



City of Los Banos

At the Crossroads of California

www.losbanos.org

AGENDA

CITY COUNCIL MEETING

CITY HALL COUNCIL CHAMBERS
520 J Street
Los Banos, California

MAY 20, 2020 – 4:00 PM

**Temporary Public Comment Email Established for the City of Los Banos
City Council Meeting of May 20, 2020 – emails must be received by 4:00 PM:**

The City has established a temporary email address citizens can use to email comments on any agenda item. Any public comments received by May 20, 2020 prior to 4:00 PM will be read aloud during the appropriate time and agenda item.

Public comment during Public Hearings will be taken in real time via email.

Once the Public Hearing is opened, the City Council will pause the meeting in order to receive emails directed at the Public Hearing (up to 250 words) and will read comments into the record after resuming the meeting, as time permits.

Please indicate that comments are for a particular Public Hearing by putting “Public Hearing” in the subject line of the email and the title of the Public Hearing.

The email address is cityclerk@losbanos.org

The Council Chambers are closed to the public, those interested in viewing the City Council meeting can do so on the City of Los Banos’ Website at:

<https://www.youtube.com/watch?v=sc3NQ8A8iuE&feature=youtu.be>

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.
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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.
* * * * *

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.

1. CALL TO ORDER.

4:00 PM

2. PLEDGE OF ALLEGIANCE.

3. ROLL CALL: (City Council Members)

Faria ____, Johnson-Santos ____, Jones ____, Lewis ____, Villalta ____

4. CONSIDERATION OF APPROVAL OF AGENDA.

5. PUBLIC FORUM. (Members of the public may address the City Council on the following consent agenda items. Speakers may submit their comments by submitting a written statement by dropping it off in the Utility Payment Box at City Hall, 520 J Street, by mail or emailing cityclerk@losbanos.org. Comments received will be read into the record during the City Council Meeting.)

6. 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 Member.)

A. Check Register for #221979 – #222243 in the Amount of \$525,040.34.

Recommendation: Approve the check register as submitted.

B. Minutes for the May 6, 2020 City Council Meeting.

Recommendation: Approve the minutes as submitted.

C. City Council Resolution No. 6209 – Approving a Side Letter/Memorandum of Understanding Contract Extension through September 30, 2020 by and between the City of Los Banos and the Los Banos Police Sergeants Association.

Recommendation: Approve the resolution as submitted.

D. City Council Resolution No. 6210 – Approving and Adopting Final Tract Map No. 2019-01 Mission Village South Phase 5A and Accompanying Subdivision Improvement Agreement (Stonefield Home, Inc.).

Recommendation: Approve the resolution as submitted.

E. City Council Resolution No. 6211 – Authorizing the City Manager to Execute a Measure V Local Funding Agreement with Merced County Association of Governments for the Administration of the Local Projects Funding From Measure V.

Recommendation: Approve the resolution as submitted.

- F. City Council Resolution No. 6212 – Approving Amendment No. 3 to Professional Services Agreement with CSG Consultants, Inc. for Plan Check and Building Inspection Services for an Additional One (1) Year.

Recommendation: Approve the resolution as submitted.

- G. City Council Resolution No. 6213 – Accepting the Fire Station 1 and 2 Americans with Disabilities Act (ADA) and “State Streets” Sidewalk Improvement Project as Complete and Authorizing the Filing of a Notice of Completion with the Merced County Recorder.

Recommendation: Approve the resolution as submitted.

- H. City Council Resolution No. 6214 – Authorizing Entering into a Second Amendment to Lease Agreement between the City of Los Banos and Marlene Pennington for Rental of the Ranchwood Park Facility for an Additional Five (5) Years.

Recommendation: Approve the resolution as submitted.

7. COVID-19 STATUS UPDATE.

Recommendation: Informational item only, no action to be taken.

8. PUBLIC HEARING. (If you challenge the proposed action as described herein in court, you may be limited to raising only those issues you or someone else raised at the public hearing described herein or in written correspondence delivered to the City at, or prior to, the public hearing.)

- A. Public Hearing – To Receive Public Comment and Consideration of a Negative Declaration (SCH #2020020445) and a Conditional Use Permit for the Allowance of the On-sale and On-site Consumption of Alcohol through a Type 41 Beer and Wine ABC License in Conjunction with a Bona-fide Eating Establishment for OA Holdings No. 1 LLC & MMCG DBR Los Banos LLC (Chipotle), Located at 1420 E. Pacheco Boulevard, APN 428-140-030.

- 1) City Council Resolution No. 6215 – Approving Negative Declaration (SCH #2020020445) and Approving Conditional Use Permit 2020-02 to Allow for the Sale of Beer and Wine Under a Type 41 Alcohol License for Chipotle Located at 1420 E. Pacheco Boulevard, APN 428-140-030.

Recommendation: Receive staff report, open the public hearing, receive public comment, close the public hearing and adopt the resolution.

9. CONSIDERATION OF AN ORDINANCE AMENDMENT REGARDING SHOPPING CARTS.

- A. Ordinance No. 1184 – Uncodified Urgency Ordinance Amending Chapter 8 of Title 11 of the Los Banos Municipal Code Regulating Shopping Carts.

B. Ordinance No. 1185 – Amending Chapter 8 of Title 11 of the Los Banos Municipal Code Regulating Shopping Carts.

Recommendation: Receive staff report and adopt the urgency ordinance and introduce the ordinance.

10. CONSIDERATION OF ADOPTION OF CITY COUNCIL RESOLUTION NO. 6216 – AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH VANIR CONSTRUCTION MANAGEMENT, INC. FOR PROJECT MANAGEMENT SERVICES FOR THE NEW POLICE DEPARTMENT FACILITIES PROJECT.

Recommendation: Receive staff report and adopt the resolution.

11. CONSIDERATION OF ADOPTION OF CITY COUNCIL RESOLUTION NO. 6217 – AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATIVE AGREEMENT WITH THE STATE OF CALIFORNIA THROUGH ITS DEPARTMENT OF TRANSPORTATION (CALTRANS) TO PROVIDE OVERSIGHT IN THE DEVELOPMENT OF THE PROJECT STUDY REPORT – PROJECT DEVELOPMENT SUPPORT (PSR-PDS) FOR THE IMPROVEMENTS ON THE PIONEER ROAD WIDENING PROJECT AT LOCATIONS WHERE CALTRANS HAS JURISDICTION.

Recommendation: Receive staff report and adopt the resolution.

12. ADVISEMENT OF PUBLIC NOTICES. (No report)

13. CITY MANAGER REPORT.

14. REPORT/UPDATE ON MERCED COUNTY ASSOCIATION OF GOVERNMENTS (MCAG) AND MEASURE V COMMITTEE.

Recommendation: Informational item only, no action to be taken.

15. CITY COUNCIL MEMBER REPORTS.

- A. Deborah Lewis
- B. Tom Faria
- C. Daronica Johnson-Santos
- D. Brett Jones
- E. Mayor Mike Villalta

16. ADJOURNMENT.

- A. Adjourn to 4:00 PM, Thursday, May 28, 2020 in the Council Chambers, 520 J Street, Los Banos, California to Attend a 2020/2021 Fiscal Year Budget Workshop.

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.



Sara Blevins, Deputy City Clerk

Dated this 14th day of May 2020

CK # 221979 - # 222243

05/20/2020

\$ 525,040.34

Bank Reconciliation



City of
Los Banos
At the Crossroads of California

Checks by Date

User: jcanchola

Printed: 05/13/2020 - 9:16AM

Cleared and Not Cleared Checks

Print Void Checks

Check No	Check Date	Name	Module Void	Clear Date	Amount
221980	5/1/2020	Advantage Gear, Inc.	AP		1,664.01
221981	5/1/2020	Animal Damage Management, Inc.	AP		200.00
221982	5/1/2020	Aramark Uniform Ser Inc	AP		633.07
221983	5/1/2020	AT&T Mobility	AP		364.51
221984	5/1/2020	BJ's Consumers Choice	AP		156.00
221985	5/1/2020	Bruce's Tire Inc	AP		3,345.72
221986	5/1/2020	BSK Associates	AP		1,317.88
221987	5/1/2020	Burton's Fire Inc.	AP		1,525.00
221988	5/1/2020	Buxton Company	AP		12,500.00
221989	5/1/2020	Comcast	AP		122.08
221990	5/1/2020	Cook's Communications Corp.	AP		2,272.75
221991	5/1/2020	Copy Shipping Solutions	AP		148.15
221992	5/1/2020	Fastenal Company	AP		139.76
221993	5/1/2020	Fast Track Car Wash	AP		206.50
221994	5/1/2020	Federal Express Corporation	AP		5.69
221995	5/1/2020	GCS Environmental Equipment Services	AP		625.51
221996	5/1/2020	Galls Inc	AP		335.64
221997	5/1/2020	Garton Tractor Inc	AP		247.39
221998	5/1/2020	Gouveia Engineering Inc.	AP		10,768.09
221999	5/1/2020	Victor Gonzalez	AP		5.00
222000	5/1/2020	Hach Company	AP		556.53
222001	5/1/2020	Halcyon Creek Inc.	AP		214.81
222002	5/1/2020	Holt of California	AP		493.10
222003	5/1/2020	Laboratory Corporation of America Holdings	AP		33.00
222004	5/1/2020	Lawson Products, Inc.	AP		1,196.90
222005	5/1/2020	Los Banos Basque Club	AP		350.00
222006	5/1/2020	Marfab Inc	AP		368.31
222007	5/1/2020	McCrometer Inc.	AP		26.00
222008	5/1/2020	Merced Chevrolet Inc.	AP		2,107.70
222009	5/1/2020	Merced Truck & Trailer Inc	AP		265.76
222010	5/1/2020	Monterey Auto Services Inc.	AP		632.37
222011	5/1/2020	MOO, Inc.	AP		257.83
222012	5/1/2020	Municipal Maintenance Equipment, Inc.	AP		50.35
222013	5/1/2020	Eivon Martinez	AP		100.00
222014	5/1/2020	Napa Auto Parts of Los Banos	AP		94.88
222015	5/1/2020	NDN International LLC	AP		2,087.87
222016	5/1/2020	North Central Laboratories	AP		560.15
222017	5/1/2020	The Office City	AP		184.03
222018	5/1/2020	OSE	AP		53.68
222019	5/1/2020	O'Reilly Auto Parts	AP		872.85
222020	5/1/2020	PB Loader Corporation	AP		1,916.18
222021	5/1/2020	The Phone Connection Inc	AP		101.75
222022	5/1/2020	PlaceWorks, Inc.	AP		41,702.25
222023	5/1/2020	Precision Civil Engineering, Inc	AP		2,800.00
222024	5/1/2020	Provost and Pritchard Engineering, Inc.	AP		107.50

222025	5/1/2020	Quad Knopf, Inc.	AP	12,556.99
222026	5/1/2020	Randik Paper Co	AP	109.58
222027	5/1/2020	Gilbert Reyes	AP	50.00
222028	5/1/2020	Safety-Kleen Systems, Inc.	AP	532.15
222029	5/1/2020	Sherwin Williams Co	AP	141.48
222030	5/1/2020	Sorensens True Value	AP	576.53
222031	5/1/2020	Sorensens True Value	AP	58.74
222032	5/1/2020	Stantec Consulting Services, Inc.	AP	3,914.00
222033	5/1/2020	Stommel, Inc.	AP	1,278.90
222034	5/1/2020	Triangle Rock Products	AP	117.58
222035	5/1/2020	Westside Water Conditioning	AP	173.00
222036	5/1/2020	California Building Standards Commission	AP	1,311.30
222037	5/1/2020	CDTFA California Dept. of Tax & Fee	AP	488.00
222038	5/1/2020	Dept of Conservation	AP	4,384.25
222039	5/1/2020	Fernando Garcia	AP	671.00
222040	5/1/2020	Mary Lou Gilardi	AP	160.48
222041	5/1/2020	Jeffrey Lyle Kelley	AP	42.85
222042	5/1/2020	Los Banos Downtown Assoc.	AP	2,530.99
222043	5/1/2020	Los Banos Volunteer	AP	2,416.67
222044	5/1/2020	Gerald "Obie" O'Brien	AP	77.14
222045	5/1/2020	Premier Access Insurance Co.	AP	21,042.44
222046	5/1/2020	72 Hour LLC	AP	88,873.35
222047	5/1/2020	Sun Life Financial	AP	7,065.14
222048	5/1/2020	SWRCB Accounting Office	AP	55.00
222049	5/1/2020	Law Offices of William A Vaughn	AP	12,600.00
222052	5/5/2020	Aflac-Customer Service	AP	422.41
222053	5/5/2020	Los Banos Police Assn	AP	175.00
222054	5/5/2020	Los Banos Police Assn	AP	385.00
222055	5/5/2020	Los Banos Police Assn	AP	840.00
222056	5/5/2020	MassMutual	AP	1,297.09
222057	5/5/2020	MassMutual	AP	3,727.50
222058	5/5/2020	Merced County Sheriff	AP	150.00
222059	5/5/2020	Nationwide Retirement Solutions	AP	3,532.50
222060	5/5/2020	Professional Fire Fighter	AP	720.00
222061	5/5/2020	Public Employees Union, Local One	AP	1,006.08
222062	5/5/2020	State Disbursement Unit	AP	2,190.00
222063	5/5/2020	Vantagepoint Transfer Agents - 306797	AP	884.45
222064	5/5/2020	Vantagepoint Transfer Agents - 801838	AP	3,250.00
222065	5/8/2020	Anderson Pump Company Inc	AP	1,367.61
222066	5/8/2020	Animal Damage Management, Inc.	AP	3,425.00
222067	5/8/2020	Aramark Uniform Ser Inc	AP	446.27
222068	5/8/2020	AT&T Mobility	AP	252.14
222069	5/8/2020	AT&T	AP	84.67
222070	5/8/2020	AT&T	AP	58.85
222071	5/8/2020	Dorothy June Baker	AP	180.31
222072	5/8/2020	Battery Systems, Inc.	AP	527.85
222073	5/8/2020	Richard A Blak Phd	AP	800.00
222074	5/8/2020	Bruce's Tire Inc	AP	1,684.12
222075	5/8/2020	BSK Associates	AP	170.00
222076	5/8/2020	Cal Traffic	AP	125.98
222077	5/8/2020	Comcast	AP	113.59
222078	5/8/2020	Copy Shipping Solutions	AP	228.05
222079	5/8/2020	Employee Relations, Inc.	AP	50.00
222080	5/8/2020	Farmer Brothers Coffee	AP	58.10

222081	5/8/2020	Fastenal Company	AP	3.84
222082	5/8/2020	Foster Bros Security Systems Inc.	AP	72.09
222083	5/8/2020	Fresno Police Department R.T.C.	AP	288.00
222084	5/8/2020	Grainger Parts Operations	AP	732.41
222085	5/8/2020	Heppner Precision Machine Shop, Inc.	AP	79.05
222086	5/8/2020	Holt of California	AP	1,969.94
222087	5/8/2020	Home Depot	AP	7,271.19
222088	5/8/2020	JC's Pure Water & More	AP	70.00
222089	5/8/2020	David A Jones	AP	2,060.00
222090	5/8/2020	Kimball Midwest	AP	101.41
222091	5/8/2020	Lucas Business Systems	AP	2,098.62
222092	5/8/2020	Marfab Inc	AP	95.39
222093	5/8/2020	Matson Alarm Co Inc	AP	181.00
222094	5/8/2020	MOO, Inc.	AP	116.36
222095	5/8/2020	The Office City	AP	18.49
222096	5/8/2020	OSE	AP	2,066.85
222097	5/8/2020	O'Reilly Auto Parts	AP	260.75
222098	5/8/2020	PG&E Company	AP	14.74
222099	5/8/2020	The Phone Connection Inc	AP	44.28
222100	5/8/2020	Provost and Pritchard Engineering, Inc.	AP	4,767.30
222101	5/8/2020	Protech Security & Electronics, Inc.	AP	396.00
222102	5/8/2020	Safe T Lite of Modesto, Inc.	AP	510.18
222103	5/8/2020	Michael Bartholomew	AP	265.86
222104	5/8/2020	Sherwin Williams Co	AP	176.51
222105	5/8/2020	Sinclair General Engineering Construction, Inc.	AP	5,700.00
222106	5/8/2020	Springbrook Software, Inc.	AP	2,780.00
222107	5/8/2020	Sorensens True Value	AP	408.19
222108	5/8/2020	Sprint Solutions, Inc.	AP	189.95
222109	5/8/2020	Telcion Communications Group	AP	2,202.74
222110	5/8/2020	Terminix Processing Center	AP	55.00
222111	5/8/2020	Top Dog Police K9 Training and Consulting, LLC	AP	225.00
222112	5/8/2020	Tractor Supply Credit Plan	AP	197.90
222113	5/8/2020	Juan & Mabel Lopez	AP	10.46
222114	5/8/2020	Jose Manuel Viramontes Cruz	AP	10.46
222115	5/8/2020	Maria Vargas	AP	10.46
222116	5/8/2020	Cecilia Padilla	AP	100.00
222117	5/8/2020	Mary Suarez	AP	32.45
222118	5/8/2020	Stefanie Frances	AP	100.00
222119	5/8/2020	Park & Associates, LLC	AP	100.00
222120	5/8/2020	Michelle Cabrera	AP	10.46
222121	5/8/2020	Martin Or Guillermina Abrego Diaz	AP	10.46
222122	5/8/2020	Severino Alpi	AP	10.46
222123	5/8/2020	John Costa	AP	12.30
222124	5/8/2020	Monique Barbosa Bachelder	AP	10.46
222125	5/8/2020	Jose Ramirez	AP	100.00
222126	5/8/2020	Jaime Perez	AP	10.46
222127	5/8/2020	Cheryl Guilford	AP	10.46
222128	5/8/2020	Alma and John Brown	AP	10.46
222129	5/8/2020	Oscar Lugo Vargas	AP	32.45
222130	5/8/2020	Mary & Felix Segura	AP	10.46
222131	5/8/2020	William Arteaga Cadena	AP	34.34
222132	5/8/2020	Bernard Gullo	AP	10.46
222133	5/8/2020	Arvinder Chadha	AP	100.00
222134	5/8/2020	Rocio Villasenor Balcazar	AP	100.00

222135	5/8/2020	Shannon Davey	AP	10.46
222136	5/8/2020	Sandra Sanchez	AP	10.46
222137	5/8/2020	Judith Whiteaker	AP	10.46
222138	5/8/2020	Wendy Bowling	AP	83.53
222139	5/8/2020	Manuel & Marie Costa	AP	100.00
222140	5/8/2020	Natali Sanchez	AP	10.46
222141	5/8/2020	Cathy Castillo	AP	100.00
222142	5/8/2020	Irma Ramos	AP	100.00
222143	5/8/2020	Monica Smith	AP	70.00
222144	5/8/2020	Mariana Fernandez	AP	100.00
222145	5/8/2020	Elena Celedon	AP	10.46
222146	5/8/2020	Jessie & Heather West	AP	100.00
222147	5/8/2020	Mario Vergara	AP	100.00
222148	5/8/2020	Ramon & Ana Bravo	AP	10.46
222149	5/8/2020	Diana & Michael Ross	AP	100.00
222150	5/8/2020	Desirae Liera	AP	10.46
222151	5/8/2020	Marline Goularte	AP	10.46
222152	5/8/2020	Boram Jung	AP	100.00
222153	5/8/2020	Michael & Norma Collaso	AP	10.46
222154	5/8/2020	PMZ Real Estate	AP	100.00
222155	5/8/2020	Delfina Mascareno Diaz	AP	10.46
222156	5/8/2020	Marisol Magana Sanchez	AP	10.46
222157	5/8/2020	Elizabeth Rodriguez	AP	10.46
222158	5/8/2020	Jose Rios	AP	10.46
222159	5/8/2020	Linda McMullen	AP	10.46
222160	5/8/2020	Isabel Ulloa	AP	19.38
222161	5/8/2020	Salvador Bobadilla Chavez	AP	10.46
222162	5/8/2020	Sokha Chhak	AP	32.45
222163	5/8/2020	Guillermina Valencia Alvarez	AP	10.46
222164	5/8/2020	Silvia Fuentes	AP	10.46
222165	5/8/2020	Armendina Aguilar	AP	10.46
222166	5/8/2020	Kimber Christiansen	AP	10.46
222167	5/8/2020	Elyse Etcheverry	AP	10.46
222168	5/8/2020	Jenny Gonzalez	AP	100.00
222169	5/8/2020	Anthony Tapia Jr.	AP	100.00
222170	5/8/2020	Thao Ho	AP	10.46
222171	5/8/2020	Lizette Esquivel	AP	10.46
222172	5/8/2020	Jose Avila	AP	10.46
222173	5/8/2020	Richard Sawyer	AP	10.46
222174	5/8/2020	Rodolfo Perez Alvarado	AP	10.46
222175	5/8/2020	Gustavo Fuentes Jr.	AP	10.46
222176	5/8/2020	Jesse Barba III	AP	10.46
222177	5/8/2020	Caitlin Boyer	AP	10.46
222178	5/8/2020	Sinar Rubicel Lopez-Rodriguez	AP	10.46
222179	5/8/2020	Marcelino Calderon	AP	10.46
222180	5/8/2020	John Klingler	AP	10.46
222181	5/8/2020	Beatrice Labrado	AP	100.00
222182	5/8/2020	Ismael Avila Jr.	AP	100.00
222183	5/8/2020	Ismael Higareda Salinas	AP	100.00
222184	5/8/2020	Simitria Lopez Gomez	AP	10.46
222185	5/8/2020	Luis & Maricela Porras	AP	10.46
222186	5/8/2020	Rafaela and Edgar Verduzco	AP	10.46
222187	5/8/2020	Erika Flores	AP	10.46
222188	5/8/2020	Travis Cook	AP	100.00

222189	5/8/2020	Maria Valle	AP	55.23
222190	5/8/2020	Ricky & Marfa Smith	AP	10.46
222191	5/8/2020	William & Dianne Swegan	AP	100.00
222192	5/8/2020	Monica Campos Nunez	AP	10.46
222193	5/8/2020	Encida Rios	AP	10.46
222194	5/8/2020	Lionel & Imelda Buenrostro	AP	100.00
222195	5/8/2020	Maria Perez	AP	10.46
222196	5/8/2020	Martha Alicia & Jose Rosario Sepulveda	AP	41.84
222197	5/8/2020	John and Frank Brazzillo	AP	100.00
222198	5/8/2020	Rodrigo Saavedra Vasquez	AP	24.02
222199	5/8/2020	Beverly Garcia	AP	10.46
222200	5/8/2020	Penny Shanley	AP	32.45
222201	5/8/2020	Mayra Ruiz	AP	100.00
222202	5/8/2020	Kelly & Kathleen Granado	AP	10.46
222203	5/8/2020	Stuardt-Mikhail Clarke	AP	100.00
222204	5/8/2020	Benjamin Silva	AP	17.63
222205	5/8/2020	Raymundo Zapien	AP	100.00
222206	5/8/2020	Jasmin Munoz	AP	10.46
222207	5/8/2020	Craig Prien	AP	100.00
222208	5/8/2020	Abelardo Ramirez	AP	100.00
222209	5/8/2020	Elizabeth Figueroa	AP	10.46
222210	5/8/2020	Lorenzo Turcios	AP	100.00
222211	5/8/2020	Leonel Valencia	AP	10.46
222212	5/8/2020	Daniel Rocha, Jr	AP	100.00
222213	5/8/2020	Leonardo & Le Ann Rivera	AP	113.45
222214	5/8/2020	Jose & Rosa Bettencourt	AP	185.07
222215	5/8/2020	Agustina Mendoza Castillo	AP	41.81
222216	5/8/2020	Shiv Lal	AP	41.81
222217	5/8/2020	D.R. Horton	AP	171.41
222218	5/8/2020	Melina Garcia-Guevara	AP	28.36
222219	5/8/2020	Pablo Moran	AP	22.39
222220	5/8/2020	Lea Hernandez	AP	27.85
222221	5/8/2020	Kim Loan Tran	AP	152.24
222222	5/8/2020	Cloverland Property Management	AP	59.72
222223	5/8/2020	David Zarate	AP	149.26
222224	5/8/2020	D.R. Horton	AP	172.88
222225	5/8/2020	D.R. Horton	AP	176.54
222226	5/8/2020	D.R. Horton	AP	172.88
222227	5/8/2020	Home Sweet Home Property Management	AP	194.03
222228	5/8/2020	Aldina Real Estate, Inc.	AP	20.92
222229	5/8/2020	Tristin George	AP	20.51
222230	5/8/2020	Theodore & Susan Robinson	AP	89.57
222231	5/8/2020	Eusebia Frutos	AP	13.45
222232	5/8/2020	Okba Zoubeidi	AP	110.46
222233	5/8/2020	Windecker Inc	AP	1,846.10
222234	5/8/2020	BSK Associates	AP	14,251.12
222235	5/8/2020	Ca Dept of Justice	AP	2,852.00
222236	5/8/2020	Golden State Flow Measurement	AP	30,667.50
222237	5/8/2020	Halcyon Creek Inc.	AP	5,000.00
222238	5/8/2020	John Deere Financial	AP	165.59
222239	5/8/2020	Los Banos Medical Group A Medical Corp.	AP	200.00
222240	5/8/2020	PG&E Company	AP	98,437.46
222241	5/8/2020	72 Hour LLC	AP	44,436.68
222242	5/8/2020	Walmart	AP	65.27

222243 5/8/2020 Xerox Financial Services

AP

2,464.46

Break in check sequence due to the following:

Check #221979 (Payroll)

Check #222050 - # 222051 (Payroll)

Total Void Check Count: 0

Total Void Check Amount:

Total Valid Check Count: 262

Total Valid Check Amount: 525,040.34

Total Check Count: 262

Total Check Amount: 525,040.34

**CITY OF LOS BANOS
CITY COUNCIL MEETING MINUTES
MAY 6, 2020**

***ACTION MINUTES** – These minutes are prepared to depict action taken for agenda items presented to the City Council. For detail of this meeting refer to the electronic media (CD and/or audio) kept as a permanent record.*

***SPECIAL NOTE:** This meeting was held by teleconference due to the COVID-19 Pandemic.*

CALL TO ORDER: Mayor Villalta called the City Council Meeting to order at the hour of 4:06 p.m.

PLEDGE OF ALLEGIANCE: Police Chief Brizzee led the pledge of allegiance.

ROLL CALL – MEMBERS OF THE CITY COUNCIL PRESENT: *Participating by teleconference:* Council Members Tom Faria, Daronica Johnson-Santos, Brett Jones, Deborah Lewis, Mayor Michael Villalta.

STAFF MEMBERS PRESENT: *Participating by teleconference:* City Manager Terrazas, City Attorney Vaughn, Police Chief Brizzee, Fire Chief Hurley, Community & Economic Development Director Elms; *Present in the Council Chambers:* City Clerk/Human Resources Director Mallonee, Finance Director Williams.

CONSIDERATION OF APPROVAL OF AGENDA: Motion by Faria, seconded by Johnson-Santos to approve the City Council Meeting agenda as submitted. The motion carried by the following roll call vote: AYES: Faria, Johnson-Santos, Jones, Lewis, Villalta; NOES: None; ABSENT: None.

PUBLIC FORUM: MEMBERS OF THE PUBLIC MAY ADDRESS THE CITY COUNCIL MEMBERS 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. Mayor Villalta asked the City Clerk if she had received any comments by email, for which City Clerk Mallonee stated she had received three (3) comments by email regarding Agenda Item 7 – COVID-19 Status Update. No other comments were received or read into the record and the public forum was closed.

CONSIDERATION OF APPROVAL OF CONSENT AGENDA. Motion by Lewis, seconded by Johnson-Santos to approve the consent agenda as follows: Check Register for #221317 – #221978 in the Amount of \$1,808,813.09; Third Quarter Investment Report for the 2019/2020 Fiscal Year; Minutes for the April 15, 2020 City Council Meeting; Request to Advertise Vacancy for the City of Los Banos' Representative on the Measure V Citizens Oversight Committee, Appointment of

Mayor and Mayor Pro Tem to Sit on the Committee to Review, Interview and Recommend Appointment to the City Council at the June 6, 2020 City Council Meeting; City Council Resolution No. 6205 – Approving a Side Letter/Memorandum of Understanding Contract Extension through September 30, 2020 by and between the City of Los Banos and the Los Banos Fire Fighters Association; City Council Resolution No. 6206 – Approving Amendment No. 1 to the Professional Services Agreement with J.B. Anderson Land Use Planning for Presidential Estates East Project and Budget Amendment to Increase Expenditures in the Amount of \$16,754.70 in Association with the Project; City Council Resolution No. 6207 – Amending the Fiscal Year Budget by Increasing Revenues in the Amount of \$458,000 and Expenditures in the Amount of \$292,000 as it Pertains to the Building Department Budget; City Council Resolution No. 6208 – Accepting Grant Deeds for a Parcel Dedication of Approximately 362 Square Feet Along with a 5 Foot Wall Easement Dedication and a Parcel Abandonment of Approximately 24 Square Feet Along with a 5 Foot Wall Easement Abandonment at the Southwest Corner of Cardoza Road and Barley Lane and Authorizing the City Manager to Execute the Associated Documents in Connection with Tract No. 2017-01 Villages VII, Phase 1, Unit 2 (Anderson Homes, Inc.). The motion carried by the following roll call vote: AYES: Johnson-Santos, Jones, Lewis, Villalta; NOES: None; ABSENT: None.

COVID-19 STATUS UPDATE. Dr. Yu from Memorial Hospital Los Banos spoke regarding the COVID-19 situation in Los Banos and Merced County as a whole, which included a Powerpoint presentation.

City Manager Terrazas spoke in more detail about the Governor's plan and steps towards the slow re-opening of the economy. Certain types of businesses that could provide curb-side services would be eligible for reopening while other types of businesses will need to remain closed. City staff is waiting for clarification on these allowances.

A COVID-19 testing site available to all residents was opened at the Merced County Fairgrounds. Currently, this testing site does not offer antibody testing. Testing is done by appointment only.

City Clerk Mallonee read three (3) letters into the public record from: Phil McMurray wrote in opposition to the restrictions put in place by the City of Los Banos related to Covid-19 encouraging the City Council to open up the City again; Mark Vierra wrote in in opposition to the restriction put in place in the City of Los Banos; Jennifer Correia & Graciano Rubio spoke regarding their business, CrossFit ValleyView, and the business protocols they have created so that they are able to open up as soon as allowed.

SHORT TERM FINANCIAL STRATEGIES SURROUNDING COVID-19. Finance Director Williams presented the staff report, which included a PowerPoint presentation.

Community & Economic Development Director Elms spoke regarding a four-point economic recovery plan created with assistance from Chabin Concepts, which included a PowerPoint presentation.

ADVISEMENT OF PUBLIC NOTICES (No Report).

CITY MANAGER REPORT. No report

REPORT/UPDATE ON MERCED COUNTY ASSOCIATION OF GOVERNMENTS (MCAG) AND MEASURE V COMMITTEE. Mayor Villalta stated that Pioneer Trail project is continuing to move forward. Staff is working on a project study review and a contract will be presented for Council's approval at a later date. The expansion of the Billy Wright land fill is still in discussion. CalTrans continues to work on the synchronization of the stoplights on Highway 152 to aid in traffic concerns through Los Banos.

BRETT JONES: No report.

DEBORAH LEWIS: No report.

TOM FARIA: No report.

DARONICA JOHNSON-SANTOS: No report.

MAYOR MICHAEL VILLALTA: Mayor Villalta stated that Americans are unique in every way and this weekend proved the point. There was no May Day Fair this past week, but the City was able to bring May Day fair food to town so the community could still enjoy. Those proceeds was raised in order to help nonprofit organizations.

ADJOURNMENT. The meeting was adjourned at 6:54 PM.

APPROVED:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor & City Council Members

FROM: Lucy Mallonee, MMC *LM*
City Clerk/Human Resources Director

DATE: May 20, 2020

SUBJECT: Approval of a Side Letter/Contract Extension through September 30, 2020 by and between the City of Los Banos and the Los Banos Police Sergeants Association (LBPSA)

TYPE OF REPORT: Consent Agenda Item

Recommendation:

Adopt the Resolution approving the Side Letter/Contract Extension through September 30, 2020 by and between the City of Los Banos and the LBPSA.

Discussion:

The City has bargained in good faith with the LBPSA and reached agreement on a Side Letter/Contract Extension through September 30, 2020.

Attached are the resolution and the Side Letter/Contract Extension for your review and consideration of approval.

Reviewed by:

Alex Terrazas, City Manager

Attachments:

Resolution

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LOS BANOS APPROVING A
MEMORANDUM OF UNDERSTANDING BY AND
BETWEEN THE CITY OF LOS BANOS AND THE
LOS BANOS POLICE SERGEANTS
ASSOCIATION**

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 Police Sergeants Association; and

WHEREAS, the Memorandum of Understanding will be in effect from July 1, 2020 to September 30, 2020.

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

PASSED AND ADOPTED this 6th day of May 2020, at a regular meeting of the City Council by the following vote:

AYES: Council Members

NOES:

ABSENT:

APPROVED:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

**SIDE LETTER
BETWEEN CITY OF LOS BANOS AND
LOS BANOS POLICE SERGEANTS' ASSOCIATION
RE: MOU EXTENSION 2020**

This Memorandum of Understanding (MOU) Extension Agreement ("Agreement") is between the City of Los Banos (hereinafter called "City") and the Los Banos Police Sergeants' Association (hereinafter called "Association" or LBPSA) (collectively called "the parties"). This Agreement shall apply to all employees of the City working in the classifications set forth in the MOU between the City and the Association, with reference to the following recitals:

WHEREAS, the spread of the COVID-19 virus has been declared a global pandemic; and

WHEREAS, a state of emergency has been declared by the President of the United States, the Governor of California, and the County of Merced; and

WHEREAS, the Governor of California has issued a shelter-in-place order for the State of California resulting in the temporary closure of all non-essential businesses throughout the City and State; and

WHEREAS, the economic impacts of the COVID-19 pandemic on the City are unknown at this time;

NOW THEREFORE, the City and the Association have met and conferred in good faith and mutually agreed on the salaries, hours, fringe benefits and working conditions set forth herein, as follows:

1. MOU Extension: The City and the Association agree to extend the 2018-2020 MOU between the parties, scheduled to expire on June 30, 2020. The MOU will be extended by three (3) months, from July 1, 2020 until September 30, 2020, and shall be amended as follows:

SECTION XIII - TERM

The term of this MOU will commence July 1, ~~2018-2020~~ and will expire ~~June-September~~ 30, 2020, except as otherwise provided in this MOU.

2. Tentative Agreement: This Tentative Agreement is subject to ratification by the bargaining unit and approval by the City Council.

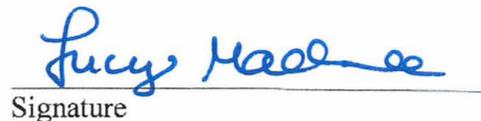
IN WITNESS WHEREOF, the parties hereby agree to this tentative agreement:

LOS BANOS POLICE SERGEANTS
ASSOCIATION (LBPSA)


Signature

Date: 5/5/20

CITY OF LOS BANOS


Signature

Date: 5/5/2020



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor & City Council Members

FROM: Mark Fachin, P.E., Public Works Director/City Engineer

DATE: May 20, 2020

TYPE OF REPORT: Consent Item

SUBJECT: Final Map No. 2019-01 Mission Village South, Phase 5A

Recommendation:

That the City Council adopts the Resolution approving Final Map No. 2019-01 Mission Village South, Phase 5A.

Background:

The original Mission Village South Phase 5 Tentative Tract Map 2009-16 was approved by the Los Banos Planning Commission on October 24, 2007. Since then, Mission Village South Phase 5 Tentative Tract Map 2009-16 has expired. The revised Tentative Tract Map No. 2019-01 was approved by the City of Los Banos Planning Commission on December 11, 2019 by Resolution No. 2019-27. In September 11, 2019, the Public Works staff was contacted by the developer, Stonefield Home, Inc., a California Corporation, for Final Map approval.

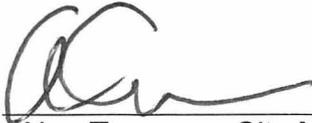
Discussion:

The subject is generally located within the area bounded by Mission Drive to the north, Willmott Avenue to the south, Mission Village South, Phase 3B to the east and Mercey Springs Road to the west, more specifically identified as APN 428-280-012. The applicant is Stonefield Home, Inc., a California Corporation. The map consists 10 single family lots on 1.03± acres. This Final Map is in substantial compliance with Tentative Subdivision Map No. 2019-01.

Fiscal Impact:

Financial security as required by the Subdivision Improvement Agreement, the Subdivision Map Act and Los Banos Municipal Code has been deposited with the City. All required processing, development, plan check and inspection fees to date have been paid.

Reviewed by:



Alex Terrazas, City Manager



Sonya Williams, Finance Director

Attachments:

Resolution

Exhibit A Legal Description

Exhibit B Final Map

Site Map

Subdivision Improvement Agreement

Exhibit A Original Engineers Estimate

Exhibit B Conditions of Approval

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS APPROVING AND ADOPTING FINAL TRACT MAP NO. 2019-01 MISSION VILLAGE SOUTH PHASE 5A AND ACCOMPANYING SUBDIVISION IMPROVEMENT AGREEMENT.

WHEREAS, there has been submitted to the City Council of the City of Los Banos Tract Map No. 2019-01 Mission Village South Phase 5A and accompanying Subdivision Improvement Agreement: and

WHEREAS, the single-family residential subdivision consists of 10 single family lots on 1.03± acres; and

WHEREAS, the Public Works Director/City Engineer has approved the Final Map, the plan check and inspection fees have been paid in full, and said Final Tract Map has been submitted to the City Council of the City of Los Banos for approval.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Los Banos that it does hereby approve and adopt Final Tract Map No. 2019-01 Mission Village South for the real property described in Exhibit "A", shown in Exhibit "B" and authorize recording based upon the following findings:

1. Final Map is in substantial compliance with Tentative Map No. 2019-01.
2. Financial Security as required by the Subdivision Improvement Agreement, Subdivision Map Act, and Los Banos Municipal Code has been deposited with the City.
3. All required processing, development, plan check, and inspection fees to date have been paid.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on the _____ day of _____, 2020, 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:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 428-280-012

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LOS BANOS, COUNTY OF MERCED, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel 2 of Certificate of Compliance, Lot Line Adjustment No. 2018-02, recorded February 27, 2019 as Document No. 2019005704 of Official Records, more particularly described as follows:

All that certain real property situate, lying and being Lot 4 and a portion of Lot 5, as shown on the map of Mission Village South, Phase 1, recorded November 10, 2005 in Book 72, Pages 4 to 8, inclusive, of Maps, Merced County Records, in the North half of Section 13, Township 10 South, Range 10 East, Mount Diablo Base and Meridian, in the City of Los Banos, County of Merced, State of California, being more particularly described as follows:

Lot 4 as shown on said map of Mission Village South, Phase 1; together with the following described land:

Beginning at the Northwest corner of said Lot 4; thence along the North line of Lot 5 as shown on said map of Mission Village South, Phase 1, North 88° 23' 51" West 142.79 feet; thence South 00° 55' 25" West 750.71 feet to a point on the North line of Willmott Road, as shown on said map of Mission Village South, Phase 1; thence along the North line of said Willmott Road, South 89° 04' 35" East 142.34 feet to the Southwest corner of said Lot 4; thence along the West line of said Lot 4, North 00° 57' 25" East 749.02 feet to the point of beginning.

Excepting therefrom an undivided one-half interest in all oil, gas, and other hydrocarbons and minerals, with the right of entry, as reserved by Bank of America National Trust and Savings Association, NA, in deed recorded April 29, 1936 in Book 502, Page 108 of Official Records.

OWNER'S STATEMENT

THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND WITHIN THE EXTERIOR BOUNDARY OF THE SUBDIVISION AS SHOWN ON THIS MAP, HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP AND HEREBY IRREVOCABLY OFFER FOR DEDICATION TO THE PUBLIC FOR PUBLIC USE.

AS EASEMENTS, THE PUBLIC UTILITY EASEMENTS (PUE), ALL AS SHOWN ON THIS MAP.

OWNER: STONEFIELD HOME, INC.
BY: Greg Hostetler DATE: 3-31-2020

TRUSTEE'S STATEMENT

WE, FIDELITY NATIONAL TITLE COMPANY, AS TRUSTEE UNDER THE CERTAIN DEED OF TRUST RECORDED FEBRUARY 27, 2019, AS DOCUMENT NO. 2019-005706, DO HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS FINAL MAP, TRACT NO. 2019-01, MISSION VILLAGE SOUTH, PHASE 5A, AND JOIN IN ALL DEDICATIONS THEREON.

BY: Diane H. Robinson DATE: 4-16-2020
Diane H. Robinson, Asst. V.P. * 12-08-2016
Insta. # 2016-043887

BY: SIGNATURE DATE:
PRINT NAME AND TITLE

NOTARY STATEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA COUNTY OF Merced } s.s.
ON March 31, 2020, BEFORE ME, Regina A. Robles
A NOTARY PUBLIC, PERSONALLY APPEARED Greg Hostetler

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND
SIGNATURE: Regina Robles COMMISSION NUMBER: 2141490
PRINCIPAL COUNTY OF BUSINESS: Merced MY COMMISSION EXPIRES: July 29, 2020

NOTARY STATEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA COUNTY OF Merced } s.s.
ON April 16, 2020, BEFORE ME, Irma Lopez
A NOTARY PUBLIC, PERSONALLY APPEARED Diane H. Robinson

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND
SIGNATURE: Irma Lopez COMMISSION NUMBER: 2147549
PRINCIPAL COUNTY OF BUSINESS: Merced MY COMMISSION EXPIRES: April 22, 2020

DATE: 2/21/2020 7:37 FILE: M:\209239\Survey Drawings\PHASE 5A FM-FM-01.dwg

TRACT NO. 2019-01
MISSION VILLAGE SOUTH, PHASE 5A

BEING A SUBDIVISION OF PARCEL 2 AS DESCRIBED IN THE GRANT DEED RECORDED 27 FEBRUARY, 2019, AS DOCUMENT NO. 2019005706, MERCED COUNTY RECORDS, LYING IN A PORTION OF SECTION 13, TOWNSHIP 10 SOUTH, RANGE 10 EAST, MOUNT DIABLO BASE AND MERIDIAN CITY OF LOS BANOS, COUNTY OF MERCED, STATE OF CALIFORNIA SEPTEMBER 2019



BENCHMARK ENGINEERING, INC.

915 17TH STREET, MODESTO, CALIFORNIA, 95354



PLANNING COMMISSION STATEMENT

I, STACY SOUZA ELMS, DIRECTOR FOR THE CITY OF LOS BANOS COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT, DO HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP OF TRACT NO. 2019-01, MISSION VILLAGE SOUTH, PHASE 5A, AND THAT THE SUBDIVISION IS SUBSTANTIALLY THE SAME AS THAT SHOWN ON THE TENTATIVE MAP APPROVED BY THE CITY PLANNING COMMISSION ON THE 11TH DAY OF MAY, 2016, AND THAT THIS FINAL MAP OF TRACT NO. 2019-01, MISSION VILLAGE SOUTH, PHASE 5A* COMPLIES WITH ALL REQUIREMENTS OF SAID PLANNING COMMISSION.

DATED THIS DAY OF 2020

STACY SOUZA ELMS, COMMUNITY AND ECONOMIC DEVELOPMENT DIRECTOR
CITY OF LOS BANOS

OMITTED SIGNATURE STATEMENT

PURSUANT TO SECTION 66436 OF THE SUBDIVISION MAP ACT, THE FOLLOWING SIGNATURES HAVE BEEN OMITTED:

- NAME: MILLER AND LUX, INC.
TYPE OF INTEREST: PUBLIC STREETS/ROADS, TELEPHONE, TELEGRAPH & ELECTRIC POWER LINES; PIPELINES; SEWERS; DRAINAGE DITCHES; CANALS; RECLAMATION & IRRIGATION WORKS; MAINTENANCE
DEED REFERENCE: BOOK 338, PAGE 376 OF OFFICIAL RECORDS OF MERCED COUNTY
NAME: BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, NA
TYPE OF INTEREST: AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS, AND OTHER HYDROCARBONS AND MINERALS, WITH THE RIGHT OF ENTRY
DEED REFERENCE: BOOK 502, PAGE 108 OF OFFICIAL RECORDS OF MERCED COUNTY

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF STONEFIELD HOME, INC., ON OCTOBER 4, 2019. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE DECEMBER 31, 2021, AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

DATED THIS 30th DAY OF April, 2020
Michael Halterman, L.S. 8040



CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP OF TRACT NO. 2019-01, MISSION VILLAGE SOUTH, PHASE 5A, AND STATE THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, AND ANY APPROVED ALTERATIONS THEREOF, AND THAT ALL PROVISIONS OF ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

DATED THIS DAY OF 20

MARK FACHIN, R.C.E. 34614
CITY ENGINEER

CITY CLERK'S STATEMENT

I, LUCILLE L. MALLONEE, CITY CLERK OF THE CITY OF LOS BANOS, STATE OF CALIFORNIA, DO HEREBY STATE THAT AT THE REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF LOS BANOS, STATE OF CALIFORNIA, HELD ON THIS DAY OF 20, THE ACCOMPANYING FINAL MAP OF TRACT NO. 2019-01, MISSION VILLAGE SOUTH, PHASE 5A* WAS APPROVED; ACCEPTED ON BEHALF OF THE PUBLIC, FOR PUBLIC USE, THE OFFER OF DEDICATION IN EASEMENT OF ALL PUBLIC UTILITY EASEMENTS (PUE); ALL AS SHOWN ON THIS FINAL MAP.

DATED THIS DAY OF 2020

LUCILLE L. MALLONEE, CITY CLERK
CITY OF LOS BANOS

CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT AT THE REQUEST OF THE CITY ENGINEER OF THE CITY OF LOS BANOS, I HAVE EXAMINED THIS FINAL MAP AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT AND COMPLIES WITH APPLICABLE PROVISIONS OF THE SUBDIVISION MAP ACT.

DATED THIS DAY OF 2020

TIMOTHY M. ODOM, P.L.S. 8468
REVENING CITY SURVEYOR

RECORDER'S STATEMENT

FILED THIS DAY OF 20, AT O'CLOCK M.

IN BOOK OF OFFICIAL PLATS AT PAGE(S) M.C.R.

AT THE REQUEST OF STONEFIELD HOME, INC.

FEES:

BARBARA J. LEVEY, COUNTY RECORDER BY: DEPUTY

NOTES

1. ALL BEARINGS AND DISTANCES SHOWN HEREON ARE MEASURED UNLESS OTHERWISE NOTED.
2. ALL DISTANCES AND DIMENSIONS SHOWN ARE IN FEET AND DECIMAL PARTS THEREOF.
3. ALL RECORD INFORMATION SHOWN IS FROM MERCED COUNTY RECORDS.

BASIS OF BEARINGS

AN OBSERVED BEARING OF N26°23'09"W FOR THE LINE BETWEEN GPS/GIS 1021 AND GPS/GIS 1017 AS SHOWN ON REF (B) WAS USED AS THE BASIS OF BEARINGS FOR THIS DRAWING. THE RECORD BEARING SHOWN ON REF (B) FOR THIS LINE IS N26°23'32"W.

SUBDIVISION SUMMARY

10 LOTS	0.88 ACRES
LOT A	0.07 ACRES
LOT B	0.08 ACRES
REMAINDER	7.82 ACRES
TOTAL	8.85 ACRES

REFERENCES

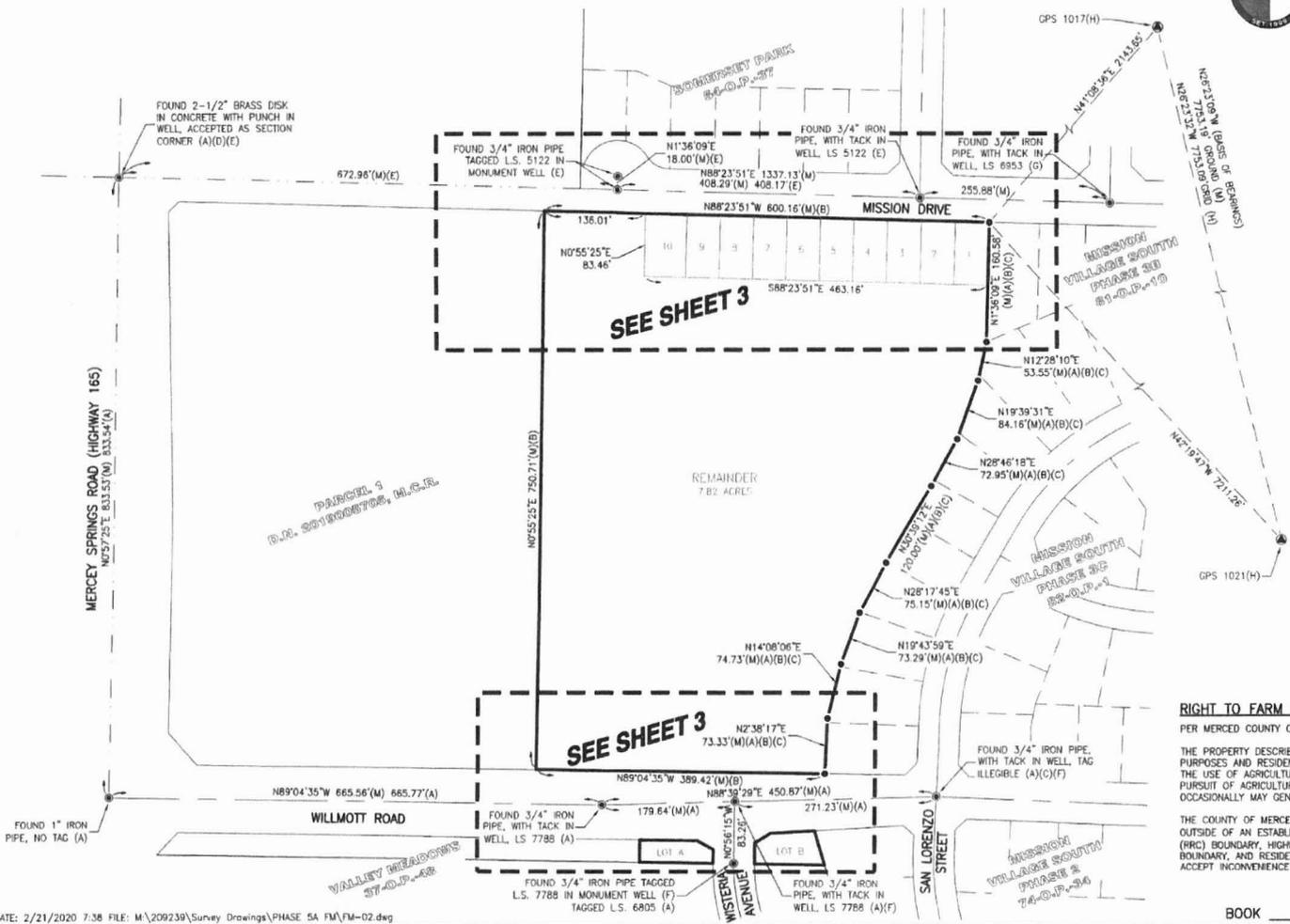
- TRACT NO. 2001-02, MISSION VILLAGE SOUTH, PHASE 1, BOOK 72 OF OFFICIAL PLATS, PAGES 4-8, M.C.R.
- GRANT DEED, D.N. 2019005706, M.C.R.
- TRACT NO. 2001-02, MISSION VILLAGE SOUTH, PHASE 3S, BOOK 82 OF OFFICIAL PLATS, PAGES 1-4, M.C.R.
- VALLEY MEADOWS, BOOK 37 OF OFFICIAL PLATS, PAGES 48-49, M.C.R.
- TRACT MAP NO. 2000-05, SOMERSET PARK, BOOK 54 OF OFFICIAL PLATS, PAGES 37-40, M.C.R.
- TRACT NO. 2001-02, MISSION VILLAGE SOUTH, PHASE 2, BOOK 74 OF OFFICIAL PLATS, PAGES 34-39, M.C.R.
- TRACT NO. 01-01, MISSION VILLAGE NORTH, UNIT NO. 4, BOOK 59 OF OFFICIAL PLATS, PAGES 27-29, M.C.R.
- GPS SURVEY CONTROL NETWORK, BOOK 28 OF SURVEYS, PAGES 9-12, M.C.R.

**TRACT NO. 2019-01
MISSION VILLAGE SOUTH, PHASE 5A**

BEING A SUBDIVISION OF PARCEL 2 AS DESCRIBED IN THE GRANT DEED RECORDED 27 FEBRUARY, 2019, AS DOCUMENT NO. 2019005706, MERCED COUNTY RECORDS, LYING IN A PORTION OF SECTION 13, TOWNSHIP 10 SOUTH, RANGE 10 EAST, MOUNT DIABLO BASE AND MERIDIAN CITY OF LOS BANOS, COUNTY OF MERCED, STATE OF CALIFORNIA SEPTEMBER 2019

BENCHMARK ENGINEERING, INC.

915 17TH STREET, MODESTO, CALIFORNIA, 95354



LEGEND

- NOTE: ALL PIPE SIZES ARE INSIDE DIAMETER
- FOUND 3/4" IRON PIPE TAGGED L.S. 8040 PER (C), OR AS NOTED
 - ⊙ FOUND MONUMENT IN MONUMENT WELL AS NOTED
 - ⊙ FOUND GPS MONUMENT, DESCRIPTION PER (H)
 - SET 3/4" x 24" IRON PIPE, WITH PLASTIC PLUG STAMPED L.S. 8040
 - ⊙ SET 3/4" x 24" IRON PIPE, WITH PLASTIC PLUG STAMPED L.S. 8040 AT ALL LOT CORNERS, AND LOT ANGLE POINTS, UNLESS NOTED AS A WITNESS CORNER
 - ⊙ SET BRASS TAG STAMPED L.S. 8040 IN CONCRETE AT 1.00' MEASURED PERPENDICULAR OR RADially FROM RIGHT-OF-WAY ANGLE AND CURVE POINTS AND LOT LINE EXTENSIONS AS NOTED
- O.P. OFFICIAL PLATS
(M) MEASURED ON THIS SURVEY
M.C.R. MERCED COUNTY RECORDS

SCALE 1" = 100'

RIGHT TO FARM STATEMENT

PER MERCED COUNTY ORDINANCE NO. 1213

THE PROPERTY DESCRIBED ON THE HEREON SHOWN MAP IS IN THE VICINITY OF LAND UTILIZED FOR AGRICULTURAL PURPOSES AND RESIDENTS OF THIS PROPERTY MAY BE SUBJECT TO INCONVENIENCE OR DISCOMFORT ARISING FROM THE USE OF AGRICULTURAL CHEMICALS, INCLUDING BUT NOT LIMITED TO, PESTICIDES AND FERTILIZERS, AND FROM THE PURSUIT OF AGRICULTURAL OPERATIONS INCLUDING, BUT NOT LIMITED TO, PLOWING, SPRAYING AND BURNING WHICH OCCASIONALLY MAY GENERATE DUST, SMOKE, NOISE, AND ODOR.

THE COUNTY OF MERCED HAS ESTABLISHED AGRICULTURE AS A PRIORITY USE IN AGRICULTURAL ZONES WHICH ARE OUTSIDE OF AN ESTABLISHED SPECIFIC URBAN DEVELOPMENT PLAN (SUDD) BOUNDARY, RURAL RESIDENTIAL CENTER (RRC) BOUNDARY, HIGHWAY INTERCHANGE CENTER (HIC) BOUNDARY, OR AGRICULTURAL SERVICE CENTER (ASC) BOUNDARY, AND RESIDENTS OF PROPERTY IN THE VICINITY OF SUCH AGRICULTURAL ZONES SHOULD BE PREPARED TO ACCEPT INCONVENIENCE OR DISCOMFORT FROM NORMAL, NECESSARY AGRICULTURAL OPERATIONS.

TRACT NO. 2019-01 MISSION VILLAGE SOUTH, PHASE 5A

BEING A SUBDIVISION OF PARCEL 2 AS DESCRIBED IN THE GRANT DEED RECORDED 27 FEBRUARY, 2019, AS DOCUMENT NO. 2019005706, MERCED COUNTY RECORDS, LYING IN A PORTION OF SECTION 13, TOWNSHIP 10 SOUTH, RANGE 10 EAST, MOUNT DIABLO BASE AND MERIDIAN
CITY OF LOS BANOS, COUNTY OF MERCED, STATE OF CALIFORNIA
SEPTEMBER 2019



BENCHMARK ENGINEERING, INC.

915 17TH STREET, MODESTO, CALIFORNIA, 95354

LEGEND

- NOTE: ALL PIPE SIZES ARE INSIDE DIAMETER
- FOUND 3/4" IRON PIPE TAGGED L.S. 8040 PER (C), OR AS NOTED
 - FOUND MONUMENT IN MONUMENT WELL AS NOTED
 - SET 3/4" x 24" IRON PIPE, WITH PLASTIC PLUG STAMPED L.S. 8040
 - SET 3/4" x 24" IRON PIPE, WITH PLASTIC PLUG STAMPED L.S. 8040 AT ALL LOT CORNERS, AND LOT ANGLE POINTS, UNLESS NOTED AS A WITNESS CORNER
 - SET BRASS TAG STAMPED L.S. 8040 IN CONCRETE AT 1.00' MEASURED PERPENDICULAR FROM RIGHT-OF-WAY ANGLE AND CURVE POINTS AND LOT LINE EXTENSIONS AS NOTED
 - O.P. OFFICIAL PLATS
 - (M) MEASURED ON THIS SURVEY
 - PUE PUBLIC UTILITY EASEMENT
 - SFN SEARCHED, FOUND NOTHING



NOTES

1. ALL BEARINGS AND DISTANCES SHOWN HEREON ARE MEASURED UNLESS OTHERWISE NOTED.
2. ALL DISTANCES AND DIMENSIONS SHOWN ARE IN FEET AND DECIMAL PARTS THEREOF.
3. ALL RECORD INFORMATION SHOWN IS FROM MERCED COUNTY RECORDS.

BASIS OF BEARINGS

AN OBSERVED BEARING OF N28°23'09"W FOR THE LINE BETWEEN GPS/GIS 1021 AND GPS/GIS 1017 AS SHOWN ON REF (B) WAS USED AS THE BASIS OF BEARINGS FOR THIS DRAWING. THE RECORD BEARING SHOWN ON REF (B) FOR THIS LINE IS N28°23'32"W.

REFERENCES

- (A) TRACT NO. 2001-02, MISSION VILLAGE SOUTH, PHASE 1, BOOK 72 OF OFFICIAL PLATS, PAGES 4-8, M.C.R.
- (B) GRANT DEED, D.N. 2019005706, M.C.R.
- (C) TRACT NO. 2001-02, MISSION VILLAGE SOUTH, PHASE 3C, BOOK 82 OF OFFICIAL PLATS, PAGES 1-4, M.C.R.
- (D) VALLEY MEADOWS, BOOK 37 OF OFFICIAL PLATS, PAGES 48-49, M.C.R.
- (E) TRACT MAP NO. 2000-05, SOMERSET PARK, BOOK 54 OF OFFICIAL PLATS, PAGES 37-40, M.C.R.
- (F) TRACT NO. 2001-02, MISSION VILLAGE SOUTH, PHASE 2, BOOK 74 OF OFFICIAL PLATS, PAGES 34-39, M.C.R.
- (G) TRACT NO. 01-01, MISSION VILLAGE E NORTH, UNIT NO. 4, BOOK 59 OF OFFICIAL PLATS, PAGES 27-29, M.C.R.
- (H) GPS SURVEY CONTROL NETWORK, BOOK 28 OF SURVEYS, PAGES 9-12, M.C.R.



DATE: 2/25/2020 15:34 FILE: M:\209239\Survey Drawings\PHASE 5A FM\FM-03.dwg

BOOK _____ PAGE _____

SHEET 3 OF 3

OWNER'S STATEMENT

THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND WITHIN THE EXTERIOR BOUNDARY OF THE SUBDIVISION AS SHOWN ON THIS MAP, HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP AND HEREBY IRREVOCABLY OFFER FOR DEDICATION TO THE PUBLIC FOR PUBLIC USE:

AS EASEMENTS, THE PUBLIC UTILITY EASEMENTS (PUE), ALL AS SHOWN ON THIS MAP.

OWNER: STONEFIELD HOME, INC.

BY: Greg Hostetler DATE: 3-31-2020

TRUSTEE'S STATEMENT

WE, FIDELITY NATIONAL TITLE COMPANY, AS TRUSTEE UNDER THE CERTAIN DEED OF TRUST RECORDED FEBRUARY 27, 2019 AS INSTRUMENT NO. 2019-005790, DO HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS FINAL MAP, "TRACT NO. 2019-01, MISSION VILLAGE SOUTH, PHASE 5A", AND JOIN IN ALL DEDICATIONS THEREON.

BY: Diane H. Robinson DATE: 4-16, 2020
SIGNATURE: Diane H. Robinson, Asst. V.P. * 12-08-2016
PRINT NAME AND TITLE: Instr # 2016-043887

BY: _____ DATE: _____
SIGNATURE: _____
PRINT NAME AND TITLE: _____

NOTARY STATEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA } S.S.
COUNTY OF Merced
ON March 31, 2020, BEFORE ME, Regina A. Robles
A NOTARY PUBLIC, PERSONALLY APPEARED Greg Hostetler

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND

SIGNATURE: Regina A. Robles COMMISSION NUMBER: 2161490
PRINCIPAL COUNTY OF BUSINESS: Merced MY COMMISSION EXPIRES: July 30, 2020

NOTARY STATEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA } S.S.
COUNTY OF Merced
ON April 16, 2020, BEFORE ME, Irma Lopez
A NOTARY PUBLIC, PERSONALLY APPEARED Diane H. Robinson

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND

SIGNATURE: Irma Lopez COMMISSION NUMBER: 2147549
PRINCIPAL COUNTY OF BUSINESS: Merced MY COMMISSION EXPIRES: April 22, 2020

DATE: 2/21/2020 7:37 FILE: M:\209239\Survey Drawings\PHASE 5A FM\FM-01.dwg

TRACT NO. 2019-01
MISSION VILLAGE SOUTH, PHASE 5A

BEING A SUBDIVISION OF PARCEL 2 AS DESCRIBED IN THE GRANT DEED RECORDED 27 FEBRUARY, 2019, AS DOCUMENT NO. 2019005706, MERCED COUNTY RECORDS, LYING IN A PORTION OF SECTION 13, TOWNSHIP 10 SOUTH, RANGE 10 EAST, MOUNT DIABLO BASE AND MERIDIAN CITY OF LOS BANOS, COUNTY OF MERCED, STATE OF CALIFORNIA SEPTEMBER 2019



BENCHMARK ENGINEERING, INC.

915 17TH STREET, MODESTO, CALIFORNIA, 95354



PLANNING COMMISSION STATEMENT

I, STACY SOUZA ELMS, DIRECTOR FOR THE CITY OF LOS BANOS COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT, DO HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP OF "TRACT NO. 2019-01, MISSION VILLAGE SOUTH, PHASE 5A", AND THAT THE SUBDIVISION IS SUBSTANTIALLY THE SAME AS THAT SHOWN ON THE TENTATIVE MAP APPROVED BY THE CITY PLANNING COMMISSION ON THE 11TH DAY OF MAY, 2016, AND THAT THIS FINAL MAP OF "TRACT NO. 2019-01, MISSION VILLAGE SOUTH, PHASE 5A" COMPLIES WITH ALL REQUIREMENTS OF SAID PLANNING COMMISSION.

DATED THIS _____ DAY OF _____, 20____.

STACY SOUZA ELMS, COMMUNITY AND ECONOMIC DEVELOPMENT DIRECTOR
CITY OF LOS BANOS

OMITTED SIGNATURE STATEMENT

PURSUANT TO SECTION 66436 OF THE SUBDIVISION MAP ACT, THE FOLLOWING SIGNATURES HAVE BEEN OMITTED:

NAME: MILLER AND LUX, INC.
TYPE OF INTEREST: PUBLIC STREETS/ROADS; TELEPHONE, TELEGRAPH & ELECTRIC POWER LINES; PIPELINES; SEWERS; DRAINAGE DITCHES; CANALS; RECLAMATION & IRRIGATION WORKS; MAINTENANCE
DEED REFERENCE: BOOK 338, PAGE 376 OF OFFICIAL RECORDS OF MERCED COUNTY

NAME: BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, NA
TYPE OF INTEREST: AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS, AND OTHER HYDROCARBONS AND MINERALS, WITH THE RIGHT OF ENTRY
DEED REFERENCE: BOOK 502, PAGE 108 OF OFFICIAL RECORDS OF MERCED COUNTY

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF STONEFIELD HOME, INC., ON OCTOBER 4, 2019. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE DECEMBER 31, 2021, AND THAT THE MONUMENTS ARE OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

DATED THIS 26th DAY OF APRIL, 2020

Michael Halterman
MICHAEL HALTERMAN, L.S. 8040



CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP OF "TRACT NO. 2019-01, MISSION VILLAGE SOUTH, PHASE 5A", AND STATE THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, AND ANY APPROVED ALTERATIONS THEREOF, AND THAT ALL PROVISIONS OF ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

DATED THIS _____ DAY OF _____, 20____.

MARK FACHN, R.C.E. 34614
CITY ENGINEER

CITY CLERK'S STATEMENT

I, LUCILLE L. MALLONEE, CITY CLERK OF THE CITY OF LOS BANOS, STATE OF CALIFORNIA, DO HEREBY STATE THAT AT THE REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF LOS BANOS, STATE OF CALIFORNIA, HELD ON THIS _____ DAY OF _____, 20____, THE ACCOMPANYING FINAL MAP OF "TRACT NO. 2019-01, MISSION VILLAGE SOUTH, PHASE 5A" WAS APPROVED; ACCEPTED ON BEHALF OF THE PUBLIC, FOR PUBLIC USE, THE OFFER OF DEDICATION IN EASEMENT OF ALL PUBLIC UTILITY EASEMENTS (PUE); ALL AS SHOWN ON THIS FINAL MAP.

DATED THIS _____ DAY OF _____, 2020.

LUCILLE L. MALLONEE, CITY CLERK
CITY OF LOS BANOS

CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT AT THE REQUEST OF THE CITY ENGINEER OF THE CITY OF LOS BANOS, I HAVE EXAMINED THIS FINAL MAP AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT AND COMPLIES WITH APPLICABLE PROVISIONS OF THE SUBDIVISION MAP ACT.

DATED THIS _____ DAY OF _____, 2020.

TIMOTHY M. ODUM, P.L.S. 8468
REVIEWING CITY SURVEYOR

RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 20____, AT _____ O'CLOCK ____ M.

IN BOOK _____ OF OFFICIAL PLATS AT PAGE(S) _____, M.C.R.

AT THE REQUEST OF STONEFIELD HOME, INC.

FEES: _____

BARBARA J. LEVEY, COUNTY RECORDER BY: _____, DEPUTY

NOTES

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3. ALL RECORD INFORMATION SHOWN IS FROM MERCED COUNTY RECORDS.

BASIS OF BEARINGS

AN OBSERVED BEARING OF N26°23'09"W FOR THE LINE BETWEEN GPS/GIS 1021 AND GPS/GIS 1017 AS SHOWN ON REF (B) WAS USED AS THE BASIS OF BEARINGS FOR THIS DRAWING. THE RECORD BEARING SHOWN ON REF (B) FOR THIS LINE IS N26°23'32"W.

SUBDIVISION SUMMARY

10 LOTS	0.88 ACRES
LOT A	0.07 ACRES
LOT B	0.08 ACRES
REMAINDER	7.82 ACRES
TOTAL	8.85 ACRES

REFERENCES

- (A) TRACT NO. 2001-02, MISSION VILLAGE SOUTH, PHASE 1, BOOK 72 OF OFFICIAL PLATS, PAGES 4-8, M.C.R.
- (B) GRANT DEED, D.N. 2019005706, M.C.R.
- (C) TRACT NO. 2001-02, MISSION VILLAGE SOUTH, PHASE 3G, BOOK B2 OF OFFICIAL PLATS, PAGES 1-4, M.C.R.
- (D) VALLEY MEADOWS, BOOK 37 OF OFFICIAL PLATS, PAGES 48-49, M.C.R.
- (E) TRACT MAP NO. 2000-05, SOMERSET PARK, BOOK 54 OF OFFICIAL PLATS, PAGES 37-40, M.C.R.
- (F) TRACT NO. 2001-02, MISSION VILLAGE SOUTH, PHASE 2, BOOK 74 OF OFFICIAL PLATS, PAGES 34-39, M.C.R.
- (G) TRACT NO. 01-01, MISSION VILLAGE NORTH, UNIT NO. 4, BOOK 59 OF OFFICIAL PLATS, PAGES 27-29, M.C.R.
- (H) GPS SURVEY CONTROL NETWORK, BOOK 28 OF SURVEYS, PAGES 9-12, U.C.R.

**TRACT NO. 2019-01
MISSION VILLAGE SOUTH, PHASE 5A**

BEING A SUBDIVISION OF PARCEL 2 AS DESCRIBED IN THE GRANT DEED RECORDED 27 FEBRUARY, 2019, AS DOCUMENT NO. 2019005706, MERCED COUNTY RECORDS, LYING IN A PORTION OF SECTION 13, TOWNSHIP 10 SOUTH, RANGE 10 EAST, MOUNT DIABLO BASE AND MERIDIAN CITY OF LOS BANOS, COUNTY OF MERCED, STATE OF CALIFORNIA SEPTEMBER 2019

BENCHMARK ENGINEERING, INC.

915 17TH STREET, MODESTO, CALIFORNIA, 95354



LEGEND

- NOTE: ALL PIPE SIZES ARE INSIDE DIAMETER
- FOUND 3/4" IRON PIPE TAGGED L.S. 8040 PER (C), OR AS NOTED
 - ⊙ FOUND MONUMENT IN MONUMENT WELL AS NOTED
 - ⊙ FOUND GPS MONUMENT, DESCRIPTION PER (H)
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 - ⊙ SET BRASS TAG STAMPED LS 8040 IN CONCRETE AT 1.00' MEASURED PERPENDICULAR OR RADIALY FROM RIGHT-OF-WAY ANGLE AND CURVE POINTS AND LOT LINE EXTENTIONS AS NOTED
 - O.P. OFFICIAL PLATS
 - (M) MEASURED ON THIS SURVEY
 - M.C.R. MERCED COUNTY RECORDS

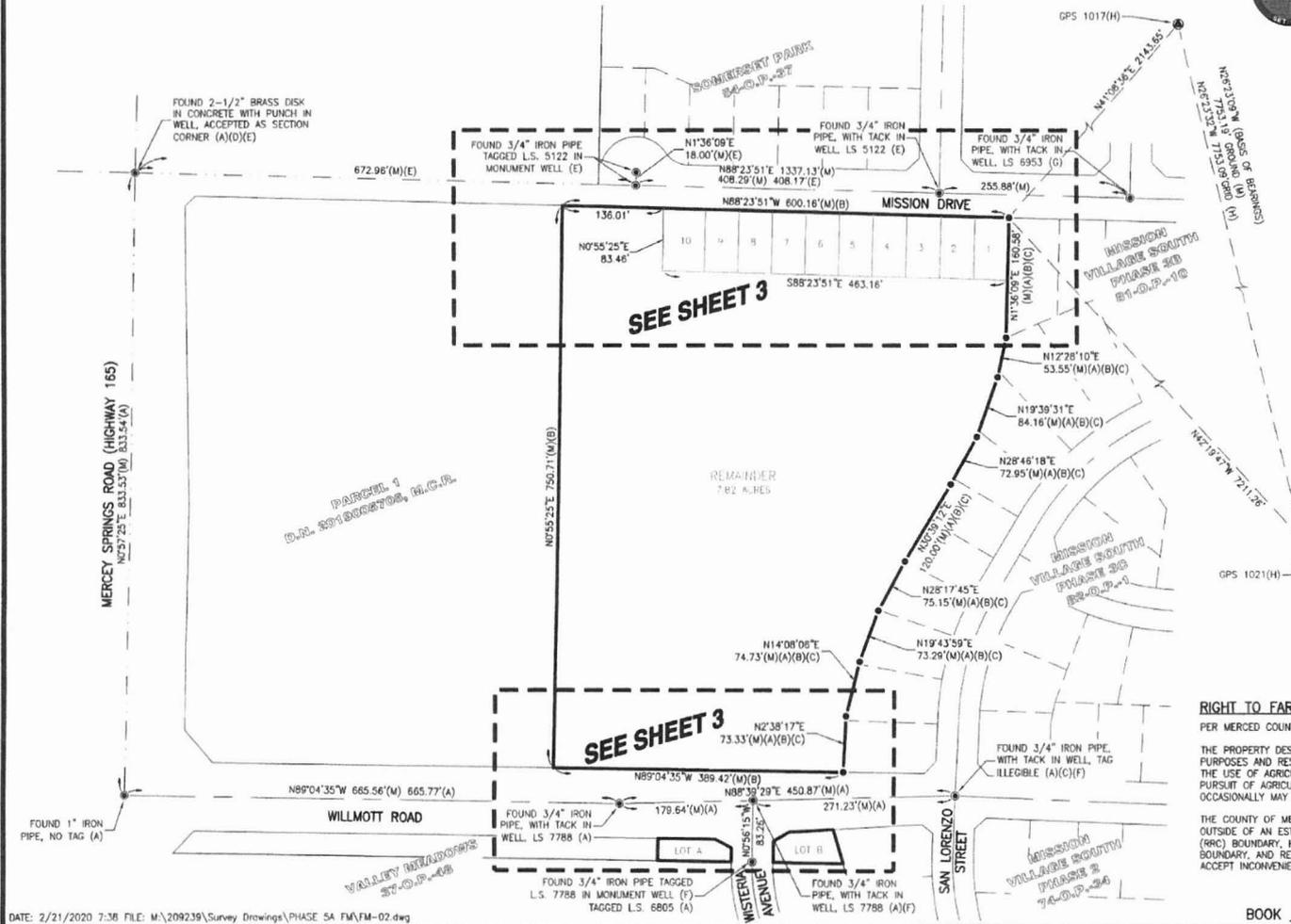
SCALE 1" = 100'

RIGHT TO FARM STATEMENT

PER MERCED COUNTY ORDINANCE NO. 1213

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TRACT NO. 2019-01
MISSION VILLAGE SOUTH, PHASE 5A

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 CITY OF LOS BANOS, COUNTY OF MERCED, STATE OF CALIFORNIA
 SEPTEMBER 2019



BENCHMARK ENGINEERING, INC.

915 17TH STREET, MODESTO, CALIFORNIA, 95354

LEGEND

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 - D.P. OFFICIAL PLATS
 - (M) MEASURED ON THIS SURVEY
 - PUE PUBLIC UTILITY EASEMENT
 - SFN SEARCHED, FOUND NOTHING

SCALE 1" = 40'

NOTES

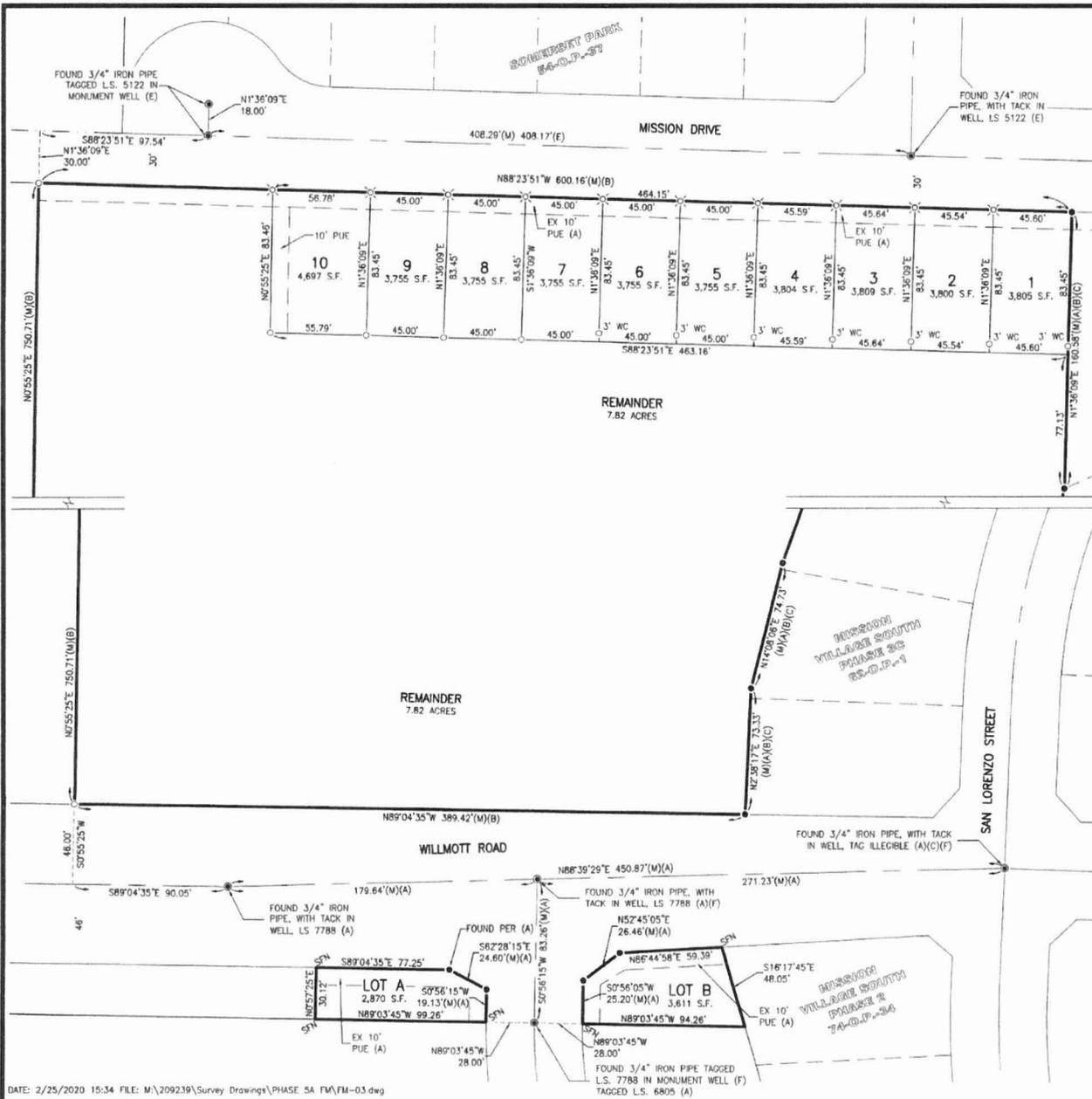
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REFERENCES

- (A) TRACT NO. 2001-02, MISSION VILLAGE SOUTH, PHASE 1, BOOK 72 OF OFFICIAL PLATS, PAGES 4-5, M.C.R.
- (B) GRANT DEED, D.N. 2019005706, M.C.R.
- (C) TRACT NO. 2001-02, MISSION VILLAGE SOUTH, PHASE 3C, BOOK 82 OF OFFICIAL PLATS, PAGES 1-4, M.C.R.
- (D) VALLEY MEADOWS, BOOK 37 OF OFFICIAL PLATS, PAGES 48-49, M.C.R.
- (E) TRACT MAP NO. 2000-05, SOMERSET PARK, BOOK 54 OF OFFICIAL PLATS, PAGES 37-40, M.C.R.
- (F) TRACT NO. 2001-02, MISSION VILLAGE SOUTH, PHASE 2, BOOK 74 OF OFFICIAL PLATS, PAGES 34-39, M.C.R.
- (G) TRACT NO. 01-01, MISSION VILLAGE E NORTH, UNIT NO. 4, BOOK 59 OF OFFICIAL PLATS, PAGES 27-29, M.C.R.
- (H) GPS SURVEY CONTROL NETWORK, BOOK 28 OF SURVEYS, PAGES 9-12, M.C.R.



Site Map
Mission Village South Phase 5 A



Recording Requested By:

City of Los Banos

And When Recorded Mail to:

Lucille L. Mallonee, City Clerk
City of Los Banos
520 J Street
Los Banos CA 93635

Space above this line for Recorder's use.

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2020, between STONEFIELD HOME, INC., a California Corporation, Parties of the First Part, hereinafter designated and called "DEVELOPER(S)", and the CITY OF LOS BANOS, a municipal corporation, the Parties of the Second Part, hereinafter designated and called "CITY".

WHEREAS, the DEVELOPER(S) have presented to the CITY a certain Final Map located within the corporate limits of the CITY, and known and described as Tract No. 2019-01, Mission Village South Phase 5A, comprised of 10 single family residential lots on approximately _____ acres, a copy of which is on file at the City of Los Banos Planning Department and made a part of this AGREEMENT by reference, and said DEVELOPER(S) have requested the CITY to accept the dedications delineated and shown on said Final Map in order that the same may be recorded as required by law; and,

WHEREAS, the CITY requires a condition precedent to the acceptance and approval of said Final Map, the dedication of said easements as are delineated and shown on said Final Map, and deems the same as necessary for public use, and requires and deems as necessary for the public use that any and all street improvements delineated and shown thereon shall be improved by the construction thereon and the installation therein of the improvements hereinafter specified in Paragraph One herein; and,

WHEREAS, certain sections of the Los Banos Municipal Code require the DEVELOPER(S) to enter into this AGREEMENT with the CITY whereby DEVELOPER(S) agree to do, perform, and complete the works and matters hereinafter in this AGREEMENT mentioned and set forth in details, within the time hereinafter mentioned, in consideration of the acceptance of the offers of dedication by the CITY; and,

WHEREAS, the City Council of the City of Los Banos has found said Final Map by Resolution No. _____ to be in substantial compliance with the designs and Conditions of Approval of Vesting Tentative Tract Map No. 2019-01.

NOW, THEREFORE, in consideration of the acceptance of the offers of dedication of easements, and facilities as shown and delineated on said Final Map, and the approval of said Final Map for filing and recording as provided and required by law, it is mutually agreed and understood by and between DEVELOPER(S) and CITY as follows:

SUBDIVISION AGREEMENT

1. That the CITY has fixed and does fix the time within which DEVELOPER(S) shall do and perform the work and improvements hereinafter specified and at such time during this period as designated by the Public Works Director/City Engineer of the CITY, but no later than the 30th day of May 2022, with the said provision that this time may be extended by consent of the City Council, and that the DEVELOPER(S) will, within the period of time stated herein above in this paragraph stated and fixed, do or cause to be done and performed, the following described work and improvements,(as detailed in attached Exhibit A) all at their own cost and expense, to the satisfaction of the Public Works Director/City Engineer in accord with the approved subdivision improvement plans and existing City Policies and adopted Standards, including all costs of inspection, to-wit;

IMPROVEMENTS:

1. SITE PREPARATION	\$	11,534.00
2. DEMOLITION	\$	8,975.00
3. WATER	\$	12,000.00
4. SEWER	\$	14,500.00
5. CONCRETE	\$	36,415.00
6. PAVEMENT	\$	5,790.00
7. MISCELLANEOUS	\$	11,580.00
TOTAL	\$	100,794.00

2. The DEVELOPER(S) shall furnish bonding or other forms of security for the estimated cost of the remaining improvements, agreed to by the CITY for Performance at 100%, **\$100,794.00** and Labor and Materials at 50%, **\$50,397.00** and prior to the release of other security, for Warranty and Guarantee at 10% in the amount of **\$ 10,079.40**. In addition, the DEVELOPER(S) shall provide a bond or other form of security in the amount of **\$3,500.00** for survey monuments, per §66496 of the Government Code.

3. The DEVELOPER(S) agrees to pay the following fees at the time of signing the AGREEMENT less any amount previously paid and not to exclude pending invoices from outside consulting firms.

ENGINEERING AND INSPECTION

5% of Approved Engineer's estimate of \$100,794.00	\$	5,039.70
Less: Deposit for Plan Check (Rec#01374598)	\$	(2,217.47)
Less: Payment (Rec#01462958)	\$	(2,822.23)
SUB-TOTAL	\$	0

FINAL MAP REVIEW

Charges for Phase 5A	\$	2,000.00
Less: Deposit for Map Review (Rec#01423101)	\$	(1,000.00)
Less: Deposit for Map Review (Rec#01427724)	\$	(1,000.00)

SUB-TOTAL	\$	0.00
TOTAL	\$	0.00

4. In accordance with adopted City Policy, security funds may be released for each category of improvements, as per Engineer's cost estimates for **\$100,794.00** (attached as Exhibit "A"), as approved by Public Works Director/City Engineer and accepted by the City Council.
5. The DEVELOPER(S) shall install improvements in accordance with the requirements of the City of Los Banos Municipal Code, the Standard Specifications of the City of Los Banos, the approved Subdivision Improvements and Grading Plans and the Conditions of Approval of Vesting Tentative Tract Map No. 2019-01. All public improvements and utilities must be installed prior to occupancy of units.
6. In the event that the DEVELOPER(S) shall damage, destroy, or tear up any existing improvements, DEVELOPER(S) agree to repair or replace such destroyed or damaged improvements at their cost whenever such damage shall occur.
7. Street lights shall be furnished and installed by the DEVELOPER(S). It is solely the DEVELOPER(S) responsibility to coordinate the installation of street lights with the Pacific Gas and Electric Company and pay any and all fees necessary for their installation. At the time of acceptance, the street lights, including conductors to utility owner splice boxes, shall become the property of the CITY.
8. Any improvements not shown on the approved Improvement Plans which are to be dedicated to the CITY or which are to be placed within the proposed City right-of-way, including mailboxes, private and utility works, shall not be constructed without written approval from the CITY. It shall be the DEVELOPER(S) responsibility to ensure that mailboxes for use by the U.S. Postal Service are available for residents at the time of occupancy; installation to be per plans approved by the Postmaster and the CITY.
9. All earthwork and construction shall meet the requirements and recommendations of the Soils Report, the Amended Soils Report for the Project and the adopted Improvement Standards and Specifications of the City. The DEVELOPER(S) shall, at their expense, provide a Soils Engineer whose responsibility includes the professional inspection and approval concerning the preparation of ground to receive fills, excavation and backfill operations, stability of all finished slopes, and testing for required compaction. Prior to the issuance of structural permits and prior to occupancy release, the Soils Engineer shall certify, in writing, that all earthwork including trench backfill meets the requirements and recommendations of the Soils Report and the adopted Improvement Standards and Specifications of the City.
10. Neither the CITY nor any of its officers or agents shall be liable to DEVELOPER(S) or their contractors for any error or omission arising out of or in connection with any work to be performed under this AGREEMENT. During the progress of the work, if it becomes necessary to modify the design because of errors or omissions on the plans or unforeseen conditions which render a portion of the project inoperable, unsafe, or prohibits a part of the project from performing satisfactorily in

the opinion of the CITY, the plans shall be modified in accordance with the recommendations of the CITY. The DEVELOPER(S) shall be responsible for all costs incurred in revising the plans and performing the work in accordance with the modified plans.

11. The Improvement Plans may be modified upon approval by the CITY at no cost to the CITY.

12. The CITY shall not be liable to the DEVELOPER(S) or to any other person, firm, or corporation whatsoever, for any injury or damage that may result to any person or property by or from any cause whatsoever in, on, or about the subdivision of said land covered by this AGREEMENT, or any part thereof.

13. The DEVELOPER(S) hereby release and agree to indemnify and hold the CITY harmless from and against any and all injuries to and deaths of persons and injuries to property, and all claims, demands, costs, loss, damage, and liability, howsoever the same may be caused and whensoever the same may appear, resulting directly or indirectly from the performance or nonperformance of any or all work to be done in and upon the street rights-of-way in said subdivision and upon the premises adjacent thereto pursuant to this AGREEMENT, and also from any and all injuries to and deaths of persons and injuries to property or other interests, and all claims, demands, costs, loss, damage, and liability, howsoever the same may be caused and whensoever the same may appear, either directly or indirectly made or suffered by the DEVELOPER(S), the DEVELOPER(S) agents, employees, and subcontractors, while engaged in the performance of said work.

14. The DEVELOPER(S) agree that the use for any purpose and by any persons of any and all of the improvements herein before specified, shall be at the sole and exclusive risk of the DEVELOPER(S) at all times prior to final acceptance by the CITY of the completed improvements. Thereon and therein; provided, that acceptance by the CITY shall in no way eliminate or lessen any of DEVELOPER(S) obligations and undertakings contained in this AGREEMENT. The issuance of any occupancy permits by the CITY for dwellings located within said subdivision shall not be construed in any manner to constitute an acceptance and approval of any or all of the improvements in said subdivision.

15. It is mutually agreed by the parties hereto that the Public Works Director/City Engineer shall have the right to reject any or all of the work to be performed under this AGREEMENT if such work does not conform with the plans and specifications mentioned herein or the ordinances of the CITY. Reinspection of corrected work shall be at the expense of the DEVELOPER(S). The cost of such reinspection is not included in the Engineering and Inspection Fee described in Paragraph 3 of this AGREEMENT. Any damage to the sewer system, utilities, concrete work, or street paving that occurs after installation shall be repaired by the DEVELOPER(S) to the satisfaction of the Public Works Director/City Engineer by the DEVELOPER(S) before release of bond or final acceptance of completed work.

16. DEVELOPER(S) shall provide for adequate erosion control as determined by the Public Works Director/City Engineer on individual lots and from exterior property draining into the area of the subdivision, to protect the public rights-of-way and improvements. Erosion control on individual lots shall continue until such a time as front and street side yard landscaping is installed.
17. Without limiting the foregoing, DEVELOPER(S) warrant and guarantee materials used and workmanship performed on said work for a period of one (1) year after completion and acceptance thereof by the City Council, or the Public Works Director/City Engineer.
18. Upon completion of the improvements, specified herein the DEVELOPER(S) shall file a Notice of Completion with Merced County and submit to the City "As Built" drawings on mylar, of the improvements. The Notice of Completion shall be filed no later than thirty-five (35) days prior to consideration for acceptance of the improvements by the City Council. As part of the request for acceptance of improvements, the DEVELOPER(S) shall submit a title report encompassing each of the parcels within the Subdivision which discloses all liens or claims which may have been recorded in or prior to thirty-one (31) days following the date of recordation of the Notice of Completion. If any liens or claims are thus revealed, the DEVELOPER(S) shall either remove the liens and claims and submit an updated title report prior to acceptance of the Subdivision by the CITY, or shall enter into an agreement with the CITY that provides to the satisfaction of the CITY a method for the removal of such liens and claims at no cost to the CITY.
19. It is hereby mutually covenanted and agreed by the parties hereto that DEVELOPER(S) contractors are not agents of the CITY and that the contractors' relations to CITY, if any, are those of independent contractors.
20. That the applicant furnish the CITY with a reproducible 8 1/2" x 11" map of the Final Map of this development prior to issuance of permits.
21. DEVELOPER(S) shall comply with all applicable original or amended Conditions of Approval of Vesting Tentative Tract Map No. 2019-01 prior to acceptance of public improvements or final of any housing units.
22. No work shall commence under the terms of this AGREEMENT prior to all of the following being completed: deposit of improvement security per City Council resolution; issuance of a Subdivision Improvements grading permit other than rough grading and site preparation; and payment of all required development fees.
23. All costs for engineering and inspection services which exceed the 5% fee specified above will be invoiced to the DEVELOPER(S) and must be paid in full prior to acceptance of the subject improvements by the CITY.
24. If construction of improvements has not begun within one (1) year from the date of this AGREEMENT, then prior to commencement of work the Public Works Director/City Engineer shall review the improvement plans and determine if revisions are required. In any case, a new engineer's

cost estimate shall be submitted by the applicant to the Public Works Director/City Engineer. The applicant shall be responsible for any modification to the plans required by the Public Works Director/City Engineer and shall pay all plan check fees plus the difference in inspection fees due based on the new cost estimate.

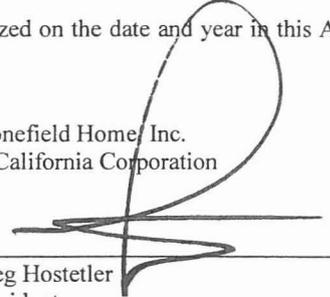
25. The DEVELOPER(S) acknowledge the requirement to comply with the environmental mitigation measures for Vesting Tentative Tract Map No. 2019-01, and the conditions of approval for said tentative map, (attached herein as Exhibit 'B'), in the development of this Subdivision.

26. The terms of this AGREEMENT are not intended to, nor do they, relieve the DEVELOPER(S) of any conditions of approval, compliance with City Standards or compliance with mitigation measures of adopted environmental documents, the compliance with which may be placed as a condition of permit issuance or occupancy.

27. Time is of the essence of this AGREEMENT. It is agreed that the provisions of this AGREEMENT shall apply to and bind the heirs, executors, administrators, successors, devisees, and assignees of the respective parties hereto.

IN WITNESS WHEREOF, the parties have executed these presents or caused the same to be executed by the officers thereunto duly authorized on the date and year in this AGREEMENT first above written.

Stonefield Home, Inc.
A California Corporation



Greg Hostetler
President

PARTIES OF THE FIRST PART

CITY OF LOS BANOS
A Municipal Corporation

Michael Villalta
Mayor

PARTIES OF THE SECOND PART

ATTEST:

Lucille L. Mallonee
City Clerk
City of Los Banos

**Signatures need to be notarized.
Attach a Notary Acknowledgement.**

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Merced

On May 16, 2020 before me, Regina A. Robles, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Regina A. Robles

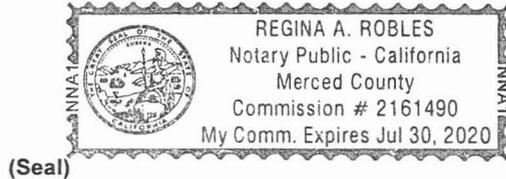
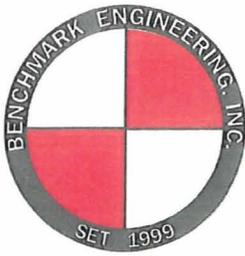


Exhibit A



BENCHMARK ENGINEERING INC.
CIVIL ENGINEERING & LAND SURVEYING

JOB #209239
 AUGUST 12, 2019

**ENGINEERS BOND ESTIMATE
 FOR
 MISSION VILLAGE SOUTH PHASE 5A
 10 LOTS
 LOS BANOS, CA**

ITEM	DESCRIPTION	UNIT	QUAN.	UNIT PRICE	AMOUNT
A. SITE PREPARATION					
1.	MOBILIZATION	LS	1	\$5,000.00	\$5,000.00
2.	CLEAR AND GRUB	SF	43,560	\$0.05	\$2,178.00
3.	GRADING	SF	43,560	\$0.10	\$4,356.00
SUB-TOTAL					\$11,534.00
B. DEMOLITION					
1.	REMOVE EXISTING CURB & GUTTER	LF	231	\$10.00	\$2,310.00
2.	REMOVE EXISTING ASPHALT	SF	3,628	\$1.50	\$5,442.00
3.	SAWCUT	LF	1,223	\$1.00	\$1,223.00
SUB-TOTAL					\$8,975.00
C. WATER					
1.	1" WATER SERVICE ON EX. MAIN	EA	10	\$1,200.00	\$12,000.00
SUB-TOTAL					\$12,000.00
D. SEWER					
1.	4" SEWER SERVICE	EA	10	\$1,200.00	\$12,000.00
2.	RELOCATE EX. MANHOLE	EA	1	\$2,500.00	\$2,500.00
SUB-TOTAL					\$14,500.00
E. CONCRETE					
1.	6" VERTICAL CURB & GUTTER	LF	70	\$18.00	\$1,260.00
2.	SIDEWALK (INCLUDING RETURNS)	SF	2,355	\$7.00	\$16,485.00
3.	RESIDENTIAL DRIVEWAY	SF	1,867	\$10.00	\$18,670.00
SUB-TOTAL					\$36,415.00
F. PAVEMENT					
1.	TRENCH PATCH (MATCH EX.)	SF	2,316	\$2.50	\$5,790.00
SUB-TOTAL					\$5,790.00

ITEM	DESCRIPTION	UNIT	QUAN.	UNIT PRICE	AMOUNT
G. MISCELLANEOUS					
1.	RETAINING FENCE/WALL	LF	272	\$15.00	\$4,080.00
2.	EROSION CONTROL	LS	1	\$7,500.00	\$7,500.00
SUB-TOTAL					\$11,580.00

CONSTRUCTION SUB-TOTAL=====>	\$100,794.00
10% CONTINGENCY=====>	\$10,079.40
CONSTRUCTION TOTAL=====>	\$110,873.40

NOTE:

1. THE ABOVE DEVELOPMENT COST ESTIMATE DOES **NOT** INCLUDE LAND, ADJACENT RIGHT-OF-WAY, INTEREST, TAXES, COMMISSIONS, LEGAL FEES, ENGINEERING FEES, GEOTECHNICAL FEES, CITY FEES. FEES CHARGED IN CONNECTION WITH A BUILDING PERMIT. PRICES REFLECT CURRENT NORMAL CONSTRUCTION COSTS AND ARE SUBJECT TO CHANGE ONCE STREET IMPROVEMENT PLANS HAVE BEEN APPROVED.

PREPARED BY T. Gees
REVIEWED BY _____

Exhibit B

CONDITIONS OF APPROVAL FOR VESTING TENTATIVE TRACT MAP #2019-01- MISSION VILLAGE SOUTH PHASE 5A SUBDIVISION

General

1. The applicant shall submit a revised Vesting Tentative Tract Map to the Community and Economic Development Department reflecting any modifications, additions, and/or conditions of approval, within 30 days from Planning Commission approval. If necessary, the revised Vesting Tentative Tract Map shall be reviewed by the City Engineer and the Community and Economic Development Director and signed by the Community and Economic Development Director for purposes of providing a clear record of the approved Vesting Tentative Tract Map.
2. Prior to the recordation of a Final Map the Developer shall form or annex the Subject Property to a Community Facilities District created for the purposes of funding public safety, as authorized by Government Code Section 53313(a) and (b). The form, terms and conditions and the tax rate for the formation of the Mello-Roos district, or in the alternative the annexation of the subject property to an existing district, shall be as approved by the City Council, as determined in its sole and exclusive discretion. District formation or annexation shall be at the sole cost of the Developer.
3. Prior to approval of any Final Map, the Developer shall form or annex the subject property to a Lighting and Landscaping District created for purposes of maintaining public landscape areas, signage and public lighting including a share of traffic signal maintenance costs as authorized pursuant to the Landscape and Lighting Act of 1972, Part 2 of Division 15 of the California Streets and Highways Code, and Article XIIIID of the California Constitution. The form, terms and conditions and the tax rate for the formation of the Lighting and Landscaping District, or in the alternative the annexation of the subject property to an existing district, shall be as approved by the City Council, as determined in its sole and exclusive discretion. It is the intent of the parties that the assessment of the subject property will be apportioned to each parcel in proportion to the special benefit it receives. District formation or annexation shall be at the sole cost of the developer.
4. The project shall be subject to and the Developer shall pay development impact fees enacted by the City, including scheduled or periodic increases as provided for in the adopting ordinance or resolutions in effect at the time of the Developer's request for the issuance of a building permit and/or as included in the Subdivision Improvement Agreement.

5. Approval and life of the Vesting Tentative Tract Maps shall be as set forth in the Los Banos Municipal Code.
6. All development shall be consistent with the Vesting Tentative Tract Map #2019-01 reflecting any amendments added during approval.
7. The Final Map(s) shall be in substantial compliance with the approved Vesting Tentative Tract Map, including any changes set forth in the conditions of approval.
8. A Final Map shall be prepared by a professional land surveyor licensed in California or a professional engineer licensed in California and qualified to practice land surveying, according to the Subdivision Map Act, and local ordinances.
9. At least two points on the Final Map shall be tied to the California State Plane Coordinate System (NAD 83) with ties shown and closure calculations depicting the tie bearings and distances.
10. A letter from the Tax Collector shall be submitted prior to the recording of the Final Map which indicates that taxes have been paid or a bond has been posted.
11. A Final Map Guarantee shall be prepared and provided to the County Recorder.
12. When the submittal has been technically approved, the original mylars and a conforming mylar will be signed and notarized (notary shall not be stamped on the map) and delivered to the Public Works Department.
13. Developer shall include a Public Utility Easement of ten (10) feet along all road frontages.
14. For all properties within 1,000 feet of agricultural operations, deed notices shall be recorded with the final map. The deed notice shall require property purchasers to acknowledge the existing and ongoing commercial and/or agricultural uses on adjacent and nearby properties, and the Merced County Right-to-farm Ordinance.
15. Building Master Plans shall be approved by the Community and Economic Development Department and Building Department prior to issuance of the first building permit and the architecture shall be consistent with the Final Development Plan.
16. Improvement Plans shall be submitted to the City for approval prior to/or concurrent with the application for each final map and the following note

shall be required: "The Contractor is responsible for protecting and preserving survey monuments and other survey markers. Any survey monuments damaged as a direct or indirect result of construction activities shall be re-established by a duly licensed land surveyor at the Contractor's sole expense. A corner record shall be filed in accordance with State law for any reset monuments at the Contractor's sole expense."

17. Improvement Plans shall include a street signage and striping plan to be approved by the Public Works Director/City Engineer.
18. On-site improvements may be constructed prior to the recording of the final map subject to City approval of Improvement Plans and payment of applicable plan check and inspection fees, and satisfaction of all construction conditions of approval.
19. Off-site public improvement plan(s) shall be submitted to the Public Works Department for approval prior to/or concurrent with the application for the Final Map. The developer shall not commence off-site improvements until approval is received by the Public Works Department. The developer shall enter into a subdivision improvement agreement with the City and provide labor and maintenance bonds in an amount of 100% of the Engineer's Estimate for public improvements to be completed following recordation of the Final Map.
20. A completed Final Development Plan must be submitted to staff when submitting for the Final Map so that the Final Development Plan is processed and approved concurrently with the Final Map.
21. The Final Development Plan shall be approved by the Planning Commission and City Council prior to submittal of a building permit.
22. The project is subject to the appropriate Development Impact Fees as established by the City.
23. Private property owners shall be responsible for the maintenance of sound walls and decorative masonry walls located on private property.
24. The applicant shall obtain City approval in advance for permanent and temporary on-site and off-site signs through separate sign reviews and bonding consistent with the development criteria of the Los Banos Municipal Code – Sign Ordinance.
25. It is the applicant's responsibility to ensure that the development complies with the Americans with Disabilities Act requirements.
26. It shall be the responsibility of the applicant to convey copies of the conditions of approval to all contractors and sub-contractors.

27. Building permits will be issued in accordance with City Subdivision Policy that identifies the improvements required in order for a building permit to be issued.
28. If parking for model homes is to be provided in a temporary parking lot, such lot shall be approved by the Community and Economic Development Director as a commercial lot conforming with Los Banos Municipal Code Section 9-3.2009, and shall be removed within 60 days of the end of sales, if not intended to serve a permanent use.
29. All structures, foundations, and footings for future buildings on the project site shall be designed and constructed to conform with the current Uniform Building Code for Seismic Zone 4 to minimize structural damage resulting from potential seismic activity.
30. An engineering soils report shall be prepared for all projects in order to identify soil characteristics requiring special structural design. On-site and off-site structural design shall conform to the findings and recommendation of the engineering soils report. The report shall be prepared prior to issuance of a grading permit, subject to review and approval of the Los Banos City Engineer.
31. Prior to issuance of building permits for development of sensitive residential land uses (e.g. houses, schools, parks, day care), or other uses in which persons may contact soils), a Phase 1 environmental assessment shall be prepared to determine if soils contain hazardous materials. If necessary, a remediation plan shall be created and implemented. The assessment and any necessary remediation plans shall be subject to the approval of the Community Development Department.
32. The project site is subject to the Northgate Sanitary Sewer Reimbursement Agreement for the fair share costs of oversizing the sewer lift station and the construction of sewer mains which benefit APN: 428-280-012 and shall be made payable to the City of Los Banos prior to issuance of a building permit.
33. Improvement Plans and Grading Plans shall delineate the location and design of all required walls and fences including retaining walls.
34. Improvement Plans shall include mailbox locations, which must be approved by the US Postmaster and the City of Los Banos.
35. Undeveloped portions of the subdivision shall be controlled of weeds and free of debris and litter.
36. Prior to issuance of building permits for development on the project site, if the project site has remained fallow and reverted to grassland vegetation, the following measures shall be required, subject to the review and approval of the City of Los Banos Community Development Department:

- a. A pre-construction survey shall be conducted by a qualified biologist for burrowing owls within 30 days of the on-set of construction according to methods described in the Staff Report on Burrowing Owl Mitigation (CDFG 1995).
 - b. If pre-construction surveys undertaken during the breeding season (February through July) locate active nest burrows within or near construction zones, these nests, and an appropriate buffer around them (as determined by a qualified biologist) must remain off-limits to construction until the breeding season is over. The CDFG recommends setbacks from occupied nest burrows of 100 meters where construction will result in the loss of foraging habitat.
 - c. During the non-breeding season (August through January), resident owls may be relocated to alternative habitat. The relocation of resident owls must be according to a relocation plan prepared by a qualified biologist in consultation with the California Department of Fish and Game. Passive relocation is the preferred method of relocation. This plan must provide for the owls relocation to nearby lands possessing available nesting and foraging habitat.
37. Due to the possibility that significant buried cultural resources might be found during construction, the following language shall be included in any permits issued for the project site, including, but not limited to building permits for future development, subject to the review and approval of the Los Banos Planning Division:

"If archaeological resources or human remains are discovered during construction, work shall be halted at a minimum of 200 feet from the find and the area shall be staked off. The project developer shall notify a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented."

38. In the event of an accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the City shall ensure that this language is included in all permits in accordance with CEQA Guidelines section 15064.5(e):

"If human remains are found during construction there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the Los Banos Police Department contacts the coroner of Merced County to determine that no investigation of the cause of death is required. If the coroner determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission within 24 hours. The Native American Heritage Commission shall identify the person or persons it believes to be

the most likely descendent from the deceased Native American. The most likely descendent may then make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and associated grave goods as provided in Public Resources Code Section 5097.98. The landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further disturbance if: a) the Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission; b) the descendent identified fails to make a recommendation; or c) the landowner or his authorized representative rejects the recommendation of the descendent, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner."

36. Prior to issuance of a building permit, dust control requirements consistent with SJVAPCD District Rule VIII shall be included in all construction contract specifications to reduce significant levels of construction contract specifications to reduce significant levels of construction-related hazardous air emissions.
- a. All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, or vegetative cover.
 - b. All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
 - c. All land clearing, grubbing, scraping, excavation, land leveling, grading, and cut and fill activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.
 - d. When materials are transported off-site, all material shall be covered, effectively wetted to limit visible dust emissions, or at least six inches of freeboard space from the top of the container shall be maintained.
 - e. All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at least once every 24 hours when operations are occurring. (The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. The use of blower devices is expressly forbidden.)
 - f. Following the addition of materials to, or the removal of materials from,

the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.

37. Prior to issuance of building permits, developers shall include the following requirements in all construction bids and documents including contracts (and implemented during construction activities) for the purpose of reducing diesel particulate and acrolein emissions during construction of the project:
- a. All pre-1994 model year and older diesel equipment shall be retrofitted with EPA-certified diesel oxidation catalyst filters;
 - b. Contractor shall maintain records of all purchases of diesel oxidation catalyst filters or biodiesel fuel until construction is complete; and
 - c. The SJVAPCD shall have the right to inspect all construction and demolition equipment, as well as the contractor's records at any time during demolition and construction.
38. **This approval is conditioned upon and shall be effective upon payment in full of all outstanding invoices pursuant to the Cost Recovery Contract.**

Pre-Construction and Construction

39. A minimum 200-foot separation shall be maintained between residences and material stockpiles, debris piles or containers and equipment storage during the construction process. If such storage must be located within 200 feet of a residence, a six-foot high opaque fence shall shield the storage area from view when the storage area is inactive for more than eight hours. This requirement shall be incorporated into the specifications for all construction plans, subject to review and approval by the City of Los Banos Community and Economic Development Department.
40. Two points of all-weather access shall be provided to all areas of the development during all phases of construction to the satisfaction of the Fire Department in areas where residential units are under construction.
41. Temporary construction trailers shall be permitted only in areas immediately adjacent to or within that portion of the subdivision where active subdivision construction is taking place. Placement of said construction trailer is subject to the Community and Economic Development Director approval in accordance with Title 9, Chapter 3, Article 38, Temporary Use Ordinance of the Los Banos Municipal Code.
42. During construction, and for safety purposes, the developer and assigned contractors shall keep the public right-of-way clear of obstructions, and provide for clean up on a daily basis.

43. Prior to issuance of grading permits, the grading plans shall include the following language:

“Large bulldozers, loaded trucks, or heavy equipment which causes significant ground vibration will not operate closer than 50 feet to an occupied residence without notifying the resident 48 hours in advance of construction work.”

44. Prior to acceptance of public improvements, all entries to the subdivision shall be barricaded to prevent the public from entering the construction site.

45. Undeveloped portions of development sites shall be controlled of weeds and free of debris and litter. The applicant shall provide protection against wind and water soil erosion on undeveloped portions of the project site. Temporary vegetation on undeveloped portions of the project site shall not be allowed to grow taller than eighteen inches.

46. All contractors and subcontractors performing work relative to this project shall obtain City of Los Banos Business Licenses, prior to start of work on the project. All work performed on the project shall comply with the requirements of the State Business and Professions Code.

47. Building permits shall be issued in accordance with the Los Banos Municipal Code and Standards and Specifications that identifies the improvements required in order for a building permit to be issued.

48. The developer shall be responsible for obtaining encroachment permits from the City of Los Banos, County of Merced, Caltrans, or other jurisdictions prior to performing any work within that jurisdiction's right-of-way.

49. Construction shall be limited to those times allowed by City Ordinance: Monday through Friday from 7:00 am to 7:00 pm; Saturday from 8:00 am to 7:00 pm; and Sunday from 9:00 am to 7:00 pm. Properly muffled equipment shall be used.

50. The developer shall incorporate soil erosion control measures into grading and drainage plans that comply with NPDES storm water regulations. These measures shall be monitored for effectiveness by the City of Los Banos. Such measures may include, but not be limited to, the following:

- a. Limit disturbance of soils and vegetation disturbance removal to the minimum area necessary for access and construction;
- b. Confine all vehicular traffic associated with construction to the right-of-way of designated access roads;
- c. Silt fencing installed in accordance with the American Society for Testing and Materials standard D6462.

- d. Adhere to construction schedules designed to avoid periods of heavy precipitation or high winds;
 - e. Ensure that all exposed soil is provided with temporary drainage and soil protection when construction activity is shut down during the winter periods;
 - f. Inform construction personnel prior to construction and periodically during construction activities of environmental concerns, pertinent laws and regulations, and elements of the proposed erosion control measures;
 - g. Compliance with National Pollution Discharge Elimination System (NPDES) permits administered by the California Regional Water Quality Control Board; and
 - h. Development of a plan to employ best management practices that reduce the level of pollutants discharged into natural waterways and wetlands.
51. Silt fencing shall be installed in accordance with American Society for Testing and Materials Standard D6462.
52. Where standard corner lot side yards abut a street, a minimum three-foot landscaping area shall be provided between the back of sidewalk and the fence.
53. Restricted access rights shall be irrevocably offered for dedication to the City along the rear edge of private property where properties back onto streets, and shall be shown on final maps.
54. During construction activities, all food-related trash items shall be enclosed in sealed containers and regularly removed from the project site to avoid attracting wildlife to the project site, and pets shall not be allowed on the construction site.

Air Quality:

55. Housing units shall be oriented to maximize passive solar cooling and heating when practicable.
56. Gas fired appliances shall be low NOx emitting appliances complying with California NOx Emission Rule #1121.
57. The developer shall comply with all applicable Indirect Source Rule requirements of the San Joaquin Valley Air Pollution Control District. Developer shall prepare an air emissions reduction if required.

Access and Circulation:

58. All street traffic impact fee reimbursements shall be per the Transportation Impact Fee program (TIF).
59. The developer shall submit public improvement plans to include curb, gutter, sidewalk, street lights, decorative masonry wall, underground utilities and a landscape plan for public areas.
60. The developer shall be responsible for constructing public streets per the Vesting Tentative Tract Maps including, but not limited to curb, gutter and sidewalk, decorative masonry wall, and landscaping where noted. Improvements to arterials and collector streets shall be completed prior to occupancy of any use within the project boundaries, and improvements to neighborhood streets shall be complete prior to occupancy of any house that requires the street for access.
61. All street signage and striping within the project area shall be approved by the Public Works Department and shall meet all line-of-sight requirements.
62. Prior to acceptance of subdivision improvements, the developer shall install all street and traffic control signs, pavement striping, and street name signs in accordance with the public improvement plans and City and/or Caltrans standards.
63. Final Map(s) shall show a non-access strip 12 inches in width on private property along the frontage of arterial and collector streets, except at driveways, for the purpose of constructing sound walls and decorative masonry walls.
64. The developer shall be responsible for obtaining encroachment permits from the City of Los Banos prior to performing any work within the City's right-of-way.
65. The developer shall design and install traffic calming measures throughout the project area as approved by the City Engineer.
66. Traffic calming measures may include, but are not limited to, raised intersections, speed cushions, stop signs, varied cross sections, and roundabouts.

Utilities:

67. The applicant shall construct water, sewer, and storm drainage facilities as noted on the Vesting Tentative Tract Map, in accordance with City standards. The project shall comply with the current City Plans, Standards, and Specifications, all Master Plan requirements, and the applicant shall work with the Public Works Department in regards to needed infrastructure and

development during the Improvement Plan Review stage. The project shall also be developed in consistency to the proposed Final Development Plan to be submitted by the applicant.

68. The applicant shall repave Mission Drive to City Standards once all utility connections and associated work has been completed.
69. Existing utility easements shall be preserved. If existing utilities and/or easements are relocated for the benefit of a developer, that developer shall be fully responsible for the relocation including all expenses.
70. In conformance with the Subdivision Map Act, the developer shall permit installation of underground cable television delivery systems within public utility easements. All dwellings shall be made cable ready.
71. Prior to approval of Improvement Plans or Final Maps, the developer shall obtain any necessary easements for utilities across adjoining properties and signatures from the Irrigation District or other public agencies for relocated facilities.
72. All existing overhead utilities shall be placed underground with the exception of high voltage power lines. No new overhead utility lines and equipment shall be shown on Improvement Plans and Grading Plans.
73. Where the invert is six feet or greater below finish grade, a minimum clearance of five feet from lip of gutter to the edge of pipe shall be provided for underground utility lines.

Water:

74. The proposed project shall conform to the requirements of the Los Banos Water Master Plan, including payment of the water connection impact fee.
75. Approved backflow devices shall be installed as required.
76. Domestic water services shall not be placed in driveways.

Sewer:

77. The developer shall construct all on-site and off-site sewer facilities necessary to serve the project, subject to reimbursement for over-sizing, as determined by the City.
78. Prior to submission of improvement plans for the first phase of development, a Master Sewer Plan for the development shall be submitted, reviewed, and approved by the Public Works Director/City Engineer.

Storm Drainage:

79. Final Improvement Plans for the storm drainage system shall utilize the TR-55 analysis method.
80. All development shall comply with the Phase II storm water regulations and the City's MS4 Storm Water Permit.
81. Final Improvement Plans for the storm drainage system shall be submitted to the City and reviewed and approved by the City Engineer prior to issuance of a grading permit.
82. The Developer shall generate a Storm Water Pollution Prevention Plan (SWPPP) for pre and post construction best management practices (BMPs). A Notice of Intent (NOI) shall be submitted and approved prior to construction by the State Department of Water Resources.

Public Safety:

83. Fire department requirements for the placement of fire hydrants shall be complete prior to approval of development permits.
84. Fire hydrants shall be installed at locations approved during the Improvement Plan stage and shall be installed based upon City standards.
85. The developer, as specified by City development standards, shall install "Blue Dot" fire hydrant locators.
86. Each residence shall have a 6-inch lighted address numbers of contrasting color installed on the front elevations or alternative size as agreed to by developer and Fire Chief.
87. The developer shall comply with the City Fire Codes and regulations subject to Fire Department approval in regards to building requirements, fire hydrant placement, and sprinkler requirements.
88. Fire hydrants (or other methods approved by the Fire Chief) shall be in place and functioning prior to approval of the first residential building permit. Fire hydrants (or other methods approved by the Fire Chief) shall be operational to the satisfaction of the Fire Chief prior to combustible material being located on the site.
89. No combustible materials shall be on-site prior to the approval of the Fire Department.
90. Prior to placement of combustible materials on the site, two points of all-weather access, at least one paved, shall be provided for each phase, to the satisfaction of the Fire Chief.

91. Street names shall be approved by the Fire Department.
92. Paved surface streets shall be a minimum of 32-feet curb-to-curb.
93. Minimum water lines shall be 8-inch.
94. Driveways, parking lots, water lines, fire hydrants, and underground utilities shall be completed prior to issuance of building permits.
95. Upon completion and approval of the project plans, a CD shall be submitted to the Fire Department providing information on street layout, hydrant locations, water mains, storm drain inlets (i.e. Fire Department pre-planning).

Public Works

96. All improvements shall conform to the latest addition of the Los Banos Municipal Code and the Standards and Specifications.
97. All existing groundwater wells within the map boundary shall be abandoned to Merced County standards. The City will require copies of the well destruction permits.
98. Streetlights are to be installed per City Standards. They shall be "Cobra" style with LED lights. The streetlights shall meet the illumination standards in the City Street Light standards.
99. Streets shall be designed per the City's Improvement Standards and Specifications. The following Traffic Index's shall be used: cul-de-sac, 4.0; local streets, 5.0.
100. Prior to recordation of the Final Map, a Subdivision Improvement Agreement shall be signed between the Developer and the City. The Agreement shall outline fees, performance dates, bonding and insurance requirements, and other pertinent requirements of the project.
101. An Improvement Plan, reviewed and approved for conformance by the Public Works Director/City Engineer, shall be designed and approved before the Final Map is recorded.
102. Prior to the approval of the Improvement Plans, the street sections for all streets shall be approved by the Public Works Director/City Engineer.
103. Curb returns shall be done per City of Los Banos Standards and Specifications.

104. The developer shall incorporate traffic calming measures, including City standard speed cushions into the project as this will be a required element of the signage and striping street plan.

105. The Developer shall provide tree type and location of tree on landscaping plan in compliance with the City of Los Banos Municipal Code.

Landscaping:

109. All residential lots shall have fully landscaped front yards prior to occupancy of each dwelling. Front yard landscape plans shall be submitted with the development Master Plans prior to building permit issuance and shall be approved by the Public Works Director/City Engineer and Community and Economic Development Director.

106. Draught tolerant planting may replace front yard turf as approved by the Community and Economic Development Department and Public Works Department.

107. The developer shall comply with the adopted street tree ordinance.

108. The applicant shall submit landscape and irrigation plans with each phase of the improvement plans for City review and approval of streetscape landscaping.

109. Landscape plans for single-family residences shall utilize drought tolerant plantings for no less than 75 percent of front yards. Turf varieties shall be chosen for drought tolerance. Irrigation systems shall be set to minimize water use and spillage onto paved areas.

110. Landscape plans shall emphasize deciduous shade tree plantings for the project.

111. Landscaping along streets shall utilize all drought tolerant plantings. Irrigation systems shall be designed and operated to minimize water use and spillage onto paved areas. The applicant shall submit an irrigation conservation plan for the approval of the Public Works Director/City Engineer. The irrigation conservation plan shall indicate the amount of water applied in each zone, frequency of irrigation, method of matching irrigation to soil moisture conditions, and for drought-tolerant plantings, an irrigation reduction or phase out plan when plantings are well-established.

112. Landscape plans shall be designed in accordance with Title 9, Chapter 6, Water Efficient Landscape Ordinance of the Los Banos Municipal Code.

Architecture

113. All development shall conform to the City's applicable design guidelines and standards.

114. The interface between the street and houses shall be designed to alleviate the monotony of straight building lines along the street frontage, and facilitation of a "pedestrian friendly" streetscape that encourages community interaction. Possible approaches include, but are not limited to: varying the size of individual dwellings, staggering the front yard setbacks, varying exterior building materials and colors, articulating building facades, including enhanced fenestration and trim, trellis work, or large porches on front elevations, setting garages back from the living areas, and/or utilizing extensive landscaping.

115. Development of the project is subject to approval of the Final Development Plan.

Fencing:

116. Where the project boundary abuts existing good-neighbor residential fences, the Developer shall replace with new fences in accordance with the requirements of the Los Banos Municipal Code.

Notice: this approval may contain fees, dedications, reservations or other exactions as defined by the Mitigation Fee Act (Government Code Section 66000 et seq.). This notice triggers the 90 day protest period as provided for by the Mitigation Fee Act.



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor & City Council Members

FROM: Mark Fachin, P.E., Public Works Director/City Engineer

DATE: May 20, 2020

TYPE OF REPORT: Consent Agenda

SUBJECT: Measure V Local Funding Agreement between Merced County Association of Governments and the City of Los Banos

Recommendation:

That the City Council adopt the Resolution to enter into the Measure V Local Funding Agreement between Merced County Association of Governments and the City of Los Banos for the administration of the local project funding from the one-half cent transaction and use tax known as Measure V. This Resolution authorizes the City Manager to execute said agreement.

Background:

On November 6, 2016, the voters of Merced County approved Measure V. Measure V established a one-half cent transaction and use tax for transportation purposes. Measure V has a 30 year duration, from April 1, 2017 to March 31, 2047.

These tax proceeds are to be used to pay for programs and projects as outlined in Merced County's 2016 ½ Cent Transportation Sales Tax Measure Expenditure Plan.

This Agreement delineates the requirements of the local project funding that are directly allocated to local jurisdictions by Merced County Association of Governments (MCAG).

Discussion:

The current Measure V Recipient Funding Agreements expire June 30, 2020. MCAG drafted an updated agreement that reflects the same components related to measure implementation such as reporting requirements and signage. In summary, some of the agreement components are:

- The agreement does address reporting tools/procedures. The agreement requires the use of the MCAG designated reporting tool and adherence to a quarterly reporting schedule that aligns with the review of expenditures by the Measure V Citizens Oversight Committee.

- The agreement requires recipients to be current on their quarterly expenditure reporting, otherwise local project fund allocations may be held until reporting requirements are met.
- The agreement indicates that recipients agree to promote all projects funded by more than \$50,000 through Measure V with branded signage, and agree to provide MCAG with two (2) photographs of the project to be used for public information purposes such as the website and the Annual Report.
- The agreement requests information on Measure V projects be used on the Measure V website as a means to keep the public informed.
- The agreement proposes a two year term, expiring June 30, 2022.
- The new agreement's title has been changed to 'Measure V Local Funding Agreement' from the previous 'Measure V Recipient Funding Agreement' title.

The City Attorney reviewed the previous agreement and his comments were incorporated into the agreement. The new agreement is consistent with the previous one.

With the MCAG Governing Board's authorization to distribute the agreement to the jurisdictions, each jurisdiction will need to act and execute the agreement by June 10, 2020.

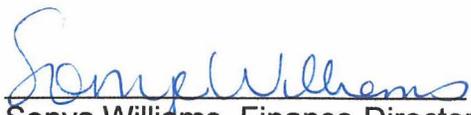
Fiscal Impact:

By executing this agreement, the process and mechanism to distribute Measure V local project funding for the next two years is established. The local Measure V fund will be used to design and build street infrastructure projects as approved by Council during the budget approval process.

Reviewed by:



Alex Terrazas, City Manager



Sonya Williams, Finance Director

Attachments:

Resolution
Measure V Local Funding Agreement
Previous Measure V Recipient Funding Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LOS BANOS AUTHORIZING THE CITY
MANAGER TO EXECUTE A MEASURE V LOCAL
FUNDING AGREEMENT WITH MERCED
COUNTY ASSOCIATION OF GOVERNMENTS
FOR THE ADMINISTRATION OF THE LOCAL
PROJECTS FUNDING FROM MEASURE V**

WHEREAS, on November 6, 2017, the voters of Merced County approved Measure V, a one-half cent transaction and use tax; and

WHEREAS, the current Measure V Recipient Funding Agreement expires on June 30, 2020; and

WHEREAS, City of Los Banos staff had provided comments and revisions to the existing agreement, and the new agreement conforms to the existing one; and

WHEREAS, a Measure V Local Funding Agreement needs to be approved and executed by MCAG and each jurisdiction in order to administer the local project funding.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Los Banos does hereby authorize the City Manager to execute a Measure V Local Funding Agreement with Merced County Association of Governments (MCAG) for the purpose of the administration of the local projects funding from the one-half cent transaction and use tax known as Measure V.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on the 20th day of May 2020, 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:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

MEASURE V LOCAL FUNDING AGREEMENT

between

MERCED COUNTY ASSOCIATION OF GOVERNMENTS

and the

CITY OF LOS BANOS

This Measure V Local Funding Agreement (“AGREEMENT”), effective the 1st day of July 2020, is entered into by and between Merced County Association of Governments, a joint powers authority pursuant to California Government Code Section 6500 et seq. (MCAG), and the City of Los Banos, a municipal corporation (“RECIPIENT”).

RECITALS

- A. On November 8, 2016, the voters of Merced County, pursuant to the provisions of the Local Transportation Authority and Improvement Act, California Public Utilities Code Section 180000 et seq. (“Act”), approved Measure V, thereby authorizing MCAG to administer the proceeds from the one-half cent transaction and use tax (“Measure V”).
- B. The duration of the Measure V transportation sales tax will be 30 years from the initial year of collection, which began April 1, 2017, with said tax to terminate/expire on March 31, 2047. The tax proceeds will be used to pay for the programs and projects outlined in Merced County’s 2016 – ½ Cent Transportation Sales Tax Measure Expenditure Plan (“Expenditure Plan”), as it may be amended in accordance with State law.
- C. This AGREEMENT delineates the requirements of the Local Projects funds that are directly allocated to local jurisdictions, as authorized by the Expenditure Plan.

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

ARTICLE I – LOCAL PROJECTS FUNDING ALLOCATIONS

This AGREEMENT authorizes MCAG to allocate the Local Projects funds derived from Measure V receipts in accordance with the voter-approved Expenditure Plan as follows:

- Each jurisdiction (each City and the County) shall be allocated an annual base amount of \$150,000 from the Local Projects funds. The total amount of this base amount will be subtracted from the 50% Local Projects funds before the remainder is allocated.

- The remaining Local Projects funds after the base amount allocation shall be allocated in accordance with the Expenditure Plan based on the average of the jurisdiction's share of the total countywide population and its share of the total countywide publicly maintained road miles. For example, if a jurisdiction has 35% of the population and 75% of the road miles it will be allocated 55% of the funds remaining after the base amounts are allocated.
- 20% of each jurisdiction's total allocation of Local Projects funds shall be used for Alternative Modes projects as outlined in the Expenditure Plan.

A. LOCAL PROJECTS

1. Fifty percent (50%) of the Measure V funds collected shall be allocated to Local Projects. The individual local elected city councils and the Merced County Board of Supervisors are the decision-making bodies for the use of their respective allocations of the Local Projects funds within their respective jurisdictions. Each city and the County of Merced shall receive their Local Projects funding allocation as described above consistent with the Expenditure Plan. The goal of the Local Projects funds is to improve the local transportation systems within each individual city and the County of Merced overall. At least twenty percent (20%) of the Local Projects funds each jurisdiction receives shall be used for Alternative Modes projects (see section B).
2. MCAG shall distribute the Local Projects funds pursuant to the formula described above and consistent with the Expenditure Plan. RECIPIENT allocations are subject to change based on variations of annual population figures and percent of road miles pursuant to Article II Paragraph A(2) herein.
3. The Expenditure Plan provides basic fund usage guidelines for RECIPIENT use of the Local Project funds received from the Measure V sales tax. Said guidelines are hereby incorporated into this AGREEMENT by reference.
4. RECIPIENT shall use the reporting tools designated by MCAG to maintain and provide a separate accounting of the Local Projects funds received and any and all expenditures from said funds to ensure that the funds are spent in accordance with the approved Expenditure Plan.
5. RECIPIENT may choose to advance funds for a project, either a project specified in the plan or a project for which they plan to use their Local Projects funds, and to receive reimbursement for that advancement in accordance with the plan. The fund advancement

and reimbursement projections must be approved by a majority vote of the MCAG Governing Board per its Bylaws prior to the jurisdiction proceeding with the project. RECIPIENT may also accumulate funds from their Local Projects allocations over several years to fund higher-cost projects.

6. RECIPIENT shall provide a report to the Citizens Oversight Committee within 60 days of the fiscal year end delineating the Local Projects funds received and how they were spent. In addition, RECIPIENT shall provide documentation as to whether or not the Maintenance of Effort as described in Article II, Paragraph B(4) below, was met.

B. ALTERNATIVE MODES PROJECTS

1. At least twenty percent (20%) of the Local Projects funds received by RECIPIENT shall be used for Alternative Modes projects as required in the Expenditure Plan. RECIPIENT may use more than the twenty percent (20%) minimum but not less. The goal of this sub-category of projects is to provide safe alternatives to automobile travel, increase use of alternative modes, and improve air quality and the environment. RECIPIENT may also accumulate funds from their Local Projects allocations over several years to fund higher-cost Alternative Modes projects.
2. This sub-category may be used for projects and programs that provide alternatives to single-occupant vehicle use, increase use of alternative modes, and improve air quality and the environment, including but not limited to the following:
 - Sidewalks, crosswalks, safe routes to schools, ADA curb ramps and other pedestrian projects
 - Bicycle projects
 - Passenger rail
 - Railroad crossing safety improvements
 - Vanpools, carpools or other ridesharing programs or incentives
 - Roundabouts or other air quality improvements
 - Other alternative modes

ARTICLE II: PAYMENTS AND EXPENDITURES

A. MERCED COUNTY ASSOCIATION OF GOVERNMENTS (MCAG)

1. Within 5 business days of actual receipt of the Measure V sales tax revenues from the State Board of Equalization (“BOE”), MCAG shall pay to the RECIPIENT its allocated amount of available Local Projects funds provided that the RECIPIENT is current on expenditure reporting requirements as outlined in Article II, Paragraph B(3). With the payment, MCAG shall provide the RECIPIENT with an itemized breakdown of how the allocation payment was calculated. In the event of non-compliance, MCAG maintains the authority to hold Local Project fund allocations until reporting requirements are met.
2. MCAG shall annually update the Measure V revenue projections and the resulting fund allocation formulas to reflect the most current population using the California Department of Finance’s annual population estimates (Report E-1 published annually in May) and the Maintained Miles by jurisdiction as published in the most current California Public Road Data. MCAG shall use the updated Local Projects allocation formulas in the allocations beginning July 1 of each new fiscal year, which is from July 1 to June 30. MCAG shall provide the RECIPIENT prompt notice of any update to the allocation formulas and MCAG’s application of the updated formula to the RECIPIENT’s allocation.
3. MCAG shall include Measure V Local Projects funds distributed to each RECIPIENT in a quarterly report to the Board of Directors.
4. MCAG shall provide for an independent annual audit of its financial statements including revenues and expenditures and of its calculation of the allocation formula for distributing Measure V revenues to RECIPIENT and the other jurisdictions.
5. MCAG shall provide reasonable notice to RECIPIENT prior to conducting an audit of Local Projects funds received by RECIPIENT to determine whether the RECIPIENT’s use of said funds is in compliance with this AGREEMENT and the Expenditure Plan.

B. RECIPIENT’S DUTIES AND OBLIGATIONS

1. RECIPIENT shall use all Local Projects funds received in compliance with the applicable guidelines and plan(s), as they may be adopted or amended by the Board of Directors for MCAG in accordance with applicable law.
2. RECIPIENT shall use and maintain the designated reporting tools to report on funds received and expended. RECIPIENT must account for Local Projects funds, including any interest

received or accrued, separately for each fund type. The accounting system shall provide adequate internal controls and audit trails to facilitate an annual compliance audit for each fund type and the respective usage and application of said funds. MCAG and its representatives and agents shall have the absolute right at any reasonable time to inspect and copy any accounting records related to such funds, except to the extent specifically prohibited by application law.

3. RECIPIENT will use the designated reporting tools to provide MCAG with the required information related to Local Projects funds expenditures according to the following schedule:

<u>Reporting Period</u>	<u>Due Date</u>
July 1 to September 30	October 31
October 1 to December 31	January 31 of following calendar year
January 1 to March 31	April 30
April 1 to June 30	August 31 (60 days are provided for the 4th quarter of each fiscal year)

4. RECIPIENT hereby agrees to the Maintenance of Effort. The enabling legislation in Public Utilities Code Section 180001(e) provides:

It is the intent of the Legislature that funds generated pursuant to this division be used to supplement and not replace existing local revenues used for transportation purposes.

If RECIPIENT receives revenues for Local Projects, it shall annually maintain, as a minimum, the same level of local fully discretionary general fund revenues that were expended on average for fiscal years 2013/14, 2014/15, and 2015/16, for transportation purposes. Dedicated funds for transportation such as gas tax revenues are not counted as general fund revenues. Transfers into the general fund will not be counted as general fund revenues. Grant awards and general fund revenues used as matching funds for grant awards will not be counted as general fund revenues.

5. RECIPIENT hereby agrees to and accepts the formulas used in the allocation of Measure V, as reflected in the Expenditure Plan, and agrees to accept and use the California Department of Finance Estimates of Population figures (Report E-1, updated annual in May)

for California cities and counties and the maintained miles by jurisdiction as published in the most current California Public Road Data for the annual update of the sales tax allocation formulas to begin in each new fiscal year.

C. OTHER CONSIDERATIONS

1. Transportation Purposes Only: RECIPIENT shall use all Local Projects funds solely for transportation purposes as defined by the Expenditure Plan. Any jurisdiction that violates this provision, as determined by the MCAG Board, must fully reimburse all misspent funds, including all interest which would have been earned thereon. The interest rate shall not exceed the maximum allowed by law.
2. Staff Cost Limitations: Direct costs associated with the delivery of programs and projects associated with Local Projects funds, including direct staff costs and consultant costs, are eligible uses of said funds. Indirect costs, including, but not limited to, overhead costs such as rent, utilities, and human resources staff, are not allowed.
3. Fund Exchange: Each local jurisdiction shall have the authority to loan Local Projects funds allocated to them to other local jurisdictions for the implementation of needed transportation projects.
4. CEQA: All projects funded with Local Projects funds shall comply with the California Environmental Quality Act (CEQA) and other environmental reviews as required.
5. Promotion: At a minimum, RECIPIENT agrees to promote all projects funded by more than \$50,000 through Measure V with branded signage and is encouraged to use additional means such as news releases, social media, events, or any other tools to communicate to the public that the project was funded by Measure V. For this same category of projects, RECIPIENT also agrees to provide MCAG with at least two (2) photographs of the project, either 1) in progress or 2) before and after completion or some combination thereof.

ARTICLE III: REPORTING REQUIREMENTS

A. REQUIREMENTS AND WITHHOLDING

RECIPIENT shall comply with each of the reporting requirements set forth below. If RECIPIENT fails to comply with one or more of these requirements, MCAG may withhold payment of further Local Projects funds to RECIPIENT until full compliance is achieved.

1. RECIPIENT shall, by December 31st of each year, submit to MCAG at the RECIPIENT's expense, separate independently audited financial statements for the prior fiscal year of Local Projects funds received and used.
2. RECIPIENT shall provide current and accurate information on RECIPIENT's website (if applicable) and to MCAG for the Measure V website, to inform the public about how RECIPIENT is using Local Projects funds.
3. RECIPIENT shall, at least annually, publish an article highlighting a project or program funded by Local Projects funds, or provide information to MCAG's Public Information Officer regarding such project or program for publication.
4. RECIPIENT shall make its administrative officer or designated staff available upon request to render a report or answer any and all inquiries in regard to RECIPIENT's receipt, usage, and/or compliance with audit findings regarding Local Projects funds before the Citizens Oversight Committee.
5. RECIPIENT agrees that MCAG may review and/or evaluate all projects or programs funded pursuant to this AGREEMENT. This may include visits by representatives, agents or nominees of MCAG to observe RECIPIENT's project or program operations, to review project or program data and financial records, and to discuss the project with RECIPIENT's staff or governing body.

ARTICLE IV: OTHER PROVISIONS

A. INDEMNITY BY RECIPIENT

Neither MCAG nor its governing body, elected officials, officers, consultants, agents or employees shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by RECIPIENT in connection with the Local Projects funds distributed to RECIPIENT pursuant to this AGREEMENT. It is also understood and agreed, pursuant to Government Code Section 895.4, that RECIPIENT shall fully defend, indemnify and hold harmless MCAG, its governing body, elected officials, officers, agents and employees from any liability imposed on MCAG for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by RECIPIENT in connection with the Local Projects funds distributed to RECIPIENT pursuant to this AGREEMENT.

B. INDEMNITY BY MCAG

Neither RECIPIENT nor its governing body, elected officials, officers, consultants, agents or employees shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by MCAG under or in connection with any work, authority or jurisdiction delegated to MCAG under this AGREEMENT. It is also understood and agreed, pursuant to Government Code Section 895.4, that MCAG shall fully defend, indemnify and hold harmless RECIPIENT, its governing body, elected officials, officers, agents and employees from any liability imposed on RECIPIENT for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by MCAG under or in connection with any work, authority or jurisdiction delegated to MCAG under this AGREEMENT

C. JURISDICTION AND VENUE

The laws of the State of California will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims to which it relates. All legal actions arising out of this AGREEMENT shall be brought in a court of competent jurisdiction in Merced County, California.

D. ATTORNEY'S FEES

Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to recover reasonable expenses and attorney's fees from the other party.

E. TERM

The term of this AGREEMENT shall be from July 1, 2020 to June 30, 2022, unless amended in writing or a new Measure V Local Funding Agreement is executed between MCAG and RECIPIENT.

F. SEVERABILITY

If any provision of this AGREEMENT is found by a court of competent jurisdiction or, if applicable, an arbitrator, to be unenforceable, such provision shall not affect the other provisions of the AGREEMENT, but such unenforceable provisions shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this AGREEMENT.

MEASURE V RECIPIENT FUNDING AGREEMENT

between

MERCED COUNTY ASSOCIATION OF GOVERNMENTS

and the

CITY OF LOS BANOS

This Measure V Recipient Funding Agreement ("AGREEMENT"), effective the 1st day of July 2018, is entered into by and between Merced County Association of Governments, a joint powers authority pursuant to California Government Code Section 6500 et seq. (MCAG), and the CITY OF LOS BANOS a municipal corporation ("RECIPIENT").

RECITALS

- A. On November 8, 2016, the voters of Merced County, pursuant to the provisions of the Local Transportation Authority and Improvement Act, California Public Utilities Code Section 180000 et seq. ("Act"), approved Measure V, thereby authorizing MCAG to administer the proceeds from the one-half cent transaction and use tax ("Measure V").
- B. The duration of the Measure V transportation sales tax will be 30 years from the initial year of collection, which began April 1, 2017, with said tax to terminate/expire on March 31, 2047. The tax proceeds will be used to pay for the programs and projects outlined in Merced County's 2016 – ½ Cent Transportation Sales Tax Measure Expenditure Plan ("Expenditure Plan"), as it may be amended in accordance with State law.
- C. This AGREEMENT delineates the requirements of the Local Projects funds that are directly allocated to local jurisdictions, as authorized by the Expenditure Plan.

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

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- The remaining Local Projects funds after the base amount allocation shall be allocated in accordance with the Expenditure Plan based on the average of the jurisdiction's share of the total countywide population and its share of the total countywide publicly maintained road miles. For example, if a jurisdiction has 35% of the population and 75% of the road miles it will be allocated 55% of the funds remaining after the base amounts are allocated.
- 20% of each jurisdiction's total allocation of Local Projects funds shall be used for Alternative Modes projects as outlined in the Expenditure Plan.

A. LOCAL PROJECTS

1. Fifty percent (50%) of the Measure V funds collected shall be allocated to Local Projects. The individual local elected city councils and the Merced County Board of Supervisors are the decision-making bodies for the use of their respective allocations of the Local Projects funds within their respective jurisdictions. Each city and the County of Merced shall receive their Local Projects funding allocation as described above consistent with the Expenditure Plan. The goal of the Local Projects funds is to improve the local transportation systems within each individual city and the County of Merced overall. At least twenty percent (20%) of the Local Projects funds each jurisdiction receives shall be used for Alternative Modes projects (see section B).
2. MCAG shall distribute the Local Projects funds pursuant to the formula described above and consistent with the Expenditure Plan. RECIPIENT allocations are subject to change based on variations of annual population figures and percent of road miles pursuant to Article II Paragraph A(2) herein.
3. The Expenditure Plan provides basic fund usage guidelines for RECIPIENT use of the Local Project funds received from the Measure V sales tax. Said guidelines are hereby incorporated into this AGREEMENT by reference.
4. RECIPIENT shall utilize the reporting tools designated by MCAG to maintain and provide a separate accounting of the Local Projects funds received and any and all expenditures from said funds to ensure that the funds are spent in accordance with the approved Expenditure Plan.

5. RECIPIENT may choose to advance funds for a project, either a project specified in the plan or a project for which they plan to use their Local Projects funds, and to receive reimbursement for that advancement in accordance with the plan. The fund advancement and reimbursement projections must be approved by a majority vote of the MCAG Governing Board per its Bylaws prior to the jurisdiction proceeding with the project. RECIPIENT may also accumulate funds from their Local Projects allocations over several years to fund higher-cost projects.
6. RECIPIENT shall provide a report to the Citizens Oversight Committee within 60 days of the fiscal year end delineating the Local Projects funds received and how they were spent. In addition, RECIPIENT shall provide documentation as to whether or not the Maintenance of Effort as described in Article II, Paragraph B(4) below, was met.

B. ALTERNATIVE MODES PROJECTS

1. At least twenty percent (20%) of the Local Projects funds received by RECIPIENT shall be used for Alternative Modes projects as required in the Expenditure Plan. RECIPIENT may use more than the twenty percent (20%) minimum but not less. The goal of this sub-category of projects is to provide safe alternatives to automobile travel, increase use of alternative modes, and improve air quality and the environment. RECIPIENT may also accumulate funds from their Local Projects allocations over several years to fund higher-cost Alternative Modes projects.
2. This sub-category may be used for projects and programs that provide alternatives to single-occupant vehicle use, increase use of alternative modes, and improve air quality and the environment, including but not limited to the following:
 - Sidewalks, crosswalks, safe routes to schools, ADA curb ramps and other pedestrian projects
 - Bicycle projects
 - Passenger rail
 - Railroad crossing safety improvements
 - Vanpools, carpools or other ridesharing programs or incentives
 - Roundabouts or other air quality improvements
 - Other alternative modes

ARTICLE II: PAYMENTS AND EXPENDITURES

A. MERCED COUNTY ASSOCIATION OF GOVERNMENTS (MCAG)

1. Within 5 business days of actual receipt of the Measure V sales tax revenues from the State Board of Equalization ("BOE"), MCAG shall pay to the RECIPIENT its allocated amount of available Local Projects funds provided that the RECIPIENT is current on expenditure reporting requirements as outlined in Article II, Paragraph B(3). With the payment, MCAG shall provide the RECIPIENT with an itemized breakdown of how the allocation payment was calculated. In the event of non-compliance, MCAG maintains the authority to hold Local Project fund allocations until reporting requirements are met.
2. MCAG shall annually update the Measure V revenue projections and the resulting fund allocation formulas to reflect the most current population using the California Department of Finance's annual population estimates (Report E-1 published annually in May) and the Maintained Miles by jurisdiction as published in the most current California Public Road Data. MCAG shall use the updated Local Projects allocation formulas in the allocations beginning July 1 of each new fiscal year, which is from July 1 to June 30. MCAG shall provide the RECIPIENT prompt notice of any update to the allocation formulas and MCAG's application of the updated formula to the RECIPIENT's allocation.
3. MCAG shall include Measure V Local Projects funds distributed to each RECIPIENT in a quarterly report to the Board of Directors.
4. MCAG shall provide for an independent annual audit of its financial statements including revenues and expenditures and of its calculation of the allocation formula for distributing Measure V revenues to RECIPIENT and the other jurisdictions.
5. MCAG shall provide reasonable notice to RECIPIENT prior to conducting an audit of Local Projects funds received by RECIPIENT to determine whether the RECIPIENT's use of said funds is in compliance with this AGREEMENT and the Expenditure Plan.

B. RECIPIENT'S DUTIES AND OBLIGATIONS

1. RECIPIENT shall use all Local Projects funds received in compliance with the applicable guidelines and plan(s), as they may be adopted or amended by the Board of Directors for MCAG in accordance with applicable law.
2. RECIPIENT shall use and maintain the designated reporting tools to report on funds received and expended. RECIPIENT must account for Local Projects funds, including any interest

received or accrued, separately for each fund type. The accounting system shall provide adequate internal controls and audit trails to facilitate an annual compliance audit for each fund type and the respective usage and application of said funds. MCAG and its representatives and agents shall have the absolute right at any reasonable time to inspect and copy any accounting records related to such funds, except to the extent specifically prohibited by application law.

3. RECIPIENT will utilize the designated reporting tools to provide MCAG with the required information related to Local Projects funds expenditures according to the following schedule:

Quarter	Reporting Period	Due Date
FY 18-19 Q1	July 1 to September 31	October 31, 2018
FY 18-19 Q2	October 1 to December 31	January 31, 2019
FY 18-19 Q3	January 1 to March 31	April 30, 2019
FY 18-19 Q4	April 1 to June 30	August 30, 2019*
FY 19-20 Q1	July 1 to September 31	October 31, 2019
FY 19-20 Q2	October 1 to December 31	January 31, 2020
FY 19-20 Q3	January 1 to March 31	April 30, 2020
FY 19-20 Q4	April 1 to June 30	August 31, 2020*

*60 days provided for the 4th quarter of each fiscal year.

4. RECIPIENT hereby agrees to the Maintenance of Effort. The enabling legislation in Public Utilities Code Section 180001(e) provides:

It is the intent of the Legislature that funds generated pursuant to this division be used to supplement and not replace existing local revenues used for transportation purposes.

If RECIPIENT receives revenues for Local Projects, it shall annually maintain, as a minimum, the same level of local fully discretionary general fund revenues that were expended on average for fiscal years 2013/14, 2014/15, and 2015/16, for transportation purposes. Dedicated funds for transportation such as gas tax revenues are not counted as general fund revenues. Transfers into the general fund will not be counted as general fund revenues. Grant awards and general fund revenues used as matching funds for grant awards will not be counted as general fund revenues.

5. RECIPIENT hereby agrees to and accepts the formulas used in the allocation of Measure V, as reflected in the Expenditure Plan, and agrees to accept and utilize the California Department of Finance Estimates of Population figures (Report E-1, updated annual in May) for California cities and counties and the maintained miles by jurisdiction as published in the most current California Public Road Data for the annual update of the sales tax allocation formulas to begin in each new fiscal year.

C. OTHER CONSIDERATIONS

1. Transportation Purposes Only: RECIPIENT shall use all Local Projects funds solely for transportation purposes as defined by the Expenditure Plan. Any jurisdiction that violates this provision, as determined by the MCAG Board, must fully reimburse all misspent funds, including all interest which would have been earned thereon. The interest rate shall not exceed the maximum allowed by law.
2. Staff Cost Limitations: Direct costs associated with the delivery of programs and projects associated with Local Projects funds, including direct staff costs and consultant costs, are eligible uses of said funds. Indirect costs, including, but not limited to, overhead costs such as rent, utilities, and human resources staff, are not allowed.
3. Fund Exchange: Each local jurisdiction shall have the authority to loan Local Projects funds allocated to them to other local jurisdictions for the implementation of needed transportation projects.
4. CEQA: All projects funded with Local Projects funds shall comply with the California Environmental Quality Act (CEQA) and other environmental reviews as required.
5. Promotion: At a minimum, RECIPIENT agrees to promote all projects funded by more than \$50,000 through Measure V with branded signage and is encouraged to utilize additional means such as news releases, social media, events, or any other tools to communicate to the public that the project was funded by Measure V. For this same category of projects, RECIPIENT also agrees to provide MCAG with at least two (2) photographs of the project, either 1) in progress or 2) before and after completion or some combination thereof.

ARTICLE III: REPORTING REQUIREMENTS

A. REQUIREMENTS AND WITHHOLDING

RECIPIENT shall comply with each of the reporting requirements set forth below. If RECIPIENT fails to comply with one or more of these requirements, MCAG may withhold payment of further Local Projects funds to RECIPIENT until full compliance is achieved.

1. RECIPIENT shall, by December 31st of each year, submit to MCAG at the RECIPIENT's expense, separate independently audited financial statements for the prior fiscal year of Local Projects funds received and used.
2. RECIPIENT shall provide current and accurate information on RECIPIENT's website (if applicable) and to MCAG for the Measure V website, to inform the public about how RECIPIENT is using Local Projects funds.
3. RECIPIENT shall, at least annually, publish an article highlighting a project or program funded by Local Projects funds, or provide information to MCAG's Public Information Officer regarding such project or program for publication.
4. RECIPIENT shall make its administrative officer or designated staff available upon request to render a report or answer any and all inquiries in regard to RECIPIENT's receipt, usage, and/or compliance with audit findings regarding Local Projects funds before the Citizens Oversight Committee.
5. RECIPIENT agrees that MCAG may review and/or evaluate all projects or programs funded pursuant to this AGREEMENT. This may include visits by representatives, agents or nominees of MCAG to observe RECIPIENT's project or program operations, to review project or program data and financial records, and to discuss the project with RECIPIENT's staff or governing body.

ARTICLE IV: OTHER PROVISIONS

A. INDEMNITY BY RECIPIENT

Neither MCAG nor its governing body, elected officials, officers, consultants, agents or employees shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by RECIPIENT in connection with the Local Projects funds distributed to RECIPIENT pursuant to this AGREEMENT. It is also understood and agreed, pursuant to

Government Code Section 895.4, that RECIPIENT shall fully defend, indemnify and hold harmless MCAG, its governing body, elected officials, officers, agents and employees from any liability imposed on MCAG for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by RECIPIENT in connection with the Local Projects funds distributed to RECIPIENT pursuant to this AGREEMENT.

B. INDEMNITY BY MCAG

Neither RECIPIENT nor its governing body, elected officials, officers, consultants, agents or employees shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by MCAG under or in connection with any work, authority or jurisdiction delegated to MCAG under this AGREEMENT. It is also understood and agreed, pursuant to Government Code Section 895.4, that MCAG shall fully defend, indemnify and hold harmless RECIPIENT, its governing body, elected officials, officers, agents and employees from any liability imposed on RECIPIENT for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by MCAG under or in connection with any work, authority or jurisdiction delegated to MCAG under this AGREEMENT

C. JURISDICTION AND VENUE

The laws of the State of California will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims to which it relates. All legal actions arising out of this AGREEMENT shall be brought in a court of competent jurisdiction in Merced County, California.

D. ATTORNEY'S FEES

Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to recover reasonable expenses and attorney's fees from the other party.

E. TERM

The term of this AGREEMENT shall be from July 1, 2018 to June 30, 2020, unless amended in writing or a new Master Recipient Funding Agreement is executed between MCAG and RECIPIENT.

F. SEVERABILITY

If any provision of this AGREEMENT is found by a court of competent jurisdiction or, if applicable, an arbitrator, to be unenforceable, such provision shall not affect the other

provisions of the AGREEMENT, but such unenforceable provisions shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this AGREEMENT.

G. ENTIRE AGREEMENT; MODIFICATION

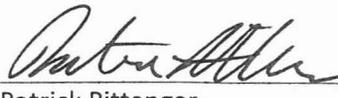
This AGREEMENT, as well as the referenced Expenditure Plan, constitutes the entire AGREEMENT and supersedes all prior written or oral understandings regarding Local Projects funds. This AGREEMENT may only be modified by a written agreement executed by both parties.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT by their duly authorized officers as of the date first written below.

CITY OF LOS BANOS (RECIPIENT)

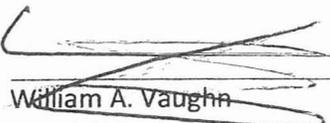
MERCED COUNTY ASSOCIATION OF GOVERNMENTS (MCAG)

By:  6/4/18
Alex Terrazas Date
City Manager

By:  7/17/18
Patrick Pittenger Date
Executive Director

Approved as to Form:

Reviewed as to Budget/Financial Controls:

By:  6/4/2018
~~William A. Vaughn~~ Date
City Attorney

By:  7/17/18
Nav Bagri Date
Finance Director

Approved as to Legal Form:

By:  7/17/18
Emily Haden Date
Legal Counsel to MCAG



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor & City Council Members

FROM: Mason Hurley, Fire Chief/Chief Building Official 

DATE: May 20, 2020

SUBJECT: Approving Amendment No. 3 to Professional Services Agreement with CSG Consultants, Inc. for Plan Check and Building Inspection Services

TYPE OF REPORT: Consent Agenda

Recommendation:

That the City Council adopt a Resolution authorizing the City Manager to enter into a Professional Building Permit Processing, Building Inspections, and Plan Check Services contract/agreement extension with CSG Consultants, Inc. for one year.

History:

Since June 30, 1999, the City of Los Banos has provided Building Department services to the citizens of Los Banos by contracting building permit processing, building inspections and plan check services with a private contractor. This approach has proven to be very beneficial to the City of Los Banos. This business model allows our Building Department to expand and contract with the needs of the community. This process also allows the City to compensate the private contract services based on a percentage of collected Building Department fees; therefore, the City is only paying for services provided by the private contractor as the services are rendered.

The original contract went into effect on August 5, 2015 and expired on June 30, 2018. The City and CSG amended the agreement to extend the terms for a maximum of two (2) one (1) year terms, terminating June 30, 2020.

The City of Los Banos has been in the process of releasing a Request For Proposal (RFP) to evaluate qualified applicants who have submitted proposals for these services. Due to the current COVID -19 Pandemic and the State Order to maintain social distancing this process would be very difficult to complete prior to the above expiration date. Since it is expected that this process will extend beyond the June 30, 2020 expiration date of the existing agreement, the City of Los Banos and CSG are willing to extend the existing contract term for an additional 12 months ending June 30, 2021 on the same terms and conditions of the current contract.

City Staff will be preparing a Request for Proposal (RFP) for a professional services agreement for Plan Check and Building Inspections Services during the fiscal year 2020/2021.

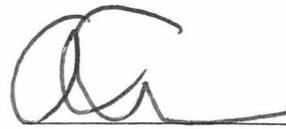
Fiscal Impact:

The fiscal impact to the City of Los Banos will be based on the amount of building activity experienced within the City of Los Banos. This agreement compensates CSG Consultants, Inc. based on 65% of building fees collected. Based on the current building activity, the 19/20 FY Revenues are estimated to be at or above \$605,000.

Reviewed by:



Sonya Williams
Finance Director



Alex Terrazas, City Manager
City Manager

Attachments:

Resolution
Amendment No. 3

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LOS BANOS APPROVING
AMENDMENT NO. 3 TO PROFESSIONAL
SERVICES AGREEMENT WITH CSG
CONSULTANTS, INC. FOR PLAN CHECK AND
BUILDING INSPECTION SERVICES**

WHEREAS, City and CSG entered into a Professional Services Agreement on August 5, 2015 for Plan Check and Building Inspections Services;

WHEREAS, City and CSG entered into Amendment No, 1 for a one-year extension on the 6th day of June 2018.

WHEREAS, City and CSG entered into Amendment No, 2 for a one-year extension on the 21st day of June 2019.

WHEREAS, City and CSG desire to amend the Agreement again to extend the term of the Agreement for an additional one year term.

WHEREAS, the Amendment has been reviewed and approved by the City Attorney.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Los Banos does hereby approve Amendment No. 3 to Professional Services Agreement with CSG Consultants, Inc. for Plan Check and Building Inspections Services and authorizes the City Manager to execute said Amendment, in the form presented herewith.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on the ___ day of June, 2020, 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:

ATTEST:

Michael Villalta, Mayor

Lucille L. Mallonee, City Clerk

**AMENDMENT NO. 3
TO PROFESSIONAL SERVICES AGREEMENT FOR PLAN CHECK AND
BUILDING INSPECTIONS SERVICES
[CSG CONSULTANTS, INC.]**

THIS AGREEMENT is made and entered into this ____ day of _____ 2020, by and between the **City of Los Banos**, a municipal corporation, ("City") and **CSG Consultants, Inc.**, a California Corporation ("CSG").

RECITALS

A. WHEREAS, City and CSG entered into the current Professional Services Agreement for Plan Check and Building Inspections Services on August 5, 2015; Amendment No, 1 to Professional Services Agreement for Plan Check and Building Inspection Services on June 6, 2018; and Amendment No, 2 to Professional Services Agreement for Plan Check and Building Inspection Services on June 21, 2019 extending the term of the Agreement to June 30, 2020; and

B. WHEREAS, City and CSG desire to amend the Agreement again to extend the term of the Agreement for an additional one year term.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree to amend the Agreement as follows:

SECTION 1. Section 1 of the Agreement is amended to read as follows:

1. **Extended Term.** The term of this Agreement shall be extended, on the same terms and conditions as set forth herein, for a one year extended term (terminating June 30, 2021).

SECTION 2. Except as expressly modified or supplemented by this Amendment No.3, all of the provisions of the Agreement entered into on August 5, 2015 shall remain unaltered and in full force and effect.

[Signatures begin on next page]

IN WITNESS WHEREOF, this Amendment No. 3 was executed by the parties thereto on the dates set forth below.

CITY OF LOS BANOS,
A municipal corporation

By: _____
ALEX TERRAZAS, City Manager

Dated: _____

ATTEST:
CITY CLERK

By: _____
LUCILLE L. MALLONEE, City Clerk

Dated: _____

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
WILLIAM A. VAUGHN, City Attorney

Dated: _____

CSG CONSULTANTS INC.
A California Corporation

By: _____
Name
Title

Dated: _____



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor & City Council Members

FROM: Mark Fachin, P.E., Public Works Director/City Engineer

DATE: May 20, 2020

TYPE OF REPORT: Consent Agenda

SUBJECT: Accepting the Fire Station 1 and 2 ADA (Americans with Disabilities Act) and "State Streets" Sidewalk Improvement Project as complete and authorizing the Filing of a Notice of Completion with the Merced County Recorder

Recommendation:

That the City Council adopts the Resolution accepting the Fire Station 1 and 2 ADA (Americans with Disabilities Act) and "State Streets" Sidewalk Improvement project as completed; authorizes the City Manager to file the "Notice of Completion" with the Merced County Recorder; and authorizes the Public Works Director/City Engineer to release the five (5) percent retention after the thirty-five (35) day period from the date of filing the Notice of Completion with the County Recorder.

Background:

Staff initiated infrastructure improvements for two of the projects identified in City's Capital Improvement Plan. Standards for pedestrian accessibility to public buildings were deficient at both Fire Stations 1 and 2. Safe pedestrian access was deficient in an area of Los Banos known as the "State Streets". The two projects were combined into one construction project for bidding purposes which increased the overall quantities of the work. The higher quantities afford contractors the ability to propose lower unit prices. The strategy was to get quality work at better unit prices than if each project was bid separately.

The Public Works Department enlisted the services of one of our consultants, Gouveia Engineering, to design the project. Gouveia engineers and City staff met at each project

site to outline the project work scope. Gouveia and City staff walked each street of the "State Streets" portion of the project to identify the specific quantities of curb/gutter and sidewalk to install and/or replace. Several property owners within the project limits had made improvements in the public right-of-way (ROW). All private improvements were evaluated to determine whether the improvements met City Standards for a pedestrian sidewalk. Subsequently, all property owners were contacted with a letter in the mail informing them of the pending improvements and inviting them to a public information meeting. Additionally, staff hand delivered the same letter to each address within the project limits. The public meeting was held in the evening at the Community Center Lounge on June 18, 2019. Many of the home owners and tenants attended. Following the public meeting, staff generated a second letter for home owners and/or tenants with a space to list any fencing and/or landscaping in the ROW which would need to be set back behind the ROW for the proper installation of the pedestrian sidewalks. The second letter indicated the ROW would need to be cleared by residents before August 15, 2019 otherwise City staff would be clearing the area for the eventual sidewalk. The second letter was also hand delivered by staff who attempted on two separate days, one evening and one weekend day. Special attention was directed to properties where fencing and/or landscaping needed to be cleared.

Discussion:

The Engineering Division of the Public Works Department initiated a construction contract for the Fire Station 1 and 2 ADA and "State Streets" Sidewalk Improvement project. Plans and specifications were designed by Gouveia Engineering. The scope of work consisted of constructing concrete ADA improvements at Fire Station 1 and 2, and sidewalks and curb cut ramps at "State Streets" in the City of Los Banos.

The project was publicly advertised. Bids were opened for this project on Thursday, August 1, 2019. The City Council awarded the construction contract on August 21, 2019 to Sinclair General Engineering Construction, Inc. of Oakdale for the amount of \$881,799.00 with a 20% contingency of \$176,360.00. The Engineering Division performed the construction management for the project. There were four Change Orders with this project. Change Order #1 consisted of the removal of 9 additional trees, which resulted in an increase in quantity, for a total amount of \$14,400.00. Change Order #2 involved an additional driveway section on Pine Street, which was necessary due to the field of grade differences between existing curb and gutter and new sidewalk/driveway in the amount of \$10,810.00. Change Order #3 consisted of additional concrete work and striping at Fire Station #2 due to revised ADA standards in the amount of \$12,510.00, and increased the number of working days by 10 days for extra work and bad weather. Change Order #4 was to increase quantities of water meter boxes and sewer clean out boxes due to deterioration of existing boxes in the amount of \$3,840.00. The total construction cost for this project was \$923,359.00. This represents the original bid, plus the four Change Orders. The Change Order percentage is 5% of the original bid amount.

Fiscal Impact:

Funds for this project have been allocated in the 2019-2020 Fiscal Year budget proportionate to the type of improvements that were performed.

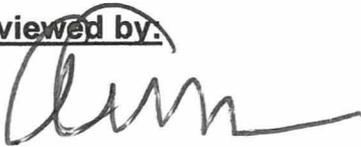
The Measure V Alternative Mode fund was responsible for the curb/gutter, sidewalks, and ADA street corner improvements on the "State Streets" portion of the project; 73.49% of the improvements were from Measure V account 214-430-210-730.

The Water fund was responsible for the water meter and hydrant improvements on the "State Streets" portion of the project; 11.29% of the improvements were from Water account 501-461-100-739.

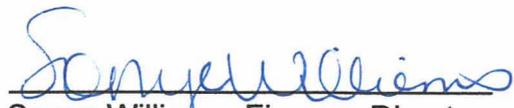
The Wastewater Collections fund was responsible for the storm drain inlet improvements on the "State Streets" portion of the project; 7.52% of the improvements were from Collections account 502-432-100-714.

The Fire fund was responsible for the ADA improvements on the Fire Station 1 and 2 ADA portion of the project; 7.70% of the improvements were from Fire account 100-422-100-720.

Reviewed by:



Alex Terrazas, City Manager


Sonya Williams, Finance Director

Attachments:

Resolution
2019-2020 Fiscal Budget Sheet
Notice of Completion
Site Maps

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS ACCEPTING THE FIRE STATION 1 AND 2 ADA (AMERICANS WITH DISABILITIES ACT) AND "STATE STREETS" SIDEWALK IMPROVEMENT PROJECT AS COMPLETE AND AUTHORIZING THE FILING OF A NOTICE OF COMPLETION WITH THE MERCED COUNTY RECORDER

WHEREAS, on August 1, 2019 the City of Los Banos received competitive bids for the construction of the Fire Station 1 and 2 ADA (Americans with Disabilities Act) and "State Streets" Sidewalk Improvement Project; and

WHEREAS, on August 21, 2019 the City Council awarded the Construction Contract to Sinclair General Engineering Construction, Inc. for the construction of the Fire Station 1 and 2 ADA (Americans with Disabilities Act) and "State Streets" Sidewalk Improvement Project; and

WHEREAS, the Public Works Director/City Engineer has determined, upon inspection, that all work has been completed in compliance with the plans and specifications, and in accordance with the approved contract.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Los Banos does hereby accept the Fire Station 1 and 2 ADA (Americans with Disabilities Act) and "State Streets" Sidewalk Improvement Project as complete; authorize the City Manager to file a Notice of Completion with the Merced County Recorder within ten (10) days after acceptance; and authorize the Public Works Director/City Engineer to release the five (5) percent retention held in escrow after the thirty-five (35) days from the date of filing the Notice of Completion.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on the 20th day of May 2020, 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:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

City of Los Banos
RSTP Exchange
Transportation Expenditure Plan
Gas Tax
2019-2020

Account Number	Description	2016-2017 Actual	2017-2018 Actual	2018-2019 Estimated	2019-2020 Adopted
<u>RSTP EXCHANGE</u>					
207-430-210-820	Charge-In	1,200,000	1,336,919	306,466	638,944
	Charge Ins - Outs	1,200,000	1,336,919	306,466	638,944
207-498-000-000	Transfer Out	0	0	7,000	34,377
	Transfer Out	0	0	7,000	34,377
	Total RSTP	\$1,200,000	\$1,336,919	\$313,466	\$673,321
<u>TRANSPORTATION EXPENDITURE PLAN</u>					
214-430-210-233	Consulting Services	0	0	0	81,000
	Supplies & Services	0	0	0	81,000
214-430-210-715	Street & Road Impr. Overlay	0	0	49,000	1,500,000
* 214-430-210-730	Alternative Street Impr	0	250,000	41,250	820,000
	Capital Outlay	0	250,000	90,250	2,320,000
	Total Trans Expend Plan	\$0	\$250,000	\$90,250	\$2,401,000
<u>GAS TAX</u>					
215-430-210-264	Electricity & Gas	64,455	64,789	65,000	70,000
	Supplies & Services	64,455	64,789	65,000	70,000
215-430-220-819	Street Charge In-SB1 Projects	0	226,371	700,000	700,000
215-430-220-820	Street Charge-In	251,262	228,375	1,000,000	700,000
	Charge Ins - Outs	251,262	454,746	1,700,000	1,400,000
	Total Gas Tax	\$315,718	\$519,535	\$1,765,000	\$1,470,000

RSTP Exchange

CHARGE IN

820-CHARGE IN: Support Street Services maintenance, repair and rehabilitation of local roads.

TRANSFER OUT

000-TRANSFER OUT: Construction of the Pedestrian Sidewalk In-Fills estimated at \$296,743 (\$34,377 from RSTP and \$262,366 from CMAQ grant funding).

Transportation Expenditure Plan

SERVICES & SUPPLIES

233-CONSULTING SERVICES: Charges for services to outside engineering firms to complete environmental, ROW, design, drawings, and project management of regional projects (Trail to the College); as well as other miscellaneous professional services, which may be required.

CAPITAL OUTLAY

715-STREET & ROAD OVERLAYS: Construction of the 2019 Street Rehabilitation Work estimated at \$1,500,000 (Additional \$50,000 in RSTP).

730-ALTERNATIVE STREET IMPROVEMENTS: Sidewalk improvements, ADA pedestrian ramps, storm drain catch basins, fire hydrants and water meter relocations in the area of Colorado Ballpark on Maryland Avenue, Pennsylvania Avenue, Vermont Avenue, Pine Street and Colorado Avenue. Construction costs will be shared accordingly with Measure V, Water, and Wastewater Collection funds. Costs are estimated at \$1,010,000 for design and construction (Measure V-alternative \$820,000, Water 126,000, and Collections \$84,000).

Gas Tax

CHARGE IN

819-CHARGE IN- SB1 PROJECTS: Funding for various SB1 street projects and work throughout the city.

820-CHARGE IN: Support Street Services maintenance, repair and rehabilitation of local roads.

City of Los Banos
Water
2019-2020

Account Number	Description	2016-2017 Actual	2017-2018 Actual	2018-2019 Estimated	2019-2020 Adopted
★ 501-461-100-739	Water Master Plan Improve	387,435	319,547	918,000	1,856,000 ★
501-461-100-740	Miscellaneous Equipment	0	0	0	50,000
501-461-100-750	Vehicles	40,061	77,908	43,357	166,039
501-461-100-752	Communication Equipment	1,133	39	1,776	2,047
501-461-100-753	Specialized Equipment	0	130,168	229,216	32,500
501-461-100-770	Computer Equipment	407	0	0	0
	Capital Outlay	635,856	628,392	1,346,349	2,381,586
501-495-100-900	Contingency	0	0	100,000	100,000
	Contingency	0	0	100,000	100,000
	Total Water	\$3,352,355	\$3,506,690	\$4,384,711	\$5,622,228

Water (continued)

laboratory for water quality analysis, and repair parts for pumps and electric motors for the wells & chemical feed equipment. Asphalt repair following repair of underground distribution facilities.

273-SPECIAL DEPARTMENTAL EXPENSES: For miscellaneous safety equipment and employee longevity awards.

274-BOOKS & PERIODICALS: Expenditures for books, textbooks, periodicals, reference books, and workbooks. Books to include purchase of pertinent volumes of the Federal Code of Regulations, subscription to environmental compliance guide, State Water Code, and miscellaneous books.

CAPITAL OUTLAY

737-METERS: Purchase of water meters for new construction service accounts estimated at \$150,000.

738-WELLS: Costs associated with meeting State of California Maximum Contaminant Levels (MCL) for Parts per Billion (PPB) of Chromium 6. These costs include studying cost effective solutions to treat City water and any litigation that may arise from Chromium 6 levels; total estimated cost \$125,000.

* **739-WATER MASTER PLAN IMPROVEMENTS:** Groundwater Sustainability Agency estimated at \$150,000; Idaho Water Line (P10) finish construction estimated at \$180,000; 8th & 9th Water Line project construction estimated at \$450,000; and Valve Replacements (valve insertion method) estimated at \$50,000. Purchase land for new well (#16) estimated at \$900,000; Fire hydrants and water meters to be relocated and replaced with the sidewalk improvements, ADA pedestrian ramps, and storm drain catch basins in the area of Colorado Ballpark on Maryland Avenue, Pennsylvania Avenue, Vermont Avenue, Pine Street and Colorado Avenue. Construction costs will be shared accordingly with Measure V, Water, and Wastewater Collection funds. Costs are estimated at \$1,030,000 for the construction (Measure V-alternative \$820,000, Water \$126,000, and Collections \$84,000). *

740-MISCELLANEOUS EQUIPMENT: Install new Sensus tower in the Northeast area of the City to improve communication estimated cost \$50,000.

750-VEHICLES: Purchase of two (2) ¾ ton utility pickup trucks estimated at \$50,000 each. Purchase of a one ton service body pickup truck at \$132,078 (cost shared between Water \$66,039 and Collections \$66,039).

752-COMMUNICATION EQUIPMENT: Expenses related to Telephone System Replacement.

753-SPECIALIZED EQUIPMENT: Purchase of Programmable Message Board estimated at \$20,000; and a Portable Air Compressor (cost shared between Water \$12,500 and Collections \$12,500).

CONTINGENCY

900-CONTINGENCY: For unexpected and unforeseen costs associated with Water activities.

City of Los Banos
Wastewater Collections
2019-2020

Account Number	Description	2016-2017	2017-2018	2018-2019	2019-2020
		Actual	Actual	Estimated	Adopted
502-432-100-101	Salaries	361,784	376,001	401,728	414,165
502-432-100-102	Part Time	2,114	0	0	0
502-432-100-103	Overtime	12,906	9,073	18,000	18,000
502-432-100-120	Benefits	237,095	266,917	291,402	326,240
502-432-100-121	Benefits-PERS	97,208	97,467	109,324	105,867
	Personnel Services	711,106	749,458	820,454	864,272
502-432-100-201	Grounds Maintenance	0	0	0	2,000
502-432-100-202	Fleet Repair & Maintenance	31,200	29,677	29,677	28,177
502-432-100-203	Equipment Repair & Maintenance	18,964	18,519	23,000	20,000
502-432-100-204	Fleet Services	39,211	29,881	43,237	25,331
502-432-100-205	Facility Maintenance	1,167	1,095	1,500	1,500
502-432-100-206	Property Lease	2,946	2,946	3,000	3,000
502-432-100-208	Rental - Vehicles & Equipment	24,673	24,673	22,000	17,000
502-432-100-231	Professional Services	91,305	119,269	85,000	90,000
502-432-100-236	Medical Services	1,177	1,144	1,500	1,500
502-432-100-237	Recruitment	434	362	2,000	2,000
502-432-100-238	Technical Services	3,491	2,435	3,000	3,000
502-432-100-240	I.T.Services	6,661	8,747	8,010	9,470
502-432-100-250	Insurance	17,864	18,909	21,646	21,224
502-432-100-251	Memberships & Dues	249	993	1,000	1,700
502-432-100-252	Communications	1,094	1,052	1,200	1,400
502-432-100-253	Advertising	0	0	100	200
502-432-100-256	Permits, Fees & Charges	128,592	127,021	130,000	135,000
502-432-100-257	Travel & Training	995	2,084	2,000	2,600
502-432-100-259	Community Promotion	391	0	500	500
502-432-100-260	Office Supplies	953	1,200	1,000	1,300
502-432-100-262	Uniform Expenses	1,794	2,404	3,550	5,000
502-432-100-264	Electricity & Gas	62,975	66,837	70,000	74,900
502-432-100-265	Gasoline & Oil	11,508	12,085	12,085	14,502
502-432-100-267	General Materials & Supplies	33,994	32,653	35,000	35,000
502-432-100-273	Special Departmental Exp.	0	594	1,100	1,100
	Supplies & Services	481,639	504,581	501,105	497,404
502-432-100-710	Land Purchase	0	1,436	0	1,300,000
502-432-100-714	Storm Drain Improvement	0	0	5,500	104,000
502-432-100-739	Master Plan Improvements	2,045,841	1,528,516	249,000	35,000
502-432-100-750	Vehicles	0	0	43,357	116,039
502-432-100-752	Communication Equipment	1,133	39	1,776	2,047
502-432-100-753	Specialized Equipment	58,026	0	221,943	47,500
502-432-100-770	Computer Equipment	407	0	0	0
	Capital Outlay	2,105,407	1,529,991	521,576	1,604,586
	Total Wastewater Collections	\$3,298,152	\$2,784,030	\$1,843,135	\$2,966,262

Wastewater Collections

SERVICES & SUPPLIES

201-GROUNDS MAINTENANCE: Costs of purchasing and applying weed killer and ground sterilent around storm drain pump.

205-FACILITY MAINTENANCE: Maintenance of buildings, structures and enclosures within the sewer collection and storm water collection system. Payment of maintenance agreements PMA 39 and Grasslands Water District.

206-PROPERTY LEASE: Expenditures for leasing buildings, facilities, and maintenance yards to support the Wastewater Collection services to the City.

231-PROFESSIONAL SERVICES: Charges for services to outside engineering firms to complete wastewater collection related projects including: MS4 estimated at \$50,000; City Improvement Standards estimated at \$30,000; services may include design, drawings, and project management; as well as other miscellaneous professional services, which may be required.

238-TECHNICAL SERVICES: Services of electricians and other technical services related to lift station maintenance and repair.

251-MEMBERSHIP & DUES: Wastewater Collection Certificate renewals; annual dues to the CVCWA (Central Valley Clean Water Association).

256-PERMIT FEES & CHARGES: Expenses associated with the collection of storm water and wastewater. Costs related directly to CCID, SJVAPCD, SWRCB, and CVCWA; Grasslands maintenance agreement and MS4 permit.

259-COMMUNITY PROMOTION: Public education and promotion expenditures in support of storm water and wastewater collection, health, and safety. Expenses include mailing of reports, elementary school programs, promotional literature, and other promotional items.

273-SPECIAL DEPARTMENTAL EXPENSES: For miscellaneous safety equipment and employee longevity awards.

CAPITAL OUTLAY

710-LAND PURCHASE: Nantes Storm Basin land purchase estimated at \$1,300,000 (1/2 restricted funds).

714-STORM DRAIN IMPROVEMENTS: Rehabilitate West I Street storm lift station \$20,000. Storm drain catch basins to be upgraded with the sidewalk improvements, ADA pedestrian ramps, fire hydrants and water meter relocations in the area of US States Streets: Pine Street, Maryland Avenue, Vermont Avenue, Pennsylvania Avenue, and Colorado Avenue between West J Street and Watt Avenue. Construction costs will be shared accordingly with Measure V, Water, and Wastewater Collection funds. Costs are estimated at \$1,030,000 for construction (Measure V-alternative \$820,000, Water 126,000, and Collections \$84,000).

City of Los Banos

Fire

2019-2020

Account Number	Description	2016-2017	2017-2018	2018-2019	2019-2020
		Actual	Actual	Estimated	Adopted
100-422-100-101	Salaries	578,071	569,764	604,248	643,125
100-422-100-102	Part Time	16,089	12,774	25,767	4,000
100-422-100-103	Overtime	48,871	86,805	97,000	30,000
100-422-100-120	Benefits	332,700	346,372	392,000	407,654
100-422-100-121	Benefits-PERS	202,305	224,610	193,659	225,309
	Personnel Services	1,178,036	1,240,325	1,312,674	1,310,088
100-422-100-201	Grounds Maintenance	988	796	1,200	3,800
100-422-100-202	Fleet Repair & Maintenance	11,039	10,192	12,000	65,000
100-422-100-203	Equipment Repair & Maintenance	17,071	15,761	17,000	17,000
100-422-100-204	Fleet Services	0	0	0	29,844
100-422-100-205	Facility Maintenance	14,883	13,793	15,000	17,000
100-422-100-216	Vehicle Repair & Maintenance	29,439	55,513	70,000	0
100-422-100-231	Professional Services	12,035	24,866	45,000	20,000
100-422-100-236	Medical Services	5,500	5,243	4,000	4,000
100-422-100-237	Recruitment	0	456	0	500
100-422-100-238	Technical Services	10,984	6,559	15,000	15,000
100-422-100-240	I.T. Services	47,671	63,225	50,937	57,475
100-422-100-250	Insurance	55,422	57,700	63,027	62,198
100-422-100-252	Communications	7,464	7,387	7,850	8,850
100-422-100-257	Travel & Training	4,857	5,821	9,500	11,100
100-422-100-259	Community Promotion	1,494	1,500	2,000	3,000
100-422-100-260	Office Supplies	4,994	4,968	5,000	5,000
100-422-100-262	Uniform Expenses	5,657	5,850	4,800	5,000
100-422-100-264	Electricity & Gas	33,229	33,782	35,000	38,500
100-422-100-265	Gasoline & Oil	19,670	26,699	28,000	28,000
100-422-100-267	General Materials & Supplies	2,489	2,971	3,000	3,000
100-422-100-270	Special Programs	29,000	29,000	29,000	29,000
100-422-100-273	Special Departmental Exp.	17,465	17,698	20,000	20,000
100-422-100-274	Special Activities	9,978	9,502	11,000	12,000
100-422-100-275	Bad Debt Expense	4,977	7,920	0	0
	Supplies & Services	346,305	407,201	448,314	455,267
100-422-100-720	Building & Structures	15,112	0	30,000	99,000
100-422-100-750	Vehicles	53,625	0	0	0
100-422-100-752	Communication Equipment	3,846	276	12,415	14,308
100-422-100-753	Specialized Equipment	20,506	22,063	23,000	25,000
100-422-100-770	Computer Equipment	816	0	0	0
	Capital Outlay	93,906	22,338	65,415	138,308
100-422-100-881	Interest - Leases/Loans	3,256	2,942	2,609	2,257
	Interest - Debt Service	3,256	2,942	2,609	2,257
	Total Fire	\$1,621,503	\$1,672,806	\$1,829,012	\$1,905,920

Fire (continued)

CAPITAL OUTLAY

* 720-BUILDING & STRUCTURES: Install new ADA compliant parking and front door access to both stations. Electronic access and security hardware on all exterior man doors will be installed at both fire stations for Phase 2 of the Station Security Project. *

752-COMMUNICATION EQUIPMENT: Expenses related to Telephone System Replacement.

753-SPECIALIZED EQUIPMENT: Funding for the purchase of turnouts and equipment for career and volunteer firefighters.

DEBT SERVICE

881-INTEREST-LEASES/LOANS: Interest payment on City Hall/Fire Station COP refinanced as an inter-fund loan from the Water Fund.

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

CITY OF LOS BANOS
520 'J' Street
Los Banos, California 93635

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN:

1. That the interest of estate stated in paragraph 3 below in the real property hereinafter described is owned by the following:

NAME	STREET AND NO.	CITY	STATE
CITY OF LOS BANOS	520 'J' Street	Los Banos	California

(If more than one owner of the interest stated, the name and address of each must be inserted.)

2. That the full name and address of the owner of said interest or estate, if there is only one owner, and the full names and addresses of all the co-owners who own said interest or estate as joint tenants, as tenants in common or otherwise, if there is more than one owner, are set forth in the preceding paragraph.

3. That the nature of the title of said owner, or if more than one, then of said owner and co-owner is: In Fee.

4. That on the 23rd day of January, 2020, a work of improvement on the real property hereinafter described was completed.

5. That the name of the original contractor, if any, for such work of improvement was Sinclair General Engineering Construction, Inc.
(If no contractor for work of improvement as a whole, insert "No Contractor.")

6. That the real property herein referred to is situated in the City of Los Banos

County of Merced State of California, and is described as follows:

"Construction of Fire Station 1 and 2 ADA (Americans with Disabilities Act) and "State Streets" Sidewalk Improvements"

The major work consisted of constructing concrete ADA improvements at Fire Station 1 and 2, and sidewalks and curb cut ramps at "State Streets" in the City of Los Banos.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ CITY OF LOS BANOS
Owner

Place: Los Banos, California By: _____

ACKNOWLEDGMENT



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor & City Council Members

FROM: Mark Fachin, P.E., Public Works Director/City Engineer

DATE: May 20, 2020

TYPE OF REPORT: Consent

SUBJECT: Second Amendment to 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

Recommendation:

That the City Council adopt the Resolution authorizing the Mayor to execute a Second Amendment to 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 on entering into a Second Amendment to the current Lease Agreement for the continual rental of the Ranchwood Park Facility for her child care business. The current five year Lease Agreement, as amended by a First Amendment, ends on March 31, 2020, and she would like the lease to be extended for an additional five years. Ms. Pennington has been in business providing child care for over 38 years in Los Banos.

Discussion:

A Second Amendment to 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 by the City Attorney of the City of Los Banos for the Council's review and adoption, if so

deemed. The following are the main points of the Second Amendment to Lease Agreement:

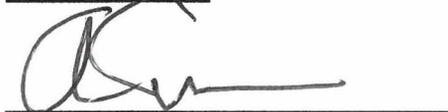
- 1) The term of the Second Amendment to Lease Agreement will be five years, commencing on June 1, 2020.
- 2) The lease rent will be \$1,913.00 per month for the first year, to be increased by 2% per year, per the agreement.
- 3) All terms and conditions of the original Lease Agreement remain in full force and effect except as expressly amended by the Second Amendment to Lease 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 Agreement.
- 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 Agreement.

The first year revenue for this facility that will be generated by this Second Amendment to Lease Agreement is \$22,956.00.

Fiscal Impact:

\$119,424.00 will be received into the General Fund as a result of this five year Second Amendment to Lease Agreement.

Reviewed by:



Alex Terrazas, City Manager



Sonya Williams, Finance Director

Attachments:

Resolution
Second Amendment to Lease Agreement
First Amendment to Lease Agreement
Lease Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS AUTHORIZING ENTERING INTO A SECOND AMENDMENT TO 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 Second Amendment To Lease Agreement for rental of the Ranchwood Park Facility for child care use; and

WHEREAS, the term of the Second Amendment To Lease Agreement is five years, commencing on June 1, 2020 and ending on March 31, 2025; and

WHEREAS, commencing on June 1, 2020, Marlene Pennington agrees to pay \$1,913.00 per month during the first year of Second Amendment To Lease Agreement, and to a 2% increase each subsequent year, as described in the terms of Second Amendment To Lease Agreement; and

WHEREAS, said Second Amendment To Lease Agreement, as presented, has been prepared by the City Attorney of the City of Los Banos; and

WHEREAS, all the terms and conditions of the Lease Agreement remain in full effect except as expressly amended by the Second Amendment To Lease Agreement; and

WHEREAS, the City Council of the City of Los Banos designates the Mayor to sign and execute the First Amendment To Lease Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Los Banos does hereby approve the Second Amendment To Lease Agreement between the City of Los Banos and Marlene Pennington, and the designation of the Mayor to sign and execute the Second Amendment To 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 20th day of May 2020, 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:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

Recording Requested By:

City of Los Banos

And When Recorded Mail to:

**Lucille Mallonee, City Clerk
City of Los Banos
520 J Street
Los Banos, CA 93635**

Exempt from Recording Fees
Pursuant to Gov't Cd 6103

APN: a portion of 082-343-044

Space above this line for Recorder's use.

**SECOND AMENDMENT TO LEASE AGREEMENT BETWEEN
THE CITY OF LOS BANOS AS LESSOR AND MARLENE PENNINGTON
AS LESSEE**

[Ranchwood Park Facility]

THIS SECOND AMENDMENT TO LEASE AGREEMENT is entered into and effective on June 1, 2020 by and between the CITY OF LOS BANOS, a California municipal corporation, (referred to in this lease as "Lessor") and MARLENE PENNINGTON, an individual (referred to in this lease as "Lessee").

RECITALS

WHEREAS, the parties entered into a lease agreement, dated for reference purposes as of March 17, 2010 (the "Lease") as amended by First Amendment to Lease Agreement dated March 13, 2015 (the "First Amendment") in which Lessor leased to Lessee the real property (indoor and outdoor space) located at 515 Stonewood Drive in the City of Los Banos, County of Merced, State of California, more particularly described in Exhibit A ("the Premises"); and

WHEREAS, the First Amendment extended the term of the Lease for a period of five years to expiring on March 31, 2020; and

WHEREAS, the parties wish to amend the Lease as herein set forth.

NOW THEREFORE, for good and valuable consideration as hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties agree to amend the Lease as follows:

1. Term. The term of the Lease shall be extended an additional five years commencing on June 1, 2020 and ending on May 31, 2025 ("Second Extended Term"), unless terminated earlier pursuant to the provisions of the Lease.

2. Rent. Lessee agrees to pay to Lessor during the second extended term of the Lease, rent as follows:

(1) \$1,913.00 per month on the first day of each and every month, commencing on the first day of June, 2020, during the first year of the second extended term of this lease.

(2) \$1,951.00 per month on the first day of each and every month, commencing on the first day of June, 2021, during the second year of the second extended term of this lease.

(3) \$1,990.00 per month on the first day of each and every month, commencing on the first day of June, 2022, during the third year of the second extended term of this lease.

(4) \$2,029.00 per month on the first day of each and every month, commencing on the first day of June, 2023, during the fourth year of the second extended term of this lease.

(5) \$2,069.00 per month on the first day of each and every month, commencing on the first day of June, 2024, during the fifth year of the second extended 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.

3. 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 except when caused by the sole negligence or willful misconduct of Lessor.

4. Insurance. Lessee shall, at its own cost and expense, procure and maintain during the second extended 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) General Liability. Lessee shall maintain general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Lessee, general liability policies shall be primary and shall not seek

IN WITNESS THEREOF, this Second Amendment to Lease was executed by the parties thereto on the dates set forth herein.

LESSOR:
CITY OF LOS BANOS, a municipal corporation

By: _____ Dated:
Michael Villalta, Mayor

ATTEST:

_____ Dated:
Lucille Mallonee, City Clerk

APPROVED AS TO FORM:

_____ Dated:
William A. Vaughn
City Attorney

LESSEE:

_____ Dated:
Marlene Pennington

[SIGNATURES MUST BE NOTARIZED]

EXHIBIT A
PROPERTY DESCRIPTION

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.).

a portion of APN 082-343-044

Barbara J Levey
Merced County Clerk – Recorder

P Public

G

Recording Requested By:

City of Los Banos

And When Recorded Mail to:

Lucille Mallonee, City Clerk
City of Los Banos
520 J Street
Los Banos, CA 93635

Exempt from Recording Fees
Pursuant to Gov't Cd 6103

APN: a portion of 082-343-044

Doc#: 2015-011391



Titles:	1	Pages:	7
Fees	0.00		
Taxes	0.00		
Other	0.00		
PAID	\$0.00		

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**FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN
THE CITY OF LOS BANOS AS LESSOR AND MARLENE PENNINGTON
AS LESSEE**

[Ranchwood Park Facility]

THIS FIRST AMENDMENT TO LEASE AGREEMENT is entered into on March ~~12~~, 2015 by and between the CITY OF LOS BANOS, a California municipal corporation, (referred to in this lease as "Lessor") and MARLENE PENNINGTON, an individual (referred to in this lease as "Lessee").

RECITALS

WHEREAS, the parties entered into a lease agreement, dated for reference purposes as of March 17, 2010 (the "Lease") in which Lessor leased to Lessee the real property (indoor and outdoor space) located at 515 Stonewood Drive in the City of Los Banos, County of Merced, State of California, more particularly described in Exhibit A ("the Premises"); and

WHEREAS, the term of the Lease was for a period of five years to expire on March 31, 2015; and

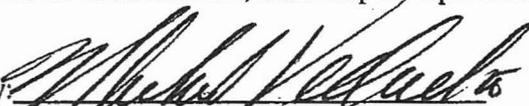
WHEREAS, the parties wish to amend the Lease as herein set forth.

NOW THEREFORE, for good and valuable consideration as hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties agree to amend the Lease as follows:

1. Term. The term of the Lease shall be extended an additional five years commencing on April 1, 2015 and ending on March 31, 2020 ("Extended Term"), unless terminated earlier pursuant to the provisions of the Lease.

IN WITNESS THEREOF, this First Amendment to Lease was executed by the parties thereto on the date set forth above.

LESSOR:
CITY OF LOS BANOS, a municipal corporation

By: 
Michael Villalta, Mayor

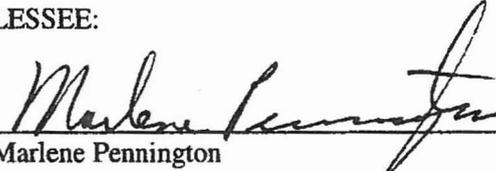
ATTEST:


Lucille Mallonee, City Clerk

APPROVED AS TO FORM:


~~William A. Vaughn~~
City Attorney

LESSEE:


Marlene Pennington

[SIGNATURES MUST BE NOTARIZED]

**EXHIBIT A
PROPERTY DESCRIPTION**

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.).

a portion of APN 082-343-044

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
 }
County of Merced }

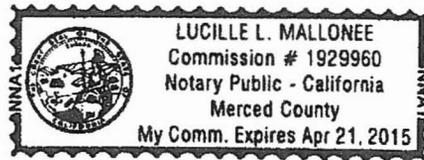
On this 13th day of March, 2015 before me, Lucille L. Mallonee, a Notary Public in and for said State, personally appeared Michael Gerard Villalta, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed this instrument.

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

WITNESS my hand and official seal.

Lucille L. Mallonee

Signature of Notary Public



(Notary Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

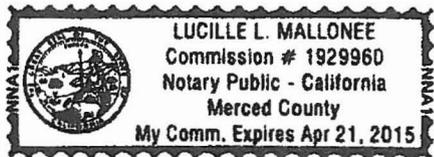
State of California }
 }
County of Merced }

On this 17th day of March, 2015 before me, Lucille L. Mallonee, a Notary Public in and for said State, personally appeared Marlene Louise Pennington, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed this instrument.

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

WITNESS my hand and official seal.

Lucille L. Mallonee
Signature of Notary Public



(Notary Seal)

RESOLUTION NO. 5641

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LOS BANOS AUTHORIZING ENTERING
INTO A FIRST AMENDMENT TO 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 First Amendment To Lease Agreement for rental of the Ranchwood Park Facility for child care use; and

WHEREAS, the term of the First Amendment To Lease Agreement is five years, commencing on April 1, 2015 and ending on March 31, 2020; and

WHEREAS, commencing on April 1, 2015, Marlene Pennington agrees to pay \$1,735.00 per month during the first year of First Amendment To Lease Agreement, and to a 2% increase each subsequent year, as described in the terms of First Amendment To Lease Agreement; and

WHEREAS, said First Amendment To Lease Agreement, as presented, has been prepared by the City Attorney of the City of Los Banos; and

WHEREAS, all the terms and conditions of the Lease Agreement remain in full effect except as expressly amended by the First Amendment to Lease Agreement; and

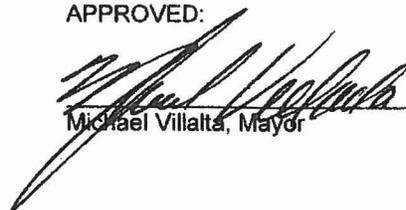
WHEREAS, the City Council of the City of Los Banos designates the Mayor to sign and execute the First Amendment to Lease Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Los Banos does hereby approve the First Amendment to Lease Agreement between the City of Los Banos and Marlene Pennington, and the designation of the Mayor to sign and execute the First Amendment To 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 4th day of March 2015, by Council Member Faria who moved its adoption, which motion was duly seconded by Council Member Silveira and the Resolution adopted by the following vote:

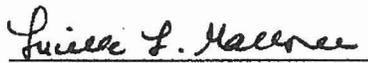
AYES: Council Members Faria, Lewis, Silveira, Stonegrove, Mayor Villalta
NOES: None
ABSENT: None

APPROVED:



Michael Villalta, Mayor

ATTEST:



Lucille L. Mallonee, City Clerk

**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 17, 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 withheld.

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.

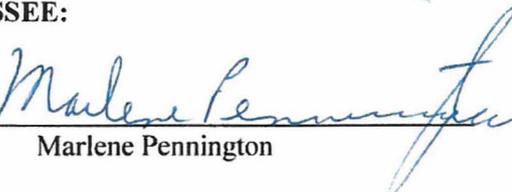
Section 8.07. Sole and Only Agreement. This instrument constitutes the sole and only agreement between Lessor and Lessee respecting the Premises, the leasing of the Premises to Lessee, or the lease term created under this lease, and correctly sets forth the obligations of Lessor and Lessee to each other 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.

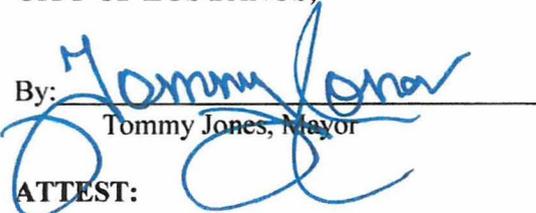
Section 8.09. No Partnership or Joint Venture. Nothing in this lease shall be construed to render Lessor in any way or for any purpose a partner, joint venturer, or associate in any relationship with Lessee other than that of Lessor and Lessee, nor shall this lease be construed to authorize either to 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

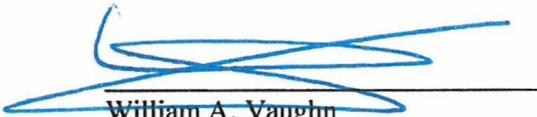
LESSOR:
CITY OF LOS BANOS,

By: 
Tommy Jones, Mayor

ATTEST: 

Lucille Mallonee, City Clerk

APPROVED AS TO FORM:


William A. Vaughn
City Attorney



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor & City Council Members
FROM: Alex Terrazas, City Manager *AT*
DATE: May 20, 2020
REPORT TYPE: Agenda Item
SUBJECT: COVID-19 Update

There will be an update by City Staff regarding COVID-19. Merced County Public Health staff will also provide a presentation regarding COVID-19.

This is an informational item only, no action to be taken.



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor Villalta and City Council Members

FROM: Stacy Souza Elms, Community and Economic Development Director *SSE*

DATE: May 20, 2020

TYPE OF REPORT: Public Hearing

SUBJECT: Consideration of Conditional Use Permit #2020-02 to allow for the sale of beer and wine under a Type 41 alcohol license for Chipotle located at 1420 E. Pacheco Blvd.; APN: 428-140-030

Recommendation:

That the City Council adopt a Resolution approving Negative Declaration (SCH #2020020445) and approving Conditional Use Permit #2020-02 to allow for the sale of beer and wine under a Type 41 alcohol license located at 1420 E. Pacheco Blvd.

Background:

On April 22, 2020, the Los Banos Planning Commission approved Tentative Parcel Map #2020-01, Site Plan Review #2016-06, and Conditional Use Permit #2020-01 for the subdivision of approximately 1.22 acres into two (2) parcels to accommodate the development of two (2) commercial structures totaling 3,300 square feet and for a 25' tall monument sign. Building A will consist of 2,500 square feet and is being developed to accommodate Chipotle with a drive-thru window. Building B consist of 800 square feet and is being developed to accommodate Dutch Bros. with drive-thru and walk-up window.

The applicant, OA Holdings No. 1 LLC, is requesting a Conditional Use Permit on behalf of Chipotle for the allowance of a Type 41 alcohol license for the on-sale of beer and wine in conjunction with an eating place.

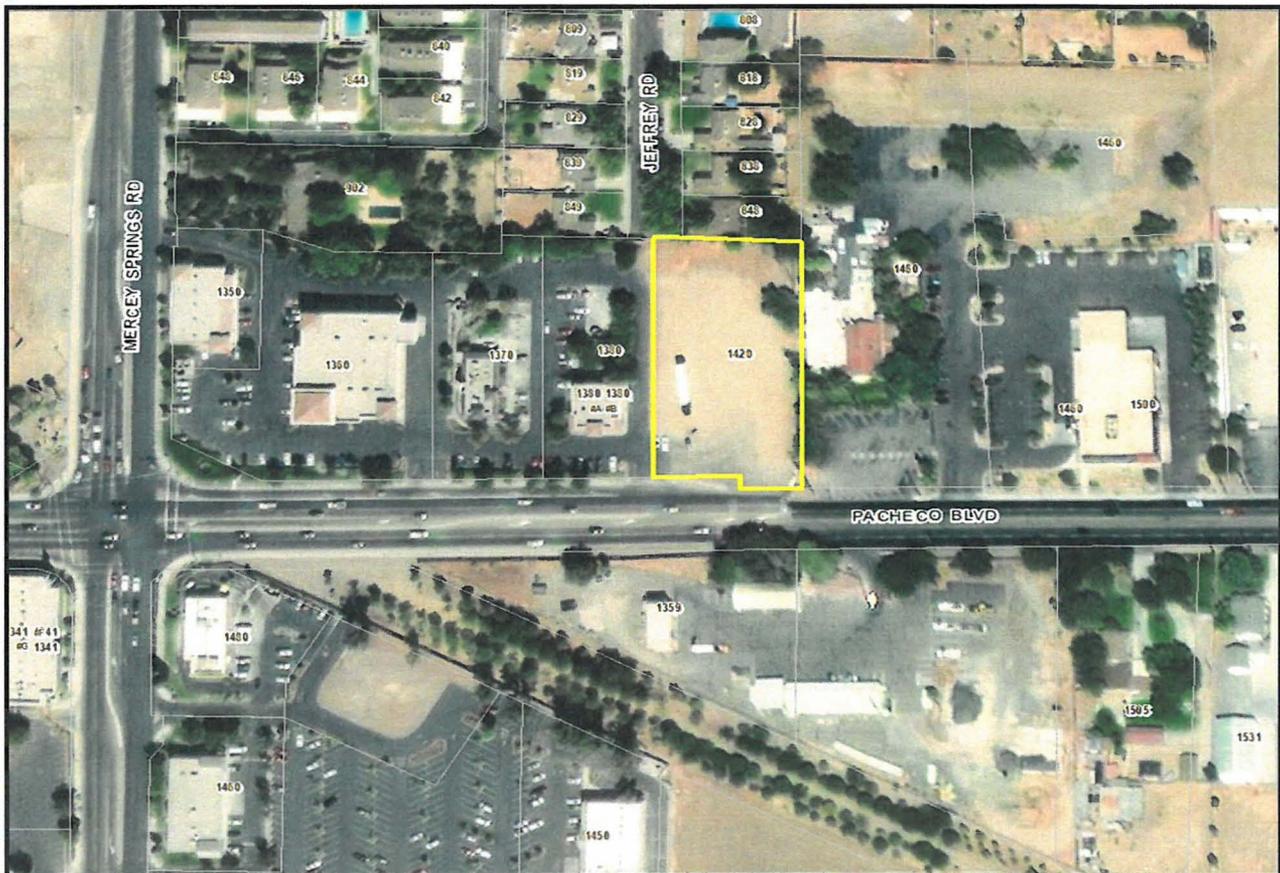
On April 22, 2020 the Los Banos Planning Commission held a public hearing to review Conditional Use Permit #2020-02 for the use of a Type 41 alcohol license for the on-sale of beer and wine in conjunction with an eating establishment. At the public hearing, the Planning Commission considered the application, including the staff report, presentation by staff, and public comment. As the recommending body, the Planning Commission recommended approval of Conditional Use Permit #2020-02 to the Los Banos City Council.

Discussion:

The project site is located 1420 E. Pacheco Blvd., which historically consisted of a liquor store that was demolished in June 2015. The project site is surrounded by various commercial uses to the east, west, and south, and residential uses to the north. The commercial development is a permitted use by right within the Highway Commercial Zoning District.

PROJECT LOCATION:

The Project site is located approximately 545 feet east of the north east corner of Mercey Springs Road (HWY 165) and Pacheco Boulevard (HWY 152) intersection. The project site can be accessed from Pacheco Boulevard and Mercey Springs Road. In addition, the project will have reciprocal access to the Espanas Parking lot to the east as an easement has been negotiated between the property owners.



LAND USE:

Property	Land Use	Zone	General Plan
Project site	Commercial	H-C	C
North	Residential	R-1	LDR
South	Commercial	H-C	C
East	Commercial	H-C	C
West	Commercial	H-C	C

R-1 = Low Density Residential
H-C = Highway Commercial

LDR = Low Density Residential
C = Commercial

ENVIRONMENTAL ASSESSMENT:

Pursuant to the California Environmental Quality Act (CEQA) and the City of Los Banos Environmental Quality Guidelines, an initial study was prepared to identify and assess potential environmental impacts of the project. Through the information detailed in the initial study, staff made the determination that the project would not result in significant environmental effects and no mitigation measures would be necessary constituting a Negative Declaration. Staff prepared a Notice of Intent for a Negative Declaration which was posted at the Merced County Clerk’s Office for circulation and review on February 21, 2020 until March 22, 2020. On April 22, 2020, the Planning Commission approved Negative Declaration (SCH #2020020445) during a public hearing.

USE PERMIT ANALYSIS

Code Requirements

Pursuant to the Los Banos Municipal Code Section 9-3.2322, a Conditional Use Permit is required for any establishment dispensing for sale or other consideration alcoholic beverages, including beer and wine, for on-sale or off-sale. The Planning Commission is the recommending body and the City Council is the decision making body for Conditional Use Permits for the on-sale and off-sale of alcoholic beverages. A Conditional Use Permit may be granted if the proposed use is conforming to the following criteria:

General Use Permit Criteria:

1. That the proposed use and project is consistent with the City of Los Banos General Plan, and Los Banos Municipal Code;
2. That the proposed use or project will not be a nuisance or detrimental to the public health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use;
3. That the proposed use is compatible with the adjacent uses, properties and neighborhoods and will not be detrimental or injurious to property and improvement in the neighborhood or to the general welfare of the City.

Specific On-Sale and Off-Sale Alcoholic Beverages Criteria:

1. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable with consideration given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;
2. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;
3. That the proposal will not interfere with the movement of people along an important pedestrian street; and
4. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, the use will be limited in hours of operation, or designed operated so as to avoid the disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.

Staff has evaluated the proposal pursuant to the above criteria set forth in the Municipal Code and offers the following observations:

1. The primary use of Chipotle will be a casual family eating establishment/ restaurant (dine-in).
2. The surrounding area, adjacent uses, and function are primarily commercial and residential in nature. A restaurant providing for the on-sale of beer and wine in this location is consistent with the commercial uses of the Highway Commercial Zoning District.
3. Staff is unaware of any significant problems related to crime and loitering, in the surrounding area which would be exacerbated by the on-sale of beer and wine at this location.
4. The approval of the on-sale of beer and wine will not contribute to the undue proliferation of alcohol sales in the area where that use would be undesirable taking into account the characteristics of the area. The entitlement will include conditions of approval which will regulate the operational characteristics of allowing the serving of beer and wine and are intended to preserve the public health, safety, or welfare of persons and property in the vicinity including crime prevention and loitering.
5. The proposed use is not located within the immediate vicinity to any churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds. The nearest school would be Los Banos Junior School which is located approximately 2,100 feet northeast of the project site. The nearest places of worship are Praise Fellowship International which is approximately 578 feet northeast of the project site and Westside Community Church is approximately 1,000 feet north of the project location. The project will include conditions of approval which regulate the operational characteristics of allowing the serving of

alcohol which are intended to preserve the public health, safety, and welfare of persons and property in the vicinity.

6. The project is located on Pacheco Boulevard which is primarily occupied by commercial uses. Conditions of approval will regulate loitering and operational characteristics to insure that the proposal will not interfere with the movement of people along the public right-of-way.
7. The nearest residence is located directly to the north of the project site. It is not anticipated that the proposed use would have a negative impact on the surrounding area. The applicant will be conditioned to operate the establishment in such a manner as to preserve the public safety, health and welfare, to prevent the use from becoming a nuisance and to operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. Furthermore, at all times the facility shall be operated and maintained to comply with State Laws, The City of Los Banos Municipal Code, adopted Building Codes and all other applicable laws and ordinances pertaining to the proposed use.

All sales and consumption of alcohol will be conducted inside the premises. In addition, the project will be subject to conditions which will mitigate any adverse effects on the surrounding neighborhood and are intended to preserve the public health, safety, and welfare of persons and property in the vicinity. The dine-in restaurant will also be subject to the Los Banos Municipal Code Noise Ordinance.

Alcoholic Beverage Control

The Alcoholic Beverage Control Board (ABC) is the issuing authority for a Type 41 alcohol license. The City's authority for the sale of alcohol is through its land use powers embodied within the Los Banos Municipal Code Title 9 Chapter 3, Zoning.

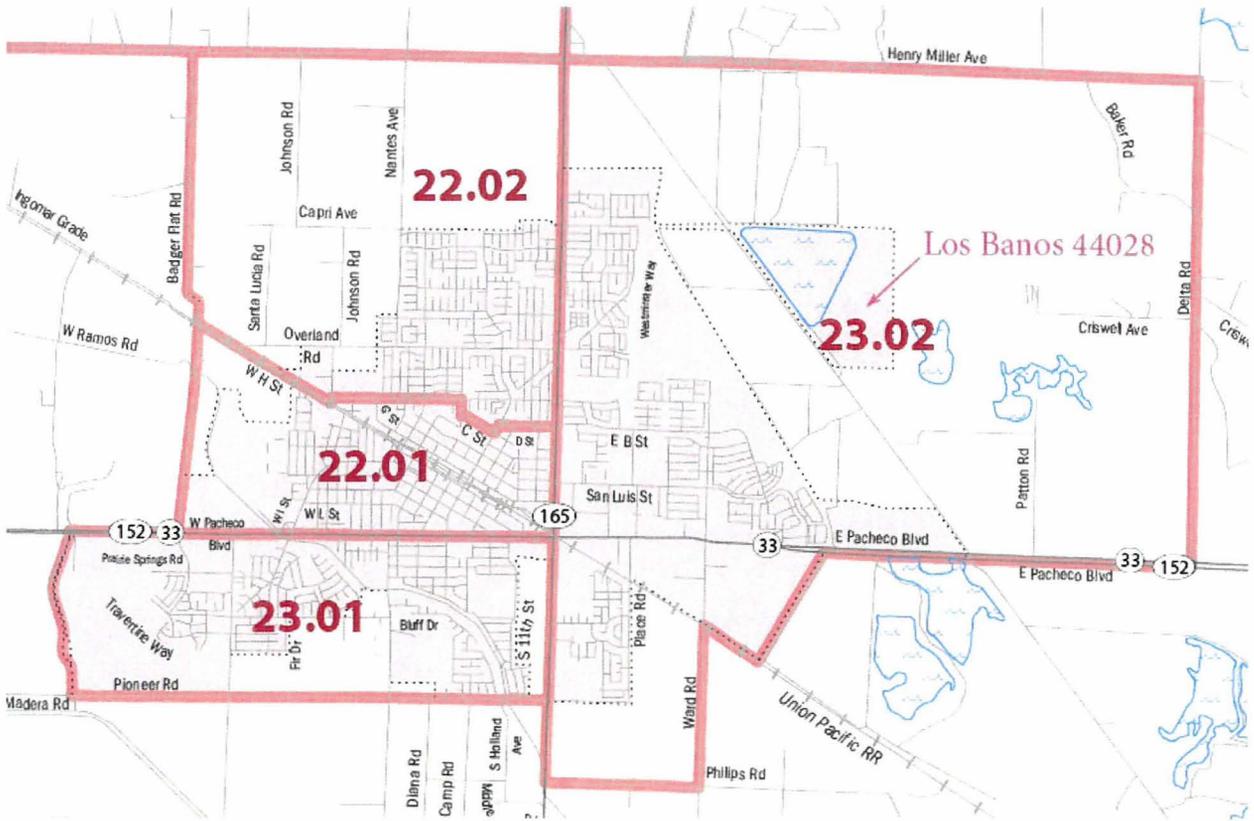
ABC has the authority according to Section 23801 of the Business and Professions Code to exercise certain conditions under the license, the personal qualifications of the licensee, the conduct of the business or the condition of the premises, which will protect the public welfare and morals, including, but not limited to, the following:

- a) Restrictions as to hours of sale
- b) Display of signs
- c) Employment of designated persons
- d) Types and strengths of alcoholic beverages to be served where such types or strengths are otherwise limited by law
- e) The portion of the privileges to be exercised under the license
- f) The personal conduct of the licensee

ABC may also refuse to issue a license to any person who has violated the Alcoholic Beverage Control Act, has a disqualifying criminal record, or is otherwise disqualified.

Census Tract

The project site is located in census tract 23.02.



As of the date of this report there are 8 on-sale licenses currently in use in this specific census tract. The nearest active on-sale alcohol license to the project site within the same census tract is Españas Southwest Bar & Grill located directly adjacent to the east of the project site. Approval of this on-sale license would make the ninth (9) on-sale license within the census tract.

License Type	Business Name	Premises Address
47	Chilli's Grill & Bar	1905 Pacheco Blvd
47	Españas Southwest Bar & Grill	1460 E. Pacheco Blvd.
41	El Michoacano	2160 E. Pacheco Blvd., Ste A
41	Wingstop	1989 E. Pacheco Blvd.
47	El Campesinos Restaurant & Bar	1639 E. Pacheco Blvd.
41	Roundtable Pizza #1055	1462 S. Mercey Springs Rd..
41	Rico's Pizza	2160 E. Pacheco Blvd., Ste K
41	Mountain Mike's Pizza	2260 E. Pacheco Blvd, Ste A & B

Type 41 license = On-sale beer and wine

Type 47 license = On-sale general

The applicant has provided a security plan showing the proposed camera locations, which is attached to the staff report.

PUBLIC COMMENT:

A public hearing notice was published in the Los Banos Enterprise and notices were mailed out to property owners within a 300' radius of the Project site on Friday, May 8, 2020. As of the date of this report no comments have been received.

Reviewed by:



Alex Terrazas, City Manager

Attachments:

1. Resolution
 - Exhibit A: CEQA Findings
 - Exhibit B: Project Findings
 - Exhibit C: Conditions of Approval
2. Floor Plan/ Camera Plan
3. Site Photos
4. Public Hearing Notice

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS APPROVING NEGATIVE DECLARATION (SCH #2020020445) AND APPROVING CONDITIONAL USE PERMIT #2020-02 TO ALLOW FOR THE SALE OF BEER AND WINE UNDER A TYPE 41 ALCOHOL LICENSE FOR CHIPOTLE LOCATED AT 1420 E. PACHECO BLVD., APN: 428-140-030

WHEREAS, the applicant, OA Holdings No. 1 LLC, has requested that the City of Los Banos consider a Conditional Use Permit to allow the use of a Type 41 alcohol license for the on-sale of beer and wine in conjunction with a bona-fide public eating place to be located at 1420 E. Pacheco Blvd., more specifically identified as Assessor's Parcel Number: 428-140-030; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) and the City of Los Banos Environmental Quality Guidelines, Conditional Use Permit #2020-02 was analyzed in an initial study to identify and analyze potential environmental impacts due to the project. Through the information detailed in the initial study, staff made the determination that the project would not result in significant environmental effects and no mitigation measures would be necessary constituting a Negative Declaration. Staff prepared a Notice of Intent for a Negative Declaration which was posted at the Merced County Clerk's Office for circulation and review on February 21, 2020 until March 22, 2020. On April 22, 2020, the Los Banos Planning Commission approved Negative Declaration (SCH #2020020445) during a public hearing; and

WHEREAS, the Los Banos Planning Commission held a public hearing on April 22, 2020, for the purpose of considering Conditional Use Permit #2020-02 and at the completion of the public hearing, duly considered the evidence presented and recommended approval of Conditional Use Permit #2020-02 to the Los Banos City Council; and

WHEREAS, a public hearing notice was published in the Los Banos Enterprise on Friday, May 8, 2020, and notices were mailed to property owners within a 300 foot radius of the project site as required by the Los Banos Municipal Code and California Government Code Section 65091; and

WHEREAS, the Los Banos City Council has held a duly noticed public hearing on Wednesday, May 20, 2020, reviewed said Conditional Use Permit request and staff report, has studied the compatibility of the applicant's request with adjacent land uses and has considered this request in conformance with the Conditional Use Permit criteria established in Section 9-3.2322 of the Los Banos Municipal Code; and

WHEREAS, the request/proposed use satisfies the criteria of the Los Banos Municipal Code.

BASED UPON THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, the Planning Commission of the City of Los Banos hereby makes the appropriate findings set forth in Exhibit A (California Environmental Quality Act (CEQA) Findings), and Exhibit B (Findings for Approval), attached hereto and incorporated herein by this reference.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Los Banos does hereby affirm the determination of approving Negative Declaration (SCH #2020020445) and approves Conditional Use Permit #2020-02 to allow a Type 41 alcohol license for the on-sale of beer and wine in conjunction with a bona-fide public eating place for Chipotle, located at 1420 E. Pacheco Blvd., APN: 428-140-030, subject to the Conditions of Approval set forth in Exhibit C, attached hereto and incorporated herein by this reference.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on the 20th day of May 2020, 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:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

EXHIBIT A

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS FOR CONDITIONAL USE PERMIT #2020-02 – OA HOLDINGS NO. 1 LLC (CHIPOTLE)

Pursuant to the requirements of California Public Resources Code Section 21000 et seq. (“CEQA”) and Title 14, California Code of Regulations Section 15000 et seq. (the “CEQA Guidelines”), the City as Lead Agency under CEQA adopts the following findings required by CEQA, along with the facts and evidence upon which each finding is based.

The City of Los Banos City Council hereby finds as follows:

1. Pursuant to CEQA, the CEQA Guidelines, and the City of Los Banos Environmental Quality Guidelines, Conditional Use Permit #2020-02 was evaluated in an initial study which determined that the project would not involve nor create any significant environmental effects, and a Negative Declaration (SCH #2020020445) was made.
2. The Negative Declaration was prepared in compliance with CEQA and on the basis of the whole record, there is no substantial evidence of significant new information or changes in the environmental setting which have occurred that would result in new or greater significant effects not studied in the Initial Study/ Negative Declaration.
3. No further environmental documentation is required as the Conditional Use Permit was contemplated and adequately analyzed in the initial review.
4. The City of Los Banos Community and Economic Development Department located at 520 J Street in Los Banos, is the custodian of the documents that constitute the record of proceedings upon which the determination to adopt the negative declaration is based upon.
5. Prior to considering the proposed Project, the Planning Commission considered the Negative Declaration for the project.

EXHIBIT B

FINDINGS FOR APPROVAL FOR CONDITIONAL USE PERMIT #2020-02 – OA HOLDINGS NO. 1, LLC (CHIPOTLE)

The City of Los Banos City Council hereby finds as follows:

1. General Findings:

- a. The project is consistent with the City of Los Banos General Plan.

The existing General Plan land use designation for the project site is Commercial, which is intended for commercial development, located off of Pacheco Blvd, allowing for commercial uses.

The following specific General Plan Goals, Objectives, and Policies are applicable to the proposed project:

ECONOMIC DEVELOPMENT POLICY ED-G-7:

Seek and promote particular businesses or economic opportunities that provide needed local goods, services, employment, or those that enhance the City's physical and social well being.

LAND USE POLICY LU-G-10:

Foster viable, pedestrian-oriented neighborhood centers and strong, visually attractive regional commercial centers with a mix of tenants to serve both local and regional needs.

Evidence/Analysis: The dine-in restaurant will have the ability to provide a wider range of service for customers and allows the restaurant to compete with similar type businesses. The proposed use would continue a commercial use that is compatible with and complementary of existing commercial uses adjacent to the project site. In addition, the project would also be consistent with General Plan land use policies as set forth above.

- b. The zoning designation for the project site is Highway Commercial (H-C). The purpose of the Highway Commercial District is to provide a district for commercial uses which do not specialize in serving the pedestrian shopper but rather, because of their character, are more appropriately located along a highway or major street and where drive-in operations are more feasible.

Evidence/Analysis: The proposed use complies with the Los Banos Municipal Code Title 9, Chapter 3, Article 13 as the use will be consistent with the surrounding area, adjacent uses, and function are primarily

commercial in nature. A restaurant providing for the on-sale and serving of beer and wine is permitted in this location.

2. That the proposed use or project will not be a nuisance or detrimental to the public health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use.

Evidence/Analysis: The on-sale of beer and wine will be conducted in accordance with ABC regulations and therefore, will not be a nuisance or detrimental to the neighborhood in which the store is located. The project contains conditions of approval which regulate the operational characteristics of allowing the serving of alcohol and are intended to preserve the public health, safety, or welfare of persons and property in the vicinity.

3. That the proposed use is compatible with the adjacent uses, properties, and neighborhoods and will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

Evidence/Analysis: The proposed use will be conducted in the location in which previous restaurants used to operate and will not result in significant operational changes to the existing commercial area. The areas function and character is Commercial, which includes uses that serve alcohol. The project would include conditions of approval which regulate the operational characteristics of allowing the serving of alcohol and are intended to preserve the public health, safety, or welfare of persons and property in the vicinity.

2. Specific Findings:

1. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable with consideration given to the area's function and character, problems of crime and loitering, and traffic problems and capacity.

Evidence/Analysis: The primary use in conjunction with the serving of beer and wine is a restaurant. As reflected in the staff report, the number of on-sale licenses in the Census Tract is currently eight (8). The census tract area and function is primarily commercial in nature, and is entirely consistent with a restaurant and the on-sale and serving of beer and wine. The proposed on-sale of beer and wine is complementary to the restaurant use that is compatible with and complementary of existing commercial uses in the area. The project would include conditions of approval which regulate the operational characteristics of allowing the serving of alcohol and are intended to preserve the public health, safety, or welfare of persons and property in the vicinity including crime prevention and loitering. Staff is unaware of any significant problems in the area related to crime and loitering, which would be negatively affected by the on-sale of beer and wine at this location.

2. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds.

Evidence/Analysis: Conditions of Approval have been incorporated into the project which regulate the operational characteristics of allowing the serving of alcohol and are intended to preserve the public health, safety, or welfare of persons and property in the vicinity. The project is not located within the immediate proximity of any sensitive uses.

3. That the proposal will not interfere with the movement of people along an important pedestrian street.

Evidence/Analysis: Alcohol will not be allowed to be consumed beyond the premises of the restaurant at any time and it is not anticipated that persons will congregate on sidewalks or streets as a result of the proposed use. Signage will also be provided on the property and building which prohibit loitering. It is not anticipated that the on-sale of beer and wine at this location will adversely affect any important pedestrian right of ways.

4. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, the use will be limited in hours of operation, or designed operated so as to avoid the disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.

Evidence/Analysis: There are residential units in directly to the north of the project site. The project will include conditions of approval which regulate the operational characteristics of allowing the serving of alcohol and are intended to preserve the public health, safety, and welfare of persons and property in the vicinity.

EXHIBIT C

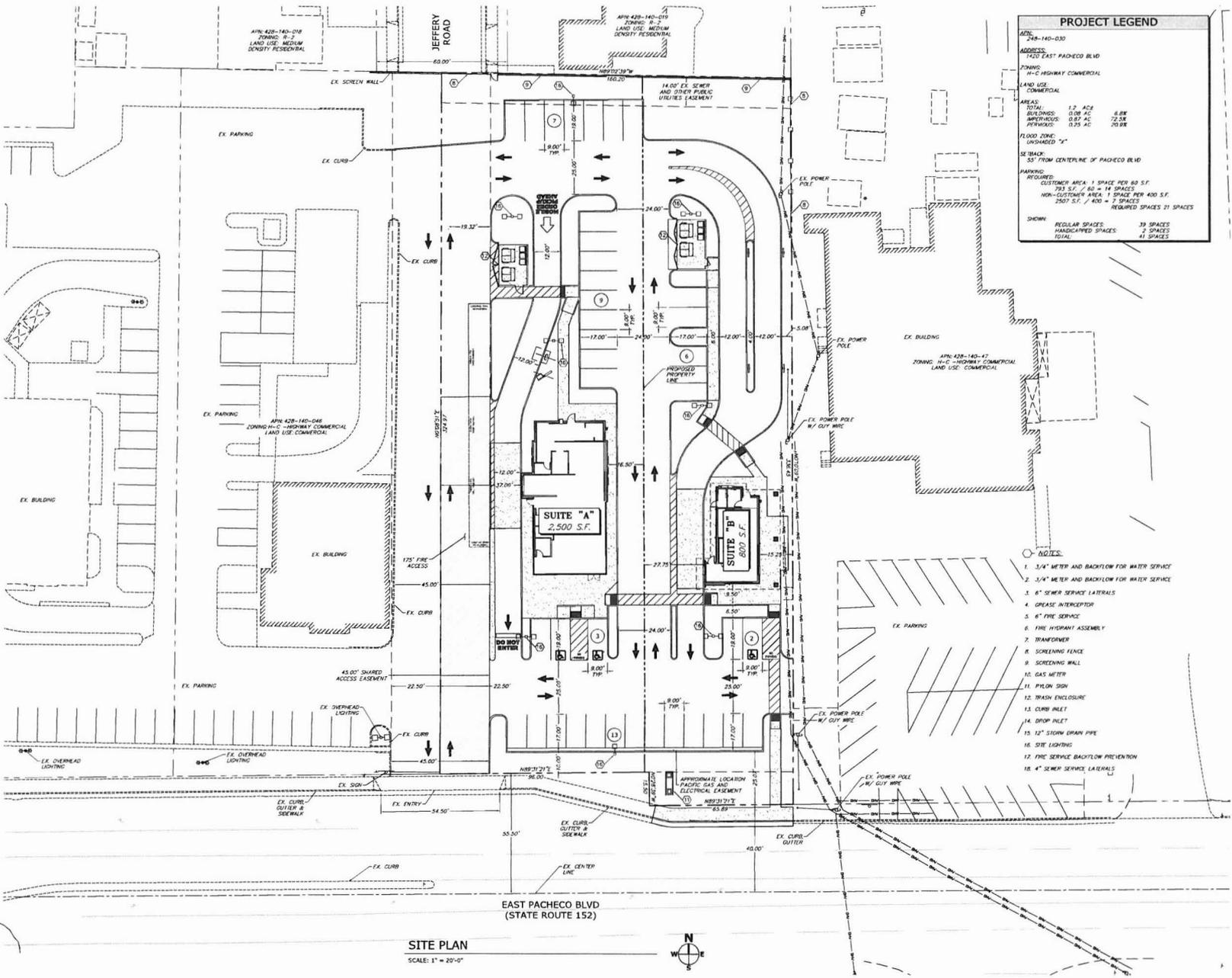
CONDITIONS OF APPROVAL FOR CONDITIONAL USE PERMIT #2020-02 – OA HOLDINGS NO. 1, LLC (CHIPOTLE)

1. The following conditions of approval shall apply to and be applicable to the applicant, property owner, and/or operator. Reference to applicant, property owner, and/or operator shall be interpreted to include all.
2. Conditional Use Permit 2020-02 is for OA Holdings No. 1, LLC (Chipotle) located at 1420 E. Pacheco Blvd, Assessor's Parcel Number: 428-140-030 and the requested use shall automatically and without notice expire after one (1) year from date of approval by the Los Banos City Council unless commenced. The City for cause may revoke this Conditional Use Permit. Any expansion, intensification, or significant change to the primary use and the uses approved under this Conditional Use Permit shall be permitted only upon modification of this Conditional Use Permit or approval of a separate Conditional Use Permit application. The Conditional Use Permit shall automatically and without notice expire one year after discontinuance of the primary use and/or the uses approved under the Conditional Use Permit.
3. The applicant/operator shall comply with all other requirements, laws and policies of other governmental agencies in the conduct and operation of said business.
4. The applicant/operator shall obtain and maintain an active Type 41 "on-sale of beer and wine in conjunction with a bona-fide eating place" license as defined by the Department of Alcoholic Beverage Control and shall provide a copy of said license upon issuance by the Alcoholic Beverage Control to the Community and Economic Development Department prior to the sale of alcohol on the premises.
5. A copy of these Conditions of Approval and the California Department of Alcoholic Beverage Control license are required to be kept on the premises and presented to any law enforcement officer or authorized City official upon request.
6. The applicant/operator shall be responsible for maintaining the exterior of the premises free of litter and trash at all times including the parking lot areas in front of the premises. No storage of equipment, supplies, or merchandise of any kind shall be allowed in the front or rear exterior of the building. All deliveries shall be made from the rear of the building.
7. The Planning Commission reserves the right to review and/or revoke this permit should the applicant not adhere to the Conditions of Approval. The City may amend or impose new conditions to mitigate adverse affects in the neighborhood resulting from the use of alcohol on the premises.

8. The applicant/operator agrees to indemnify, hold harmless, and defend the City of Los Banos, its officers, agents and employees from any and all liability or claims that may be brought against the City of Los Banos arising out of its approval of this permit, or the environmental determination rendered in connection with the permit approval, or arising out of the operation of the use or uses allowed under the permit, save and except that caused solely by the City's active negligence.
9. The exterior of the premises, including parking lot areas (front and rear), shall be sufficiently illuminated, to the satisfaction of the Police Chief, during all hours of darkness when the premises are open for business in a manner so that persons accessing those areas at night are identifiable by law enforcement personnel.
10. The premises shall be operated primarily as a restaurant as described in the application prepared by the applicant and filed with the Community and Economic Development Department. Any substantial or significant changes in use or operation of the premises from the Operational Statement may cause a review, amendment or revocation of the Conditional Use Permit. The applicant shall notify the Community and Economic Development Department of any substantial or significant changes in use or operation of the premises from the Operational Statement. The onsite consumption and sale of beer and wine shall be ancillary to the primary use as a restaurant.
11. The use of the premises of the subject site shall be consistent with the Conditions of Approval and shall not be operated in a manner that deviates from the approved Conditional Use Permit filed application and operational statement, which shall constitute a violation and may result in the revocation or modification of the permit upon written notice to the owner of the subject site.
12. Authorization of a Conditional Use Permit granted pursuant to the provisions of Section 9-3.2322 of the Los Banos Municipal Code continue to be valid upon change of ownership of the site or structure which was the subject of the Conditional Use Permit application provided the use shall be subject to all provisions of the Municipal Code and all conditions placed on approval of the Conditional Use Permit are continually met. The applicant shall immediately notify the Community and Economic Development Department of any changes in ownership.
13. This Conditional Use Permit shall be subject to revocation by the Community and Economic Development Director or the Planning Commission upon a finding that:
 - a. Conditions of approval have not been fulfilled;
 - b. A significant change or intensification of the approved use;
 - c. The use has resulted in a nuisance or detriment to the public health, safety, morals, comfort, and general welfare of the persons residing or working in the

neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

14. Consumption of alcohol shall only be allowed on the premises of the restaurant. Outside patio consumption of alcohol shall only be permitted with a barrier between the public right-of-way and restaurant patrons to be approved by the Community and Economic Development Director.
15. No loud amplification of music or voice shall be allowed outside.
16. The applicant/operator shall have monitoring cameras in the exterior and interior of the restaurant at all times to the satisfaction and approval of the Police Chief. The applicant shall always maintain the surveillance equipment in working order and keep the video recordings for 30 days to be made available to law enforcement upon request.
17. The premises shall be operated in accordance with the Los Banos Municipal Code Noise Ordinance.
18. The applicant shall acknowledge and execute receipt of a copy of the foregoing Conditions of Approval.
19. The applicant/operator shall provide signs prohibiting loitering on the property and/or building subject to the approval of the Community and Economic Development Director.
20. **This approval is conditioned upon and shall be effective upon payment in full of all outstanding invoices pursuant to the Cost Recovery Contract.**



SITE PLAN
SCALE: 1" = 20'-0"



PROJECT LEGEND	
APN:	248-140-030
ADDRESS:	1420 EAST PACHECO BLVD
ZONING:	H-C HIGHWAY COMMERCIAL
LAND USE:	COMMERCIAL
AREAS:	
TOTAL:	1.2 AC
AVULSIONS:	0.08 AC 6.8W
IMPERVIOUS:	0.87 AC 72.5W
PERVIOUS:	0.25 AC 20.8W
FLOOD ZONE:	UNSHADED "X"
SETRAIL:	55' FROM CENTERLINE OF PACHECO BLVD
PARKING:	
REQUIRED:	
CUSTOMER AREA:	1 SPACE PER 60 S.F.
703 S.F. / 60 = 12 SPACES	
NON-CUSTOMER AREA:	1 SPACE PER 400 S.F.
2507 S.F. / 400 = 7 SPACES	
REQUIRED SPACES:	21 SPACES
SHOW:	
REGULAR SPACES:	33 SPACES
HANDICAPPED SPACES:	2 SPACES
TOTAL:	41 SPACES

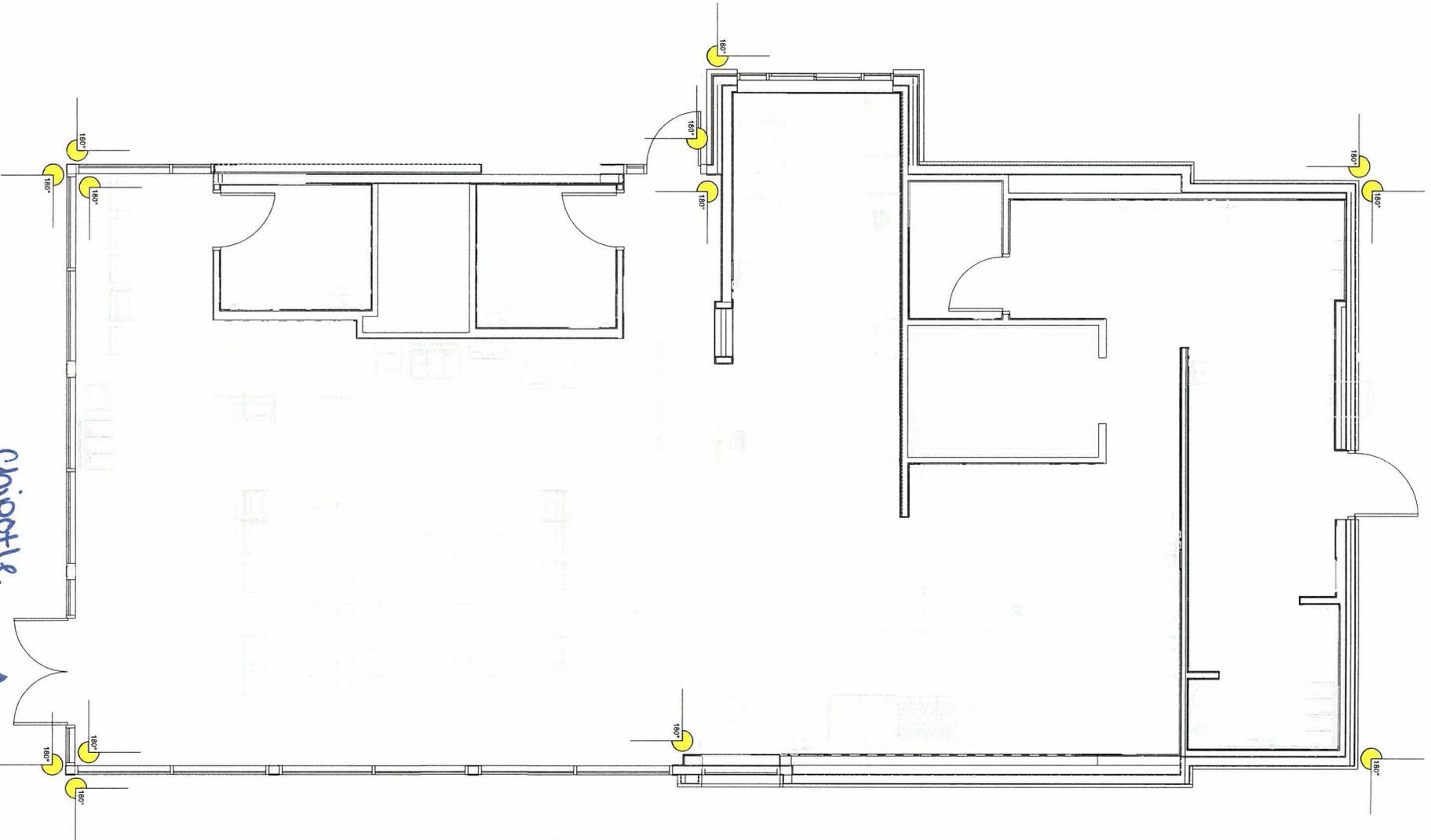
- NOTES:**
- 3/4" METER AND BACKFLOW FOR WATER SERVICE
 - 3/4" METER AND BACKFLOW FOR WATER SERVICE
 - 6" SEWER SERVICE LATERALS
 - GREASE INTERCEPTOR
 - 6" FIRE SERVICE
 - FIRE HYDRANT ASSEMBLY
 - TRANSFORMER
 - SCREENING FENCE
 - SCREENING WALL
 - GAS METER
 - PIECON SIGN
 - TRASH ENCLOSURE
 - CURB INLET
 - DROP INLET
 - 12" STORM DRAIN PIPE
 - SITE LIGHTING
 - FIRE SERVICE BACKFLOW PREVENTION
 - 4" SEWER SERVICE LATERALS

All drawings herein are the property of Technics Design Group and may not be reproduced or used in any capacity without the written authorization of Technics Design Group.
 DRAWN: W.T.G.
 DESIGNED: J.P.B.
 CHECKED/STAMPED: MATT K. RASMUSSEN, P.E.
 DESIGNER:
 PROJECT/CLIENT:
 #1: 2010
 DATE: 03/25/20
 SUBMITTAL RECORD:
 SHEET TITLE: SUBMITTAL RECORD
 SHEET: EX1
 SUBMITTAL RECORD:
 SHEET TITLE: SUBMITTAL RECORD
 SHEET: EX1

TECTONICS DESIGN GROUP
 735 S. 28th St., Suite 103, Frisco, Texas 75034
 www.tectonicsdesigngroup.com
 Tel: 772-84-9888
 Fax: 772-84-9886

CONDITIONAL USE PERMIT
 1420 EAST PACHECO BLVD, LOS BANOS, CA
MAIN & MAIN
 5750 Genesis Court, Suite 103, Frisco, TX 75034

Onipotle
Entrance



Chipotle Site Photo

Legend

-  1420 E Pacheco Blvd
-  Espana's Southwest Bar and Grill



Google Earth

© 2020 Google



7.51 ft

Chipotle Site Photo

Legend

 1420 E Pacheco Blvd

 Espana's Southwest Bar and Grill



Google Earth

© 2020 Google

6.37 ft





City of
Los Banos
At the Crossroads of California

COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

Date: May 8, 2020

Re: Notice of Public Hearing

Proposal: Negative Declaration (SCH #20200020445) & Conditional Use Permit #2020-02

NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Los Banos City Council to consider a Negative Declaration (SCH #2020020445) and a Conditional Use Permit for the allowance of the on-sale and on-site consumption of alcohol through a Type 41 Beer and Wine ABC license in conjunction with a bona-fide eating establishment for OA Holdings No. 1 LLC & MMCG DBR Los Banos LLC. The proposed project is within the Highway Commercial Zoning District (H-C). The project site is located at 1420 E. Pacheco Boulevard, Assessor Parcel Number: 428-140-030.

The Los Banos Planning Commission held a public hearing on April 22, 2020, for the purpose of considering the mentioned project. At the completion of the public comment, the Planning Commission recommended approval of Negative Declaration (SCH#20200020445) and Conditional Use Permit #2020-02 to the City of Los Banos Council.

A PUBLIC HEARING on this matter will be held at the next scheduled meeting of the City Council on Wednesday, May 20, 2020 at 4:00 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 Elms, Community & Economic Development Director at City Hall or at (209) 827-2433.

All persons are invited to be present at the public hearing. Written and oral testimony is invited. Notice is hereby further given that if you challenge the above described Project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this Notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing.

Additional information may be obtained from the Community & Economic Development Department at 520 J Street, Los Banos, California. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (209) 827-7000. Notification at least 72 hours prior to the public hearing will enable the City to make reasonable arrangements to allow participation at this hearing

THE CITY OF LOS BANOS

Stacy Souza Elms
Community and Economic Development Director



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor Villalta and City Council Members

FROM: Stacy Souza Elms, Community and Economic Development Director *SSE*

DATE: May 20, 2020

TYPE OF REPORT: Regular Agenda

SUBJECT: Ordinance Amendment Shopping Carts

Recommendation:

- 1) Adopt Urgency Ordinance ____ by 4/5ths vote.
- 2) Waive the 1st Reading and Introduce Ordinance ____.

Background and Discussion:

Similar to other communities, the City of Los Banos struggles with keeping abandoned shopping carts off the streets and sidewalks. California Business and Professions Code sections 22435-22435.13 regulate shopping and laundry carts in the State of California by making certain regulations for retrieval and disposal of said carts. However, those regulations only apply to a shopping cart that has a sign affixed to it "...that identifies the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is a violation of state law; and lists a valid telephone number or address for returning the cart removed from the premises or parking area to the owner or retailer" (Business and Professions

Code section 22435.1). The City's current ordinance requires shopping cart signs for management of shopping carts within Los Banos, in accordance with the state law cited above. Notwithstanding the foregoing abandoned shopping carts still remains a problem in Los Banos.

The City of Los Banos has approximately 16 retail businesses that provide rolling shopping carts for the convenience of customers.

- Save Mart *
 - Target *
 - Wal-Mart *
 - Hobby Lobby
 - Marshalls
 - Ross
 - Dollar Tree
 - 99 Cent Only Store *
 - Dollar General
 - Home Depot
 - Rite Aid
 - Walgreens
 - La Esperanza
 - Santa Fe
 - Food 4 Less *
 - La Morenita
- * locking device system

The majority of these stores have outdoor corrals to contain carts near their entrances and in the parking lots to collect carts. At least five local stores have locking, radio-controlled security devices affixed to wheels to prevent carts from being removed beyond the perimeter of their site and two have poles that prevent the carts from leaving the store. Regardless of measures, shopping carts are commonly removed from stores and discarded in the community. The following is a summary of local efforts:

- Most stores have employees periodically collect used carts from parking areas, but generally do not go beyond property perimeters to retrieve carts.
- Some stores have the required signage on their carts.
- Some stores contract with a cart retrieval service.
- City staff routinely collects carts and returns them directly to the store, or stores them at the City's airport.

According to the California Grocers Association, approximately 120 jurisdictions in California have adopted regulations specifically addressing abandoned shopping carts. Staff proposes to adopt new regulations in addition to the current signage requirements similar to the majority of these existing ordinances. Staff recommends that the most cost-effective ordinance is one that allows cart owners the ability to implement their own cart retention system among a number of options to be approved by the community and economic development director (tied to their business license) that requires that owners manage their own carts.

- Mechanical disabling devices on all shopping carts, which prevent the cart from being removed from the business premises by locking the wheels automatically or otherwise preventing movement of the carts off of the business premises.
- An on-site security guard to prevent customers from removing carts from the business premises.
- Bollards and/or other barriers around the business premises to prevent cart removal, subject to approval of the City's Fire Chief.
- Obtaining a security deposit from customers for the use of shopping carts on the business premises.
- Prohibiting the use of shopping carts outside the building of the business premises unless accompanied by an employee of the business.
- A contracted retrieval service approved by the Community and Economic Development Director.
- Any other measure approved by the Director of Community and Economic Development as a means of preventing carts from being removed from the business premises.

As a result of COVID 19 the City has become more concerned about the cleanliness and sanitation of shopping carts and baskets. A number of studies pre-COVID 19 indicate that without proper cleaning washing and disinfecting shopping carts and baskets pose a significant health threat to the community. Staff believes that regulatory guidance on acceptable cleaning measures will reduce the risk to the public from contaminated shopping carts and baskets. Staff does not have any statistics on which if any of the retailers have implemented a process for periodic cleaning and sanitizing their shopping carts and baskets used by the public. Attached are some scientific studies and articles that attest to the need for guidance in this area.

Staff recommends that the most cost-effective ordinance is one that allows cart owners the ability to implement their own cart cleanliness program among a number of options to be approved by the Community and Economic Development Director (tied to their business license) that requires that owners manage their own carts.

- Use of onsite cleaning and/or sanitizing systems; or
- Pressure washing and sanitizing; or
- Steam cleaning and sanitizing; or
- Any other measure approved by the Community and Economic Development Director as a means of cleaning, sanitizing, or eliminating exposure to contaminants that may be found on shopping carts and/or baskets.

Proposed Ordinance – Other:

In addition to the foregoing amendments to the Current Ordinance the proposed Ordinance also provides as follows:

- Every cart owner shall lock or otherwise secure all shopping carts during hours when the business premises are not open for business.
- Any shopping cart or shopping basket retrieved from off premises shall be cleaned and sanitized prior to the next customer use.
- Every shopping cart and/or shopping basket owner shall provide at each customer entrance with prominent signage a cart handle disinfectant wipe dispenser and hand sanitizer dispenser.

Environmental Finding:

State Guidelines for implementation of the California Environmental Quality Act (CEQA) provide for the exemption of projects which will clearly have no significant effects on the environment. More specifically, Section 15061(b)(3) of the CEQA Guidelines states: ...CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. It has been determined that there is no possibility of significant adverse effects as a result of this proposal given that it has no potential for resulting in physical change in the environment, directly or indirectly, nor does it permit or authorize new or increased intensity of uses. Therefore, the proposed ordinance is not subject to CEQA.

Reviewed by:

A handwritten signature in black ink, appearing to read 'Alex Terrazas', written over a horizontal line.

Alex Terrazas, City Manager

Attachments:

Proposed Urgency Ordinance
Proposed Ordinance
Current Ordinance
California Business and Professions Code
Research Articles

ORDINANCE NO. _____

**AN UNCODIFIED URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF LOS BANOS AMENDING CHAPTER 8 OF TITLE 11 OF
THE LOS BANOS MUNICIPAL CODE REGULATING SHOPPING
CARTS**

WHEREAS, the presence of abandoned shopping carts is found to be a public nuisance and contributes to a decline in the quality of life; and

WHEREAS, the abundance of abandoned shopping carts on both private and public property encourages crime, tends to reduce property values, and is a blight on the community; and

WHEREAS, abandoned shopping carts also obstruct pedestrian access, interfere with pedestrian and vehicular traffic, and emergency services; and

WHEREAS, studies have shown that the presence of harmful bacteria is a common occurrence on shopping carts and shopping baskets; and

WHEREAS, the use of unclean and unsanitized shopping carts poses an unnecessary health risk to the public, specifically customers and children using shopping carts furnished by businesses for the convenience of their shoppers; and

WHEREAS, based upon the foregoing there is a need for improved sanitation of shopping carts and shopping baskets by owners to reduce exposure to pathogens and potential transmission of microbial infections among shoppers; and

WHEREAS, the City Council finds the regulations set forth in this ordinance are necessary to protect the public safety and welfare of the residents of the City; and

WHEREAS, California Government Code 36937 empowers cities to adopt, by four-fifths vote, an urgency ordinance which is necessary for the immediate preservation of the public peace, health or safety; and

WHEREAS, the Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3) and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA;

NOW, THEREFORE, the City Council of the City of Los Banos does hereby ordain as follows:

Findings: The City Council hereby finds and determines that, based on all the facts described above, the staff report, the documentation attached to the staff report, staff report and public comment received on this urgency ordinance, the adoption of this urgency ordinance is necessary to help preserve the public peace, health or safety.

Section 1. The above recitals and findings are true and correct and incorporated herein by this reference.

Section 2. The title of this Chapter 8 of Title 11 is amended to read as follows:

**Chapter 8
SHOPPING CARTS RETENTION AND CLEANING**

Section 3. Section 11-8.01 is amended to read as follows:

Sec. 11-8.01 Findings and purpose.

Abandoned shopping carts constitute a nuisance, create potential hazards to the public health and safety and interfere with pedestrian and vehicular traffic within the city. Wrecked, dismantled and/or abandoned shopping carts on public or private property create conditions that reduce property values and promote blight and deterioration within the city's neighborhoods. In addition a program for shopping cart cleaning and sanitizing to protect customers using shopping carts is necessary to protect the public health and safety. The purpose of this chapter is to ensure that measures are taken by shopping cart owners to prevent the removal of shopping carts from store premises and to ensure that measures are put into place for the cleaning and sanitizing of shopping carts. This chapter is based in part on California Business and Professions Code Section 22435 et seq.

Section 4. Section 11-8.02 is amended to add subsection (f) through (l) as follows:

(f) "Shopping basket" means a handheld basket or a similar device generally used in a retail establishment by a customer for carrying goods of any kind.

(g) "Cleaning" means removing visible debris, dirt and dust.

(h) "Sanitizing" means a process to reduce contaminants that could affect health such as bacteria and pathogens from surfaces to make them safe for contact.

(i) "Disinfecting" means a process to destroy/kill germs rather than simply reducing them.

Section 5. Section 11-8.03 is amended to read as follows:

Sec. 11-8.03 Mandatory retention measures.

(a) Required Signs on Shopping Carts. Every shopping cart owned or provided by any business establishment in the City shall have a sign permanently affixed to it that contains the following information:

(1) The identity of the owner or business, or both;

(2) Notification of the procedure for authorized removal of the shopping cart from the premises;

(3) Notice to the public that the unauthorized removal of the shopping cart from the premises or parking area of the business establishment, or the unauthorized possession of the shopping cart, is a violation of State law and a violation of City ordinance; and

(4) A valid telephone number or address for returning the shopping cart.

(b) Required Signs on Property. Signs shall be placed and maintained on the premises near all customer exits and throughout the premises, including parking areas that warn customers that shopping cart removal from the premises is prohibited and constitute a violation of state and local law. Said signs shall be not less than eight (8") inches by fourteen (14") inches in size with block lettering containing the following "REMOVAL OF SHOPPING CARTS FROM THE PREMISES IS PROHIBITED BY LAW. California Business and Professions Code Section 22435.2 and Los Banos Municipal Code Section 11-8.05."

(c) As a condition to the issuance of a business license every cart owner shall on or before January 1, 2021, install, operate and maintain an on-site cart retention system approved by the community and Economic Development Director. On-site cart retention system means one or more of the following measures:

(1) Mechanical disabling devices on all shopping carts, which prevent the cart from being removed from the business premises by locking the wheels automatically or otherwise preventing movement of the carts off of the business premises.

(2) An on-site security guard to prevent customers from removing carts from the business premises.

(3) Bollards and/or other barriers around the business premises to prevent cart removal, subject to approval of the City's Fire Chief.

(4) Obtaining a security deposit from customers for the use of shopping carts on the business premises.

(5) Prohibiting the use of shopping carts outside the building of the business premises unless accompanied by an employee of the business.

(6) A contracted retrieval service approved by the Community and Economic Development Director. This measure shall be mandatory.

(7) Any other measure approved by the Director of Community and Economic Development as a means of preventing carts from being removed from the business premises.

(d) Every cart owner shall lock or otherwise secure all shopping carts during hours when the business premises are not open for business; and shall lock or otherwise secure all shopping carts not in service and stored on the premises.

Section 6. Sections 11.8.04 through 11.8.08 are renumbered as Sections 11.8.05 through 11.8.09 respectively.

Section 7. Section 11.8.04 is added to read as follows:

Sec. 11-8.04 Mandatory Regular Scheduled Cleaning and Sanitizing of Shopping Carts and Shopping Baskets.

(a) Every shopping cart and/or shopping basket owner shall implement measures to maintain clean and sanitized shopping carts and shopping baskets.

(b) Clean and sanitized means one or more of the following measures to be employed no less than monthly:

(1) Use of onsite cleaning and/or sanitizing systems; or

(2) Pressure washing and sanitizing; or

(3) Steam cleaning and sanitizing; or

(4) Any other measure approved by the Community and Economic Development Director as a means of cleaning, sanitizing, or eliminating exposure to contaminants that may be found on shopping carts and/or baskets.

(c) Any shopping cart or shopping basket retrieved from off premises shall be cleaned and sanitized prior to the next customer use.

(d) Every shopping cart and/or shopping basket owner shall provide at each customer entrance with prominent signage a cart handle disinfectant wipe dispenser and hand sanitizer dispenser.

(e) The requirements of this Section shall be a condition of issuance of a business license.

Section 8. Section 11-8.08 is amended to read as follows:

Sec. 11-8.08 Violation—Enforcement.

Any person who violates the provisions of this chapter is subject to any enforcement procedures permitted by law, including but not limited to: prosecution of a misdemeanor or an infraction, civil action for injunction, administrative enforcement procedures, and revocation of a business license and/or use permit if applicable.

Section 9. To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

Section 10. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

Section 11. The proposed amendments to the Los Banos Municipal Code do not propose any changes to City policies or regulations that would result in a direct or indirect physical environmental impact; therefore it has been determined that this ordinance amendment is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment pursuant to CEQA guidelines section 15601(b)(3) and is not subject to environmental review.

Section 12. Pursuant to Government Code Section 36937 this Urgency Ordinance shall be effective immediately and shall be in full force and effect upon its adoption and shall expire thirty days after the adoption of Ordinance No. _____. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced and adopted by Council Member _____ and seconded by Council Member _____ on the ____ day of _____, 2020.

Passed on the ____ day of _____, 2020 by the following vote:

AYES: Council Members

NOES:

ABSENT:

APPROVED:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS
BANOS AMENDING CHAPTER 8 OF TITLE 11 OF THE LOS BANOS
MUNICIPAL CODE REGULATING SHOPPING CARTS**

WHEREAS, the presence of abandoned shopping carts is found to be a public nuisance and contributes to a decline in the quality of life; and

WHEREAS, the abundance of abandoned shopping carts on both private and public property encourages crime, tends to reduce property values, and is a blight on the community; and

WHEREAS, abandoned shopping carts also obstruct pedestrian access, interfere with pedestrian and vehicular traffic, and emergency services; and

WHEREAS, studies have shown that the presence of harmful bacteria is a common occurrence on shopping carts and shopping baskets; and

WHEREAS, the use of unclean and unsanitized shopping carts poses an unnecessary health risk to the public, specifically customers and children using shopping carts furnished by businesses for the convenience of their shoppers; and

WHEREAS, based upon the foregoing there is a need for improved sanitation of shopping carts and shopping baskets by owners to reduce exposure to pathogens and potential transmission of microbial infections among shoppers; and

WHEREAS, the City Council finds the regulations set forth in this ordinance are necessary to protect the public safety and welfare of the residents of the City; and

WHEREAS, the Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3) and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA;

NOW, THEREFORE, the City Council of the City of Los Banos does hereby ordain as follows:

Findings: The City Council hereby finds and determines that, based on all the facts described above, the staff report, the documentation attached to the staff report,

and public comment received on this Ordinance, the adoption of this Ordinance is necessary to help preserve the public peace, health or safety.

Section 1. The above recitals and findings are true and correct and incorporated herein by this reference.

Section 2. The title of this Chapter 8 of Title 11 is amended to read as follows:

**Chapter 8
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Section 3. Section 11-8.01 is amended to read as follows:

Sec. 11-8.01 Findings and purpose.

Abandoned shopping carts constitute a nuisance, create potential hazards to the public health and safety and interfere with pedestrian and vehicular traffic within the city. Wrecked, dismantled and/or abandoned shopping carts on public or private property create conditions that reduce property values and promote blight and deterioration within the city's neighborhoods. In addition a program for shopping cart cleaning and sanitizing to protect customers using shopping carts is necessary to protect the public health and safety. The purpose of this chapter is to ensure that measures are taken by shopping cart owners to prevent the removal of shopping carts from store premises and to ensure that measures are put into place for the cleaning and sanitizing of shopping carts. This chapter is based in part on California Business and Professions Code Section 22435 et seq.

Section 4. Section 11-8.02 is amended to add subsection (f) through (l) as follows:

(f) "Shopping basket" means a handheld basket or a similar device generally used in a retail establishment by a customer for carrying goods of any kind.

(g) "Cleaning" means removing visible debris, dirt and dust.

(h) "Sanitizing" means a process to reduce contaminants that could affect health such as bacteria and pathogens from surfaces to make them safe for contact.

(i) "Disinfecting" means a process to destroy/kill germs rather than simply reducing them.

Section 5. Section 11-8.03 is amended to read as follows:

Sec. 11-8.03 Mandatory retention measures.

(a) Required Signs on Shopping Carts. Every shopping cart owned or provided by any business establishment in the City shall have a sign permanently affixed to it that contains the following information:

(1) The identity of the owner or business, or both;

(2) Notification of the procedure for authorized removal of the shopping cart from the premises;

(3) Notice to the public that the unauthorized removal of the shopping cart from the premises or parking area of the business establishment, or the unauthorized possession of the shopping cart, is a violation of State law and a violation of City ordinance; and

(4) A valid telephone number or address for returning the shopping cart.

(b) Required Signs on Property. Signs shall be placed and maintained on the premises near all customer exits and throughout the premises, including parking areas that warn customers that shopping cart removal from the premises is prohibited and constitute a violation of state and local law. Said signs shall be not less than eight (8") inches by fourteen (14") inches in size with block lettering containing the following "REMOVAL OF SHOPPING CARTS FROM THE PREMISES IS PROHIBITED BY LAW. California Business and Professions Code Section 22435.2 and Los Banos Municipal Code Section 11-8.05."

(c) As a condition to the issuance of a business license every cart owner shall on or before January 1, 2021, install, operate and maintain an on-site cart retention system approved by the community and Economic Development Director. On-site cart retention system means one or more of the following measures:

(1) Mechanical disabling devices on all shopping carts, which prevent the cart from being removed from the business premises by locking the wheels automatically or otherwise preventing movement of the carts off of the business premises.

(2) An on-site security guard to prevent customers from removing carts from the business premises.

(3) Bollards and/or other barriers around the business premises to prevent cart removal, subject to approval of the City's Fire Chief.

(4) Obtaining a security deposit from customers for the use of shopping carts on the business premises.

(5) Prohibiting the use of shopping carts outside the building of the business premises unless accompanied by an employee of the business.

(6) A contracted retrieval service approved by the Community and Economic Development Director. This measure shall be mandatory.

(7) Any other measure approved by the Director of Community and Economic Development as a means of preventing carts from being removed from the business premises.

(d) Every cart owner shall lock or otherwise secure all shopping carts during hours when the business premises are not open for business; and shall lock or otherwise secure all shopping carts not in service and stored on the premises.

Section 6. Sections 11.8.04 through 11.8.08 are renumbered as Sections 11.8.05 through 11.8.09 respectively.

Section 7. Section 11.8.04 is added to read as follows:

Sec. 11-8.04 Mandatory Regular Scheduled Cleaning and Sanitizing of Shopping Carts and Shopping Baskets.

(a) Every shopping cart and/or shopping basket owner shall implement measures to maintain clean and sanitized shopping carts and shopping baskets.

(b) Clean and sanitized means one or more of the following measures to be employed no less than monthly:

(1) Use of onsite cleaning and/or sanitizing systems; or

(2) Pressure washing and sanitizing; or

(3) Steam cleaning and sanitizing; or

(4) Any other measure approved by the Community and Economic Development Director as a means of cleaning, sanitizing, or eliminating exposure to contaminants that may be found on shopping carts and/or baskets.

(c) Any shopping cart or shopping basket retrieved from off premises shall be cleaned and sanitized prior to the next customer use.

(d) Every shopping cart and/or shopping basket owner shall provide at each customer entrance with prominent signage a cart handle disinfectant wipe dispenser and hand sanitizer dispenser.

(e) The requirements of this Section shall be a condition of issuance of a business license.

Section 8. Section 11-8.08 is amended to read as follows:

Sec. 11-8.08 Violation—Enforcement.

Any person who violates the provisions of this chapter is subject to any enforcement procedures permitted by law, including but not limited to: prosecution of a misdemeanor or an infraction, civil action for injunction, administrative enforcement procedures, and revocation of a business license and/or use permit if applicable.

Section 9. To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

Section 10. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

Section 11. The proposed amendments to the Los Banos Municipal Code do not propose any changes to City policies or regulations that would result in a direct or indirect physical environmental impact; therefore it has been determined that this ordinance amendment is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment pursuant to CEQA guidelines section 15601(b)(3) and is not subject to environmental review.

Section 12. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member _____ and seconded by Council Member _____ on the ____ day of _____, 2020.

Passed on the ____ day of _____, 2020 by the following vote:

AYES: Council Members

NOES:

ABSENT:

APPROVED:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

[Title 11 BUSINESS REGULATION](#)**Chapter 8 ABANDONED SHOPPING CARTS****Sec. 11-8.01 Findings and purpose.**

Abandoned shopping carts constitute a nuisance, create potential hazards to the public health and safety and interfere with pedestrian and vehicular traffic within the city. Wrecked, dismantled and/or abandoned shopping carts on public or private property create conditions that reduce property values and promote blight and deterioration within the city's neighborhoods. The purpose of this chapter is to ensure that measures are taken by shopping cart owners to prevent the removal of shopping carts from store premises. This chapter is based in part on California Business and Professions Code Section 22435 et seq. (§ 1, Ord. 1055, eff. June 16, 2007, as amended by § 10, Ord. 1161, eff. February 17, 2018)

Sec. 11-8.02 Definitions.

- (a) "City" means the City of Los Banos.
- (b) "Owner" means a person or entity that owns one or more shopping carts or a retailer that provides one or more shopping carts for customer use.
- (c) "Parking area" means a parking lot or other property provided by a retailer for use by a customer for parking an automobile or other vehicle.
- (d) "Premises" means the entire area owned or under the control of an owner, including the parking area or other off-street area.
- (e) "Shopping cart" means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for transporting goods of any kind. (§ 1, Ord. 1055, eff. June 16, 2007)

Sec. 11-8.03 Mandatory prevention measures.

- (a) **Required Signs on Shopping Carts.** Every shopping cart owned or provided by any business establishment in the City shall have a sign permanently affixed to it that contains the following information:
 - (1) The identity of the owner or business, or both;
 - (2) Notification of the procedure for authorized removal of the shopping cart from the premises;
 - (3) Notice to the public that the unauthorized removal of the shopping cart from the premises or parking area of the business establishment, or the unauthorized possession of the shopping cart, is a violation of State law and a violation of City ordinance; and
 - (4) A valid telephone number or address for returning the shopping cart.
- (b) **Required Signs on Property.** Signs shall be placed and maintained on the premises near all customer exits and throughout the premises, including parking areas that warn customers that shopping cart removal from the premises is prohibited and constitute a violation of state and local law. Said signs shall be not less than eight (8") inches by fourteen (14") inches in size with block lettering containing the following "REMOVAL OF SHOPPING CARTS FROM THE PREMISES IS PROHIBITED BY LAW. California Business and Professions Code Section 22435.2 and Los Banos Municipal Code Section 11-8.04."
- (c) **Existing Retail Establishments.** Each existing retail establishment shall comply with the requirements of subsections (a) and (b) within one hundred twenty (120) days following the date of adoption of this chapter. Failure to comply with the requirements of subsections (a) and (b) within the timeframe specified herein shall subject the owner or retailer to a fine of Fifty and No/100ths (\$50.00) Dollars per day for each day of noncompliance. (§ 1, Ord. 1055, eff. June 16, 2007, as amended by § 10, Ord. 1161, eff. February 17, 2018)

Sec. 11-8.04 Unauthorized removal or possession of a shopping cart.

It is unlawful for any person to do any of the following, without the written consent of the owner, if a shopping cart has a permanently affixed sign pursuant to Section 11-8.03:

- (a) To remove a shopping cart from the premises or parking area of a business establishment with the intent to temporarily or permanently deprive the owner of possession of the shopping cart;
- (b) To leave or abandon a shopping cart at a location other than the premises or parking area of the retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the shopping cart;
- (c) To alter, convert, or tamper with a shopping cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a shopping cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the shopping cart;
- (d) To be in possession of any shopping cart while that shopping cart is not located on the premises or parking lot of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the shopping cart. (§ 1, Ord. 1055, eff. June 16, 2007, as amended by § 10, Ord. 1161, eff. February 17, 2018)

Sec. 11-8.05 Notification, impoundment, and disposal.

- (a) A shopping cart that has a sign affixed to it in accordance with Section 11-8.03 may be impounded by the city provided that the shopping cart is located outside the premises or parking area of a retail establishment and the shopping cart is not retrieved within three (3) business days from the date the owner of the shopping cart, or his or her agent, receives actual notice from the City of the shopping cart's discovery and location. In instances where the location of a shopping cart will impede emergency services, the City is authorized to immediately retrieve the shopping cart from public or private property.

(b) The City may impound a shopping cart that has a sign affixed to it in accordance with Section 11-8.03 without complying with the three (3) day advance notice requirement of subsection (a), provided that the owner of the shopping cart, or his or her agent, is provided actual notice within twenty-four (24) hours following the impound and that notice informs the owner, or his or her agent, as to the location where the shopping cart may be claimed.

(c) Any shopping cart that is impounded by the City shall be held at a location that is both: reasonably convenient to the owner of the shopping cart and open for business at least six (6) hours of each business day.

(d) If the City does not comply with the three (3) day advance notice requirement of subsection (a), any shopping cart reclaimed by the owner or his or her agent, within three (3) business days following the date of actual notice, shall be released and surrendered to the owner or agent at no charge whatsoever, including the waiver of any impound and storage fees or fines that would otherwise be applicable.

(e) Any shopping cart not reclaimed from the City, within thirty (30) days of receipt of a notice of violation by the owner of the shopping cart may be sold or otherwise disposed of by the entity in possession of the shopping cart. The City may, without notice, retrieve and immediately dispose of any abandoned shopping cart(s) that lack the signs required by this chapter if the owner of the abandoned shopping cart cannot readily be determined from inspection of the shopping cart. (§ 1, Ord. 1055, eff. June 16, 2007, as amended by § 10, Ord. 1161, eff. February 17, 2018)

Sec. 11-8.06 Administrative costs and fines.

Any owner of a shopping cart that is impounded in accordance with this chapter shall pay the City's administrative costs for impounding the shopping cart(s) including but not limited to the costs of retrieval and notification. Any owner who fails to retrieve an abandoned shopping cart(s) in accordance with this chapter in excess of three (3) times during a specified six (6) month period shall be subject to a Fifty and No/100ths (\$50.00) Dollar fine for each occurrence. An occurrence includes all shopping carts owned by the owner that are impounded by the City in a one-day period. (§ 1, Ord. 1055, eff. June 16, 2007, as amended by § 10, Ord. 1161, eff. February 17, 2018)

Sec. 11-8.07 Violation—Enforcement.

Any person who violates the provisions of this chapter is subject to any enforcement procedures permitted by law, including but not limited to: prosecution of a misdemeanor or an infraction, civil action for injunction, administrative enforcement procedures, and revocation of a use permit if applicable. (§ 1, Ord. 1055, eff. June 16, 2007, as amended by § 10, Ord. 1161, eff. February 17, 2018)

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DIVISION 8. SPECIAL BUSINESS REGULATIONS [18400 - 22949.51] (*Division 8 added by Stats. 1941, Ch. 44.*)

CHAPTER 19. Shopping and Laundry Carts [22435 - 22435.13] (*Chapter 19 added by Stats. 1981, Ch. 687, Sec. 1.*)

ARTICLE 1. Identification of Shopping and Laundry Carts [22435 - 22435.8] (*Article 1 added by Stats. 1981, Ch. 687, Sec. 1.*)

22435. As used in this article:

(a) "Shopping cart" means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

(b) "Laundry cart" means a basket which is mounted on wheels and used in a coin-operated laundry or drycleaning retail establishment by a customer or an attendant for the purpose of transporting fabrics and the supplies necessary to process them.

(c) "Parking area" means a parking lot or other property provided by a retailer for use by a customer for parking an automobile or other vehicle.

(*Added by Stats. 1981, Ch. 687, Sec. 1.*)

22435.1. The provisions of Section 22435.2 shall apply when a shopping cart or a laundry cart has a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is a violation of state law; and lists a valid telephone number or address for returning the cart removed from the premises or parking area to the owner or retailer.

(*Amended by Stats. 1996, Ch. 291, Sec. 1. Effective January 1, 1997.*)

22435.2. It is unlawful to do any of the following acts, if a shopping cart or laundry cart has a permanently affixed sign as provided in Section 22435.1:

(a) To remove a shopping cart or laundry cart from the premises or parking area of a retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(b) To be in possession of any shopping cart or laundry cart that has been removed from the premises or the parking area of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(c) To be in possession of any shopping cart or laundry cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(d) To leave or abandon a shopping cart or laundry cart at a location other than the premises or parking area of the retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(e) To alter, convert, or tamper with a shopping cart or laundry cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(f) To be in possession of any shopping cart or laundry cart while that cart is not located on the premises or parking lot of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(*Amended by Stats. 1983, Ch. 436, Sec. 1.*)

22435.3. Any person who violates any of the provisions of this article is guilty of a misdemeanor.

The provisions of this section are not intended to preclude the application of any other laws relating to prosecution for theft.

(Added by Stats. 1981, Ch. 687, Sec. 1.)

22435.4. This article shall not apply to the owner of a shopping cart or laundry cart or to a retailer, or to their agents or employees, or to a customer of a retail establishment who has written consent from the owner of a shopping cart or laundry cart or a retailer to be in possession of the shopping cart or laundry cart or to remove the shopping cart or laundry cart from the premises or the parking area of the retail establishment, or to do any of the acts specified in Section 22435.2.

(Added by Stats. 1981, Ch. 687, Sec. 1.)

22435.5. (a) In any civil proceeding, any shopping cart or laundry cart which has a sign affixed to it pursuant to Section 22435.1 shall establish a rebuttable presumption affecting the burden of producing evidence that the property is that of the person or business named in the sign and not abandoned by the person or business named in the sign.

(b) In any criminal proceeding, it may be inferred that any shopping cart or laundry cart which has a sign affixed to it pursuant to Section 22435.1 is the property of the person or business named in the sign and has not been abandoned by the person or business named in the sign.

(Added by Stats. 1983, Ch. 436, Sec. 2.)

22435.7. (a) The Legislature hereby finds that the retrieval by local government agencies of shopping carts specified in this section is in need of uniform statewide regulation and constitutes a matter of statewide concern that shall be governed solely by this section.

(b) A shopping cart that has a sign affixed to it in accordance with Section 22435.1 may be impounded by a city, county, or city and county, provided both of the following conditions have been satisfied:

(1) The shopping cart is located outside the premises or parking area of a retail establishment. The parking area of a retail establishment located in a multistore complex or shopping center shall include the entire parking area used by the complex or center.

(2) Except as provided in subdivision (i), the shopping cart is not retrieved within three business days from the date the owner of the shopping cart, or his or her agent, receives actual notice from the city, county, or city and county of the shopping cart's discovery and location.

(c) In instances where the location of a shopping cart will impede emergency services, a city, county, or city and county is authorized to immediately retrieve the shopping cart from public or private property.

(d) Any city, county, or city and county that impounds a shopping cart under the authority provided in subdivisions (b) and (c) is authorized to recover its actual costs for providing this service.

(e) Any shopping cart that is impounded by a city, county, or city and county pursuant to subdivisions (b) and (c) shall be held at a location that is both:

(1) Reasonably convenient to the owner of the shopping cart.

(2) Open for business at least six hours of each business day.

(f) A city, county, or city and county may fine the owner of a shopping cart in an amount not to exceed fifty dollars (\$50) for each occurrence in excess of three during a specified six-month period for failure to retrieve shopping carts in accordance with this section. An occurrence includes all shopping carts impounded in accordance with this section in a one-day period.

(g) Any shopping cart not reclaimed from the city, county, or city and county within 30 days of receipt of a notice of violation by the owner of the shopping cart may be sold or otherwise disposed of by the entity in possession of the shopping cart.

(h) This section shall not invalidate any contract entered into prior to June 30, 1996, between a city, county, or city and county and a person or business entity for the purpose of retrieving or impounding shopping carts.

(i) Notwithstanding paragraph (2) of subdivision (b), a city, county, or city and county may impound a shopping cart that otherwise meets the criteria set forth in paragraph (1) of subdivision (b) without complying with the three-day advance notice requirement provided that:

(1) The owner of the shopping cart, or his or her agent, is provided actual notice within 24 hours following the impound and that notice informs the owner, or his or her agent, as to the location where the shopping cart may be claimed.

(2) Any shopping cart so impounded shall be held at a location in compliance with subdivision (e).

(3) Any shopping cart reclaimed by the owner or his or her agent, within three business days following the date of actual notice as provided pursuant to paragraph (1), shall be released and surrendered to the owner or agent at no charge whatsoever, including the waiver of any impound and storage fees or fines that would otherwise be applicable pursuant to subdivision (d) or (f). Any cart reclaimed within the three-business-day period shall not be deemed an occurrence for purposes of subdivision (f).

(4) Any shopping cart not reclaimed by the owner or his or her agent, within three business days following the date of actual notice as provided pursuant to paragraph (1), shall be subject to any applicable fee or fine imposed pursuant to subdivision (d) or (f) commencing on the fourth business day following the date of the notice.

(5) Any shopping cart not reclaimed by the owner or his or her agent, within 30 days of receipt following the date of actual notice as provided pursuant to paragraph (1), may be sold or disposed of in accordance with subdivision (g).

(Amended by Stats. 1998, Ch. 16, Sec. 1. Effective January 1, 1999.)

22435.8. This article shall not invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city, county, or city and county, which ordinance regulates or prohibits the removal of shopping carts or laundry carts from the premises or parking area of a retail establishment except to the extent any provision of such an ordinance expressly conflicts with any provision of this article.

(Added by Stats. 1998, Ch. 16, Sec. 2. Effective January 1, 1999.)

Bacterial Contamination of Shopping Carts and Approaches to Control

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SUMMARY

Placing children in grocery shopping carts has been implicated recently as a source of infection with *Salmonella* and *Campylobacter* in young children. This study was conducted to assess the occurrence total bacteria, coliform bacteria and *Escherichia coli* on grocery shopping cart handles and seats. A total of 85 shopping carts in parking lots of grocery stores were tested in five major metropolitan areas across the United States. The total numbers of heterotrophic bacteria were as great as 1.1×10^7 on the handle and seat. Coliforms were detected on 72% (62) of the carts. *E. coli* was identified on 18 of 35 carts (51%) on which coliform identification was conducted. The results of this study suggest the need for improved sanitation of shopping carts/baskets to reduce exposure to pathogens and potential transmission of microbial infections among shoppers.

INTRODUCTION

Contamination of raw meat products with bacterial enteric pathogens, such as *Salmonella*, *Campylobacter* and *Escherichia coli*, occurs on a regular basis (1). Recent studies have shown that children are at increased risk of both *Salmonella* and *Campylobacter* infections if they ride in shopping carts carrying meat products (4, 6, 9). This suggests that exposure of children to enteric bacterial

pathogens in shopping carts occurs on a regular basis. Mizumachi et al. (7) also reported frequent exposure to pathogenic *Staphylococcus aureus* on shopping cart handles and suggested that this was a hidden reservoir of this organism that points to a need for shopping basket sanitation. Contamination of shopping carts may occur from direct handling of raw food products or contamination of the cart by previous users.

The goal of this project was to determine the general sanitation of shopping carts with regard to bacteria.

MATERIAL AND METHODS

Cart sampling

Grocery store shopping carts were selected at random in grocery store parking lots in Sioux City, IA, San Francisco, CA, Los Angeles, CA, Portland, OR, and Atlanta, GA. A total of 85 carts were sampled, with 50 carts tested in the greater Los Angeles area, eight from San Francisco and nine from each of the other cities. These cities were selected to represent varying regions and outdoor climates in the United States. Because of the practice of leaving shopping carts outdoors in front of the store or in parking lots, climate might affect the survival of bacteria on their surfaces. For example, relative humidity and temperature will affect the survival of bacteria on surfaces (5). The cart handle and seat were swabbed using the same Sponge-Stick containing a neutralizing buffer (3M Corporation, St. Paul, MN) and delivered overnight packed in ice to the University of Arizona, where the samples were processed. The estimated surface area sampled was 668 sq. cm. Three ml of fluid was extracted from the Sponge-Stick by squeezing it from the sponge in a plastic bag. One ml of this extract was used to test for coliforms/*E. coli*.

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TABLE 1. Arithmetic averages of bacteria detected on shopping carts

Bacteria	Average	Minimum	Maximum	Average per sq. cm
Total*	3.43×10^5	110	1.1×10^7	513
Coliforms	≥ 767	< 3	> 7,259	≥ 1.1

*colony forming units

**most probable number

TABLE 2. Enteric bacteria detected on shopping carts[†]

Bacteria isolated	Number of Carts
<i>Escherichia coli</i>	18
<i>Klebsiella pneumoniae</i>	7
<i>Cronobacter sakazakii</i>	6
<i>Enterobacter cloacae</i>	2
<i>Klebsiella oxytoca</i>	1
<i>Yersinia pseudotuberculosis</i>	1

[†]Coliform bacteria isolated from 35 carts were identified with APIE 20 biochemical strip

Bacterial assays and identification

Total heterotrophic plate counts were determined by dilution of samples in buffered peptone water and spread plating on R2A media (Difco, Sparks, MD), a medium designed to enhance the recovery of stressed bacteria. The plates were incubated for five days at room temperature and colonies were counted. Coliforms and *Escherichia coli* were identified by placing one ml of the Sponge-Stick extract into 99 ml of Colilert media (IDDEX, Westbrook, ME), which was placed in a Quanti-Tray system and incubated overnight at 37°C. Coliforms were then determined using a most probable number (MPN) table provided by the manufacturer. The results were then multiplied by the dilution factor (1:100) and the total volume of fluid recovered from the Sponge-Stick to determine the total number of coliform bacteria in the sample.

Identification was conducted by diluting positive Quanti-Tray samples in phosphate buffered saline (0.01 M) and then spread plating the diluted samples onto MacConkey's agar (Difco) to confirm the presence of coliform bacteria, since the Colilert media is not specifically designed for isolation of coliform bacteria from fomites colonies of different morphology were randomly selected and subcultured on Trypticase Soy Agar (Difco). The bacteria were then identified by use of APIE20 strips (bioMérieux, Durham, NC).

RESULTS

Table 1 shows the total number of bacteria isolated per cart collected from store parking lots, reported as colony forming units (CFU)/cart. The number of bacteria detected on the shopping carts ranged from 110 to 11,000,000, and coliform bacteria from < 3 to

> 7,259. Coliforms were detected on 72% (61/85) of the carts sampled. No *E. coli* were detected directly by the Colilert assay, but *E. coli* was identified as one of the coliforms detected in colonies on which coliform identification was conducted (35 of 61 carts were positive for coliforms). *E. coli* was the most common coliform identified on 18 of the 35 carts on which identification of coliform bacteria was conducted (Table 2). The Colilert assay is primarily designed to detect *E. coli* bacteria from water sources and not fomites, although it has been used for that purpose in other studies (8, 11). However, *E. coli* was identified by APIE 20 strips biochemical tests as one of the coliforms detected by Colilert. Why the Colilert did not detect it as *E. coli* directly may be due to low numbers present in the samples, interferences from the other coliform bacteria, or other unknown factors.

DISCUSSION

The common occurrence of coliform and *E. coli* bacteria on shopping carts indicates that the consumer is exposed to enteric bacteria on a regular basis when using grocery shopping carts. Total bacterial levels are far greater than those found in public restrooms and other public places and objects that are commonly touched in these environments (airports, bus stations, public bathroom, shopping malls, etc.). Reynolds et al. (10) found the geometric mean of HPC bacteria on these objects ranged from 5 to 41.5 per sq. cm. with the higher average found in public restrooms. Coliforms and *E. coli* also appear to be present in greater numbers on shopping cart handles than on other common surfaces with which consumers may come into contact. In testing of diaper changing tables, chair arm rests, playground equipment, ATM buttons, restaurant tabletops, escalators, and restaurant condiment containers, coliforms were detected only on 7% (16/200 samples) (10), vs. 72% (61/85) on shopping carts in the present study. Coliform bacteria often originate from feces and are associated with poor sanitary conditions. Coliform bacteria and *E. coli* detected on the carts may have originated from contact with raw foods, birds (while the carts were sitting in the parking lots between use), other sources of animal feces, and contact with fecally contaminated hands or other body parts (diaper aged infants).

The high numbers of HPC bacteria and coliform bacteria indicate unsanitary conditions of the carts compared with other public places and surfaces that the general public comes into contact. This increases the risk of coming into contact with a disease-causing organism. Results of epidemiological studies have shown

that a risk of infection from common enteric bacteria is related to placing of small children in shopping carts (4, 6, 9). The results of this study suggest the need for improved sanitation of shopping carts/baskets to reduce exposure to pathogens and transmission of bacterial infections among shoppers.

Two solutions to reduce exposure of consumers are to provide consumers with a disinfectant contained in a wipe or the use of disposable barriers. In Arkansas, legislation has passed that encourages grocers to offer complimentary sanitary wipes (3). Most disinfecting wipes provided today contain quaternary ammonium compounds effective against many types of enteric bacteria (2). Disposable plastic barriers are designed to fit over the hand contact area, such as the handle of the cart, and then be discarded in a recycling bin after use.

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DIVISION 8. SPECIAL BUSINESS REGULATIONS [18400 - 22949.51] (*Division 8 added by Stats. 1941, Ch. 44.*)

CHAPTER 19. Shopping and Laundry Carts [22435 - 22435.13] (*Chapter 19 added by Stats. 1981, Ch. 687, Sec. 1.*)

ARTICLE 1. Identification of Shopping and Laundry Carts [22435 - 22435.8] (*Article 1 added by Stats. 1981, Ch. 687, Sec. 1.*)

[22435.](#) As used in this article:

(a) "Shopping cart" means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

(b) "Laundry cart" means a basket which is mounted on wheels and used in a coin-operated laundry or drycleaning retail establishment by a customer or an attendant for the purpose of transporting fabrics and the supplies necessary to process them.

(c) "Parking area" means a parking lot or other property provided by a retailer for use by a customer for parking an automobile or other vehicle.

(*Added by Stats. 1981, Ch. 687, Sec. 1.*)

[22435.1.](#) The provisions of Section 22435.2 shall apply when a shopping cart or a laundry cart has a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is a violation of state law; and lists a valid telephone number or address for returning the cart removed from the premises or parking area to the owner or retailer.

(*Amended by Stats. 1996, Ch. 291, Sec. 1. Effective January 1, 1997.*)

[22435.2.](#) It is unlawful to do any of the following acts, if a shopping cart or laundry cart has a permanently affixed sign as provided in Section 22435.1:

(a) To remove a shopping cart or laundry cart from the premises or parking area of a retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(b) To be in possession of any shopping cart or laundry cart that has been removed from the premises or the parking area of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(c) To be in possession of any shopping cart or laundry cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(d) To leave or abandon a shopping cart or laundry cart at a location other than the premises or parking area of the retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(e) To alter, convert, or tamper with a shopping cart or laundry cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(f) To be in possession of any shopping cart or laundry cart while that cart is not located on the premises or parking lot of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(*Amended by Stats. 1983, Ch. 436, Sec. 1.*)

[22435.3.](#) Any person who violates any of the provisions of this article is guilty of a misdemeanor.

The provisions of this section are not intended to preclude the application of any other laws relating to prosecution for theft.

(Added by Stats. 1981, Ch. 687, Sec. 1.)

22435.4. This article shall not apply to the owner of a shopping cart or laundry cart or to a retailer, or to their agents or employees, or to a customer of a retail establishment who has written consent from the owner of a shopping cart or laundry cart or a retailer to be in possession of the shopping cart or laundry cart or to remove the shopping cart or laundry cart from the premises or the parking area of the retail establishment, or to do any of the acts specified in Section 22435.2.

(Added by Stats. 1981, Ch. 687, Sec. 1.)

22435.5. (a) In any civil proceeding, any shopping cart or laundry cart which has a sign affixed to it pursuant to Section 22435.1 shall establish a rebuttable presumption affecting the burden of producing evidence that the property is that of the person or business named in the sign and not abandoned by the person or business named in the sign.

(b) In any criminal proceeding, it may be inferred that any shopping cart or laundry cart which has a sign affixed to it pursuant to Section 22435.1 is the property of the person or business named in the sign and has not been abandoned by the person or business named in the sign.

(Added by Stats. 1983, Ch. 436, Sec. 2.)

22435.7. (a) The Legislature hereby finds that the retrieval by local government agencies of shopping carts specified in this section is in need of uniform statewide regulation and constitutes a matter of statewide concern that shall be governed solely by this section.

(b) A shopping cart that has a sign affixed to it in accordance with Section 22435.1 may be impounded by a city, county, or city and county, provided both of the following conditions have been satisfied:

(1) The shopping cart is located outside the premises or parking area of a retail establishment. The parking area of a retail establishment located in a multistore complex or shopping center shall include the entire parking area used by the complex or center.

(2) Except as provided in subdivision (i), the shopping cart is not retrieved within three business days from the date the owner of the shopping cart, or his or her agent, receives actual notice from the city, county, or city and county of the shopping cart's discovery and location.

(c) In instances where the location of a shopping cart will impede emergency services, a city, county, or city and county is authorized to immediately retrieve the shopping cart from public or private property.

(d) Any city, county, or city and county that impounds a shopping cart under the authority provided in subdivisions (b) and (c) is authorized to recover its actual costs for providing this service.

(e) Any shopping cart that is impounded by a city, county, or city and county pursuant to subdivisions (b) and (c) shall be held at a location that is both:

(1) Reasonably convenient to the owner of the shopping cart.

(2) Open for business at least six hours of each business day.

(f) A city, county, or city and county may fine the owner of a shopping cart in an amount not to exceed fifty dollars (\$50) for each occurrence in excess of three during a specified six-month period for failure to retrieve shopping carts in accordance with this section. An occurrence includes all shopping carts impounded in accordance with this section in a one-day period.

(g) Any shopping cart not reclaimed from the city, county, or city and county within 30 days of receipt of a notice of violation by the owner of the shopping cart may be sold or otherwise disposed of by the entity in possession of the shopping cart.

(h) This section shall not invalidate any contract entered into prior to June 30, 1996, between a city, county, or city and county and a person or business entity for the purpose of retrieving or impounding shopping carts.

(i) Notwithstanding paragraph (2) of subdivision (b), a city, county, or city and county may impound a shopping cart that otherwise meets the criteria set forth in paragraph (1) of subdivision (b) without complying with the three-day advance notice requirement provided that:

(1) The owner of the shopping cart, or his or her agent, is provided actual notice within 24 hours following the impound and that notice informs the owner, or his or her agent, as to the location where the shopping cart may be claimed.

(2) Any shopping cart so impounded shall be held at a location in compliance with subdivision (e).

(3) Any shopping cart reclaimed by the owner or his or her agent, within three business days following the date of actual notice as provided pursuant to paragraph (1), shall be released and surrendered to the owner or agent at no charge whatsoever, including the waiver of any impound and storage fees or fines that would otherwise be applicable pursuant to subdivision (d) or (f). Any cart reclaimed within the three-business-day period shall not be deemed an occurrence for purposes of subdivision (f).

(4) Any shopping cart not reclaimed by the owner or his or her agent, within three business days following the date of actual notice as provided pursuant to paragraph (1), shall be subject to any applicable fee or fine imposed pursuant to subdivision (d) or (f) commencing on the fourth business day following the date of the notice.

(5) Any shopping cart not reclaimed by the owner or his or her agent, within 30 days of receipt following the date of actual notice as provided pursuant to paragraph (1), may be sold or disposed of in accordance with subdivision (g).

(Amended by Stats. 1998, Ch. 16, Sec. 1. Effective January 1, 1999.)

22435.8. This article shall not invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city, county, or city and county, which ordinance regulates or prohibits the removal of shopping carts or laundry carts from the premises or parking area of a retail establishment except to the extent any provision of such an ordinance expressly conflicts with any provision of this article.

(Added by Stats. 1998, Ch. 16, Sec. 2. Effective January 1, 1999.)

Study: E.coli contamination found on half of shopping carts

Posted Mar 14, 2011 by [Vincent Sobotka](#)

On your next trip to the grocery store, be aware, much more than groceries may be riding in your shopping cart. More bacteria exists in these carts than in public bathrooms or on a city bus, and children may be the most at risk.

It's probably overlooked by many, but according to new research, the amount of harmful bacteria on grocery shopping carts is enough to raise quite the concern. Researchers say, in fact, that so much bacteria exists on the seats and handles of shopping carts that the only thing sanitary wipes are likely to accomplish is peace of mind for the unsuspecting shopper.



Row of shopping carts
 © Steve Sandland

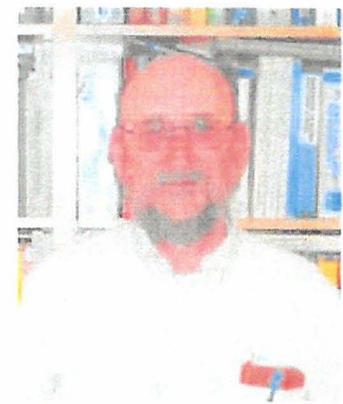
From the **University of Arizona**, **Dr. Charles P. Gerba** and Sherri Maxwell performed studies on shopping carts in grocery store parking lots across five major-metropolitan areas.

"We tested Sioux City, Iowa, San Francisco and Los Angeles, California, Portland, Oregon and Atlanta, Georgia," said Dr. Gerba during an interview following the announcement of his study. "We only tested shopping carts from grocery stores," he continued to detail the study, "and we only tested carts from the parking lot - nothing inside."

Several references are made in the report to researchers who have recently proved that raw meat products are commonly contaminated with bacteria considered infectious to the intestines. Further studies have also shown that children who ride in the seat of a shopping cart are regularly exposed to harmful bacteria, putting them at a greater risk to infections from Salmonella, which is typically passed through the feces of humans or animals, and Campylobacter, which is often carried by birds.

Additionally, Gerba cites another study, from 2010, which proves shopping cart handles to be "hidden reservoirs" for pathogenic Staphylococcus aureus, familiarly known as Staph (pronounced "staff") organisms. Staphylococcus aureus is the most common of over 30 Staphylococcus bacterial breeds to which humans are susceptible. On the human body, the most common places to find Staphylococcus aureus are in the nose and on the skin, thus providing a high probability to contaminate objects and infect others with a dangerously contagious bacteria.

Though anyone may contract an infection, those at the greatest risk for a Staph infection include infants and young children, breastfeeding mothers, persons with chronic disease(s) including immune deficiencies, intravenous apparatus users and people with unhealed surgical incisions.



Dr. Charles P. Gerba
 University of Arizona

Under Gerba's own study, his team collected samples by swabbing the seat and handle from a total of 85 shopping carts. The samples were then packed in ice and delivered overnight to the University of Arizona for processing. The total estimated surface area sampled among the 85 shopping carts was 668 square centimeters. The outcome of the study proved that 72-percent of the 85 shopping carts sampled contained a high amount of coliform bacteria.

Coliform organisms are commonly present in our environment, particularly in the feces of all warm-blooded animals, including humans. Coliform organisms are not likely to cause illness on their own, but an extreme presence is an indication of well-breeding conditions for disease-causing pathogens.

In Dr. Gerba's research, of the 72-percent of shopping carts which tested positive for high amounts of coliform organisms, 36 of them were tested for more harmful bacteria. Among those, 50-percent were found to contain *Escherichia coli*, commonly known as *E. coli* bacteria.

E. coli bacteria lives inside the intestines and helps break down food. Harmful strains of this bacteria may travel into the blood and cause very serious infections. Symptoms of an *E. coli* infection, or *E. coli* poisoning, include severe stomach cramping or pain, vomiting and diarrhea that may sometimes contain blood.

In his report, Dr. Gerba pushes hard for an awareness to shopping cart sanitation. He references a study from 2001 that proves most anti-bacterial wipes would need to be applied to the contaminated surface area for a minimum of ten-minutes in order to be effective against such organisms. Dr. Gerba also recommends the use of plastic barriers, which are designed to fit over the handle and have an anti-bacterial adhesive on the contacting side, which can then be properly disposed when each shopper returns their cart.

When asked if testing 85 units (shopping carts) were enough to support nation-wide concern over Dr. Gerba's statistics he simply reiterated the information from his report, "Samples were collected from five different cities across the U.S."

Dr. Gerba continued with his own indirect answer, "One never knows the answer to that question unless you sample every cart in every city."

How Gross Is Your Shopping Cart?

By Michael Bartiromo | Fox News



It's not like anybody believes their shopping carts are clean. Most supermarkets place a dispenser of sanitizing wipes nearby, as if to hint at the exact opposite.

But in case you were on the fence, yes, they're gross.

A [study of 85 random shopping carts](#) conducted by Dr. Charles P. Gerba found that 50 percent carried E. coli, while 72 percent contained coliform bacteria. "The exceptionally high level of coliform bacteria suggests that fecal material may be involved in cart contamination," the report further stated.

In other words, your cart most likely harbors bathroom germs.

According to [Donna Duberg](#), an assistant professor of clinical laboratory science at Saint Louis University, these pathogens find their way into our carriages through a number of avenues. "Certainly children can be a source of the germs," she explains, as toddlers often ride in carts when accompanying their parents, but Duberg doesn't downplay the role of the consumers either. "We may bring in germs with our hands," she adds.

Depending on our immune systems, many of these pathogens have the potential to make us sick, too. "Especially the fecal coliforms," notes [Elizabeth Scott](#), an assistant professor of biology at Simmons University in Boston. "The concern is that we can pick up pathogens from the cart that can be transmitted directly to our mouths or to other foodstuffs."

Is this really that big of a concern, though? Germs are everywhere, from to They're always going to be present, so how bad could a shopping cart be?

Duberg cites Gerba's findings for the answer: "[There are] 138,00 total bacteria per square inch of a shopping cart — an amount which exceeds the number of bacteria in the average public restroom," she says. "These are fecal bacteria capable of causing illness."

Unfortunately, fecal germs aren't the only bacteria to be wary of. "There are bacteria capable of causing food-borne illnesses such as Salmonella, Shigella, Listeria, and, of course, E. coli O157H7 that may be hiding in the food we are purchasing, especially the fruits and vegetables and raw meats," says Duberg. "You can tell by doing a quick scan of food recalls," such as these [online safety alerts posted by the FDA](#), she adds.

Taking both fecal and food-borne pathogens into account, it's no wonder there are disinfecting wipes in almost every supermarket. But as it turns out, they may not be as effective as we think.

"In theory, it's a good idea, but rather hard to achieve," explains Scott. "Where do you apply the disinfectant? How effective is the disinfectant? It's much better to practice careful hand hygiene and use alcohol hand sanitizer and hand washing."

Duberg adds that most of the wipes are utilizing benzalkonium chloride — and not bleach or alcohol — a disinfecting agent. This means that in order to sanitize, shoppers should be thoroughly wetting the surface areas (handles, grates, coffee cup holders) with the wipes. But if a shopper wanted to disinfect, Duberg says most brands of benzalkonium chloride recommend you leave the surfaces wet for up to four minutes.

The good news, she adds, is that if you thoroughly wet the surfaces with a benzalkonium chloride wipe, "you're going to get way over 99 percent" of the germs.

Or, if you'd rather skip that step, you can just grab a hand-held basket instead. Baskets might contain the same pathogenic bacteria as a cart, but as Scott says, "If it's baskets vs. carts, at least baskets aren't used to carry kids."

But just to be safe, you should probably make time to wipe down the basket, too.



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor and City Council Members

FROM: Mark Fachin, P.E., Public Works Director/City Engineer

DATE: May 20, 2020

TYPE OF REPORT: Non Consent Agenda

SUBJECT: Entering into a Professional Services Agreement with Vanir Construction Management, Inc. for Project Management Services for the New Police Department Facilities Project

Recommendation:

That the City Council adopts the Resolution entering into an Professional Services Agreement (Agreement) with Vanir Construction Management, Inc. for the Project Management Services for the New Police Department Facilities Project, and authorize the City Manager to execute the Professional Services Agreement. The administration of this Professional Services Agreement is to be performed by the Public Works Director/City Engineer. Said agreement is not to exceed \$68,835.00 for Phase 1, Pre-design Services.

Background:

In the 51 years since the original Police Headquarters Building, located at 945 5th Street, was moved into in 1969, the Los Banos Police Department (LBPD) has continuously occupied the building, while the City has grown around it. As such, the LBPD is now experiencing impediments to the timely and proper execution of its routine public safety and related support operations at its present facilities.

As a response to the issue of replacing the current police facilities with a new Police Station Building, many tasks have been undertaken and completed over the past several years.

Here is a listing which highlights the tasks taken to reach the goal of building a new Police Station:

- On January 17, 2018, a purchase and sales agreement was entered into by the City of Los Banos for the purchase of approximately 3.6 Acres of land located at 1111 G Street, Los Banos, California. This land is to be the site of the new Police Station.
- On October 17, 2018, the City Council awarded a Professional Services Agreement for the preparation of a Police Facilities Needs Assessment Report.
- On September 18, 2019, the City Council adopted Resolution 6130 which accepted the Police Facilities Needs Assessment Report.
- The purchase of approximately 3.6 Acres of land located at 1111 G Street, Los Banos, California, for the future site of the new Police facility was recorded on April 21, 2020.

Discussion:

The City of Los Banos released a Request for Qualifications (RFQ) for Engineering Services for Project Management Services for the New Police Station Project on January 9, 2020.

On February 7, 2020, four project management firms submitted RFQ's to the City Clerk.

The Firms were: California Professional Management
SJ Construction Management
Vanir Construction Management, Inc.
Griffin Structures, Incorporated

A four person review panel previewed the submitted RFQ's, and unanimously selected Vanir Construction Management, Inc. to negotiate an agreement with.

This agreement will authorize that Phase 1, Pre-design Services be awarded on a percentage lump sum basis for \$68,835.00

In order to authorize the future project management services phases, separate addendums to this agreement are required to be processed and presented to the City Council for their approval. These addendums will refine the proposal's scope of services and fee for phases 2 and 3 once a clearer definition of the projects parameters are established after the completion of Phase 1.

Future phases are:

- Phase 2, Design, Project Management Services
- Phase 3, Construction, Project Management Services

The City Attorney has approved said agreement as to form.

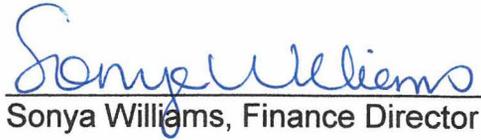
Fiscal Impact:

The percentage lump sum amount of \$68,835.00 for Phase 1 of the Project Management Services for the New Police Station Project has been budgeted in Fiscal Years 2019/2020 and 2020/2021 City Budget Account No. 245-421-100-231, Police Department Capital Improvements, Professional Services.

Reviewed by:



Alex Terrazas, City Manager



Sonya Williams, Finance Director

Attachments:

Resolution

Professional Services Agreement with:

Exhibit A- Phase 1 Scope and Fee

Exhibit B- Phases 2 & 3 Scope

Insurance Certificate

Request for Qualifications (RFQ)

Budget Sheets

Location Map

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH VANIR CONSTRUCTION MANAGEMENT, INC. FOR PROJECT MANAGEMENT SERVICES FOR THE NEW POLICE DEPARTMENT FACILITIES PROJECT

WHEREAS, as Request for Qualifications was issued on January 9, 2020 to perform Project Management Services for the New Police Station Project; and

WHEREAS, staff has reviewed the qualifications of each firm which submitted a proposal, and negotiated the cost proposal with the firm being recommended; and

WHEREAS, the proposed Professional Services Agreement has been reviewed by the City Attorney and approved as to form; and

WHEREAS, this agreement approved the Phase 1 Scope and Phase 1 Cost based on a percentage lump sum of \$68,835.00; and

WHEREAS, due to the project design and construction processes not being completed at this stage, the Phase 2 and Phase 3 Scope and Cost Proposal will need to be approved by the City Council in future Agreement Addendums.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Los Banos does hereby authorize the City Manager to execute a Professional Services Agreement with Vanir Construction Management, Inc. for Project Management Services for the New Police Department Facilities Project.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on the 20th day of May 2020, 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:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF
LOS BANOS AND VANIR CONSTRUCTION MANAGEMENT, INC.,
FOR PROJECT MANAGEMENT SERVICES
[NEW POLICE DEPARTMENT FACILITIES PROJECT]**

THIS AGREEMENT (“Agreement” or “Contract”) is made and entered into this ____ day of May 2020, by and between the City of Los Banos, California, a municipal corporation, (“City,”) and Vanir Construction Management, Inc., a California corporation (“Consultant”).

RECITALS

WHEREAS, City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California.

WHEREAS, City issued a Request for Qualifications (“RFQ”) on January 29, 2020, seeking a qualified consulting firm to provide project management services for the New Police Department Facilities Project.

WHEREAS, on February 7, 2020, Consultant submitted a Statement of Qualifications (“SOQ”) in response to the City’s RFQ.

WHEREAS, the Consultant’s submittal was evaluated and ranked according to the criteria provided in the RFQ.

WHEREAS, City desires to engage Consultant as an independent contractor to provide professional project management services for specific tasks associated with the New Police Department Facilities Project.

WHEREAS, Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.

WHEREAS, City desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **Term.** The term of this Agreement shall commence upon the above written date and shall remain in effect until the completion of Phase 3, Construction Phase, of the Project unless terminated earlier as set forth herein.

2. **Project Description.** Project management services for the development of the New Police Station Project will focus on construction options, design recommendations, contractor selection, and project management. Consultant will assist City with a review and recommendation of construction methods, practical design strategy, work with the City for the selection of the architectural engineering firm for design, work with the architectural engineering

firm selected by the City to design the new facility, and assist the City with selection of a construction contractor. Consultant will participate in construction meetings before and during construction, coordinate submittal review, provide QSP/QSD, schedule material testing, inspection services, review progress payments of contractor, and manage the build of the facility. Consultant will coordinate the installation of technology, security, communications, and furnishings.

3. General Scope of Services. Project management services to be performed by Consultant will generally include, but not limited to, the following:

- a. Provide consulting and professional services for the selection of a preferred construction method.
- b. Provide consulting and professional services for the planning of the preferred building design.
- c. Provide professional services during the bid process for the selection of an architectural engineering firm that will perform the Plans, Specifications, and Cost Estimate for the design of the new police station.
- d. Offer technical support to the architectural engineer during the plan design phase for the station.
- e. Provide professional services during the bid process for the selection of a building contractor.
- f. Provide project records software which is accessible to the contractor and City staff.
- g. Provide field inspections during construction and coordinate field compaction and strength testing.
- h. Provide QSP/QSD support for the project.
- i. Facilitate weekly construction meetings with the City and contractor.
- j. Coordinate with the City's Engineering Division for presentations and/or recommendations to City administration, staff, or City Council in relation to the project.

3.1. Phasing of Scope of Services. The Scope of Services shall be divided into three (3) phases with identifiable tasks within each phase (Phase 1, Pre-Design; Phase 2, Design; Phase 3, Construction) as set forth in the SOQ, incorporated herein by reference.

a. Phase 1. Pre- Design Phase Services: The parties agree that upon execution of this Agreement and notice to proceed issued by City for Phase 1, Consultant shall commence work on Phase 1 Pre-Design Phase Services, Tasks 1 through 5 as set forth in **Exhibit A** attached hereto and incorporated herein by this reference.

b. Phase 2. Design: The parties agree that upon execution of this Agreement and notice to proceed issued by City for Phase 2, Consultant shall commence work on Phase 2, Design Services Tasks 1.0 through 8.8; Construction Bid and Award Tasks 1.0 through 5.0; Development of Bridging Documents (if required) Tasks 1.0 through 3.0; Development of DBE Task 1.0; as set forth in **Exhibit B** attached hereto and incorporated herein by this reference. The parties recognize that the project improvements have not been defined at the time of execution of this Agreement, therefore the parties agree that the scope of work and tasks for Phase 2 may be refined and confirmed in writing by mutual agreement as necessary by amendment/addendum to this Agreement.

c. Phase 3. Construction: The parties agree that upon execution of this Agreement and notice to proceed issued by City for Phase 3, Consultant shall commence work on Phase 3, Construction Phase services Tasks 1.0 through 13.0; Inspection services Items 1.0 through 23.0; Transition Services Tasks 1.0 through 6.0; Warranty Phase Task 1.0; as set forth in **Exhibit B** attached hereto and incorporated herein by this reference. The parties recognize that the project improvements have not been defined at the time of execution of this Agreement, therefore the parties agree that the scope of work and tasks for Phase 3 may be refined and confirmed in writing by mutual agreement as necessary by amendment/addendum to this Agreement.

3.2. Consultant shall provide such services when given written instruction to do so by the Public Works Director, or his designee. Consultant shall diligently perform all the services described in the Scope of Services upon issuance by the City a notice to proceed. The City may elect to delete certain tasks of the Scope of Services at its sole discretion. **Nothing in this Agreement shall be interpreted to obligate City to proceed with the Project or authorize any Phase of Work described in the Scope of Services which decision shall be entirely at the sole discretion of the City.**

3.3. All professional services shall be performed by Consultant or under Consultant's supervision. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional Consultants in accordance with sound professional practices.

4. **Administration.** The Public Works Director shall administer this Agreement on behalf of the City. The Public Works Director or his/her authorized representative shall represent City in all matters pertaining to the services to be rendered pursuant to this Agreement.

5. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the services shall be performed to completion in a diligent and timely manner in accordance with the Project Schedule for each Phase.

5.1 A Project Schedule/Timeline shall be mutually agreed upon for each Phase of the Project by amendment/addendum to this Agreement. The failure by Consultant to perform the services in a diligent and timely manner may result in termination of this Agreement by City. Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the services to

be provided for the Project, each party hereby agrees to provide notice to the other party so that all delays can be addressed.

6. Compensation, Allowable Costs and Payments. City shall pay Consultant for services rendered on a percentage, lump sum basis in accordance with the provisions of this Section as follows:

a. Phase 1. Pre-Design Phase: Consultant's compensation for all work performed in accordance with this Agreement for Phase 1, Pre-Design, including all reimbursable items and sub Consultant fees, shall be a percentage lump sum of **sixty eight thousand eight hundred thirty five dollars (\$68,835.00)** unless otherwise authorized in writing by the City in accordance with the Fee Proposal submitted by Consultant on March 10, 2020 attached hereto as **Exhibit A** and incorporated herein by reference.

b. Phase 2. Design Phase: The parties recognize that the project improvements have not been defined at the time of execution of this Agreement, therefore the parties have agreed that the scope of work and tasks for Phase 2 may be refined and confirmed in writing as necessary by amendment/addendum to this Agreement and agree that a cost proposal on a percentage lump sum basis for Phase 2 shall be incorporated by mutual agreement to reflect the amended scope.

c. Phase 3. Construction Phase: The parties recognize that the project improvements have not been defined at the time of execution of this Agreement, therefore the parties have agreed that the scope of work and tasks for Phase 3 may be refined and confirmed in writing as necessary by amendment/addendum to this Agreement and agree that a cost proposal on a percentage lump sum basis for Phase 3 shall be incorporated by mutual agreement to reflect the amended scope.

6.1. Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Agreement.

6.2. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

6.3. When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

6.4. Progress payments will be made monthly in arrears based on percentage of services provided and actual costs incurred.

6.5. Consultant shall not commence performance of work or services until this contract has been approved by the City, and notification to proceed has been issued by the City's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this contract.

6.6. Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the City's Contract Administrator of itemized invoices. Invoices shall be submitted no

later than forty five (45) calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone, as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference the project title. Invoices shall be mailed to the City's Contract Administrator at the following address:

City of Los Banos,
Mark Fachin, P.E.,
Public Works Director/City Engineer
411 Madison Avenue,
Los Banos, CA 93635

6.7. The total amount payable by the City shall not exceed the amount agreed upon, unless authorized by contract amendment.

6.8. If the Consultant fails to satisfactorily complete a deliverable according to the schedule, no payment will be made until the deliverable has been satisfactorily completed.

7. **Subcontracting.** Nothing contained in this contract or otherwise, shall create any contractual relation between the City and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to the City for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from the City's obligation to make payments to the Consultant.

7.1. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the City's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

7.2. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by the City.

7.3. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

7.4. Any substitution of subconsultant(s) must be approved in writing by City's Contract Administrator prior to the start of work by the subconsultant(s).

8. **Indemnification.** When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Sub consultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Sub consultants) and the City in the performance of professional services under this agreement.

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.

Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

In the event the City indemnities are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant's performance of this agreement, the Consultant shall provide a defense to the City indemnities, or at the City's option, reimburse the City indemnities their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

This Section and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the City may have at law or in equity.

9. Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, a policy or policies of liability insurance of the type and amounts described below and in a form satisfactory to City.

A. Certificates of Insurance. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Insurance certificates must be approved by the City Attorney prior to commencement of performance or issuance of any permit. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement.

B. Signature. A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies.

C. Acceptable Insurers. All insurance policies shall be issued by an insurance company

currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City Attorney.

D. Coverage Requirements.

i. *Workers' Compensation Coverage.* Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his or her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by City at least thirty (30) calendar days (10 calendar days written notice of non-payment of premium) prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.

ii. *General Liability Coverage.* Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, contractual liability. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall be at least twice the required occurrence limit.

iii. *Automobile Liability Coverage.* Consultant shall maintain automobile insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

iv. *Professional Errors and Omissions Insurance.* Consultant shall maintain professional errors and omissions insurance, which covers the services to be performed in connection with this Agreement in the minimum amount of one million dollars (\$1,000,000) per claim and not less than two million dollars (\$2,000,000) in the annual aggregate.

E. Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following specific language:

i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant.

ii. This policy shall be considered primary insurance as respects to City, its elected or appointed officers, officials, employees, agents and volunteers as respects to all claims, losses, or liability arising directly or indirectly from the Consultant's operations or services provided to City. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against City, its elected or appointed officers, officials, employees, agents and volunteers.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its elected or appointed officers, officials, employees, agents or volunteers.

vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, by either party except after thirty (30) calendar days (10 calendar days written notice of non-payment of premium) written notice has been received by City.

9.1. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

9.2. All subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured to the subconsultant's policies.

10. Nondiscrimination. In the performing of this Agreement, Consultant shall not discriminate against any subcontractor, employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation race, religion, color, national origin, handicap, ancestry, sex or age.

11. Independent Contractor. It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the services.

11.1. The Consultant shall at all times remain an independent Contractor with respect to the services to be performed under this Agreement and shall be responsible for the payment of Federal and State Employer Withholding Taxes, Unemployment Insurance Taxes, FICA Taxes, Retirement, Life and/or Medical Insurance, and Worker's Compensation Insurance for the

employees of the Consultant or any other person performing services under this Agreement. Consultant and its employees are not entitled to the rights or benefits afforded to City's employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave, or any other employment benefit. Consultant agrees to indemnify and hold City harmless from any claims, costs, losses, fees, penalties, interest, or damages suffered by City as a result of any claim by any person or entity contrary to the provisions of this Section.

12. Ownership of Documents. All documents, information and materials of any and every type furnished or prepared by the Consultant or any of its subcontractors pursuant to and in the course of performance of this Agreement shall be and remain the sole and exclusive property of the City. Such documents, information and materials shall include but not be limited to all findings, reports, plans, specifications, studies, drawings, estimates, documents, information and data including, but not limited to, electronic media, computer tapes or discs, files, and tapes furnished or prepared or accumulated by the Consultant in performing work under this Agreement, whether completed or in process. City shall have the sole right to use such documents, materials and information in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such documents, materials and information to City upon prior written request.

12.1. All Documents shall be considered works made for hire and all Documents and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of the City without restriction or limitation upon their use, duplication or dissemination by the City. Consultant shall not obtain or attempt to obtain copyright protection as to any Documents.

13. Confidentiality. All City information disclosed to Consultant during the course of performance of services under this Agreement shall be treated as confidential and shall not be disclosed to any other persons or parties except as authorized by City, excepting that information which is public record and subject to disclosure pursuant to the Public Records Act, or otherwise required by law. All documents, including drafts, notes and communications that result from the services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information, excepting that information which is public record and subject to disclosure pursuant to the Public Records Act, or otherwise required by law.

14. Access to Records. Consultant shall maintain all books, records, documents, accounting ledgers, and similar materials relating to work performed for City under this Agreement on file for at least three (3) years following the date of final payment to Consultant by City. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit and copying at reasonable times, during Consultant's usual and customary business hours. Consultant shall provide proper facilities to City's representative(s) for access and inspection. Consultant shall be entitled to reasonable compensation for time and expenses relate to such access and inspection activities, which shall be considered to be an additional service to the City, subject to the provisions of Section 5 hereinabove.

15. Conflict of Interest. Consultant shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this contract, or any

ensuing City construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project, which will follow.

15.1. Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

15.2. Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

15.3. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

15.4. Consultant hereby certifies that neither Consultant, its employees, nor any firm affiliated with Consultant providing services on this project prepared the Plans, Specifications, and Estimates for any construction project included within this contract. An affiliated firm is one, which is subject to the control of the same persons through joint- ownership, or otherwise.

15.5. Consultant further certifies that neither Consultant, nor any firm affiliated with Consultant, will bid on any construction subcontracts included within the construction contract. Additionally, Consultant certifies that no person working under this contract is also employed by the construction contractor for any project included within this contract.

15.6. Except for subconsultants whose services are limited to materials testing, no subconsultant who is providing service on this contract shall have provided services on the design of any project included within this contract.

16. **Assignment.** This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City.

16.1. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Consultant shall be fully responsible to City for all acts and omissions of the subconsultant. Nothing in this Agreement shall create any contractual relationship between City and subconsultant nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subconsultant other than as otherwise required by law.

17. **Compliance with Laws, Rules, Regulations.** Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

17.1. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

17.2. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

17.3. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

17.4. Consultant shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

17.5. Consultant is aware of the requirements of California Labor Code section 1720, et

seq., and 1770, et seq., as well as California Code of Regulations, Title 8, section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the Services are subject to the Prevailing Wage Laws, Consultant agrees to fully comply with such Prevailing Wage Laws.

18. Debarment and Suspension Certification. Consultant’s signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)”, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicated, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the City.

Exceptions will not necessarily result in denial of recommendations for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

19. Integration; Amendment. This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in it. This Agreement may not be modified or altered except by amendment in writing sign by both parties.

20. Severability. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

21. Waiver/Validity. Consultant agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver of any other condition of performance under this Agreement. The acceptance by the City of the performance of any work or services by Contractor shall not be deemed to be a waiver of any term or condition of this Agreement.

22. Jurisdiction. City and Consultant agree that the law governing this Agreement shall be that of the State of California. Any suit brought by either party against the other arising out of the performance of this Agreement shall be filed and maintained in the County of Merced.

23. Notice. Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed

to the parties as follows:

To City: Mark Fachin, P.E.
Public Works Director/City Engineer
411 Madison Avenue
Los Banos, California 93635

To Consultant: Scott Murphy, CCM
Vanir Construction Management, Inc.
2444 Main Street, Suite 130
Fresno, California 93721

24. **Termination.** The City may, in its sole discretion, terminate this Agreement at any time and for any reason whatsoever by giving written notice of such termination to Consultant. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. In the event of such termination, Consultant shall be entitled to compensation for all services rendered and work performed for City to the date of such termination.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

**VANIR CONSTRUCTION
MANAGEMENT, INC., a California
corporation**

Date: April 7, 2020



by: **Steven Whitehead**
title: **President**

**CITY OF LOS BANOS, a California
municipal corporation**

Date: _____, 2020

by:
title:

**ATTEST:
CITY CLERK**

Lucille L. Mallonee, City Clerk

APPROVED AS TO FORM:

William A. Vaughn
City Attorney

EXHIBIT A

Vanir Proposal dated March 10, 2020



Construction Management, Inc.

2444 Main Street, Suite 130
Fresno, CA 93721
T 559-496-0536
F 559-860-0173
www.vanir.com

March 10, 2020

Mr. Mark Fachin
Public Work Director/City Engineer
City of Los Banos
411 Madison Avenue
Los Banos, CA 93635

**RE: City of Los Banos – New Police Department Project
Pre-Design Services, Phase 1**

Dear Mr. Fachin:

In response to our discussion on March 5, 2020, Vanir CM respectfully offers the following scope of services and fee proposal to provide pre-design phase (only) project management services to the City of Los Banos – New Police Department Project.

Vanir Construction Management, Inc. (Vanir) continuously tracks the construction market across the nation in order to forecast variations in the market for our clients. In the recent past, a few high-profile Justice projects in California were flagged by Vanir because they received fewer bids than expected, causing the projects to bid over budget. In turn, Vanir directed its staff to perform more extensive research targeted specifically at the California construction market to determine the cause of these anomalies. This research included interviews with large and small construction firms (both general contractors and subcontractors), interviews with several industry organizations, and gathering facts from various industry publications.

Vanir's research revealed that these anomalies are the result of six merging conditions that are causing volatility in the market.

- 1) Construction firm's desire for financial health outweighs its desire to grow (take on risk)
- 2) Reduction in the quantity of construction firms throughout the state
- 3) Increasing volume of construction work in various locations throughout the state
- 4) Shortage of skilled labor
- 5) Risk in traveling to remote locations
- 6) Absence of a prequalification process for general contractors on selected projects

The research also brings to light that these anomalies are, in fact, an actual market trend. In the short term, contractors will not be able to keep up with the increasing volume of work, will experience a lack of manpower, and will be much more selective of projects. The market began to see the effects of these conditions around March/April of 2015 and we continue to see the trends today.

Vanir understands that in a growing market, construction costs rise over time (some due to escalation, some due to market conditions). The research is predicting an increase in construction costs across the



state over the next few years. The increase varies depending on the location of the project. For the purpose of our study, we divided the state into seven geographic regions and analyzed each region to determine the magnitude of the increase.

Due to the changes in the market observed thus far and the changes predicted over the next few years, Vanir endorses the following strategies in order to stave off bid day cost overruns:

- i. a comprehensive regional contractor outreach program,
- ii. the incorporation of a market factor into the project budget, and
- iii. the development of a prequalification process for general contractors
- iv. highly biddable set of construction documents
- v. defined policies and procedures for contract management

Scope of Services

The scope of services outlined below includes a list of tasks that Vanir can perform within the timeline provided. *This Proposal is based on Vanir starting in the Pre-Design phase (Phase 1) April 16, 2020 with the Design Phase (Phase 2) and the Construction Phase (Phase 3) start and duration to be determined in the Pre-Design Phase.* Therefore, a separate proposal will be provided for the Design (Phase 2) & Construction (Phase 3) Phase services.

Pre-Design Phase Services (~ 6 weeks)

The Pre-Design Phase will include a kick-off meeting to review, among other items, potential funding opportunities for the City.

Task #1 – Cost Management: Effective cost management begins with the establishment of a realistic budget. The City's project budget included in the Needs Assessment performed by Indigo Architects will be verified from our initial conceptual cost estimates which will contain sufficient detail to track changes as the design progresses. Given the City is wanting to determine the appropriate project delivery method for the project, the City has requested separate conceptual construction cost estimates utilizing the following criteria:

- 30,000 SF Traditional Building using the Design-Bid-Build Delivery Method
- 30,000 SF Traditional Building using the Design-Build Delivery Method
- 30,000 SF Modular Building using the Design-Build Delivery Method (for Modular Building)
 - In this scenario, the project to be broken into two Bid Packages, one for the modular building and one for the site work.

Throughout the entire design process Vanir will be focused on Value Engineering the design. We will be continuously evaluating the impact of the decisions being made by the project team from a cost perspective. This will include not only looking at initial cost but evaluating the overall lifecycle cost. At any time during the design, specific cost estimates can be prepared to evaluate



the cost impact of pending decisions, thereby maintaining confidence that the project will bid at or under budget.

Task #2 – Project Delivery Method Evaluation: One of our major responsibilities as a project CM is to advise the Owner on the right delivery method for the City’s specific project. To do so, we need a clear understanding of the types of delivery methods available; be aware of any area restrictions and Owner constraints; and be familiar with what local resources can support. Vanir will refrain from injecting our own preferred method and will remain delivery system neutral when presenting the alternatives.

The major criteria that will be considered in the selection of a delivery method are:

- Legal requirements.
- Project costs.
- Project type.
- In this case, current level of design.
- Scheduling needs.
- Ability of local design & construction industry to respond to chosen alternatives.
- Industry input.
- Owner’s required or desired level of design input.
- Owner’s preference.

The two prominent delivery methods used today are Design-Bid-Build and Design-Build. There are other delivery methods (i.e. Job Order Contracting or JOC) as well as multiple variations of each of the identified delivery methods. In the end, the Owner, their project needs, project costs, funding and regulatory restrictions will guide the discussion for selection of the right delivery method for the City’s project.

Task #3 – Schedule Management: One of our initial tasks will be to develop a master schedule showing all the summary tasks that are required during the life of the project once a delivery method is selected. This master schedule becomes the major reporting vehicle throughout the life of the project. Detailed task information is added during the various stages of design, and construction. Progress of each phase and its activities are monitored continually and reported regularly to the project team.

Vanir has developed stringent schedule specifications for inclusion in the contract documents which are tailored to meet the specific needs of California construction projects. These schedule specifications require the contractor to provide a schedule containing cost loading, manpower loading (or other time verification measures) and sufficient detail to accurately monitor the progress of construction. These requirements form the basis for sound time management as well as cost/budget control during construction and provide the “teeth” to enforce schedule compliance during construction.



- Task #4 – Assist the City with Funding Opportunities & Cash Flow Analysis:
 - Review the USDA Rural Funding requirements
 - Review California Block Grant requirements
 - Prepare Cash Flow Schedule.
 - Prepare cash flow projection schedule for loan requests.
 - Prepare monthly schedule as needed.

- Task #5 – Architectural Programming: The success of the project will be based on establishing clear goals and direction for design and construction of the Project. That direction is dependent on sound architectural programming that reflects the operational and programmatic goals of the City and the Police Department. Our approach will include three (3) basic activities as required:
 - Needs Assessment Validation: The needs assessment validation will include review of projected facility size, support spaces and facility configuration.
 - Architectural Space Program Validation: This activity will explore your intended approach to the operations and service programs of the facilities. The information gained will help finalize space requirements, adjacencies and operational flows. It will include analysis of codes including Title 15, 19 & 24 requirements, staffing, operations and project timeline.
 - BIM Modeling: Modeling the project during the preconstruction phase confirms the program (what you model is what you get) and provides integrated cost control. Our massing models will give you a “first look” at the anticipated internal configuration and give you a sense of the issues that might be inherent in development of the site. In addition, the model becomes an interactive basis for accurate cost modeling. Vanir will perform the following:
 - Model current proposed program areas, review with owner, and develop cost achievable concept interior plan layouts.
 - Review specialty plan areas (intake) in existing police department for any functional deficiencies and suggest modifications for remodel alternatives.
 - Develop concept overall square footage plan mockups for new facility for initial constructability and cost validation.
 - Conduct one (1) value engineer workshops to validate and refine proposed conceptual space plans and allow for selection of preferred alternatives to meet the budget.

Scope of Services Timeline

<u>Phase</u>	<u>Start Date</u>	<u>Completion Date</u>
Pre-Design Phase (Phase 1)	Thurs 5/21/20	Tue 7/7/20

End of Scope & Schedule – Fee Next Page



FEE PROPOSAL: Project Cost/Timeline

Project Mgmt. Phase Services	Fees	% of Total Project Cost \$25,000,000	Schedule Durations
Pre-Design Phase Task Nos. 1 - 5:	\$67,635		6 weeks
Reimbursable Expenses	\$1,200		
Subtotal	\$68,835	0.27%	
Total	\$68,835	0.27%	

Our services will be delivered and billed on a Percentage, Lump Sum basis.

We look forward to a successful project and building a great and strong working relationship with the City of Los Banos and the project team. Thanks again for the opportunity and as always, please call with any questions.

Sincerely,
VANIR CONSTRUCTION MANAGEMENT, INC.

Scott Murphy, CCM
Project Director

Cc: Jerry Avalos, Area Manager – Principal-in-Charge, Vanir CM

EXHIBIT B

Vanir Proposal dated March 16, 2020



Construction Management, Inc.

2444 Main Street, Suite 130
Fresno, CA 93721
T 559-496-0536
F 559-860-0173
www.vanir.com

March 16, 2020

Mr. Mark Fachin
Public Work Director/City Engineer
City of Los Banos
411 Madison Avenue
Los Banos, CA 93635

**RE: City of Los Banos – New Police Department Project
Design & Construction Phase Services, Phase 2 & 3**

Dear Mr. Fachin:

In response to our discussion on March 5, 2020, Vanir CM respectfully offers the following scope of services proposal to provide Design and Construction phase project management services to the City of Los Banos on the New Police Department Project. The proposal is provided without fee or timelines until the City is able to determine the project delivery method and a master schedule is developed.

Scope of Services

The scope of services outlined below includes a list of tasks that Vanir can perform once the City makes selection on project delivery method.

Design Phase Services (Phase 2, Time - TBD)

Task #1 – Project Management Plan: During the design phase, Vanir will work closely with the architect to initiate project tracking and control methods to ensure that the project is designed in compliance with the City's needs, defined program requirements and design criteria including adherence to established budget and schedule requirements. Essential to this task is the development of the Project Management Plan. The Project Management Plan will be our "road map" and the guiding document for management of design, bid/award, construction, and project close-out. As a "living" document, the major components of the plan will identify roles and responsibilities, project delivery strategies, public relations, design and construction oversight and management, control agency liaison, lines of communication and approval, project level budget, project level schedule major milestones and funding, project controls, reporting, systems, procedures, and commissioning. This plan will become a "virtual" look at the entire project development process. The plan will outline all work activities and assignments to establish a clear understanding of the work expectations necessary for good working relationships among all team members and successful delivery of the project.

Task #2 - Architect Selection: Vanir will work with the City to establish the architectural scope of work, develop architectural design agreement, and assist in negotiation of the fees on behalf of the City for design services. Our Design Phase Manager will be responsible for coordination of



services with the City and the selected Architectural/Engineering (A/E) Firm or Design Build Entity (DBE) throughout the administration of the architectural contract and management of the design process of the project.

Task #3 -Additional Consultant Selection: Depending on the preference of the City and legal requirements we will manage the selection process for the City of the necessary additional consultants including geotechnical, topographic & boundary survey, environmental, traffic, zoning, testing and inspection.

Task #4 – Schedule Management: One of our initial tasks will be to develop a master schedule showing all the summary tasks that are required during the life of the project once a delivery method is selected. This master schedule becomes the major reporting vehicle throughout the life of the project. Detailed task information is added during the various stages of design, and construction. Progress of each phase and its activities are monitored continually and reported regularly to the project team.

Vanir has developed stringent schedule specifications for inclusion in the contract documents which are tailored to meet the specific needs of California construction projects. These schedule specifications require the contractor to provide a schedule containing cost loading, manpower loading (or other time verification measures) and sufficient detail to accurately monitor the progress of construction. These requirements form the basis for sound time management as well as cost/budget control during construction and provide the “teeth” to enforce schedule compliance during construction.

Task #4 – Design Review Meetings: An essential part of the tracking process involves conducting regular meetings with the design team. These meetings include:

- Initial Design kick-off meeting
- Review of progress of the design efforts
- Review of each consultant’s progress
- Making course corrections that effect cost, schedule or quality
- “Over-the-shoulder” review of budget compliance
- Checks for compliance of the design efforts with the program and any special requirements
- Tracking of ongoing issues which may require input from individuals not present in the meeting

Nothing in this Agreement shall be construed to mean that VANIR assumes any of the responsibilities or duties of the Design Professional. The Design Professional is solely responsible for the Project design and shall perform in accordance with the agreement between the Design Professional and the CITY.

Task #5 – Cost Management from Design to Completion: Effective cost management begins with the establishment of a realistic budget. The project budget will be verified from our initial cost estimates which will contain sufficient detail to track changes as the design progresses. Throughout the design process Vanir will prepare cost estimates to confirm the design is in line



with budget requirements and will recommend changes should they be required to maintain budget. These cost estimates occur at the completion of the following phases of design:

- 100% Schematic Design (Conceptual Estimate)
- 100% Design Development (Full Estimate)
- 50% Construction Documents (Update Estimate)
- 95% Construction Documents (Update Estimate)

Throughout the entire design process Vanir will be focused on Value Engineering the design. We will be continuously evaluating the impact of the decisions being made by the project team from a cost perspective. This will include not only looking at initial cost but evaluating the overall lifecycle cost. At any time during the design, specific cost estimates can be prepared to evaluate the cost impact of pending decisions, thereby maintaining confidence that the project will bid at or under budget.

Task #6 – Constructability & Plan Review: Experience has shown that the ability to reduce project costs is much greater early in the life of a project. Much of the opportunity is past once the contract is out for bid. Thus, technical plan review during the design phase is key to a successful project. Our review of the documents is designed to reduce errors, ambiguities, omissions and conflicts prior to bid. Constructability reviews result in contractors using lower bid contingencies due to clearer bid documents, reduced change orders, fewer schedule impacts and are a key to claims avoidance. It has been proven for every dollar spent on Constructability Reviews and Backcheck, the project will experience \$8 in construction phase cost savings. These reviews will occur at the following milestones:

- 50% Construction Documents (Full Review)
- 95% Construction Documents (Back Check Review)

VANIR is not responsible for providing, nor does VANIR control, the Project design or the contents of the design and construction documents. By performing the reviews described herein, VANIR is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design and design and construction documents. VANIR'S actions in reviewing the Project design and design and construction documents and in making recommendations as provided herein are advisory only to the CITY. The Architect is not a third-party beneficiary of VANIR'S work described herein and the Architect remains solely responsible for the contents of design drawings and design and construction documents. No warranty, either express or implied, is included or intended in this report.

Task # 7 – Contractor Pre-Qualification Process: There are advantages and disadvantages with pre-qualifying contractors for construction projects. Vanir will provide the City an opportunity to assess the list of pros and cons, discuss what is right for the City and the project, depending on the delivery method (Rq'd w/D/B Delivery Method), and make an informed decision. If the City decides to use a pre-qualification process; Vanir will assist with establishing timelines, set-up an appeals process, develop pre-qualification package (RFP) with scoring matrix, marketing the RFP to the general contracting community, evaluate pre-qualification package submittals, assist with client interviews and formal notification of pre-qualified contractors.

Advantages of Pre-Qualification



- Reduces risk by replacing some of the uncertainty inherent in open bidding with a more predictable, controlled environment.
- Pre-qualification allows the Owner to disqualify bidders who state falsehoods or misrepresent the facts behind an unfavorable safety record, and who have a history of filing fraudulent or exaggerated claims.
- It discloses a bidder's experience and competence to work on a particular type of project.
- It tends to eliminate those bidders who do not have sufficient resources to adequately document and oversee their in-house operations. The task of fulfilling the reporting requirements, assembling the pre-qualification forms, and submitting them properly may be too daunting for disorganized, often poorly staffed contractors.
- It aids in the bid marketing of the project well in advance of the anticipated start of construction. This early glimpse of an upcoming project as a component in the local construction environment allows contractors to begin discussions with subcontractors, and possibly obtain more reasonable prices than with immediately bid projects.
- It tends to reduce the possibility of post bid protests. This is because the task of determining responsible bidders, often the most difficult and contentious aspect of the award of the contract, is confined to the pre-bid phase.
- It establishes within the bidding community the importance of the project to the Owner.

Task # 8 – Commissioning (Design Phase): We will perform a focused approach to the commissioning process in all phases of the project for all of your building systems. We have in-house professionals that can perform these commissioning services, or we can bring in the required commissioning professionals as part of our team.

Category 1: Provide design review, submittal review and commissioning of MEP systems including HVAC, BMS, lighting, water, renewable systems, emergency systems, and power monitoring systems.

Category 2: Provide significant value in low voltage systems integration including radio, detention and non-detention systems to ensure functional capacity and quality of your communications, data, audio-visual, fire-alarm and security systems.

- Develop an Owner Project Requirements (OPR) document.
- Conduct Design Reviews for Commissioned Systems
- Review of Basis of Design (BoD) developed by the Architect in response to OPR.
- Incorporating Commissioning in Construction Documents (CDs)
- Commissioning Plan Development/Implementation
- Develop Commissioning Specifications
- Issues log for tracking/action/resolution of Commissioning items throughout the project

Construction Bids and Award Services (Time - TBD)

Receiving competitive, complete and responsive bids is a fundamental requirement for a successful project. At no time during the entire process, from pre-design through occupancy, is our ability as



project managers as graphically demonstrated as during the bidding process. Receiving bids from responsible and reliable contractors at a price within the budget is a basic necessity. While it is true that the underlying work to achieve this objective must be accomplished prior to the bid phase, we can make a difference in getting the best bids for you by our efforts during the bid process.

Task #1 – Bid Solicitation: In conjunction with the City, we will conduct a pre-bid solicitation effort to make contractors and sub-contractors aware of the project and confirm this project on their bid schedules. It has been proven that the competitiveness of a bid effort is directly proportional to the number of participating in the effort. Vanir will work to achieve maximum bid coverage at all levels.

Task #2 – Bid Process Administration: Vanir's project manager will be responsible for the administration of the bidding process including bid solicitation, advertising, document control, issuance of addenda, pre-bid conference and assisting the City in the opening and evaluation of bids. Our project manager will work closely with the City in the event of a bid protest.

Task #3 – Pre-bid Conferences: These conferences are a forum for the project team to impart to the bidders all of the project parameters with emphasis on the unique features and requirements of the project. These parameters normally include information concerning schedule requirements, time/cost control requirements, access and staging requirements, management and administrative requirements, and technical information on the project.

Task #4 – Bid Opening and Evaluation: All bids will be carefully evaluated for completeness, full responsiveness and price. We will make a formal recommendation to the Foundation, in writing, regarding award of the contract.

Task #5 – Blind Bid Process: Assist the City in performing the "Formal Bid" process in accordance with PUBLIC CONTRACT CODE when opening the project bids. Using the Formal Bid Process the contracts will be awarded to the lowest responsive responsible Bidder based on any combination of Base Bid and Alternates as determined by the City. Bids may be based on any combination of Base Bid and Alternates as determined by the City. All awards will be made in the City's best interest and subject to City's final approval.

Should the City Decide to use the Design-Build Delivery Method, the following tasks would add on to or replace some of the above scope.

Development of Bridging Documents/DBE RFP (Time - TBD)

Task #1 – Bridging Documents

- BIM Modeling: Modeling the project during the preconstruction phase confirms the program (what you model is what you get) and provides integrated cost control. As the architectural program is further developed, we will test its application on the site. Our massing models will give you a "first look" at the anticipated configuration and give you a sense of the issues that might be inherent in



development of the site. In addition, the model becomes an interactive basis for accurate cost modeling.

- Conduct plan review two (2) webinar workshops to validate and refine proposed conceptual space plans and allow for selection of preferred alternate.
- Develop the bridging plans and specifications to a heavy Schematic Design level.
 - Site Plan
 - Architectural Floor Plans
 - Concept Section
 - Single Line Diagram
 - Utility Plan
 - Material Descriptions
 - Room Data Sheets
 - Outline Technical Specifications
- Loose Furniture drawings to be developed by the City, not Vanir. However, Vanir can coordinate with local furniture vendor contracted through the City for plans & specs.

Task #2-Conceptual Budget: Vanir will work with the City to refine the conceptual budget previously developed for the City's review. Long-term life cycle costs and maintenance staff efficiency will be taken into account when modeling.

Task #3 - Design-Build Entity (DBE) RFP Development: Vanir will work with the City to establish the DBE scope of work, pre-qualification process and develop DBE design agreement.

DBE Pre-Qualification, Evaluation and Selection (Time - TBD)

Task #1 – Development of the DBE Pre-Qualification Package & Process:

Vanir will serve as the Design Phase Manager and will be responsible for coordination of services with the City and the selected DBE team throughout the administration of the architectural contract and management of the DBE process of the project.

- Develop the DBE Selection Process
- Develop the DBE Pre-Qualification Package
- Develop the DBE Pre-Qualification Scoring Criteria
- Evaluate the DBE Pre-Qualification Package
- Attend one (1) on site meeting with City stakeholders to finalize DBE selection.
- Assist in negotiation of the fees on behalf of the City for design and construction services. Attend one (1) on site meeting with the City stakeholders and DBE for final negotiations.

Construction Phase Services (Phase 3, Time - TBD)



Vanir's construction manager will be responsible for contract administration and in conjunction with the construction manager will establish and implement the required procedures between the City, the architect and the contractor. Success during the construction phase depends on the establishment and implementation of proper project controls systems along with the establishment of positive working relationships. Vanir will strive to establish trust among all team members and to keep their focus on the overall success of this project. With the participation and approval of the City, Vanir will complete the following tasks:

Task #1 – Submittal Procedures: Vanir will establish and maintain the formal process for submission and tracking of project documents including submittals, RFI's, proposed changer orders, change orders, payment requests, schedule updates and all other contractually required documents.

Task #2 – Jobsite Meetings: Our construction manager in conjunction with the City will conduct regular jobsite progress meetings with the contractor and major subcontractors to identify and resolve issues that may impact the progress of the project. We will record, transcribe and distribute minutes to all attendees, the City and all other appropriate parties.

Task #3 – Quality Assurance: Vanir will work with the City to develop a quality assurance plan for the construction of the project. This plan will define the technical inspection and testing requirements provided by third parties. All technical inspection reports will be in a format approved by Vanir and will be received and distributed by Vanir on a regular basis.

Task #4 – Construction Observation: Our construction manager will observe the construction effort for the City on a daily basis and report any deviations, defects or deficiencies that are observed in the work. We will work with the contractor and the architect in the timely resolution of identified issues to minimize time and cost impacts.

Task #5 – Construction Progress Review: On a monthly basis we will review the progress of construction with the contractor, observe work in place, identify properly stored materials and evaluate the percentage complete of each construction activity as indicated in the construction schedule. This will serve as data for input to the monthly update report which will be prepared and distributed to all appropriate parties. This report will reflect the contractor's contractual progress and will be the basis for the monthly progress payment to the contractor.

Task #6 – Monthly Construction Schedule Updates: Vanir will prepare and distribute monthly construction schedule updates. After an evaluation of the actual progress as observed by Vanir, schedule activities will then be assigned percentage complete values in conjunction with the contractor's progress. A report will be generated to reflect actual progress as compared to schedule progress noting variances. This report will also be the basis for determining implementation of certain City prerogatives concerning progress of the project should they be required.



Task #7 – Monthly Construction Payment Reports: Vanir will prepare and distribute the monthly construction payment reports which will be an integral function of the monthly schedule report. This report will reflect the total construction contract price, contractor’s payment to date, current payment requested, retainage and actual amounts owed for the current period. The final portion of this report will be a certificate of payment which will be executed by Vanir, the architect and the contractor and transmitted to the City for use in payment to the contractors.

Task #8 – Change Order Processing System: Vanir will establish and implement a change order processing system. All owner requested changes will first be set forth in a document from the architect outlining in detail the change and accompanied by technical drawings and specifications, if necessary. A request for proposal will be transmitted to the contractor by Vanir and a detailed breakdown of cost and time will be prepared by both the contractor and Vanir prior to negotiation of the change order. Vanir will evaluate the contractor’s proposed cost and will make a formal recommendation regarding acceptance of the proposal for a change order.

Task #9 – Negotiation of Change Order Costs and Time Extensions: Vanir, in conjunction with the City, will negotiate change order costs and time extensions on behalf of the City. Vanir will advise the City of acceptability of price and time extension prior to the execution of any change order.

Task #10 – Claims Avoidance: Claims avoidance has the highest priority at Vanir, and we are proud of our record of performance in this area. Honest parties can have reasonable, justifiable disagreements over construction claims issues and still resolve these matters by maintaining a professional demeanor. Our team believes that disputes should be resolved at the earliest possible time and that they should be resolved fairly. When disputes do arise, our approach is to research the facts around the issue thoroughly, bring all parties involved to the table, discuss the matter and reach resolution. In our efforts to bring amicable resolution to disputes, we have used several alternative dispute resolution procedures such as Dispute Resolution Boards and Mediation.

Task #11 – Instruction Manuals & Training: Prior to the conclusion of construction we will work with the contractor and subcontractors to obtain all written material such as operations and maintenance manuals, warranties and guarantees for all equipment installed in the project. These will be transmitted to the appropriate City staff for review prior to scheduling operations and maintenance training.

Task #12 – Record Documents: Vanir will perform coordination and expediting functions in connection with the contractor’s obligation to provide “record” documents. Although the transmittal of final record documents takes place at the end of the project it is imperative that this activity be monitored from the beginning of construction to assure accurate documents are available.

Task #13 – Commissioning (construction phase) per Cal Green Code: Vanir will perform a focused approach to the commissioning process in all phases of the project for all of your building systems. We have in-house professionals that can perform these commissioning services or we can bring in the required commissioning professionals as part of our team.



Category 1: Provide design review, submittal review and commissioning of MEP systems including HVAC, BMS, lighting, water, renewable systems, emergency systems, and power monitoring systems.

Category 2: Provide significant value in low voltage systems integration including radio, detention and non-detention systems to ensure functional capacity and quality of your communications, data, audio-visual, fire-alarm and security systems.

Contractor will be responsible to schedule and coordinate the commissioning functions. Vanir will document all commissioning activities and results and provide reports to the City.

- Review Contractor MEP Submittals for sequence of operations and set points
- Verifying installation and startup of MEP and low voltage systems
- Verifying performance testing in Acceptance Phase
- Verify functional testing and preparing of a Commissioning Report
- Verify/assist in facilitating Operations and Maintenance training
- Complete and provide a Systems Manual for Commissioned Systems
- Conduct one (1) building systems assessment/warranty review between 9 - 11 months after turnover/operation.

Task #14 - Systems Training: Training will be incorporated into the contract documents for maintenance operations and staff. We will assist in the training for the opening of a new facility.

Task #15 – Final Completion: Upon completion of all punch list corrective action, Vanir will make a final comprehensive review of the project and issue a report to the City indicating the work performed is acceptable under the contract and make recommendations as to final payment to the contractor and acceptance of the facility.

Construction Manager

Vanir hereby designates TBD as the project's Construction Manager, who, as long as his performance continues to be acceptable to the City, shall remain in charge of the services for the Project from beginning of the program development and design through completion of construction support services provided for in this scope of services. If the designated Construction Manager is unavailable due to extenuating circumstances, Vanir will provide a replacement subject to the City of Los Banos' prior written approval.

Inspection Services (During Construction Phase 3, Time - TBD)

Vanir shall provide competent, comprehensive and cost-effective inspection support for the City of Los Banos (City) New Police Department project that will include one (1) full-time Lead Inspector (LI) (acting as on-site day-to-day IOR under City's Building Official) Monday through Friday. The LI will supplement the City's inspection staff. This scope of work provides for potential weekend and holiday work, if needed.



1. Review construction phase work schedule and develop a project inspection plan by month and construction sequence per the schedule.
2. Review construction drawings, specifications, and building code to develop a project inspection plan.
3. Review and provide comments on the construction contractor's Project Quality Program.
4. Coordinate records management (see below) with the City on-site representative provided through Vanir Construction Management, so as to not duplicate records management and retention requirements.
5. Attend weekly Owner, Architect, Contractor (OAC) meetings and other special meetings as required by the CM. Attend sub-contractor coordination meetings as required by the contractor and the CM. Attend pre-construction, pre-installation, and other coordination meetings required by the contract documents or scheduled by the contractor for specific specification section.
6. Where necessary, the LI will timely schedule and supervise the special inspector and testing agency (under separate and direct contract with the City) when an inspection request is submitted by the contractor, in the performance of their duties.
7. The LI shall observe placement of non-structural concrete work.
8. The LI shall provide clear and constant communication with the CM and the contractor throughout the duration of the construction project.
9. The LI will advise the contractor where inspections will be required, in conformance with the approved contract documents and as is customary, so that the contractor can coordinate their workforce effectively.
10. The LI shall communicate with the CM regarding potential change orders and change orders. Review of change orders and tracking of time spent on time and material change orders shall be the LI's responsibility. The CM is the only person, other than other City representative, authorized for the City to issue and approve change orders.
11. Coordinate with the City's Material Testing Lab/Special Inspection Agency (under a separate and direct contract with the City) during the project to ensure optimal work production and avoid any schedule delays.
12. The LI shall track the City's material testing lab/special inspection agency time while on site for purposes of progress payments and provide the information to the City's CM on a monthly and timely basis.
13. Coordinate with the City's Geotechnical Consultant (Soils Engineer Inspector, Technician, etc.), under a separate and direct contract with the City, during the grading/excavation activities to ensure optimal work production and avoid any schedule delays.
14. All inspections for accessibility shall be performed by the LI using the approved documents from the City's 3rd Party Plan Reviewer and the CBC. Any interpretation issues shall be referred to the CM for resolution.
15. Inspection of all fire and life safety building components shall be performed by the LI prior to calling for the local Fire Marshall's office for inspection to ensure effective use of the Fire Marshall's/Department's time. Review of any documents that change the Fire Marshall approval of this work, shall be coordinated by the LI.
16. Inspection of all in-custody detention building components shall be performed by the LI prior to calling for the Board of State Community and Corrections (BSCC) office for inspection to



- ensure effective use of the BSCC's time. Review of any documents that change the BSCC's approval of this work, shall be coordinated by the LI through the CM.
17. Any tools, measuring devices and recordings that are necessary in providing comprehensive inspection coverage will be provided by the inspector at no additional costs to City. These devices are limited to what is normally required for this type of construction. Measurement tools will also be used to ensure that required grades and elevations are being maintained by the contractors.
 18. Document control for inspector's use will be the responsibility of the LI. The LI will receive all submittals, approved submittals, approved substitutions, inspection requests, Request for Information (RFI's), Change Orders, structural steel mill certificates, reinforcement steel mill certificates, Architect/Engineer Field Reports, Fire Marshall reports, BSCC reports, Correction Notices, special inspection reports and lab testing results, etc., which will be recorded and maintained electronically in the LI's field office computer.
 19. The LI's field office computer shall automatically be backed up to an electronic file storage system. The City shall have access at any time to the project files (hard copies and electronic), including the back-up electronic file storage system.
 20. The LI will be responsible to prepare any documents that will be needed for the LI to perform inspections which have been requested by the contractor through inspection requests and/or other methods of requesting inspections approved by the LI and CM. These documents will include any submittals for material verification, shop drawings, RFI's, Change Orders, local Fire Department reports, BSCC reports, Correction Notices, Facility Health reports, and any other standard or special inspection reports and testing lab reports.
 21. The LI will verify all major equipment, materials and fasteners provided by the contractors in the construction of this facility. These inspections will require constant verification of approved submittals and manufacturer's installation requirements for any particular installation.
 22. The LI shall verify quantity and condition of any materials stored on or off site for which payment is requested by the Contractor.
 23. The LI shall timely pre-review payment applications with the contractor prior to submittal to the CM to ensure appropriate amount of invoice relative to work in place.

Nothing in this Agreement shall be construed to mean that VANIR assumes any of the responsibilities or duties of the contractor(s). The contractors are solely responsible for construction means, methods, sequence and procedures used in the construction of the Project and for the safety of its personnel and its operations and for performing in accordance with the contractors' contracts with the CITY.

Transition Phase Services

Vanir is aware that transition planning needs to start in early project development and be maintained throughout the life of the project to assure a smooth occupancy of the building. Some of the areas Vanir can assist the City include:

Task #1 – Move-In Coordination: Preparation of RFPs for moving services and providing on-site personnel to oversee and administer the contract for moving.



Task #2 – Scheduling and Coordinating Start-Up and Transition Activities: Vanir will coordinate and schedule all testing of equipment and will assist the City with coordination of the move-in process.

Task #3 – Occupancy Plan/Schedule: Vanir will prepare an occupancy plan and schedule for relocation of furniture, equipment and personnel.

Task #4 – Policy and Procedures: A manual will be prepared with the assistance of the City staff outlining all state and federal rules for operation of the facility.

Task #5 – Procurement of FF&E: Vanir will develop an inventory of the furniture, fixtures and equipment needed to carry out the operation of the detention facility and assist in the procurement as required by the City.

Task #6 – Systems Training: Training will be incorporated into the contract documents for maintenance operations and custody staff. We will assist in the training for the opening of a new institution.

Warranty Phase

Task #1 – Warranty Coordination: Coordinate warranty issues with the City public works management team and the contractor during the one-year warranty period, maintain warranty tracking log, participate in monthly (or bi-weekly) warranty meetings and conduct one (1) warranty review meeting on site between 9 - 11 months after turnover/operation.

Our services will be delivered and billed on a Lump Sum Fixed-Fee, Percentage basis.

We look forward to a successful project and building a great and strong working relationship with the City of Los Banos and the project team. Thanks again for the opportunity and as always, please call with any questions.

Sincerely,

VANIR CONSTRUCTION MANAGEMENT, INC.

A handwritten signature in blue ink, appearing to read 'Scott Murphy'.

Scott Murphy, CCM
Project Director

Cc: Jerry Avalos, Vice President, Vanir CM
Rob Nash, Senior Project Manager, Vanir CM



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/6/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Edgewood Partners Insurance Center P.O Box 2110 Rancho Cordova CA 95670	CONTACT NAME: Rebecca Foster PHONE (A/C, No, Ext): 916 576-1524 E-MAIL ADDRESS: Rebecca.Foster@epicbrokers.com	FAX (A/C, No): 916 583-7613
	INSURER(S) AFFORDING COVERAGE	
INSURED Vanir Construction Management, Inc. 4540 Duckhorn Drive, Suite 300 Sacramento CA 95834	INSURER A: Zurich American Insurance Co NAIC # 16535	
	INSURER B: Travelers Prop Casualty Co of America NAIC # 25674	
	INSURER C: Lloyds of London NAIC # 85202	
	INSURER D: Liberty Insurance Underwriters. Inc. NAIC # 19917	
	INSURER E: INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 1532385039

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL/SUBR INSD WVP	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		GLO102078403	7/1/2019	7/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		BA1N956267	7/1/2019	7/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
D	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		100018366104	7/1/2019	7/1/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A	WC102078303	7/1/2019	7/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	<input type="checkbox"/> Professional Liability Claims Made-Retro Date 01/01/1982		B0702BN301750N	7/1/2019	7/1/2020	Each Claim/Aggregate Deductible \$3,000,000 \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: New Police Station project (8485). Additional Insured: City of Los Banos, its elected or appointed officers, officials, employees, agents and volunteers. When required by written contract, additional insured status with primary coverage applies to General Liability and Automobile Liability and waiver of subrogation applies to General Liability, Automobile Liability and Workers' Compensation, all per the attached endorsements.

CERTIFICATE HOLDER**CANCELLATION**

City of Los Banos
 Attn: Mark Fachin, P.E.
 Public Works Director/City Engineer
 411 Madison Avenue
 Los Banos CA 93635

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ZURICH

Additional Insured – Automatic – Owners, Lessees Or Contractors

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO102078403	07/01/19	07/01/20	07/01/19			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: Vanir Construction Management, Inc.

Address (including ZIP Code):

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

- a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

C. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – **Commercial General Liability Conditions:**

The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purposes of the coverage provided by this endorsement:

1. The following is added to the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

Primary and Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – **Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Paragraph A. of this endorsement; or
2. Available under the applicable Limits of Insurance shown in the Declarations, whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms and conditions of this policy remain unchanged.



General Liability Supplemental Coverage Endorsement **ZURICH**

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem.	Return Prem.
GLO102078403	07/01/19	07/01/20	07/01/19			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

The following changes apply to this Coverage Part. However, endorsements attached to this Coverage Part will supersede any provisions to the contrary in this General Liability Supplemental Coverage Endorsement.

A. Broadened Named Insured

1. The following is added to Section II – Who Is An Insured:

Any organization of yours, other than a partnership or joint venture, which is not shown in the Declarations, and over which you maintain an ownership interest of more than 50% of such organization as of the effective date of this Coverage Part, will qualify as a Named Insured. However, such organization will not qualify as a Named Insured under this provision if it:

- a. Is newly acquired or formed during the policy period;
- b. Is also an insured under another policy, other than a policy written to apply specifically in excess of this Coverage Part; or
- c. Would be an insured under another policy but for its termination or the exhaustion of its limits of insurance.

Each such organization remains qualified as a Named Insured only while you maintain an ownership interest of more than 50% in the organization during the policy period.

2. The last paragraph of Section II – Who Is An Insured does not apply to this provision to the extent that such paragraph would conflict with this provision.

B. Newly Acquired or Formed Organizations as Named Insureds

1. Paragraph 3. of Section II – Who Is An Insured is replaced by the following:

3. Any organization you newly acquire or form during the policy period, other than a partnership or joint venture, and over which you maintain an ownership interest of more than 50% of such organization, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

An additional premium will apply in accordance with our rules and rates in effect on the date you acquired or formed the organization.

In the event a claim is made or "suit" is brought against more than one insured seeking damages because of "bodily injury" or "property damage" caused by the same "occurrence" or "personal and advertising injury" caused by the same offense, we will apply the Limits of Insurance in the following order:

- (a) You;
- (b) Your "executive officers", partners, directors, stockholders, members, managers (if you are a limited liability company) or "employees"; and
- (c) Any other insured in any order that we choose.

U. Duties in the Event of Occurrence, Offense, Claim or Suit Condition

The following paragraphs are added to Paragraph 2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section IV – **Commercial General Liability Conditions**:

Notice of an "occurrence" or of an offense which may result in a claim under this insurance or notice of a claim or "suit" shall be given to us as soon as practicable after knowledge of the "occurrence", offense, claim or "suit" has been reported to any insured listed under Paragraph 1. of Section II – Who Is An Insured or an "employee" authorized by you to give or receive such notice. Knowledge by other "employees" of an "occurrence", offense, claim or "suit" does not imply that you also have such knowledge.

In the event that an insured reports an "occurrence" to the workers compensation carrier of the Named Insured and this "occurrence" later develops into a General Liability claim, covered by this Coverage Part, the insured's failure to report such "occurrence" to us at the time of the "occurrence" shall not be deemed to be a violation of this Condition. You must, however, give us notice as soon as practicable after being made aware that the particular claim is a General Liability rather than a Workers Compensation claim.

V. Other Insurance Condition

Paragraphs 4.a. and 4.b.(1) of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions** are replaced by the following:

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below. However, this insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

Other insurance includes any type of self insurance or other mechanism by which an insured arranges for funding of its legal liabilities.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

- (i) That is property insurance, Builder's Risk, Installation Risk or similar coverage for "your work";
- (ii) That is property insurance purchased by you (including any deductible or self insurance portion thereof) to cover premises rented to you or temporarily occupied by you with permission of the owner;
- (iii) That is insurance purchased by you (including any deductible or self insurance portion thereof) to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

- (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability; or
- (v) That is property insurance (including any deductible or self insurance portion thereof) purchased by you to cover damage to:
 - Equipment you borrow from others; or
 - Property loaned to you or personal property in the care, custody or control of the insured arising out of the use of an elevator at premises you own, rent or occupy.
- (b) Any other primary insurance (including any deductible or self insurance portion thereof) available to the insured covering liability for damages arising out of the premises, operations, products, work or services for which the insured has been granted additional insured status either by policy provision or attachment of any endorsement. Other primary insurance includes any type of self insurance or other mechanism by which an insured arranges for funding of its legal liabilities.
- (c) Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

W. Unintentional Failure to Disclose All Hazards

Paragraph 6. **Representations** of Section IV – **Commercial General Liability Conditions** is replaced by the following:

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

Coverage will continue to apply if you unintentionally:

- a. Fail to disclose all hazards existing at the inception of this policy; or
- b. Make an error, omission or improper description of premises or other statement of information stated in this policy.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to inception of this Coverage Part.

X. Waiver of Right of Subrogation

Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – **Commercial General Liability Conditions** is replaced by the following:

8. Transfer Of Rights Of Recovery Against Others To Us

- a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.
- b. If the insured waives its right to recover payments for injury or damage from another person or organization in a written contract executed prior to a loss, we waive any right of recovery we may have against such person or organization because of any payment we have made under this Coverage Part. The written contract will be considered executed when the insured's performance begins, or when it is signed, whichever happens first. This waiver of rights shall not be construed to be a waiver with respect to any other operations in which the insured has no contractual interest.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| <ul style="list-style-type: none"> A. BROAD FORM NAMED INSURED B. BLANKET ADDITIONAL INSURED C. EMPLOYEE HIRED AUTO D. EMPLOYEES AS INSURED E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS G. WAIVER OF DEDUCTIBLE – GLASS | <ul style="list-style-type: none"> H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT J. PERSONAL PROPERTY K. AIRBAGS L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS M. BLANKET WAIVER OF SUBROGATION N. UNINTENTIONAL ERRORS OR OMISSIONS |
|---|---|

PROVISIONS

A. BROAD FORM NAMED INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph c. in A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., **Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

COMMERCIAL AUTO

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., **Policy Period, Coverage Territory**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., **Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., **Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph D., **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph A.4.b., **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL PROPERTY

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Personal Property

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

The following is added to Paragraph B.3., **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph A.2.a., of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph A.5., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

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such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud,** of **SECTION IV – BUSINESS AUTO CONDITIONS:**

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

4. Loss Payment – Physical Damage Coverages

At our option, we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

B. General Conditions**1. Bankruptcy**

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

2. Concealment, Misrepresentation Or Fraud

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceals or misrepresents a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

3. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

4. No Benefit To Bailee – Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any per-

son or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

5. Other Insurance

a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Covered Autos Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own; or
- (2) Primary while it is connected to a covered "auto" you own.

b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Covered Autos Liability Coverage is primary for any liability assumed under an "insured contract".

d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

6. Premium Audit

a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT—
CALIFORNIA**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 0 % of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization
ALL PERSONS AND/OR
ORGANIZATIONS THAT
ARE REQUIRED BY
WRITTEN CONTRACT OR
AGREEMENT WITH THE
INSURED, EXECUTED
PRIOR TO THE
ACCIDENT OR LOSS,
THAT WAIVER OF
SUBROGATION BE
PROVIDED UNDER THIS
POLICY FOR WORK
PERFORMED BY YOU FOR
THAT PERSON AND/OR
ORGANIZATION

Job Description



City of
Los Banos
At the Crossroads of California

**REQUEST FOR QUALIFICATIONS
for
PROJECT MANAGEMENT SERVICES FOR
THE NEW POLICE STATION PROJECT**

Date Released: January 9, 2020

**Questions with regard to submission, process, or proposal
can be emailed to:**

Mark Fachin, P.E.
Public Works Director/City Engineer
mark.fachin@losbanos.org

**Proposals must be received prior to 4:00 p.m. February 7, 2020
at the office of City Clerk
City of Los Banos
520 J Street
Los Banos, CA 93635**

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REQUEST FOR QUALIFICATIONS
Project Management Services for the New Police Station Project

The City of Los Banos (City) is seeking a qualified consulting firm to provide project management services for the New Police Station Project. The response to this solicitation will be in the form of a Statement of Qualifications (SOQ).

The Request for Qualifications (RFQ), in its entirety, can be viewed and/or obtained from the City of Los Banos website: www.losbanos.org.

The City intends to award the project to one (1) project management engineering firm. The performance period becomes effective upon execution of the Agreement by both parties and shall continue in full force and effect until October 27, 2023 or extended to the completion of the building construction phase.

All qualified firms interested in providing these services are invited to submit their SOQs. The SOQs will be evaluated and ranked according to the criteria provided in Appendix B, "Proposal Evaluation," of this Request for Qualifications (RFQ).

It shall be the Consultant's responsibility to check the City of Los Banos' website to obtain any addenda that may be issued.

The Consultant's attention is directed to Appendix A, "Submittal Requirements."

Submit five (5) hard copies and one (1) electronic copy in PDF format on a USB flash drive of the Consultant's SOQs. The hard copies and USB flash drive shall be mailed or submitted to the City of Los Banos, 520 J Street, Los Banos, CA 93635, prior to **4:00 p.m., Pacific Standard Time (PST), February 7, 2020**. SOQs shall be submitted in a sealed package clearly marked "**PROJECT MANAGEMENT SERVICES FOR THE NEW POLICE STATION PROJECT**" and addressed as follows:

City of Los Banos
Attention: City Clerk
520 J Street
Los Banos, CA 93635

Submittals received after the time and date specified above will be considered nonresponsive and will be returned to the Consultant.

Any proposals received prior to the time and date specified above may be withdrawn or modified by written request of the Consultant. To be considered, however, the modified submittal must be received prior to **4:00 p.m., PST, on February 7, 2020**.

Unsigned submittals or submittals signed by an individual not authorized to bind the prospective Consultant will be considered nonresponsive and rejected.

Upon review of submitted proposals, the Selection Committee will determine whether interviews are necessary to determine a Consultant selection. The City reserves the right to hold interviews or make a Consultant selection based solely on the SOQs received.

This RFQ does not commit the City of Los Banos to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure, or contract for services. The City of Los Banos reserves the right to accept or reject any or all SOQs received as a result of this request, to negotiate with any qualified Consultant, or to modify or cancel in part or in its entirety the RFQ if it is in the best interests of the City of Los Banos to do so.

The prospective Consultant is advised that should this RFQ result in recommendation for award of a contract, the contract will not be in force until it is approved and fully executed by the City of Los Banos.

All products used or developed in the execution of any contract resulting from this RFQ will remain in the public domain at the completion of the contract.

The anticipated consultant selection schedule is as follows:

SOQ review and evaluation: February 10, 2020 through February 21, 2020
Oral interviews (if necessary): February 24, 2020 through February 28, 2020
Cost Negotiation: March 2, 2020 through March 2, 2020
Contract Award: March 18, 2020

Any questions related to this RFQ shall be submitted in writing to the attention of Mark Fachin, P.E., via email at mark.fachin@losbanos.org. Questions shall be submitted before 5:00 p.m. PST on January 28, 2020. Answers to questions and addendum, if necessary, shall be posted on the City website before 5:00 p.m. PST on January 30, 2020.

No oral questions or inquiries about the RFQ shall be accepted.

PROJECT DESCRIPTION

The services for the development of the New Police Station Project will focus on construction options, design recommendations, contractor selection, and project management. Consultant will assist City of Los Banos (City) with a review and recommendation of construction methods, practical design strategy, work with the City for the selection of the architectural engineering firm for design, work with the architectural engineering firm selected by the City to design the new facility, and assist the City with selection of a construction contractor. Consultant will participate in construction meetings before and during construction, coordinate submittal review, provide QSP/QSD, schedule material testing, inspection services, review progress payments of contractor, and manage the build of the facility. Consultant will coordinate the installation of technology, security, communications, and furnishings.

The City will select a qualified consulting firm to provide construction management services for the New Police Station Project. The consultant shall have the ability to provide in-house services or the capacity to sublet services associated with the construction management of a new facility. The consultant must be knowledgeable and experienced in the preparation of design and construction RFQ's, selection of architects and contractors, working and managing public safety construction builds, environmental expectations, and demonstrate a history of successfully producing projects of this type.

Consultants who plan to sublet any of the required services of a project contained in this RFQ shall include the name of the company(ies) and description of project services that may be potentially sublet.

The project services are to be rendered for the duration of the contract term. The City intends to award the contract to one (1) project management engineering firm.

SCOPE OF SERVICES

PURPOSE OF WORK

The consultant may provide services to the City for the Project Management of the New Police Station Project including, but not limited to, the following:

- Provide consulting and professional services for the selection of a preferred construction method.
- Provide consulting and professional services for the planning of the preferred building design.
- Provide professional services during the bid process for the selection of an architectural engineering firm that will perform the Plans, Specifications, and Cost Estimate for the design of the new police station.
- Offer technical support to the architectural engineer during the plan design phase for the station.
- Provide professional services during the bid process for the selection of a building contractor.
- Provide project records software which is accessible to the contractor and City staff.
- Provide field inspections during construction and coordinate field compaction and strength testing.
- Provide QSP/QSD support for the project.
- Facilitate weekly construction meetings with the City and contractor.

- Coordinate with the City's Engineering Division for presentations and/or recommendations to City administration, staff, or City Council in relation to the project.

GENERAL PERSONNEL REQUIREMENTS

The consultant's personnel shall be capable, competent, and experienced in performing the types of work in this Contract with minimal instruction. Personnel skill level should match the specific job classifications, as set forth herein or in the consultant's Cost Proposal and task complexity. The consultant's personnel shall be knowledgeable about, and comply with, all applicable Federal, State, and Local laws and regulations.

The consultant is required to submit a written request and obtain the City's Contract Administrator's prior written approval for any substitutions, additions, alterations, or modifications to the consultant's originally proposed personnel and project organization, as depicted on the proposed consultant's organization chart or the consultant's cost proposals. The substitute personnel shall have the same job classification as set forth herein or in the consultant's Cost Proposal not exceed the billing rate, and meet or exceed the qualifications and experience level of the previously assigned personnel, at no additional cost to the City.

The consultant Contract Manager shall be a Registered Professional Engineer licensed in the State of California in good standing with the California State Board for Professional Engineer, Land Surveyors, and Geologists at all times during the Contract period, to perform the tasks described in this Contract and shall have a documented minimum ten (10) years of demonstrated experience acceptable to City in management and delivery of public safety facilities for local government.

In addition to other specified responsibilities, the consultant Project Manager shall be responsible for all matters related to the consultant's personnel, subconsultants, and consultant's and sub-consultants' operations including, but not limited to, the following:

- a. Ensuring that deliverables are clearly defined and those criteria are specific, measurable, attainable, realistic and time-bound.
- b. Supervising, reviewing, monitoring, training, and directing the consultant's and sub-consultants' personnel.
- c. Assigning qualified personnel to complete the required tasks in coordination with the City Contract Administrator.
- d. Administering personnel actions for consultant personnel and ensuring appropriate actions taken for Sub-consultant personnel.
- e. Maintaining and submitting organized project files for record tracking and auditing.
- f. Developing, organizing, facilitating, and attending scheduled coordination meetings, and preparation and distribution of meeting minutes.
- g. Implementing and maintaining quality control procedures to manage conflicts, insure product accuracy, and identify critical reviews and milestones.
- h. Assuring that all applicable safety measures are in place.
- i. Providing invoices in a timely manner and providing monthly Contract expenditures.
- j. Reviewing invoices for accuracy and completion before billing to City.
- k. Managing Subconsultants.
- l. Managing overall budget for Contract and provide report to the City Contract Administrator.

- m. Ensuring compliance with the revisions in the Contract and all specific Task Order requirements.
- n. Knowledge, experience, and familiarity with prevailing wage issues and requirements in the State of California.

DELIVERABLES

As agreed upon by the City and consultant.

SCHEDULE

As agreed upon by the City and consultant.

METHOD OF PAYMENT

Consultant shall be paid based on the Specific Rates of Compensation for this Contract and for the amount as agreed upon by the City and Consultant. Consultant shall submit request for monthly progress payments.

MATERIALS TO BE PROVIDED BY THE CONSULTANT

Unless otherwise specified, the consultant shall provide all materials to complete the required work in accordance with the delivery schedule and cost estimate.

APPENDIX A – SUBMITTAL REQUIREMENTS

These guidelines are provided for standardizing the preparation and submission of Statement of Qualifications (SOQ's) by all consultants. The intent of these guidelines is to assist consultants in preparation of their qualifications, to simplify the review process, and to help assure consistency in format and content.

SOQ's shall contain the following information in the order listed:

1. Introductory Letter

The introductory (or transmittal) letter shall be addressed to:

Mark Fachin, P.E., Public Works Director/City Engineer
411 Madison Ave
Los Banos, CA 93635

The letter shall be on consultant letterhead and include the consultant's contact name, mailing address, telephone number, facsimile number, and email address. The letter will address the consultant's understanding of the services being requested and any other pertinent information the Consultant believes should be included. All addendums received must be acknowledged in the transmittal letter.

The letter shall be signed by the individual authorized to bind the consultant to the proposal.

2. Consultant Information, Qualifications & Experience

The City will only consider submittals from consultants that demonstrate they have successfully completed comparable projects. These projects must illustrate the quality, type, and past performance of the project team. Submittals shall include a detailed description of a minimum of three (3) projects which include the following information:

1. Contracting agency
2. Contracting agency Project Manager/Contact Person including name, address and phone
3. Contracting agency contact information
4. Contract amount
5. Funding source
6. Date of contract
7. Date of completion
8. Consultant Project Manager and contact information

3. Organization and Approach

1. Describe the roles and organization of your proposed team for this project. Indicate the composition of subcontractors and number of project staff, facilities available and experience of your team as it relates to this contract. Provide an organizational chart.
2. Describe your project and management approach.
3. Describe the roles of key individuals on the team. Provide resumes and references for all key team members. Resumes shall show relevant experience, for the Project's Scope of Work, as well as the length of employment with the proposing Consultant. Key members, especially the Project Manager, shall have significant demonstrated experience with this type of project, and should be committed to stay with the project for the duration of the project.

4. Demonstrate that the consultant's project manager and project staff have sufficient availability and/or that consultant has sufficient resources to timely deliver the City's project.

4. Past Experience on Municipal Projects

Include a description of past government projects (minimum of five) in which your firm has been involved, for comparable agencies including the following:

- Project Description
- Year of Completion
- Construction Cost (or consultant cost, if not an infrastructure project)
- Government Contact

5. Conflict of Interest Statement

Throughout the term of the awarded contract, any person, firm or subsidiary thereof who may provide, has provided or is currently providing design engineering services and/or construction engineering services under a contractual relationship with a construction contractor(s) on any City project related to this solicitation.

Similar to the disclosures regarding contractors, all firms are also required to disclose throughout the term of the awarded contract, any design engineering services including claim services, lead project management services and construction engineering services provided to all other clients on any City project listed in this solicitation.

In addition to the disclosures, the consultant shall also provide possible mitigation efforts, if any, to eliminate or avoid any actual or perceived conflicts of interest.

The consultant shall ensure that there is no conflict before providing services to any construction contractor on any of the City's projects related to this solicitation. The submitted documentation will be used for determining potential conflicts of interest. The City will use this documentation to determine whether the firm may provide the specified services under this contract.

If a consultant discovers a conflict during the execution of an assigned task, the consultant must immediately notify the City Contract Manager regarding the conflicts of interest. The City Agency Contract Manager may terminate the task involving the conflict of interest and City may obtain the conflicted services in any way allowed by law. Failure by the consultant to notify City Contract Manager may be grounds for termination of the contract.

6. Litigation

Indicate if the proposing consultant was involved with any litigation in connection with prior projects. If yes, briefly describe the nature of the litigation and the result.

7. Contract Agreement

Indicate if the proposing consultant has any issues or needed changes to the proposed contract agreement included as Appendix C.

The consultant shall provide a brief statement affirming that the proposal terms shall remain in effect for ninety (90) days following the date proposal submittals are due.

8. Cost Proposal

In order to assure that the City is able to acquire professional services based on the criteria set forth in the Brooks Act and Government Code 4526, the SOQ shall include the consultant's Specific Rates of Compensation for this contract.

The Specific Rates of Compensation shall be submitted in a separate sealed envelope from the SOQ.

The consultant's Specific Rates of Compensation are confidential and shall remain sealed. Upon completion of the consultant selection process, only the cost proposal from the selected consultant shall be opened. All other (unopened) cost proposals shall be returned in accordance with Appendix B.

APPENDIX B – PROPOSAL EVALUATION

EVALUATION PROCESS

All submittals will be evaluated by City Selection Committee. The Committee may be composed of City staff and other parties that may have expertise or experience in the services described herein. The Committee will review the submittals and will rank the proposers. The evaluation of the proposals shall be within the sole judgment and discretion of the Committee. All contacts during the evaluation phase shall be through the City Contract Administrator/Project Manager only. Proposers shall neither contact nor lobby evaluators during the evaluation process. Attempts by Proposer to contact members of the Committee may jeopardize the integrity of the evaluation and selection process and risk possible disqualification of Proposer.

The Committee will evaluate each submittal meeting the qualification requirements set forth in this RFQ. Proposers should bear in mind that any submittal that is unrealistic in terms of the technical or schedule commitments may be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the City requirements as set forth in this RFQ.

The selection process may include oral interviews. The consultants will be notified of the time and place of oral interviews and if any additional information that may be required to be submitted. Interviews, if deemed necessary, will be held with the top ranked candidates.

Upon completion of the evaluation and selection process, only the cost proposal from the top qualified consultant will be opened to begin cost negotiations. All unopened cost proposals will be returned at the conclusion of the procurement process. Upon acceptance of a cost proposal and successful contract negotiations, staff will recommend a contract be awarded.

EVALUATION CRITERIA

Proposals will be evaluated according to each Evaluation Criteria, and scored on a zero to five point rating. The scores for all the Evaluation Criteria will then be multiplied according to their assigned weight to arrive at a weighted score for each proposal. A submittal with a high weighted total will be deemed of higher quality than a proposal with a lesser-weighted total. The final maximum score for any proposal is five hundred (500) points.

Rating Scale		
0	Not Acceptable	Non-responsive, fails to meet RFQ specifications. The approach has no probability of success. For mandatory requirement this score will result in disqualification of submittal.
1	Poor	Below average, falls short of expectations, is substandard to that which is the average or expected norm, has a low probability of success in achieving project objectives per RFQ.
2	Fair	Has a reasonable probability of success, however, some objectives may not be met.
3	Average	Acceptable, achieves all objectives in a reasonable fashion per RFQ specification. This will be the baseline score for each item with adjustments based on interpretation of submittal by Evaluation Committee members.
4	Above Average/Good	Very good probability of success, better than that which is average or expected as the norm. Achieves all objectives per RFQ requirements and expectations.
5	Excellent/Exceptional	Exceeds expectations, very innovative, clearly superior to that which is average or expected as the norm. Excellent probability of success and in achieving all objectives and meeting RFQ specification.

The Evaluation Criteria Summary and their respective weights are as follows:

No.	Written Evaluation Criteria	Weight
1	Completeness of Response	Pass/Fail
2	Qualifications & Experience	30
3	Organization & Approach	15
4	Past Experience on Government Projects	20
5	Staff Availability	15
6	Conflict of Interest Statement	Pass/Fail
7	Proposal Format	5
8	References	15
Subtotal:		100

No.	Interview Evaluation Criteria (if interviews are necessary)	Weight
9	Presentation by Team	10
10	Q&A Response to Panel Questions	15
Subtotal:		25
Total:		125

1. Completeness of Response (Pass/Fail)

- a. Responses to this RFQ must be complete. Responses that do not include the proposal content requirements identified within this RFQ and subsequent addenda and do not address each of the items listed below will be considered incomplete, be rated a Fail in the Evaluation Criteria and will receive no further consideration. Responses that are rated a Fail and are not considered may be picked up at the delivery location within 14 calendar days of contract award and/or the completion of the competitive process.

2. Qualifications & Experience (30 points)

- a. Relevant experience, specific qualifications, and technical expertise of the firm and sub-consultants to conduct project management engineering services on capital improvement projects.

3. Organization & Approach (15 points)

- a. Describes familiarity of project and demonstrates understanding of work completed to date and project objectives moving forward
- b. Roles and Organization of Proposed Team
 - i. Proposes adequate and appropriate disciplines of project team.
 - ii. Some or all of team members have previously worked together on similar project(s).
 - iii. Overall organization of the team is relevant to City needs.
- c. Project and Management Approach

- i. Team is managed by an individual with appropriate experience in similar projects. This person's time is appropriately committed to the project.
 - ii. Team successfully addresses Site Planning and Programming efforts.
 - iii. Project team and management approach responds to project issues. Team structure provides adequate capability to perform both volume and quality of needed work within project schedule milestones.
 - iv. Ability of project team to meet the tight timelines and budget of the project as a whole and during the individual phases. Special emphasis will be given to meeting the budget and timelines associated with the construction phase of the project.
 - d. Roles of Key Individuals on the Team
 - i. Proposed team members, as demonstrated by enclosed resumes, have relevant experience for their role in the project.
 - ii. Key positions required to execute the project team's responsibilities are appropriately staffed.
 - e. Working Relationship with City
 - i. Team and its leaders have experience working in the public sector and knowledge of public sector procurement process.
 - ii. Team leadership understands the nature of public sector work and its decision-making process.
 - iii. Proposal responds to need to assist City during the project.

4. Past Experience on Government Projects (20 points)

- a. Consultant demonstrates experience with performance of services within the comparable agencies for projects similar in nature to those related to this solicitation.
- b. Consultant demonstrates successful completion of said projects.
- c. Consultant is familiar with Federal, State, and Local standards and procedures.

5. Staff Availability (15 points)

- a. Consultant demonstrates project team staff is available and able to promptly respond to requests throughout the contract duration in order to timely deliver the project.

6. Conflict of Interest Statement (Pass/Fail)

- a. Discloses any financial, business or other relationship with the City that may have an impact upon the outcome of the contract or the construction project.
- b. Lists current clients who may have a financial interest in the outcome of this contract or the construction project that will follow.
- c. Discloses any financial interest or relationship with any construction company that might submit a bid on the construction project.

7. Proposal Format (5 points)

- a. Attractive, professional appearance. (Cover, internal layout, font type and size, and illustrations/photos)
- b. Clear, concise, error-free.

8. References (15 points)

- a. Provide as reference the name of at least three (3) agencies you currently or have previously consulted for in the past three (3) years.

9. Presentation by Team (if necessary) (10 points)

- a. Team presentation conveying project understanding, communication skills, innovative ideas, critical issues and solutions.

10. Q&A Response to Panel Questions (if necessary) (15 points)

- a. Proposer provides responses to various interview panel questions.

Weighted scores for each Proposal will be assigned utilizing the table below:

No.	Evaluation Criteria	Rating (0-5)	Weight	Score (Rating * Weight)
1	Completeness of Response	N/A	Pass/Fail	Pass/Fail
2	Qualifications & Experience		30	
3	Organization & Approach		15	
4	Past Experience on Government Projects		20	
5	Staff Availability		15	
6	Conflict of Interest Statement		Pass/Fail	
7	Proposal Format		5	
8	References		15	
9	Presentation by Team		10	
10	Q&A Response to Panel Questions		15	
Total:			125	

APPENDIX C –SAMPLE CONTRACT AGREEMENT

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF LOS BANOS AND [CONSULTANT NAME] FOR PROJECT MANAGEMENT SERVICES FOR THE NEW POLICE STATION PROJECT

THIS AGREEMENT is made and entered into thisday of __, 2020, by and between the City of Los Banos, California, a municipal corporation, (“City,”) and [CONSULTANT NAME], a [partnership, corporation, etc.] (“Consultant”).

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California.
- B. City desires to engage Consultant as an independent contractor to provide professional engineering services for specific tasks associated with the New Police Station Project.
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.
- D. City desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **Term.** The term of this Agreement shall commence upon the above written date and shall remain in effect until October 27, 2023 or extended to the completion of the building construction phase, unless terminated earlier as set forth herein. The Consultant’s Cost Proposal is attached hereto (Exhibit A) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.

Project Description. The New Police Station Project will focus on a practical design strategy, the work with an architectural firm to design the new facility, assist in construction contractor selection, and work with the City as the project manager on all aspects of the construction from preparing the site for construction through the Police staff functioning in the new station.

2. **Scope of Services.** Services to be performed by Consultant will include the following upon reasonable notice to Consultant:

- a. Provide consulting and professional services including project planning, design, engineering, and construction.
- b. Provide professional services during the bid process including preparation of cost estimates and specifications, project construction, and project completion.

- c. Provide field construction services as required by project.
- d. Review the City's requested project and/or task to be accomplished, and provide preliminary consultation, research and evaluation of same.
- e. Assist the City's Engineering Division with presentations and/or recommendations to City staff administration, or City Council in relation to the project.

3.1 Consultant shall provide such services when given written instruction to do so by the Public Works Director, or his designee. Consultant shall diligently perform all the services described in the Scope of Services.

3.2 All professional services shall be performed by Consultant or under Consultant's supervision. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional Consultants in accordance with sound professional practices.

4. Administration. The Public Works Director shall administer this Agreement on behalf of the City. The Public Works Director or his/her authorized representative shall represent City in all matters pertaining to the services to be rendered pursuant to this Agreement.

5. Time of Performance. Upon receipt of written Notice to Proceed from the City, Consultant shall perform with due diligence the services requested by the city and agreed on by the Consultant. Time is of the essence in the performance of services under this Agreement and the services shall be performed to completion in a diligent and timely manner. The failure by Consultant to perform the services in a diligent and timely manner may result in termination of this Agreement by City. Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the services to be provided for the Project, each party hereby agrees to provide notice to the other party so that all delays can be addressed. The term of this Agreement may be amended to complete the closeout of construction of a new station by written notice from the City to the Consultant for a determined period of time and cost.

5.1 Consultant is advised that any recommendation for contract award is not binding on City until the contract is fully executed and approved by the City.

6. Allowable Costs and Payments. Consultant will be reimbursed for hours worked at the hourly rates specified in Consultants Cost Proposal (Exhibit A). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract. Consultant's compensation for all work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed the approved budget during the term of this Agreement.

6.1 In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Agreement.

6.2 Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

6.3 When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

6.4 Progress payments will be made monthly in arrears based on services provided and actual costs incurred.

6.5 Consultant shall not commence performance of work or services until this contract has been approved by the City, and notification to proceed has been issued by the City's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this contract.

6.6 Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the City's Contract Administrator of itemized invoices. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone, as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference the project title. Invoices shall be mailed to the City's Contract Administrator at the following address:

City of Los Banos, Mark Fachin, P.E.
Public Works Director/City Engineer
411 Madison Avenue, Los Banos, CA 93635

6.7 The total amount payable by the City shall not exceed the amount agreed upon, unless authorized by contract amendment.

6.8 If the Consultant fails to satisfactorily complete a deliverable according to the schedule, no payment will be made until the deliverable has been satisfactorily completed.

6.9 The total amount payable by the City shall not exceed (insert amount).

7. **Subcontracting.** Nothing contained in this contract or otherwise, shall create any contractual relation between the City and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to the City for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from the City's obligation to make payments to the Consultant.

7.1 Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the City's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

7.2 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by the City.

7.3 All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

7.4 Any substitution of subconsultant(s) must be approved in writing by City's Contract Administrator prior to the start of work by the subconsultant(s).

8. **Indemnification.** When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Sub consultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Sub consultants) and the City in the performance of professional services under this agreement.

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant.

Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

In the event the City indemnities are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant's performance of this agreement, the Consultant shall provide a defense to the City indemnities, or at the City's option, reimburse the City indemnities their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

9. **Insurance.** Without limiting Consultant's indemnification of City, and prior to commencement of work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, a policy or policies of liability insurance of the type and amounts described below and in a form satisfactory to City.

A. **Certificates of Insurance.** Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Insurance certificates must be approved by the City Attorney prior to commencement of performance or issuance of any permit. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement.

B. **Signature.** A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies.

C. **Acceptable Insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City Attorney.

D. Coverage Requirements.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his or her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by City at least thirty (30) calendar days (10 calendar days written notice of non-payment of premium) prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, contractual liability. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall be at least twice the required occurrence limit.

iii. Automobile Liability Coverage. Consultant shall maintain automobile insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

iv. Professional Errors and Omissions Insurance. Consultant shall maintain professional errors and omissions insurance, which covers the services to be performed in connection with this Agreement in the minimum amount of one million dollars (\$1,000,000) per claim and not less than two million dollars (\$2,000,000) in the annual aggregate.

E. Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following specific language:

i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant.

ii. This policy shall be considered primary insurance as respects to City, its elected or appointed officers, officials, employees, agents and volunteers as respects to all claims, losses, or liability arising directly or indirectly from the Consultant's operations or services provided to City. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against City, its elected or appointed officers, officials, employees, agents and volunteers.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its elected or appointed officers, officials, employees, agents or volunteers.

vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, by either party except after thirty (30) calendar days (10 calendar days written notice of non-payment of premium) written notice has been received by City.

8.1 Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

8.2 All subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured to the subconsultant's policies.

10. Nondiscrimination. In the performing of this Agreement, Consultant shall not discriminate against any subcontractor, employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation race, religion, color, national origin, handicap, ancestry, sex or age.

11. Independent Contractor. It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the services.

11.1 The Consultant shall at all times remain an independent Contractor with respect to the services to be performed under this Agreement and shall be responsible for the payment of Federal and State Employer Withholding Taxes, Unemployment Insurance Taxes, FICA Taxes, Retirement, Life and/or Medical Insurance, and Worker's Compensation Insurance for the employees of the Consultant or any other person performing services under this Agreement. Consultant and its employees are not entitled to the rights or benefits afforded to City's employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave, or any other employment benefit. Consultant agrees to indemnify and hold City harmless from any claims, costs, losses, fees, penalties, interest, or damages suffered by City as a result of any claim by any person or entity contrary to the provisions of this Section.

12. Ownership of Documents. All documents, information and materials of any and every type furnished or prepared by the Consultant or any of its subcontractors pursuant to and in the course of performance of this Agreement shall be and remain

the sole and exclusive property of the City. Such documents, information and materials shall include but not be limited to all findings, reports, plans, specifications, studies, drawings, estimates, documents, information and data including, but not limited to, electronic media, computer tapes or discs, files, and tapes furnished or prepared or accumulated by the Consultant in performing work under this Agreement, whether completed or in process. City shall have the sole right to use such documents, materials and information in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such documents, materials and information to City upon prior written request.

12.1 All Documents shall be considered works made for hire and all Documents and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of the City without restriction or limitation upon their use, duplication or dissemination by the City. Consultant shall not obtain or attempt to obtain copyright protection as to any Documents.

13. Confidentiality. All City information disclosed to Consultant during the course of performance of services under this Agreement shall be treated as confidential and shall not be disclosed to any other persons or parties except as authorized by City, excepting that information which is public record and subject to disclosure pursuant to the Public Records Act, or otherwise required by law. All documents, including drafts, notes and communications that result from the services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information, excepting that information which is public record and subject to disclosure pursuant to the Public Records Act, or otherwise required by law.

14. Access to Records. Consultant shall maintain all books, records, documents, accounting ledgers, and similar materials relating to work performed for City under this Agreement on file for at least three (3) years following the date of final payment to Consultant by City. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit and copying at reasonable times, during Consultant's usual and customary business hours. Consultant shall provide proper facilities to City's representative(s) for access and inspection. Consultant shall be entitled to reasonable compensation for time and expenses relate to such access and inspection activities, which shall be considered to be an additional service to the City, subject to the provisions of Section 5 hereinabove.

15. Conflict of Interest. Consultant shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this contract, or any ensuing City construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project, which will follow.

15.1 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

15.2 Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

15.3 Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

15.4 Consultant hereby certifies that neither Consultant, its employees, nor any firm affiliated with Consultant providing services on this project prepared the Plans, Specifications, and Estimate for any construction project included within this contract. An affiliated firm is one, which is subject to the control of the same persons through joint- ownership, or otherwise.

15.5 Consultant further certifies that neither Consultant, nor any firm affiliated with Consultant, will bid on any construction subcontracts included within the construction contract. Additionally, Consultant certifies that no person working under this contract is also employed by the construction contractor for any project included within this contract.

15.6 Except for subconsultants whose services are limited to materials testing, no subconsultant who is providing service on this contract shall have provided services on the design of any project included within this contract.

16. Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City.

16.1 Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Consultant shall be fully responsible to City for all acts and omissions of the subconsultant. Nothing in this Agreement shall create any contractual relationship between City and subconsultant nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subconsultant other than as otherwise required by law.

17. Compliance with Laws, Rules, Regulations. Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

17.1 During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations

under this clause to labor organizations with which they have a collective bargaining or other Agreement.

17.2 The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

17.3 The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

17.4 Consultant shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

17.5 Consultant is aware of the requirements of California Labor Code section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are subject to the Prevailing Wage Laws, Consultant agrees to fully comply with such Prevailing Wage Laws.

18. Debarment and Suspension Certification. Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicated, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the City.

Exceptions will not necessarily result in denial of recommendations for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

19. Integration: Amendment. This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in it. This Agreement may not be modified or altered except by amendment in writing sign by both parties.

20. Severability. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

21. Waiver/Validity. Consultant agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver of any other condition of performance under this Agreement. The acceptance by the City of the performance of any work or services by Contractor shall not be deemed to be a waiver of any term or condition of this Agreement.

22. Jurisdiction. City and Consultant agree that the law governing this Agreement shall be that of the State of California. Any suit brought by either party against the other arising out of the performance of this Agreement shall be filed and maintained in the County of Merced.

23. Notice. Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

To City:

Mark Fachin, P.E.
Public Works Director/City Engineer
411 Madison Avenue
Los Banos, California 93635

To Consultant:

NAME
TITLE
ADDRESS
ADDRESS

24. Termination. The City may, in its sole discretion, terminate this Agreement at any time and for any reason whatsoever by giving written notice of such termination to Consultant. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. In the event of such termination, Consultant shall be entitled to compensation for all services rendered and work performed for City to the date of such termination.

(Signature page to follow)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

[CONSULTANT NAME]

Date:

by: **[CONSULTANT CONTACT]**
[TITLE]

**CITY OF LOS BANOS,
a California Municipal Corporation**

Date:

by: **Alex Terrazas**
City Manager

**ATTEST:
CITY CLERK**

APPROVED AS TO FORM:

Lucille L. Mallonee
City Clerk

William A. Vaughn
City Attorney

City of Los Banos
Police Capital Improvement
Traffic Safety
2019-2020

Account Number	Description	2016-2017 Actual	2017-2018 Actual	2018-2019 Estimated	2019-2020 Adopted
<u>PD CAPITAL IMPROVEMENT</u>					
245-421-100-203	Equipment Repair & Maintenance	9,673	4,028	2,008	0
* 245-421-100-231	Professional Services	0	0	125,000	150,000
	Supplies & Services	9,673	4,028	127,008	150,000
245-421-100-710	Land Purchase	0	0	203	1,400,345
245-421-100-753	Specialized Equipment	16,845	0	0	0
	Capital Outlay	16,845	0	203	1,400,345
245-498-000-000	Transfer Out	2,500	0	0	0
	Transfer Out	2,500	0	0	0
	Total Police Capital Improvement	\$29,018	\$4,028	\$127,211	\$1,550,345
<u>TRAFFIC SAFETY</u>					
<u>General Services</u>					
246-421-100-267	General Materials & Supplies	0	0	5,000	0
	Supplies & Services	0	0	5,000	0
246-421-100-750	Vehicles	0	0	0	45,000
246-421-100-753	Specialized Equipment	0	0	0	60,000
	Capital Outlay	0	0	0	105,000
<u>Special Services</u>					
246-421-170-750	Vehicles	23,958	0	0	0
	Capital Outlay	23,958	0	0	0
	Total Traffic Safety	\$23,958	\$0	\$5,000	\$105,000

Police Capital Improvement

SERVICE & SUPPLIES

A **231-PROFESSIONAL SERVICES:** Funding for a feasibility study and other costs related to the design and construction of new Police Facility. *A*

CAPITAL OUTLAY

710-LAND PURCHASE: Expenses related to the purchase of land for the new Police Facility.

Traffic Safety

CAPITAL OUTLAY

753-SPECIALIZED EQUIPMENT: Expenses related to the purchase of a license plate reader, which will be installed at a major local intersection to help identify stolen and/or other wanted vehicles.



0 20' 40' 80'



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor and City Council Members

FROM: Mark Fachin, P.E., Public Works Director/City Engineer

DATE: May 20, 2020

TYPE OF REPORT: Non Consent Agenda

SUBJECT: Entering into a Cooperative Agreement with the State of California, through its Department of Transportation, referred to as Caltrans, for Caltrans to provide oversight for the City of Los Banos to develop the PSR-PDS (Project Study Report – Project Development Support) for the Pioneer Road Widening Project

Recommendation:

That the City Council adopts the Resolution approving entering into a Cooperative Agreement with the State of California, acting through its Department of Transportation, referred to as Caltrans, for Caltrans to provide oversight for the City of Los Banos to develop a Project Initiation Document (PID) for the improvements on State Route 152, State Route 165, and a portion of the Pioneer Road Widening Project, and authorize the City Manager to execute the Agreement. The administration of this Cooperative Agreement is to be performed by the Public Works Director/City Engineer.

Background:

The Pioneer Road Widening Project is an approximately 6.5 mile long design and construction of a 4-lane arterial road. This road is to be designed per City Standards and will include a 10-foot Bicycle/Pedestrian Sidewalk. The approximate location of the widening is from State Route 152, near the Merced College signalized intersection, south to Pioneer Road, easterly along Pioneer Road to the Pioneer Road/Ward Road future intersection, then north along Ward Road to the State Route 152/Ward Road signalized intersection.

Currently, Westside Regional Measure V Funding has dedicated \$8.65 million to the Pioneer Road Widening Project. This funding will take the project up to the construction phase.

On February 19, 2020, the City Council approved entering into a Professional Services Agreement (PSA) with Mark Thomas & Company, Inc. for Engineering Services for the Pioneer Road Widening Project.

Currently, Mark Thomas & Company, Inc. is working on Phase 1 of the PSA. This phase is to develop a Project Initiation Document (PID) – Project Study Report (PSR) equivalent for the Pioneer Road Widening Project (project).

Discussion:

In order for Caltrans to provide oversight for the project areas that fall under their jurisdiction, a Cooperative Agreement between the State of California (Caltrans) and the City of Los Banos is required.

The main points of this agreement are:

- Caltrans will provide oversight in the development of the PSR-PDS in the areas of their jurisdiction.
- Caltrans will provide Quality Management for the portions of work that fall under their jurisdiction.
- City will provide work-related products and supporting documents at Caltrans' request.
- Caltrans will participate in the Project Delivery Team meetings.
- All related work will be done in accordance with applicable federal and state laws, regulations, and Caltrans standards.
- Prevailing wage requirements are required of all contractors/subcontractors in work related to this project.
- The City is responsible to pay Caltrans \$30,000 for the work outlined in this agreement.

Fiscal Impact:

The Cooperative Agreement amount to be paid to Caltrans for performing the scope of work as outlined in this Cooperative Agreement is \$30,000. This amount has been incorporated into the proposed 2020/2021 City of Los Banos budget in account 229-430-100-238, Regional Transportation Impact Fee, Technical Services.

Reviewed by:



Alex Terrazas, City Manager


Sonya Williams, Finance Director

Attachments:

Resolution

Cooperative Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATIVE AGREEMENT WITH THE STATE OF CALIFORNIA THROUGH ITS DEPARTMENT OF TRANSPORTATION (CALTRANS) TO PROVIDE OVERSIGHT IN THE DEVELOPMENT OF THE PROJECT STUDY REPORT – PROJECT DEVELOPMENT SUPPORT (PSR-PDS) FOR THE IMPROVEMENTS ON THE PIONEER ROAD WIDENING PROJECT AT LOCATIONS WHERE CALTRANS HAS JURISDICTION

WHEREAS, THE City of Los Banos is developing a Project Study Report (PSR) for the Pioneer Road Widening Project (project); and

WHEREAS, there are highway and intersection improvements in this project which fall under the jurisdiction of Caltrans; and

WHEREAS, Caltrans is required to provide oversight on those road segments and intersections that fall under their jurisdiction in the PSR; and

WHEREAS, in order to receive Caltrans oversight in the PSR, a Cooperative Agreement between Caltrans and the City of Los Banos is required.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Los Banos does hereby authorize the City Manager to execute a Cooperative Agreement with the State of California (Caltrans) to provide oversight in the development of the PSR-PDS for the improvements on the Pioneer Road Widening Project at locations under Caltrans Jurisdiction.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on the 20th day of May 2020, 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:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

COOPERATIVE AGREEMENT COVER SHEET

Work Description

CALTRANS WILL PROVIDE TO DEVELOP PSR-PDS FOR THE IMPROVEMENTS ON STATE ROUTE 152, 165, AND PORTION OF THE PIONEER ROAD WIDENING PROJECT

Contact Information

CALTRANS

Charlie Do, Project Manager
1976 E. Dr. Martin Luther King Jr. Blvd.
Stockton, CA 95205
Office Phone: (209) 948-3803
Email: charlie.do@dot.ca.gov

CITY OF LOS BANOS

Mark Fachin, Public Works Director/City Engineer
520 J Street
Los Banos, CA 93635
Office Phone: (209) 827-7056
Email: mark.fachin@losbanos.org

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COOPERATIVE AGREEMENT

This AGREEMENT, effective on _____, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Los Banos, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as CITY.

An individual signatory agency in this AGREEMENT is referred to as a PARTY. Collectively, the signatory agencies in this AGREEMENT are referred to as PARTIES.

RECITALS

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System per California Streets and Highways Code, Sections 114 and 130 and California Government Code, Section 65086.5.
2. For the purpose of this AGREEMENT, *Caltrans will provide to develop PSR-PDS for the improvements on State Route 152, 165, and portion of the Pioneer Road Widening Project* will be referred to hereinafter as PROJECT. CITY desires that a Project Initiation Document (PID) be developed for the PROJECT. The Project Initiation Document will be a Project Study Report - Project Development Support (PSR-PDS).
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:
 - PROJECT INITIATION DOCUMENT (PID)

Each PROJECT COMPONENT is defined in the CALTRANS Workplan Standards Guide as a distinct group of activities/products in the project planning and development process.

4. The term AGREEMENT, as used herein, includes this document and any attachments, exhibits, and amendments.

This AGREEMENT is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between the PARTIES regarding the PROJECT.

PARTIES intend this AGREEMENT to be their final expression that supersedes any oral understanding or writings pertaining to the WORK. The requirements of this AGREEMENT will preside over any conflicting requirements in any documents that are made an express part of this AGREEMENT.

If any provisions in this AGREEMENT are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other AGREEMENT provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this AGREEMENT.

Except as otherwise provided in the AGREEMENT, PARTIES will execute a written amendment if there are any changes to the terms of this AGREEMENT.

AGREEMENT will terminate 180 days after PID is signed by PARTIES or as mutually agreed by PARTIES in writing. However, all indemnification articles will remain in effect until terminated or modified in writing by mutual agreement.

5. No PROJECT deliverables have been completed prior to this AGREEMENT.
6. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
7. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

RESPONSIBILITIES

Sponsorship

8. A SPONSOR is responsible for establishing the scope of the PROJECT and securing the financial resources to fund the WORK. A SPONSOR is responsible for securing additional funds when necessary or implementing PROJECT changes to ensure the WORK can be completed with the funds obligated in this AGREEMENT.

PROJECT changes, as described in the CALTRANS Project Development Procedures Manual, will be approved by CALTRANS as the owner/operator of the State Highway System.

9. CITY is the SPONSOR for the WORK in this AGREEMENT.

Implementing Agency

10. The IMPLEMENTING AGENCY is the PARTY responsible for managing the scope, cost, schedule, and quality of the work activities and products of a PROJECT COMPONENT.

- CITY is the Project Initiation Document (PID) IMPLEMENTING AGENCY.

The PID identifies the PROJECT need and purpose, stakeholder input, project alternatives, anticipated right-of-way requirements, preliminary environmental analysis, initial cost estimates, and potential funding sources.

11. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for the WORK in that component. The QMP describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The QMP will include a process for resolving disputes between the PARTIES at the team level. The QMP is subject to CALTRANS review and approval.

12. Any PARTY responsible for completing WORK will make its personnel and consultants that prepare WORK available to help resolve WORK-related problems and changes for the entire duration of the PROJECT including PROJECT work that may occur under separate agreements.

Funding

13. CITY is the only PARTY obligating funds in this AGREEMENT and will fund the cost of the WORK in accordance with this AGREEMENT.

If, in the future, CALTRANS is allocated state funds and Personnel Years (PYs) for PID review or development of this PROJECT, PARTIES will agree to amend this AGREEMENT to change the reimbursement arrangement for PID review.

14. Funding sources, PARTIES committing funds, funding amounts, and invoicing/payment details are documented in the Funding Summary section of this AGREEMENT.

PARTIES will amend this AGREEMENT by updating and replacing the Funding Summary, in its entirety, each time the funding details change. Funding Summary replacements will be executed by a legally authorized representative of the respective PARTIES. The most current fully executed Funding Summary supersedes any previous Funding Summary created for this AGREEMENT.

15. PARTIES will not be reimbursed for costs beyond the funds obligated in this AGREEMENT.

16. Unless otherwise documented in the Funding Summary, overall liability for project costs within a PROJECT COMPONENT will be in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
17. Unless otherwise documented in the Funding Summary, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
18. WORK costs, except those that are specifically excluded in this AGREEMENT, are to be paid from the funds obligated in the Funding Summary. Costs that are specifically excluded from the funds obligated in this AGREEMENT are to be paid by the PARTY incurring the costs from funds that are independent of this AGREEMENT.

CALTRANS' Quality Management

19. CALTRANS, as the owner/operator of the State Highway System (SHS), will perform quality management work including Quality Management Assessment (QMA) and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.
20. CALTRANS' Quality Management Assessment (QMA) efforts are to ensure that CITY's quality assurance results in WORK that is in accordance with the applicable standards and the PROJECT's quality management plan (QMP). QMA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.

When CALTRANS performs QMA, it does so for its own benefit. No one can assign liability to CALTRANS due to its QMA.

21. CALTRANS, as the owner/operator of the State Highway System, will approve WORK products in accordance with CALTRANS policies and guidance and as indicated in this AGREEMENT.
22. CITY will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

Project Initiation Document (PID)

23. As the PID IMPLEMENTING AGENCY, CITY is responsible for all PID WORK except those activities and responsibilities that are assigned to another PARTY in this AGREEMENT and those activities that may be specifically excluded.

24. Should CITY request CALTRANS to perform any portion of PID preparation work, except as otherwise set forth in this in this AGREEMENT, CITY agrees to reimburse CALTRANS for such work and PARTIES will amend this AGREEMENT.
25. CALTRANS will be responsible for completing the following PID activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
100.05.10.xx Quality Management	Yes
150.05.05.xx Review of Existing Reports, Data, Studies, and Mapping	Yes
150.25.20 PID Circulation, Review, and Approval	Yes

26. CALTRANS will provide relevant existing proprietary information and maps related to:

- Geologic and Geotechnical information
- Utility information
- Environmental constraints
- Traffic modeling/forecasts
- Topographic and Boundary surveys
- As-built centerline and existing right-of-way

Due to the potential for data loss or errors, CALTRANS will not convert the format of existing proprietary information or maps.

27. When required, CALTRANS will perform pre-consultation with appropriate resource agencies in order to reach consensus on need and purpose, avoidance alternatives, and feasible alternatives.
28. CALTRANS will actively participate in the Project Delivery Team meetings.
29. The PID will be signed on behalf of CITY by a Civil Engineer registered in the State of California.
30. CALTRANS will review and approve the Project Initiation Document (PID) as required by California Government Code, Section 65086.5.

CALTRANS will complete a review of the draft PID and provide its comments to CITY within 60 calendar days from the date CALTRANS received the draft PID from CITY. CITY will address the comments provided by CALTRANS. If any interim reviews are requested of CALTRANS by CITY, CALTRANS will complete those reviews within 30 calendar days from the date CALTRANS received the draft PID from CITY.

After CITY revises the PID to address all of CALTRANS' comments and submits the revised draft PID and all related attachments and appendices, CALTRANS will complete its review and final determination of the revised draft PID within 30 calendar days from the date CALTRANS received the revised draft PID from CITY. Should CALTRANS require supporting data necessary to defend facts or claims cited in the revised draft PID, CITY will provide all available supporting data in a reasonable time so that CALTRANS may conclude its review. The 30 day CALTRANS review period will be stalled during that time and will continue to run after CITY provides the required data.

No liability will be assigned to CALTRANS, its officers and employees by CITY under the terms of this AGREEMENT or by third parties by reason of CALTRANS' review and approval of the PID.

Additional Provisions

Standards

31. PARTIES will perform all WORK in accordance with federal and California laws, regulations, and standards; Federal Highway Administration (FHWA) standards; and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:
 - CADD Users Manual
 - CALTRANS policies and directives
 - Plans Preparation Manual
 - Project Development Procedures Manual (PDPM)
 - Workplan Standards Guide

Noncompliant Work

32. CALTRANS retains the right to reject noncompliant WORK. CITY agrees to suspend WORK upon request by CALTRANS for the purpose of protecting public safety, preserving property rights, and ensuring that all WORK is in the best interest of the State Highway System.

Qualifications

33. Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.

Consultant Selection

34. CITY will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

Encroachment Permits

35. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. CITY, their contractors, consultants, agents and utility owners will not work within the SHS right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to CITY, their contractors, consultants, and agents at no cost. CALTRANS will provide encroachment permits to utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
36. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the WORK.

Protected Resources

37. If any PARTY discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTY will notify all PARTIES within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and CALTRANS approves a plan for its removal or protection.

Disclosures

38. PARTIES will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for the WORK in confidence to the extent permitted by law and where applicable, the provisions of California Government Code, Section 6254.5(e) will protect the confidentiality of such documents in the event that said documents are shared between PARTIES.

PARTIES will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete the WORK without the written consent of the PARTY authorized to release them, unless required or authorized to do so by law.

39. If a PARTY receives a public records request pertaining to the WORK, that PARTY will notify PARTIES within five (5) working days of receipt and make PARTIES aware of any disclosed public records.

Hazardous Materials

40. If any hazardous materials, pursuant to Health and Safety Code 25260(d), are found within the PROJECT limits, the discovering PARTY will notify all other PARTIES within twenty-four (24) hours of discovery.
41. PARTIES agree to consider alternatives to PROJECT scope and/or alignment, to the extent practicable, in an effort to avoid any known hazardous materials within the proposed PROJECT limits.
42. If hazardous materials are discovered within PROJECT limits, but outside of State Highway System right-of-way, it is the responsibility of CITY in concert with the local agency having land use jurisdiction over the property, and the property owner, to remedy before CALTRANS will acquire or accept title to such property.

Claims

43. Any PARTY that is responsible for completing WORK may accept, reject, compromise, settle, or litigate claims arising from the WORK without concurrence from the other PARTY.
44. PARTIES will confer on any claim that may affect the WORK or PARTIES' liability or responsibility under this AGREEMENT in order to retain resolution possibilities for potential future claims. No PARTY will prejudice the rights of another PARTY until after PARTIES confer on the claim.
45. If the WORK expends state or federal funds, each PARTY will comply with the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards of 2 CFR, Part 200. PARTIES will ensure that any for-profit consultant hired to participate in the WORK will comply with the requirements in 48 CFR, Chapter 1, Part 31. When state or federal funds are expended on the WORK these principles and requirements apply to all funding types included in this AGREEMENT.

Accounting and Audits

46. PARTIES will maintain, and will ensure that any consultant hired by PARTIES to participate in WORK will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs and billings.
47. PARTIES will maintain and make available to each other all WORK-related documents, including financial data, during the term of this AGREEMENT.

PARTIES will retain all WORK-related records for three (3) years after the final voucher.

PARTIES will require that any consultants hired to participate in the WORK will comply with this Article.

48. PARTIES have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the State Auditor, FHWA (if the PROJECT utilizes federal funds), and CITY will have access to all WORK -related records of each PARTY, and any consultant hired by a PARTY to participate in WORK, for audit, examination, excerpt, or transcription.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTY will be permitted to make copies of any WORK-related records needed for the audit.

The audited PARTY will review the draft audit, findings, and recommendations, and provide written comments within thirty (30) calendar days of receipt.

Upon completion of the final audit, PARTIES have forty-five (45) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTIES is subject to mediation. Mediation will follow the process described in the General Conditions section of this AGREEMENT.

49. If the WORK expends state or federal funds, each PARTY will undergo an annual audit in accordance with the Single Audit Act in the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as defined in 2 CFR, Part 200.
50. When a PARTY reimburses a consultant for WORK with state or federal funds, the procurement of the consultant and the consultant overhead costs will be in accordance with the Local Assistance Procedures Manual, Chapter 10.

Interruption of Work

51. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.

Penalties, Judgements and Settlements

52. The cost of awards, judgements, or settlements generated by the WORK are to be paid from the funds obligated in this AGREEMENT.
53. Any PARTY whose action or lack of action causes the levy of fines, interest, or penalties will indemnify and hold all other PARTIES harmless per the terms of this AGREEMENT.

GENERAL CONDITIONS

Venue

54. PARTIES understand that this AGREEMENT is in accordance with and governed by the Constitution and laws of the State of California. This AGREEMENT will be enforceable in the State of California. Any PARTY initiating legal action arising from this AGREEMENT will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this AGREEMENT resides, or in the Superior Court of the county in which the PROJECT is physically located.

Exemptions

55. All CALTRANS' obligations under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, programming and allocation of funds by the California Transportation Commission (CTC).

Indemnification

56. Neither CALTRANS nor any of their officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this AGREEMENT. It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

57. Neither CITY nor any of their officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

Non-parties

58. PARTIES do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights for entities not signatory to this AGREEMENT. PARTIES do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling the WORK different from the standards imposed by law.
59. PARTIES will not assign or attempt to assign obligations to entities not signatory to this AGREEMENT without an amendment to this AGREEMENT.

Ambiguity and Performance

60. Neither PARTY will interpret any ambiguity contained in this AGREEMENT against the other PARTY. PARTIES waive the provisions of California Civil Code, Section 1654.

A waiver of a PARTY's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.

61. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.

Defaults

62. If any PARTY defaults in its performance of the WORK, a non-defaulting PARTY will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTY fails to do so, the non-defaulting PARTY may initiate dispute resolution.

Dispute Resolution

63. PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as described in the Quality Management Plan. If they cannot resolve the dispute themselves, the CALTRANS District Director and the Executive Officer of CITY will attempt to negotiate a resolution. If PARTIES do not reach a resolution, PARTIES' legal counsel will initiate mediation. PARTIES agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTIES from full and timely performance of the WORK in accordance with the terms of this AGREEMENT. However, if any PARTY stops fulfilling its obligations, any other PARTY may seek equitable relief to ensure that the WORK continues.

Except for equitable relief, no PARTY may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first.

PARTIES will file any civil complaints in the Superior Court of the county in which the CALTRANS District Office signatory to this AGREEMENT resides or in the Superior Court of the county in which the PROJECT is physically located.

64. PARTIES maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

Prevailing Wage

65. When WORK falls within the Labor Code § 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code § 1771, PARTIES will conform to the provisions of Labor Code §§ 1720-1815, and all applicable provisions of California Code of Regulations, Title 8, Division 1, Chapter 8, Subchapter 3, Articles 1-7. PARTIES will include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts.

Work performed by a PARTY's own employees is exempt from the Labor Code's Prevailing Wage requirements.

If WORK is paid for, in whole or part, with federal funds and is of the type of work subject to federal prevailing wage requirements, PARTIES will conform to the provisions of the Davis-Bacon and Related Acts, 40 U.S.C. §§ 3141-3148.

When applicable, PARTIES will include federal prevailing wage requirements in contracts for public works. WORK performed by a PARTY's employees is exempt from federal prevailing wage requirements.

SIGNATURES

PARTIES are empowered by California Streets and Highways Code to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT.

This AGREEMENT may be executed and delivered in counterparts, and by each PARTY in a separate counterpart, each of which when so executed and delivered shall constitute an original and all of which taken together shall constitute one and the same instrument.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or electronic mail (E-Mail), and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

Dan McElhinney
District Director

**VERIFICATION OF FUNDS AND
AUTHORITY:**

Michelle Ishaya
District Budget Manager

CITY OF LOS BANOS

Alex Terrazas
City Manager

Attest:

Lucille Mallonee
City Clerk

FUNDING SUMMARY NO. 01

<u>FUNDING TABLE</u>			
Source	Party	Fund Type	PID
			Totals
LOCAL	CITY	Local	\$30,000
Totals			\$30,000

<u>SPENDING SUMMARY</u>			
Fund Type	PID		Totals
	CALTRANS	CITY	
Local	\$30,000		\$30,000
Totals	\$30,000		\$30,000

Funding

1. Per the State Budget Act of 2012, Chapter 603, amending item 2660-001-0042 of Section 2.00, the cost of any engineering support performed by CALTRANS towards any local government agency-sponsored PID project will only include direct costs. Indirect or overhead costs will not be applied during the development of the PID document.

Invoicing and Payment

2. PARTIES will invoice for funds where the SPENDING SUMMARY shows that one PARTY provides funds for use by another PARTY. PARTIES will pay invoices within forty-five (45) calendar days of receipt of invoice when not paying with Electronic Funds Transfer (EFT). When paying with EFT, CITY will pay invoices within five (5) calendar days of receipt of invoice.
3. If CITY has received EFT certification from CALTRANS then CITY will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
4. When a PARTY is reimbursed for actual cost, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTIES will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.

Project Initiation Document (PID)

5. CALTRANS will invoice CITY for a \$5,000 initial deposit after execution of this AGREEMENT and forty-five (45) working days prior to the commencement of PID expenditures. This deposit represents two (2) months' estimated costs.

Thereafter, CALTRANS will invoice and CITY will reimburse for actual costs incurred and paid.

Invoicing and Payment

6. PARTIES will invoice for funds where the SPENDING SUMMARY shows that one PARTY provides funds for use by another PARTY. PARTIES will pay invoices within forty-five (45) calendar days of receipt of invoice when not paying with Electronic Funds Transfer (EFT). When paying with EFT, CITY will pay invoices within five (5) calendar days of receipt of invoice.

7. If CITY has received EFT certification from CALTRANS then CITY will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
8. When a PARTY is reimbursed for actual cost, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTIES will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.

Project Initiation Document (PID)

9. CALTRANS will invoice CITY for a \$5,000 initial deposit after execution of this AGREEMENT and forty-five (45) working days prior to the commencement of PID expenditures. This deposit represents two (2) months' estimated costs.

Thereafter, CALTRANS will invoice and CITY will reimburse for actual costs incurred and paid.