009-2010 Budget Amendment

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### Northgate @ Regency Park District # 14 - Fund 284

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### Senior Homes Village District # 16 - Fund 286

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### Exhibit A

#### Landscape/Lighting Districts  
**2009-2010 Budget Amendment**

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#### Stonecreek Villages District # 17 - Fund 287

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#### Rail Road Corridor District # 18 - Fund 288

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### Exhibit A

**Landscape/Lighting Districts**

2009-2010 Budget Amendment

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| 289-458-200-213 Water Sewerage & Disposal      | -              | -              |
| 289-458-200-220 Landscape Maintenance          | -              | -              |
| 289-458-200-221 Park Maintenance               | 30,500         | 440            |
| 289-458-200-230 Administrative Services        | 1,580          | 112            |
| 289-458-200-235 City Engineer                  | 300            | 300            |
| 289-458-200-263 Street Light Maintenance       | -              | 800            |
| 289-458-200-264 Electricity & Gas              | 788            | 788            |
| **Total Expenditures**                         | **$ 33,168**   | **$ 2,440**    | **$ 30,728**    |

**$ 495,361**
PLANNING DEPARTMENT

Date: March 12, 2010

Regarding: Notice of Public Hearing

Proposal: Vendors Permit #2010-01

NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Los Banos Planning Commission to consider a Vendors Permit to allow the operation of one ice cream truck in the Residential zoning districts. The applicant is Haridutt Karrha, dba: Fun Time Ice Cream.

A PUBLIC HEARING on this matter will be held at the next scheduled meeting of the Planning Commission on Wednesday, March 24, 2010 at 7:00 p.m. in the Council Chambers of Los Banos City Hall located at 520 "J" Street. Questions regarding the above-referenced item may be directed to Stacy Souza, Assistant Planner at City Hall or at (209) 827-7000, Ext. 133.

Persons wishing to provide oral comments on the described proposal may do so at this meeting or may provide written comments on this matter prior to the public meeting. Written comments may be sent by U.S. Mail or hand delivered to the City of Los Banos City Hall at 520 "J" Street, Los Banos, California 93635. If no comments are received prior to or on the above date, it will be assumed that no comments are being offered. The public is also informed that should this matter, at some future date go to court, court testimony is limited to only those issues raised at the hearings per Government Code Section 65009.

THE CITY OF LOS BANOS

Stacy Souza
Assistant Planner
PLANNING DEPARTMENT

Date: March 12, 2010

Regarding: Notice of Public Hearing

Proposal: Vendors Permit #2010-02

NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Los Banos Planning Commission to consider a Vendors Permit to allow the operation of one ice cream truck in the Residential zoning districts. The applicant is Charanjit Singh, dba: Domeli Ice Cream.

A PUBLIC HEARING on this matter will be held at the next scheduled meeting of the Planning Commission on Wednesday, March 24, 2010 at 7:00 p.m. in the Council Chambers of Los Banos City Hall located at 520 "J" Street. Questions regarding the above-referenced item may be directed to Stacy Souza, Assistant Planner at City Hall or at (209) 827-7000, Ext. 133.

Persons wishing to provide oral comments on the described proposal may do so at this meeting or may provide written comments on this matter prior to the public meeting. Written comments may be sent by U.S. Mail or hand delivered to the City of Los Banos City Hall at 520 "J" Street, Los Banos, California 93635. If no comments are received prior to or on the above date, it will be assumed that no comments are being offered. The public is also informed that should this matter, at some future date go to court, court testimony is limited to only those issues raised at the hearings per Government Code Section 65009.

THE CITY OF LOS BANOS

Stacy Souza
Assistant Planner
PLANNING DEPARTMENT

Date: March 12, 2010

Regarding: Notice of Public Hearing

Proposal: Los Banos Zoning Ordinance and Zoning Map Update

NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Los Banos Planning Commission to provide feedback and take input on a comprehensive Zoning Ordinance and Zoning Map update for the City of Los Banos.

A PUBLIC HEARING on this matter will be held at the next scheduled meeting of the Planning Commission on Wednesday, March 24, 2010 at 7:00 p.m. in the Council Chambers of Los Banos City Hall located at 520 "J" Street. Questions regarding the above-referenced item may be directed to Paula Fitzgerald, AICP, Planning Director at City Hall or at (209) 827-7000, Ext.114.

Persons wishing to provide oral comments on the described proposal may do so at this meeting or may provide written comments on this matter prior to the public meeting. Written comments may be sent by U.S. Mail or hand delivered to the City of Los Banos City Hall at 520 "J" Street, Los Banos, California 93635. If no comments are received prior to or on the above date, it will be assumed that no comments are being offered. The public is also informed that should this matter, at some future date go to court, court testimony is limited to only those issues raised at the hearings per Government Code Section 65009.

THE CITY OF LOS BANOS

[Signature]
Stacy Souza
Assistant Planner
TO: Mayor & City Council Members
FROM: Elaine Post, RDA Director
DATE: March 17, 2010
SUBJECT: Incubator Workshop
TYPE OF REPORT: Informational Item Only

Recommendation:
Adjourn the Council Meeting to the Incubator Workshop Thursday March 18, 2010 at 6:00 p.m. in the Council Chambers.

Discussion:
The Incubator Workshop will be held on Thursday March 18, 2010 at 4:00 p.m. in the Council Chambers to discuss the Innovation Place Incubator Project. MCEDCO and Merced College will present an outline of where the project currently is, and what steps need to be taken next.

Reviewed by:

Steve Rath, City Manager