



# City of Los Banos

At the Crossroads of California

[www.losbanos.org](http://www.losbanos.org)

## AGENDA

### ADJOURNED CITY COUNCIL MEETING

CITY HALL COUNCIL CHAMBERS  
520 J Street  
Los Banos, California

**JUNE 6, 2016**

*If you require special assistance to attend or participate in this meeting, please call the City Clerk's Office @ (209) 827-7000 at least 48 hours prior to the meeting.*

*The City of Los Banos complies with the Americans with Disabilities Act (ADA) of 1990.*

*Si requiere asistencia especial para atender o participar en esta junta por favor llame a la oficina de la Secretaria de la ciudad al (209) 827-7000 a lo menos de 48 horas previas de la junta.*

*La Ciudad de Los Banos cumple con la Acta de Americanos con Deshabilidad (ADA) de 1990.*

*Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the meeting and in the City Clerk's office located at City Hall, 520 J Street, Los Banos, California during normal business hours. In addition, such writings and documents may be posted on the City's website at [www.losbanos.org](http://www.losbanos.org).*

*Cualquier escritura o los documentos proporcionaron a una mayoría del Ayuntamiento respecto a cualquier artículo en este orden del día será hecho disponible para la inspección pública en la reunión y en la oficina de la Secretaria de la ciudad en City Hall, 520 J Street, Los Banos, California durante horas de oficina normales. Además, tales escrituras y los documentos pueden ser anunciados en el website de la ciudad en [www.losbanos.org](http://www.losbanos.org).*

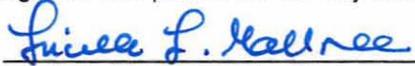
1. CALL TO ORDER. **4:00 PM**
2. PLEDGE OF ALLEGIANCE.
3. ROLL CALL: (City Council Members)  
  
Faria \_\_, Lewis \_\_, Silveira \_\_, Stonegrove \_\_, Mayor Villalta \_\_
4. CONSIDERATION OF APPROVAL OF AGENDA.
5. PUBLIC FORUM. (Members of the public may address the City Council on any item of public interest that is within the jurisdiction of the City Council; 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.)

6. CONSIDERATION OF ADOPTION OF CITY COUNCIL RESOLUTION NO. 5755 – APPROVING AN AMENDED AND RESTATED PROPERTY TAX SHARING AGREEMENT BETWEEN THE CITY OF LOS BANOS AND COUNTY OF MERCED.

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

7. ADJOURNMENT.

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 3rd day of June 2016



City of  
**Los Banos**  
*At the Crossroads of California*

**Agenda Staff Report**

**TO:** Mayor and City Council Members

**FROM:** Gary Brizzee, Interim City Manager  
Sonya Williams, Finance Director  
William A. Vaughn, City Attorney

**DATE:** June 6, 2016

**SUBJECT:** Property Tax Sharing Agreement between the City of Los Banos and the County of Merced

**TYPE OF REPORT:** Non consent

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**Recommendation:**

Staff recommends the City Council adopt Resolution No. \_\_\_\_\_ Approving Amended and Restated Property Tax Sharing Agreement between the City of Los Banos and the County of Merced.

**Background:**

On June 6, 1978 the voters of the State of California amended the California Constitution (Proposition 13) by adding Article XIII A thereto which limited the total amount of property taxes which could be levied on property by local taxing agencies having such property within their territorial jurisdiction to one percent 1 of assessed value. Following such constitutional amendment the California Legislature added Section 99 to the California Revenue and Taxation Code which requires a city seeking to annex property to its incorporated territory and a county affected by such annexation to agree upon an exchange of property taxes which are derived from such property and available to the county and city following annexation of the property to the incorporated territory of the city

Therefore, before land can be annexed to a city, there must be a property tax sharing agreement in place between the City and the County. Such agreement concerns the sharing of approximately 50 cents of every property tax dollar. This 50 cents is known as the "local

portion” of property tax as the remaining 50 cents goes to schools and other local districts. All of the cities in Merced County with the exception of Livingston have a Property Tax Sharing Agreement with the County. The terms of each agreement vary from city to city.

The sharing or splitting of future tax revenue is a fundamental part of the annexation process, as it recognizes the transfer of certain government services from a county to a city. Counties and cities are somewhat limited as to implementing or increasing discretionary revenue sources. Proposition 13 for example, limits the total annual property taxation to one percent of full cash value of the property at the time of acquisition. Prior to Proposition 13, local jurisdictions independently established tax rates and the total property tax rate was the composite of the individual rates, with few limitations. As a result of these types of limitations, it is critical the City work collaboratively with the County to ensure a fair and equitable tax sharing arrangement is reached to ensure an acceptable level of basic city services, such as police, fire, streets and parks is provided to residents as annexations occur.

Under the City’s current property tax agreement with the County executed back in 1997 the City receives approximately \$9.50 per \$100 of the “local portion” of property taxes for newly annexed properties. This split is applicable to 10 annexations in Los Banos that have occurred since 1997 and results in an approximate 30/70 city/county split.

City representatives began negotiations with the County representatives on September 29, 2011 to begin renegotiating property tax sharing for future annexed properties and for properties annexed post 1997.

**Environmental Considerations:**

California Environmental Quality Act (CEQA): Approval of the subject property tax sharing agreement itself will not cause either a direct change in the environment or a reasonably foreseeable indirect physical change in the environment and does not constitute a "project" for purposes of the CEQA under Public Resources Code section 21065 and CEQA Guidelines section 15378. The property tax sharing agreement is a component within the annexation process. Approval of the property tax sharing agreement does not constitute approval of any future annexation.

**Discussion:**

The Agreement before the City Council for consideration is the culmination of over 4 ½ years of negotiations and analysis by both the City and the County staffs. The County Board of Supervisors will be considering approval of the Agreement at their Board Meeting of June 7, 2016.

The proposed Agreement provides the City with approximately \$18 per \$100 of property tax revenue allocated to local taxing entities under Proposition 13 for areas annexed after the effective date of this agreement; and approximately \$17 per \$100 for undeveloped property within the city limits annexed into the City after October 1997. When compared to the current agreement, this Agreement results in an approximate 100 percent increase in the City’s share of

property tax revenue. The general intent of the allocation set forth in the agreement is to achieve an approximate 50/50 split between the City and the County post ERAF of the "local portion" for future annexation areas and post 1997 undeveloped annexed areas is to achieve an approximate 50/50 split between the City and the County post ERAF. Areas annexed post 1997 that have been developed will retain the allocation set forth in the current agreement. A power point presentation has been prepared to explain the allocation in more detail.

Both City and County staff believe the proposed agreement is fair and equitable and will provide each jurisdiction with funding to provide basic services as the City grows and new development occurs.

The Agreement is for an indefinite term however, it can be terminated by either party upon 180 days prior notice to the other. If the Agreement is terminated the allocations set forth in the Agreement shall not change for any areas where a certificate of filing has been issued by LAFCO prior to the termination of the Agreement. The Agreement also provides for provisions for the parties to meet and confer upon request of either party concerning the Agreement; meet and confer concerning joint interests in Pacheco Park; meet and confer concerning joint interests in the Los Banos Fairgrounds properties; cooperation concerning land use planning with the City's SOI; and a commitment by the City to participate in county wide discussions with all of the cities in the county concerning ag mitigation.

**Fiscal Impact:**

The anticipated fiscal impact to the City is an increase in property taxes allocated to the City for future annexations and undeveloped areas annexed post 1997.

**Attachments:**

Resolution

Current Agreement (1997)

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE LOS BANOS CITY COUNCIL APPROVING  
AN AMENDED AND RESTATED PROPERTY  
TAX SHARING AGREEMENT  
BETWEEN THE CITY OF LOS BANOS  
AND COUNTY OF MERCED**

WHEREAS, on June 6, 1978 the voters of the State of California amended the California Constitution by adding Article XIII A thereto which limited the total amount of property taxes which could be levied on property by local taxing agencies having such property within their territorial jurisdiction to one percent (1%) of full cash value; and

WHEREAS, following such constitutional amendment the California Legislature added Section 99 to the California Revenue and Taxation Code which requires a city seeking to annex property to its incorporated territory and a county affected by such annexation to agree upon an exchange of property taxes which are derived from such property and available to the county and city following annexation of the property to the incorporated territory of the city; and

WHEREAS, on October 21, 1997 County and City entered into a Property Tax Sharing Agreement (referred to herein as the "Original Agreement") in accordance with Section 99 to the California Revenue and Taxation Code; and

WHEREAS, annexation will not decrease the County's responsibilities for providing municipal/county-wide services in the areas of county administration, adult and juvenile detention and correction, health and human services, libraries, and office of emergency services; and

WHEREAS, annexation could decrease the County's responsibilities for providing unincorporated area services in the areas of police patrol, fire protection, planning, roads, building inspection and parks; and

WHEREAS, annexation causes certain revenues to automatically shift from the County to the City, such as sales tax, motor vehicle in-lieu tax, trailer coach in-lieu tax, transient occupancy tax, real property transfer tax, vehicle code fines, gasoline tax, and other fees and licenses; and

WHEREAS, annexation will increase the City's responsibilities for providing city services in newly annexed areas such as city administration, police and fire protection, planning, streets, water and sewer, garbage collection, storm drainage, parks and recreation; and

WHEREAS, County and City now wish to amend and restate the Original Agreement to establish a fair and equitable approach in the sharing of real property ad valorem taxes imposed and collected as authorized by the Revenue and Taxation Code in order to encourage sound urban development and economic growth and to maximize each party's ability to finance the delivery of essential governmental services in areas annexed to City; and

WHEREAS, it is the purpose of the Amended and Restated Agreement to serve as a Property Tax Sharing Agreement pursuant to Section 99 of the California Revenue and Taxation Code; and

WHEREAS, it is a further purpose of the Amended and Restated Agreement to provide for mutual cooperation and coordination to avoid conflict with each party's General Plan goals, objectives, and policies.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOS BANOS DOES HEREBY RESOLVE AS FOLLOWS:

1. That the City Council of the City of Los Banos, does hereby approve and authorizes the Mayor or his designee to execute the Amended and Restated Property Tax Sharing Agreement Between the City of Los Banos And County of Merced in a form substantially as presented in Exhibit A to this Resolution, subject to any non substantive changes as approved by the City Attorney.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on this \_\_ day of \_\_ 2016, by Council Member \_\_\_\_\_, who moved its adoption, which motion was duly seconded by Council Member \_\_\_\_\_, and the Resolution was adopted by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
Michael Villalta, Mayor

ATTEST:

\_\_\_\_\_  
Lucille L. Mallonee  
City Clerk

# EXHIBIT A

## AMENDED AND RESTATED PROPERTY TAX SHARING AGREEMENT BETWEEN THE CITY OF LOS BANOS AND COUNTY OF MERCED

**THIS AMENDED AND RESTATED AGREEMENT** (referred to herein as this "Agreement"), is made and entered into this \_\_\_\_\_ day of June 2016, by and between the County of Merced, a political subdivision of the State of California, (hereinafter referred to as "County"), and the City of Los Banos, a Municipal Corporation incorporated under the laws of the State of California, (hereinafter referred to as "City"), and pursuant to Revenue and Taxation Code of the State of California.

### RECITALS

WHEREAS, on June 6 1978 the voters of the State of California amended the California Constitution by adding Article XIII A thereto which limited the total amount of property taxes which could be levied on property by local taxing agencies having such property within their territorial jurisdiction to one percent (1%) of full cash value; and

WHEREAS, following such constitutional amendment the California Legislature added Section 99 to the California Revenue and Taxation Code which requires a city seeking to annex property to its incorporated territory and a county affected by such annexation to agree upon an exchange of property taxes which are derived from such property and available to the county and city following annexation of the property to the incorporated territory of the city; and

WHEREAS, on October 21, 1997 County and City entered into a Property Tax Sharing Agreement (referred to herein as the "Original Agreement") in accordance with Section 99 to the California Revenue and Taxation Code; and

WHEREAS, annexation will not decrease the County's responsibilities for providing municipal/county-wide services in the areas of county administration, adult and juvenile detention and correction, health and human services, libraries, and office of emergency services; and

WHEREAS, annexation could decrease the County's responsibilities for providing unincorporated area services in the areas of police patrol, fire protection, planning, roads, building inspection and parks; and

WHEREAS, annexation causes certain revenues to automatically shift from the County to the City, such as sales tax, motor vehicle in-lieu tax, trailer coach in-lieu tax, transient occupancy tax, real property transfer tax, vehicle code fines, gasoline tax, and other fees and licenses; and

WHEREAS, annexation will increase the City's responsibilities for providing city services in newly annexed areas such as city administration, police and fire protection, planning, streets, water and sewer, garbage collection, storm drainage, parks and recreation.

WHEREAS, County and City now wish to amend and restate the Original Agreement to establish a fair and equitable approach in the sharing of real property ad valorem taxes imposed and collected as authorized by the Revenue and Taxation Code in order to encourage sound

urban development and economic growth and to maximize each party's ability to finance the delivery of essential governmental services in areas annexed to City; and

WHEREAS, it is the purpose of this Agreement to serve as a Property Tax Sharing Agreement pursuant to Section 99 of the California Revenue and Taxation Code; and

WHEREAS, it is a further purpose of this Agreement to provide for mutual cooperation and coordination to avoid conflict with each party's General Plan goals, objectives, and policies.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the County and City hereby agree that the original Agreement is, as of the effective date first written above, amended and restated in its entirety to read as follows:

1. RECITALS. The foregoing recitals are true and correct and are part of this Agreement.
2. DEFINITIONS. The words and phrases in this agreement shall have the meanings as set forth below:

(a) "Base Property Tax Year" shall mean the property taxes generated from the assessed valuation applicable to the property and improvements within the area being annexed at the time the Local Agency Formation Commission (LAFCO) issues a Certification of Completion. For example, the base property tax year shall be the property taxes as of the fiscal year in which the LAFCO Certificate of Completion is issued.

(b) "Incremental Property Tax Revenue" shall mean the total increase or decrease in the property tax revenues derived from assessed valuation over the base property tax year within the annexed area.

3. ALLOCATION OF PROPERTY TAX REVENUES.

(a) Except as set forth in subsection 3(b), 3(c), and 3(d) herein, the property tax revenue attributable to the territory annexed to the City subsequent to the effective date of this Agreement shall be allocated in the following manner:

- (i) The County shall receive 100% of the total County General Fund Base Property Tax Revenue;
- (ii) The County shall receive 75% and the City shall receive 25% of the total Incremental County General Fund Property Tax Revenues;
- (iii) The City shall receive 100% of the total Fire Fund Base Property Tax Revenue; and
- (iv) The City shall receive 100% of the total Incremental Fire Fund Property Tax Revenues.

(b) The allocation set forth in subsection 3(a) shall be applicable to the following tax rate areas within the City as identified in Exhibit A – City of Los Banos Tax Rate Area Map, with the exception of 3(a)(iii) which 100% of the Fire Fund Base Property Tax Revenue shall be retained by the County.

- (i) Commencing the fiscal year 2016-2017, 004-001; 004-060; 004-064; 004-069; 004-079; 004-080; and 082-004; 004-074; and
- (ii) At the time a new tax rate area is established for the undeveloped parcels of 004-066 and 004-072 by the State Board of Equalization, provided that all other entities would remain at the same apportionment factor. The City and County will work together to identify all parcels to be included in the new tax rate areas for the undeveloped areas prior to the request with the State Board of Equalization. With the cooperation of the County the City shall take the lead in creating a new tax rate area for the undeveloped parcels of 004-066 and 004-072. If the new tax rate area(s) cannot be created for the undeveloped portion of 004-066 and 004-072 the City and County shall meet and confer for the purpose of amending this Agreement to achieve the allocation set forth in subsection 3(a) relative to the undeveloped portions of 004-066 and 004-072, with the exception of the Fire Fund Base Property Tax Revenue of which 100% shall be retained by the County.

(c) Except as set forth in this Agreement, the property tax revenue attributable to the territory annexed to the City subsequent to the date of the Original Agreement through the effective date of this Agreement shall be allocated as set forth in the Original Agreement.

#### 4. CITY AND COUNTY GENERAL PLAN COOPERATION.

(a) The City has adopted an updated general plan (2030 General Plan). The 2030 General Plan identifies an Urban Growth Boundary, a Sphere of Influence Boundary and a Planning Area Boundary.

(b) The City and County understand that legislative bodies may not bind future legislative bodies, and that one legislative body may not delegate its legislative or police power to another legislative body.

To ensure communication, coordination and to avoid conflict with the City in the implementation of the 2030 General Plan, the County agrees to refer the following applications which are accepted by the County within the City's 2030 General Plan Planning Area Boundary to the City for its review and comments:

- Major and Minor Subdivisions;
- Conditional Use Permits;
- Zone Changes;
- General Plan Amendments;
- Administrative Permits.

The County will consider all comments provided by the City prior to taking action on the application.

(c) To assist and support the County in implementing County General Plan Policies concerning the preservation of agricultural resources, the City agrees to refer all applications resulting in the expansion of the City limit boundaries into the unincorporated area of the County

to the County for its review and comment. The City will consider all County comments prior to forwarding the applications to LAFCO.

(d) The City's 2030 General Plan designates lands outside of the Urban Growth Boundary but within the Sphere of Influence Boundary as Agriculture / Rural. To assist and support County General Plan policies concerning the preservation of agricultural resources, the City agrees to refer all applications resulting in the expansion of City limit boundaries into the unincorporated area of the County to the County for its review and comment. The City will consider all County comments prior to forwarding the application to LAFCO.

(e) The City agrees to participate in future discussions to establish a countywide agricultural mitigation program for productive agricultural land converted to urban development.

6. OTHER MATTERS OF MUTUAL INTEREST.

(a) The City has acquired from the Los Banos Unified School District the property known as Pacheco Park location of the County Library, Milliken Museum, and County Recreation Center buildings. The City and County agree to enter into good faith negotiations to enter into appropriate agreements that continue to allow public uses for these facilities.

(b) The City and County currently lease properties owned by each party for the Spring Fairgrounds. The parties have constructed various public facilities on the leased parcels of property. The City and County agree to enter into good faith discussions regarding future improvements, public rights-of-way, and revisions of lease terms for the two current agreements pertaining to the use of the Baseball Fields and other fairgrounds facilities located at the Spring Fairgrounds on property owned by each party.

7. CHANGE IN LAW.

In the event that either Section 99 or the Act are repealed or amended in any way by the Legislature of the State of California so that the requirement for a negotiated exchange of property tax revenues is changed or no longer exists, then within thirty (30) days after the effective date of such a legislative act the parties shall immediately enter into good faith negotiations to modify the Agreement for the purpose of conforming it to state law. The parties mutually assume the continuation of existing state law relating to the distribution of available tax revenues to local government and that assumption is central to this Agreement. Should changes occur in state law, which negate or impact the basic purposes and intent of this Agreement, this Agreement shall be renegotiated within sixty (60) days of the request of either party.

8. MISCELLANEOUS PROVISIONS.

(a) Both parties agree that this Agreement and all documents issued or executed pursuant hereto and the rights and obligations of the parties thereunder and hereunder is subject to and governed by the laws of the State of California in all respects as to the interpretation, construction, operation, effect, and performance.

(b) The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent breach. The making or the acceptance of a payment by either party with knowledge of the existence of a breach shall not operate or be construed to operate as a waiver of any subsequent breach.

(c) No remedy conferred herein upon or reserved to the parties hereto is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any failure to comply with any term or condition of this Agreement shall impair any such right or power or shall be construed to be a waiver thereto but any such right and power may be exercised from time to time and as often as may be deemed expedient.

(d) The provisions of this Agreement shall constitute the entire Agreement between the parties and may be modified only by written Agreement duly executed by the parties hereto. The parties agree to meet and confer in good faith within thirty (30) days of the request of either party regarding the terms of this Agreement.

(e) The City and the County further covenant to cooperate with one another in all respects necessary to insure the successful consummation of the actions contemplated by this Agreement, and each will take all actions within its authority to insure cooperation of its officials, officers, agents, and employees.

(f) Implementation of this Agreement shall commence upon the date of approval of this Agreement and shall continue indefinitely. Either party may terminate this Agreement at any time so long as one hundred eighty (180) days prior to the end of any fiscal year (June 30) written notice is given to the other party to this Agreement. A termination of the Agreement shall have no effect on the allocation of property tax revenues for properties within the City or annexations for which a LAFCo has issued a certificate of filing prior to the effective date of the termination. Should either party elect to terminate this Agreement, the parties agree to meet and confer within sixty (60) days regarding renegotiation of the terms of this Agreement.

(g) In the event the County's or the City's general plans or any elements thereof are, in whole or in part, determined to be invalid by any court, governmental agency, public board or body, the County and the City acknowledge and agree that any such invalidity shall have no force or effect upon any of the remaining terms or conditions of this Agreement.

(h) This Agreement is executed in counterparts, each of which shall be deemed a duplicate original.

(i) All notices requests certifications or other correspondence required to be provided by the parties to this Agreement shall be in writing and shall be personally delivered or delivered by first class mail to the respective parties at the following addresses:

COUNTY  
County Executive Officer  
2222 M Street  
Merced, CA 95340

CITY  
City Manager  
520 J Street  
Los Banos, CA 93635

Notice by personal delivery shall be effective immediately upon delivery Notice by mail shall be effective upon receipt or three days after mailing whichever is earlier.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first written above.

COUNTY OF MERCED

CITY OF LOS BANOS

\_\_\_\_\_  
Hubert "Hub" Walsh  
Chair, Board of Supervisors

\_\_\_\_\_  
Michael Villalta  
Mayor

Date \_\_\_\_\_

Date \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
James L. Brown  
Clerk of the Board

\_\_\_\_\_  
Lucille L. Mallonee  
City Clerk

Date \_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO LEGALITY AND FORM:

COUNTY OF MERCED

CITY OF LOS BANOS

\_\_\_\_\_  
James N. Fincher  
County Counsel

\_\_\_\_\_  
William A. Vaughn  
City Attorney

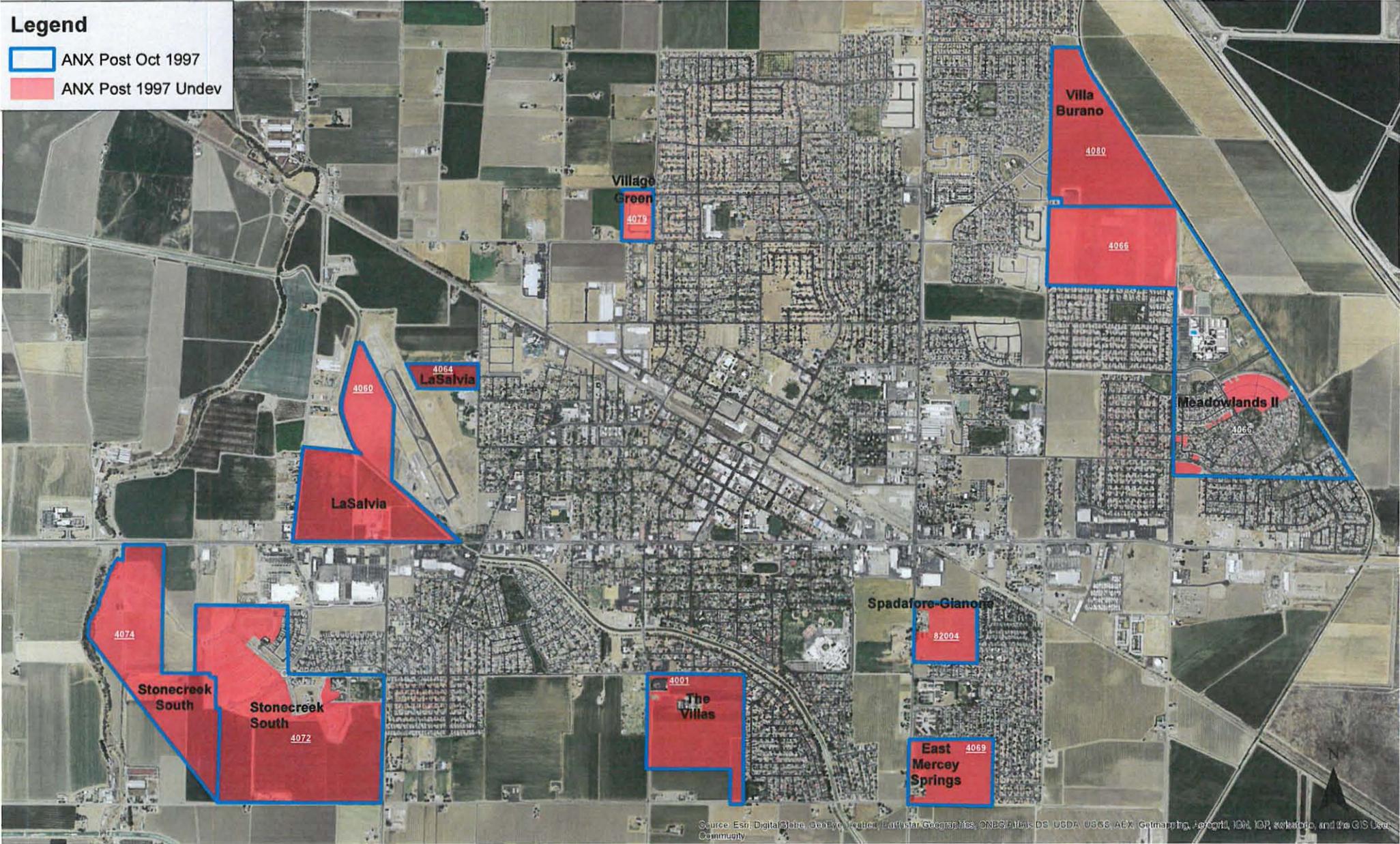
Date \_\_\_\_\_

Date \_\_\_\_\_

# CITY OF LOS BANOS

## Legend

- ANX Post Oct 1997
- ANX Post 1997 Undev



Source: Esri, DigitalGlobe, GeoEye, AeroGRID, IGN, SDA, USDA, CNES, Airbus, GeoEye, IGN, JP2, GeoEye, and the GIS User Community

**PROPERTY TAX SHARING AGREEMENT  
BETWEEN THE CITY OF LOS BANOS AND COUNTY OF MERCED**

**THIS AGREEMENT**, is made and entered into this 21<sup>st</sup> day of October 1997, by and between the County of Merced, a political subdivision of the State of California, (hereinafter referred to as "County"), and the City of Los Banos, a Municipal Corporation incorporated under the laws of the State of California, (hereinafter referred to as "City"), and pursuant to Revenue and Taxation Code of the State of California.

In consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

**I. PROPERTY TAX SHARING:**

County and City agree to adopt property tax sharing resolutions pertaining to areas annexed to the City in accordance with California Revenue and Taxation Code Section 96.1 (hereinafter all references are to the Revenue and Taxation Code unless otherwise stated) which document agreement for the County to retain the base property tax for the County General Fund and County Fire Fund. Pursuant to Section 96.5, the County will retain the incremental tax rate for the County General Fund, and the inflation factor of the incremental tax rate for the County Fire Fund equal to 2%, or the consumer price index on the base for all items as determined by the California Department of Industrial Relations per Section 51 of Division 1 of the Revenue and Taxation Code, whichever is less. The remaining incremental tax rate for the County Fire Fund will be retained by the City, and County Fire Fund.

**II. CRIMINAL JUSTICE STUDY**

County and City staff will explore, in a collaborative manner, the feasibility of a criminal justice study, the process of funding a study, and the implementation of any recommendations from the study.

**III. REDEVELOPMENT AGENCIES**

The City agrees that any changes in Redevelopment Agency Project Area boundaries to include areas annexed after the date of this agreement must be acceptable to the County.

#### **IV. ERAF-COUNTY BENEFIT FUND**

For every new city RDA project area established on or after the effective date of this Agreement, the City RDA will establish a separate fund and deposit annually an amount equal to County's annual Educational Revenue Augmentation Fund (ERAF) increment defined as the net of the annual RDA project area tax increment pass through County property tax share less County's annual ERAF contributions based on the RDA project area tax increment. Said amount shall be established annually by the County Auditor, and reported to the RDA by the first of June of each fiscal year. Interest on these funds shall accrue to the RDA.

Said funds will be utilized for the construction and augmentation of beneficial public projects within City's Sphere of Influence, as amended from time to time. Said projects will be defined by County's Board of Supervisors, as permitted by Redevelopment Law.

In the event any legislative change, property tax rulings or regulations reduce or eliminate the ERAF contribution in the RDA, County will only receive its share of the RDA pass through as defined by state law.

#### **V. CAPITAL FACILITY IMPACT FEES RELATED TO GROWTH**

A. Both County and City have determined that a direct nexus and reasonable relationship may exist between growth within the City and its impact on County public facilities, including, but not limited to, criminal justice jails, county-wide sheriff facilities, health and social service facilities, public works, libraries, hospital, public parks, and recreation, environmental resources and air quality within the entire county, and that a direct nexus and reasonable relationship may exist between growth in the unincorporated area of the County that lies within City's sphere of influence and its impact on City's public facilities, including, but not limited to, traffic and circulation.

B. City agrees to adopt any County public facility fee as requested by County when the County provides the necessary nexus documentation. The City agrees to collect said fee prior to the issuance of any City building permit and to forward the fee proceeds to County on a fiscal year quarterly basis. The County agrees to be responsible for expending and accounting for the fees pursuant to the requirements of California Government Code Section 66000 et seq. However, the City shall not be obligated to collect such fees with regard to applications for building permits received

prior to the date of this agreement, or with regard to projects involving vesting maps, which maps had vested prior to the date of this agreement. The City and its officials, officers, agents, and employees shall be protected by County and shall incur no liability in acting or proceeding in good faith upon the passage of any such fee and the collection thereof.

C. County agrees to indemnify and hold harmless City and its officers, agents, and employees from any and all liabilities, claims, demands, actions, losses, damages or costs, including attorney's fees, caused by or arising out of, or in any way connected directly or indirectly, to any public facility fee applicable to County adopted or imposed by City at County's request. In the event any person, corporation, or entity disputes or refuses to pay the public facilities fees, County shall be solely responsible for compliance with the protest provisions, as set forth in Section 66000 et seq. of the Government Code as the same now exists or hereafter may be amended.

D. County agrees to adopt and collect on behalf of the City any public facility fee requested by City when the City provides the necessary nexus documentation. The County agrees to collect said fee prior to the issuance of any County building permit and to forward the fee proceeds to City on a fiscal year quarterly basis. The City agrees to be responsible for expending and accounting for the fees pursuant to the requirements of California Government Code Section 66000 et seq. However, the County shall not be obligated to collect such fees with regard to applications for building permits received prior to the date of this agreement or outside the City's sphere of influence, or with regard to projects involving vesting maps, which maps had vested prior to the date of this agreement. The County and its officials, officers, agents, and employees shall be protected by City and shall incur no liability in acting or proceeding in good faith upon the passage of any such fee and the collection thereof.

E. City agrees to indemnify and hold harmless County and its officers, agents, and employees from any and all liabilities, claims, demands, actions, losses, damages or costs, including attorney's fees, caused by or arising out of, or in any way connected directly or indirectly, to any public facility fee adopted or imposed by County on behalf of City. In the event any person, corporation, or entity disputes or refuses to pay the public facilities fees, City shall be solely responsible for compliance with the protest provisions, as set forth in Section 66000 et seq. of the Government Code as the same now exists or hereafter may be amended.

F. It is agreed between the parties hereto that each collecting body will receive

six percent (6%) of the public facility fee revenues collected as reimbursement for administrative costs of collection.

**VI. COUNTY GENERAL PLAN POLICIES TO ACCOMMODATE CITY GROWTH**

The City of Los Banos is currently updating its General Plan. The updated General Plan will identify new urban designated areas to accommodate growth, a bypass route for Highway 152, a new Area of Interest Boundary which will also be the City's proposed Sphere of Influence, and a General Plan Study Area Boundary. Once this updated General Plan is adopted by the City, and the City provides the necessary maps and diagrams to the County, the County agrees to amend its General Plan text and diagrams and to administer zoning and subdivision regulations to accommodate the growth of the City as outlined in the City's updated General Plan as follows:

A. Within those areas outside of the present City limits and planned for urban land uses, the County agrees not to change the land use designation of territory from a rural classification (i.e. agriculture) to an urban designation (i.e. residential, commercial, or industrial). The County will maintain existing agricultural zoning within the non-urban designation. All discretionary approvals under the agricultural zoning would be subject to a mutual determination that they would not conflict with the City's adopted General Plan. Any discretionary approval by the County within those areas currently zoned for urban development within this area would be subject to adopted City development standards.

B. The County agrees to adopt and preserve a Highway 152 Bypass alignment after an alignment is adopted by the City.

C. Within those areas outside the present City limits not designated for urban development, but within the City's proposed Area of Interest Boundary (Exhibit 'A'), both the County and City agree that they will not approve any changes in land use designation or zoning without the prior agreement of the other party.

D. Within the City's General Plan Study Area Boundary (Exhibit 'A'), the County agrees to refer discretionary projects to the City for comment to avoid conflicts with the City's General Plan.

## **VII. FIRE PROTECTION WITHIN THE CITY OF LOS BANOS**

The City of Los Banos Fire Department provides fire protection services to the City of Los Banos City within the City limit boundaries. The City agrees to provide and maintain the same level of fire protection to newly annexed territories as it presently does within the current City limit boundaries.

The City agrees to enter into a mutual aid agreement with the County within 90 days of the approval of this tax sharing agreement. Upon approval of the mutual aid agreement, the City and County Fire Chiefs will develop and maintain an annual operating plan.

## **VIII. OTHER ISSUES**

~~A. The City has expressed concern about the level of County services in the City. The County agrees to continue discussions with the City with the objective of reaching a mutually acceptable resolution of this matter.~~

~~B. The City has expressed an interest in assuming the responsibility of facilities within Pacheco Park and improving the access to facilities at the Spring Fair Grounds for municipal and community functions. The County understands it is also the City's goal to develop interim and long term facilities for the senior citizens of Los Banos. The County agrees to continue discussions with the City with the objective of reaching a mutually acceptable resolution of these matters.~~

## **VIII. IX. APPLICABLE LAW AND INTERPRETATION**

A. Both parties agree that this Agreement and all documents issued or executed pursuant hereto and the rights and obligations of the parties thereunder and hereunder is subject to and governed by the laws of the State of California in all respects as to the interpretation, construction, operation, effect, and performance.

B. The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent breach. The making or the acceptance of a payment by either party with knowledge of the existence of a breach shall not operate or be construed to operate as a waiver of any subsequent breach.

C. In the event this Agreement is terminated for any reason, nothing in this Agreement or by the execution thereof shall be construed as a waiver of City's right to assert as a defense or affirmative allegation that the County lacks the authority to levy, impose or collect public facilities fees within the boundaries of an incorporated City without the consent of said City.

D. No remedy conferred herein upon or reserved to the parties hereto is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any failure to comply with any term or condition of this Agreement shall impair any such right or power or shall be construed to be a waiver thereto but any such right and power may be exercised from time to time and as often as may be deemed expedient.

E. The provisions of this Agreement shall constitute the entire agreement between the parties and may be modified only by written agreement duly executed by the parties hereto.

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

G. In the event County's or City's public facility fee(s) or their general plans or any elements thereof are, in whole or in part, determined to be invalid by any court, governmental agency, public board or body, County and City acknowledge and agree that any such invalidity shall have no force or effect upon any of the remaining terms or conditions of this Agreement.

H. Implementation of this Agreement shall commence upon the date of approval of this Agreement and shall continue indefinitely. Either party may terminate this Agreement at any time so long as written notice is given to the other party to this Agreement.

#### **IX. COPIES OF AGREEMENT**

This agreement is executed in counterparts, each of which shall be deemed a duplicate original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first written above.

COUNTY OF MERCED

By Joe Rivera  
Title \_\_\_\_\_

Date \_\_\_\_\_

CITY OF LOS BANOS

By [Signature]  
Title Mayor

Date 11-24-97

CITY OF LOS BANOS REDEVELOPMENT AGENCY

By [Signature]  
Title Mayor/Chair

Date 11-24-97

APPROVED AS TO LEGALITY AND FORM:

CITY OF LOS BANOS

By [Signature]  
City Attorney

Date 11/24/97

COUNTY OF MERCED

By [Signature]  
County Counsel

Date 10-17-97