

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	April 13, 2011
TO:	Riverside County Transportation Commission
FROM:	Budget and Implementation Committee Theresia Trevino, Chief Financial Officer
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Agreement for Advance of Measure A Funds to City of Canyon Lake

BUDGET AND IMPLEMENTATION COMMITTEE AND STAFF RECOMMENDATION:

This item is for the Commission to:

- 1) Approve Agreement No. 11-71-091-00, *“Agreement for Advancement of 2009 Measure A Local Streets and Roads Funds,”* to advance up to \$600,000 of 2009 Measure A funds to the city of Canyon Lake (Canyon Lake) utilizing proceeds from the 2010 Sales Tax Revenue Bonds; and
- 2) Authorize the Chair, pursuant to legal counsel review, to execute the agreement on behalf the Commission.

BACKGROUND INFORMATION:

In March 2005, the Commission established a commercial paper program (2005 Commercial Paper Program) to provide advance funding for projects included in the 2009 Measure A Expenditure Plan program. Some local jurisdictions requested the ability to utilize the commercial paper program to advance local streets and roads (LSR) projects and highway and regional arterial (Highway) projects. Upon developing financing guidelines under the 2005 Commercial Paper Program, advance funding agreements were executed with three cities, which are the cities of Blythe, Hemet and Indio, and the Coachella Valley Association of Governments for certain LSR and Highway projects, respectively.

The 2005 Commercial Paper Program is expected to be terminated in March 2012 upon the expiration of the standby letter of credit with Bank of America, as liquidity provider, since the Commission may now issue long-term sales tax revenue bonds under the 2009 Measure A. In November 2010, the Commission issued \$150 million in 2010 Series A (Tax-Exempt), and 2010 Series B (Taxable Build America Bonds) Sales Tax Revenue Bonds (Bonds) to retire all of the outstanding commercial paper and fund project costs. The 2010 Series B Bonds were issued with a 6.807% coupon rate; however, the Commission expects to receive a cash

subsidy from the United States Treasury equal to 35% of the interest payable on the 2010 Series B Bonds, or 45% of the interest payable on the 2010 Series B Bonds designated as Recovery Zone Economic Development Bonds. Approximately \$44 million of the bond proceeds is currently available for project costs.

As a result of the recent recession resulting in fluctuating Measure A revenues and the need to preserve debt capacity for significant Commission highway projects, staff has not sought new advance funding requests. Canyon Lake recently requested funding not to exceed \$600,000 from debt proceeds for the Railroad Canyon Road project as an advance of its share of 2009 Measure A Western County LSR funds. Staff has evaluated this request and supports an advance funding agreement with Canyon Lake for the following reasons:

- The amount requested by Canyon Lake is small and will not significantly impact the Commission's debt capacity;
- Canyon Lake is unique, as it has a limited network of LSR and related projects;
- Canyon Lake can complete additional construction work on this project, which is otherwise 100% funded, in order to be more cost-effective; and
- The reduction in future local street and road allocations as a result of the repayment obligations will not have a significant, negative impact on the Canyon Lake's ability to maintain and improve existing facilities or construct new facilities.

Under the agreement, Canyon Lake would be reimbursed for actual project costs after submittal of an invoice with appropriate documentation. Interest will be charged based on a rate of 7.307%, which is the equivalent of 6.807% as per the 2010 Build America Bond/Recovery Zone Bonds interest rate plus .50% as reimbursement to the Commission for the cost of issuing and administering the advance. Canyon Lake will be credited for its portion of the interest rate subsidy upon the Commission's receipt of the subsidy payment from the Internal Revenue Service. Repayments will begin immediately following the payment of the advance for a 10-year period by applying a portion of Canyon Lake's LSR funds from the 2009 Measure A to the advance payment due. To secure Canyon Lake's repayment obligation, it will enter into a lease/leaseback or another security arrangement with the Commission.

Since this request by Canyon Lake is considered a special situation, staff conducted preliminary due diligence procedures with consideration of the advance funding guidelines approved by the Commission in September 2005. Staff is requesting Commission approval of this advance funding agreement; however, such approval should not be interpreted by other jurisdictions as an indication of the availability of funds for new advance funding requests.

Financial Information					
In Fiscal Year Budget:	N/A	Year:	FY 2011/12	Amount:	\$600,000
Source of Funds:	2010 Sales Tax Revenue Bonds proceeds			Budget Adjustment:	N/A
GL/Project Accounting No.:	267 71 12301				
Fiscal Procedures Approved:	<i>Sherissa Trevino</i>			Date:	03/17/11

Attachments:

- 1) Canyon Lake Request for Advance dated February 23, 2011
- 2) Agreement No. 11-71-091-00



CITY OF CANYON LAKE

February 23, 2011

Anne Mayer
Riverside County Transportation Commission
4080 Lemon Street, 3rd Floor
P O Box 12008
Riverside, CA 92502-2208

Re: Measure A funding request for Railroad Canyon Road widening project

Dear Ms. Mayer:

The City of Canyon Lake has been working diligently to reach the construction phase of the Railroad Canyon Road widening project. This is a necessary regional arterial connector project that will widen Railroad Canyon Road from four to six lanes between Goetz Road and Canyon Hills in the City of Lake Elsinore. (see attached)

Engineering is 90 percent complete and construction is expected to begin this summer. The project currently has \$8,400,000 in funding from TUMF, Prop 1B, Measure A, Traffic Congestion, and AQMD and is estimated to cost approximately \$9,000,000. (see attached)

After careful consideration, City staff believes additional funding of approximately \$600,000 in gap funding is needed to ensure completion of this significant regional project. To accomplish this, the City of Canyon Lake respectfully requests a loan from the City's future Measure A revenues in the amount of \$600,000.

We understand that the loan and its conditions must be approved by the Commission as well as the City Council. Should you have any questions or concerns regarding this funding request, please feel free to contact me or Habib Motlagh.

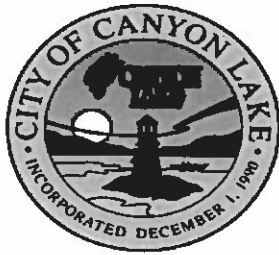
Sincerely,



Lori Moss
City Manager

C: Habib Motlagh

Enclosures



Capital Improvement Project

Title: Railroad Canyon Road (Ultimate)
Budget: 2009-2010

<p><u>Project Description</u> Design and construct roadway to facilitate circulation between Cities of Menifee and Lake Elsinore; three lanes in each direction</p>	<p><u>Project</u> approved by council</p>						
<p><u>Project Forecast</u></p>							
Year	07-08	08-09	09-10	10-11	11-12	12-13	Total
<u>Expense</u>							
Design/Engineering	\$ 388,000	\$ 969,000					\$ 1,357,000
Permits							
Administration							
Inspections							
Construction					\$ 400,000	\$ 5,581,840	\$ 5,981,840
Construction Contingency						\$ 569,160	\$ 569,160
Non-Construction							
Total Expense	\$ 388,000	\$ 969,000			\$ 400,000	\$ 6,151,000	\$ 7,908,000
<u>Revenue</u>							
TUMF	\$ 388,000	\$ 969,000				\$ 6,151,000	\$ 7,508,000
Measure 1B	\$ 400,000						\$ 400,000
Measure A						\$ 528,000	\$ 528,000
Cong Relief						\$100,000	\$ 8,436,000
Total Revenue	\$ 788,000	\$ 969,000				\$ 6,679,000	16,872,000
<u>Year Identified</u>	<u>Construction Start Date</u>		<u>Est. Completion Date</u>		<u>Project Manager</u>		
2007	July 1, 2011		December 1, 2012		Habib Motlagh		

RAILROAD CANYON ROAD IMPROVEMENTS

I. PROJECT INFORMATION

Project Title: Railroad Canyon Road Widening

Lead Agency Name and Address: City of Canyon Lake
31516 Railroad Canyon Road
Canyon Lake, California 92587

Contact: Ms. Lori Moss
Phone: (951) 244-2955

Project Location: The portion of Railroad Canyon Road to be improved is generally located northeast of Interstate 15 (I-15) within the City of Canyon Lake (see Figures 1 and 2). The project is specifically located in Section 6 of Township 6 South, Range 3 West and Sections 1 and 2 of Township 6 South, Range 4 West, San Bernardino Base and Meridian, in the City of Canyon Lake, in the County of Riverside, California. The proposed project includes the improvement of approximately 1.5 miles of Railroad Canyon Road between the western boundary of the City, near Canyon Hills Road (located within the City of Lake Elsinore), and Goetz Road to the east.

II. PROJECT DESCRIPTION

A. Introduction

Railroad Canyon Road currently has as an existing road right-of-way of 110 feet in width, with four lanes, raised center medians, and Class II bike lanes, curb, gutter, and sidewalks along portions of the roadway on both sides of the road. It is designated in the City General Plan as Arterial roadway with an ultimate width of 120 feet. Due to existing development on both sides of the Road, the roadway width is not proposed to be widened to this ultimate designated width and the General Plan was modified to establish a 110 foot right-of-way in conjunction with approval of the roadway improvements. With minimal exceptions, the proposed improvements will be completed within the existing Road right-of-way.

The proposed roadway improvements consist of the expanding Railroad Canyon Road to six lanes with 5-foot Class II bike lanes, curb, gutter, sidewalks, and raised curb will be utilized at existing intersections. As indicated above, all proposed improvements will be conducted within the existing 110-foot wide right-of-way. Raised medians will be utilized at the existing intersection along the project alignment. The proposed curb system will range from 6-9 inches in height.

For the proposed street improvements, the identified construction phases include:

- Removal of existing pavement, median, curb and gutter, and sidewalk. Equipment will include wheeled loaders, dump trucks, haulers, and backhoes and grinding equipment.
- Grading of the road alignment, including installation of additional utility infrastructure, minor drainage system and sidewalks, curbs and gutters. The equipment required for this task includes grader(s), dump truck(s), wheeled loader(s), concrete truck(s) and a roller.
- Paving will be carried out by paver(s), planer(s), up to three rollers (compactors), concrete trucks, and a water truck.
- Lane striping and signage installation.
- Traffic signal modifications.
- Bus Stops.
- Landscaping/irrigation.
- Utility relocations, including above ground vault(s), poles, wires, etc.

B. Purpose and Need

The City of Canyon Lake is improving Railroad Canyon Road through the core area of the City to its General Plan Circulation Element build-out design. The objective is to facilitate the flow of traffic through the City's community center with minimum delays for both local and regional traffic.

AGREEMENT FOR ADVANCEMENT OF 2009 MEASURE "A"
LOCAL STREETS AND ROADS FUNDS

1. Parties and Date. This Agreement ("Agreement") is entered into as of this day of , 2011, by and between the Riverside County Transportation Commission ("RCTC" or "Commission") and the City of Canyon Lake ("City") located in the County of Riverside, State of California:

2. Recitals.

2.1 RCTC is a county transportation commission created and existing pursuant to California Public Utilities Code Sections 130053 and 130053.5.

2.2 The City is a municipality with one local road requiring maintenance, development and rehabilitation hereunder.

2.3 In 1988, RCTC enacted and the voters of Riverside County ("County") approved Measure "A" (1989 Measure 'A') which authorized RCTC to impose a retail transaction and use tax of one-half percent (.5%) throughout the County of Riverside for up to twenty years. This tax is popularly known as a one-half cent sales tax.

2.4 The 1989 Measure "A" tax was due to expire in June 2009, but on November 5, 2002, a thirty year extension of the half-cent sales tax was approved by voters of the County ("2009 Measure 'A'").

2.5 The Transportation Improvement Plan ("Plan") implementing the 2009 Measure "A" provides that its tax funds are to be used for transportation purposes in the County and further provides that \$970 million of these funds are to be distributed to the cities in the Western County area for local street and road improvements ("Local Streets and Roads Funding") in amounts based on both proportionate population and contribution to 2009 Measure "A" tax revenue.

2.6 The proceeds of the retail transaction and use tax ("2009 Measure 'A' Funds") are collected by the California Board of Equalization pursuant to a contract between RCTC and the Board of Equalization, and paid to RCTC monthly.

2.7 The Commission has issued the Riverside County Transportation Commission Sales Tax Revenue Bonds, 2010 Series B Taxable Build America Bonds (2010 Series B Bonds) in November 2010. The Commission is eligible to receive a subsidy payment from the United States of America in an amount equal to 35% of the interest paid by the Commission with respect to the 2010 Series B Bonds, or 45% of the interest paid on such 2010 Series B Bonds that are additionally designated as qualified recovery zone bonds (the "Subsidy Payments"). A portion of the proceeds of the 2010 Series B Bonds will provide funding for the advance provided herein.

2.8 The City has requested and RCTC has agreed that RCTC will advance to the City certain amounts which the City and RCTC anticipate RCTC would otherwise collect and

allocate to the City as its share of Local Streets and Roads Funding, as allocated pursuant to the formula set forth in the Plan.

2.9 The funds shall be used to finance a portion of the cost of improvements to the Railroad Canyon Road Widening Project more particularly described in Exhibit “A” attached hereto (“Project”).

2.10 The City agrees that it will repay to RCTC the advance and costs associated therewith described herein from Local Streets and Roads Funding and shall secure such repayment obligation by way of a lease/lease-back arrangement or other acceptable security arrangement approved by RCTC.

3. Terms.

3.1 Advance of 2009 Measure “A” Funds.

A. Amount of Advance. RCTC agrees to distribute to the City, on terms and conditions set forth herein, a sum not to exceed Six Hundred Thousand Dollars (\$600,000) (the “Advance”).

B. Interest. The Advance shall only accrue interest on that portion of the Advance actually distributed to the City. Once any portion of the Advance is distributed to the City, interest shall accrue from this date and said interest shall be payable by the City at a rate of ½ percent over the interest rate paid by RCTC on the 2010 Series B Bonds of 6.807%. The above-described ½ percent interest rate shall reimburse RCTC for the cost of issuing and administering the Advance. Any Subsidy Payments received by the Commission in connection with the 2010 Series B Bonds will create a credit in the amount of interest owed by the City to the Commission hereunder in an amount to be determined by the Commission.

C. Repayment of Advance. The City shall repay the Advance, together with all accrued and unpaid interest, to RCTC in one-hundred twenty (120) monthly installments commencing the month following the payment of the Advance to the City, amortized over the period from the date of this Agreement until the maturity date to be calculated by RCTC based on the amount of the Advance, with each installment due no later than the thirtieth (30th) of each month, until the maturity date or repayment in full of all outstanding principal and accrued and unpaid interest, whichever is earlier.

D. Early Repayment. The City shall have the right to repay the entire unpaid principal balance of the Advance, plus accrued interest, without penalty. The City intends, but is not obligated to, seek funding from alternative sources to repay Advance. Such alternative sources include eligible TUMF funds, as well as grants and appropriations as well as applicable state and federal programs. At the City’s reasonable request and to the extent possible, RCTC will cooperate in assisting the City to obtain and utilize these alternative funding sources for early repayment of Advance.

3.2 Repayment.

A. Authorization to Apply Local Streets and Roads Funding to Payments; Pledge of Additional Security. For so long as any obligation of the City under this Agreement remains outstanding, the City hereby instructs RCTC to apply the City's portion of any Local Streets and Roads Funding which would otherwise be distributed to the City as Local Streets and Road Funding under the 2009 Measure "A" Plan to pay any due but unpaid obligations of the City to RCTC under this Agreement. To further secure the City's repayment obligation, the City shall either (i) enter into a lease/lease-back arrangement with RCTC in substantially the form set forth in Exhibit "B" hereto or (ii) enter into another security arrangement acceptable to RCTC ("Additional Security"). The parties acknowledge that the Advance is not a general obligation of the City, but is rather a special obligation of the City payable solely from the City's portion of any Local Streets and Roads Funding which would otherwise be distributed to the City under the 2009 Measure "A". The parties further acknowledge that the Additional Security is not a debt for purposes of the California Constitution. Consequently, neither the faith and credit nor the taxing powers of the City are pledged for repayment of the Advance or the Additional Security.

B. Remaining Balance Payable. RCTC shall notify the City of the calculation and application of funds made under Section 3.2(B) above, and any amounts then due to RCTC from the City, within thirty (30) days of RCTC's calculation and application of such amounts. RCTC's calculations shall be final, absent clerical or mathematical error. The City shall pay to RCTC any balance due within thirty (30) days of receipt of such notice from RCTC of such amount.

3.3 Conditions of the Advance. The obligation of RCTC to make the Advance shall be subject to the condition precedent that RCTC shall have received, in form and substance satisfactory to RCTC, all of the following:

A. Duly executed copies of this Agreement, Additional Security and such other documents as RCTC may request in order to fully effectuate the purposes and intent of this Agreement.

B. Such documents and certificates regarding the existence, authority and power of the City to execute this Agreement and any related documents as RCTC deems reasonably necessary.

3.4 City's Representations and Warranties. The City hereby makes the following representations and warranties which shall be deemed to be continuing representations and warranties so long as the Advances remains outstanding:

A. Agreement Authorized. The execution, delivery and performance of this Agreement, the Additional Security and any and all related documents (collectively "Advance Documents") are duly authorized and do not require the further consent or approval of any body, board or commission or other authority.

B. No Default. The City is not in default, nor is it aware of any events that, with the passage of time or the giving of notice, would constitute an event of default on any obligation of the City to RCTC or on any existing public debt issuance of the City.

C. No Conflict. The execution, delivery and performance of the Advances Documents does not contravene or conflict with any constitutional provision, law, statute, regulation, or any agreement, indenture or undertaking to which the City is a party or by which it or the 2009 Measure “A” Funds may be bound or affected, and does not and will not cause any lien, charge or other encumbrance to be created or imposed upon the 2009 Measure “A” Funds by reason thereof.

D. Solvency. The City is solvent.

E. No Violation of RCTC Measure “A” Advance Policies. The City is not in violation of the policies of RCTC for recipients of Advance Funds, a copy of which is attached hereto as Exhibit “C.”

F. Litigation. There is no litigation or other proceeding pending or threatened against or affecting the City and relating to the Advance, or the Advance Documents, or the transactions contemplated herein or thereby.

G. Financial Condition. All financial statements and data submitted in writing by the City to RCTC in connection with the request for Advance are true and correct, and said statements truly represent the financial condition of the City as of the date thereof and the results of the operations of the City for the period covered thereby and have been prepared in accordance with generally accepted accounting principles on a basis consistently maintained, and that since such date there have been no materially adverse changes in the ordinary course of business. The City has no knowledge of any liabilities, contingent or otherwise, at such date not reflected in said statements, and the City has not entered into any special commitments or substantial contracts which are not reflected in said statements other than in the ordinary and normal course of business, which may have a materially adverse effect upon its financial condition or operations as now conducted.

3.5 City's Affirmative Covenants. The City agrees that so long as the Advance is outstanding, it will, unless RCTC shall otherwise consent in writing:

A. Use of Advance. Use the Advance only for the purpose and project identified in Exhibit “A” attached hereto. In addition, the City recognizes that under 2009 Measure “A” Plan the purpose of Local Streets and Roads Funding is to assist with the maintenance, development, and rehabilitation of the existing the City and County road system in Western Riverside County, and the City agrees that the Advance shall only be used in a manner consistent with the portions of the 2009 Measure “A” Plan related to Western County Local Streets and Road Funding.

B. Records and Reports. Maintain a standard and modern system of accounting in accordance with generally accepted accounting principles on a basis consistently maintained and furnish RCTC annual audited financial statements and such other information relating to the affairs of the City or the uses of the Advance as RCTC reasonably may request from time to time.

C. Inspection. Permit, at any reasonable time, upon reasonable notice, qualified personnel designated by RCTC in writing, to inspect any projects funded by the

Advance and any records maintained in connection therewith. RCTC shall have no duty to make any such inspection and shall not incur any liability or obligation by reason of making or not making any such inspection.

D. Notice of Default. Promptly notify RCTC in writing of the occurrence of any Event of Default hereunder or of any event which would become an Event of Default hereunder upon giving of notice, lapse of time, or both.

3.6 City's Negative Covenants. The City will not, so long as the Advance remains outstanding, without RCTC's prior written consent create, incur, assume or permit to exist any mortgage, deed of trust, security interest (whether possessory or nonpossessory) or other lien upon or on the City's Local Share of the 2009 Measure "A" Funds other than liens in favor of RCTC.

3.7 Rights and Remedies.

A. RCTC shall at all times have the rights and remedies of a secured party under the California Commercial Code ("Code") in addition to the rights and remedies provided herein or in any other agreement or document executed by the City.

B. The rights and remedies of RCTC under this Agreement shall not be exhausted by the exercise of any of the rights or remedies of RCTC pursuant to this Agreement or any other agreement between the City and RCTC or any action, proceeding or any number of successive actions or proceedings, unless and until all of the sums owing RCTC by the City shall be fully paid, performed and discharged. All rights and remedies afforded to RCTC pursuant hereto or under any other agreement at any time in effect between the City and RCTC (whether or not there are other parties in addition to the City and RCTC) shall be separate and cumulative and in addition to any and all rights or remedies available at law, in equity or otherwise, and no one of such rights or remedies, whether exercised or not, shall be deemed to be in exclusion of any other right or remedy available and shall in no way limit or prejudice any other right or remedy. The exercise of any one of such rights or remedies shall not be deemed a waiver of, or an election not to exercise, any other right or remedy.

3.8 Events of Default. The occurrence of any one or more of the following events shall, at RCTC's option, constitute an event of default (each an "Event of Default") and the City shall provide RCTC with immediate notice thereof.

A. Any warranty, representation, statement, report or certificate made or delivered to RCTC by the City or any of the City's officers, employees or agents now or hereafter which is incorrect, false, untrue or misleading in any material respect; or

B. The City shall fail to pay, perform or comply with, or otherwise shall breach, any obligation, warranty, term or condition in this Agreement or any amendment to this Agreement, or any agreement delivered pursuant hereto; or

C. There shall occur any of the following: dissolution, termination of existence or insolvency of the City; the commencement of any proceeding under any bankruptcy

or insolvency law by or against the City; entry of a court order which enjoins, restrains or in any way prevents the City from paying any sums owed by the City to RCTC.

3.9 Indemnification. The City shall indemnify, hold harmless and defend RCTC from and against any and all claims, losses, liabilities, damages, costs, and expenses, including interest, penalties, and reasonable attorneys' fees and costs, incurred or suffered, which arise, result from, or relate to City's breach of or failure to perform any of its agreements, covenants, obligations, representations, or warranties contained herein. Such indemnity shall survive the termination or discharge of this Agreement.

3.10 Procedures for Distribution of the Advance.

A. Initial Payment by the City. The City shall be responsible for initial payment of all the Project costs as they are incurred. Following payment of such Project costs, the City shall submit invoices to RCTC requesting reimbursement of those eligible costs described in section 3.5.A. of this Agreement. Each invoice shall be accompanied by detailed contractor invoices, or other demands for payment addressed to the City, and documents evidencing the City's payment of the invoices or demands for payment. The City shall submit invoices not more often than monthly and not less often than quarterly.

B. Review and Reimbursement by RCTC. Upon receipt of an invoice from the City, RCTC may request additional documentation or explanation of the Project costs for which reimbursement is sought. Undisputed amounts shall be paid by RCTC to the City within thirty (30) days. In the event that RCTC disputes the eligibility of the City for reimbursement of all or a portion of an invoiced amount, the Parties shall meet and confer in an attempt to resolve the dispute. If the meet and confer process is unsuccessful in resolving the dispute, the City may appeal RCTC's decision as to the eligibility of one or more invoices to RCTC's Executive Director. The City may appeal the decision of the Executive Director to the full RCTC Board, the decision of which shall be final. Additional details concerning the procedure for the City's submittal of invoices to RCTC and RCTC's consideration and payment of submitted invoices are set forth in Exhibit "D", attached hereto.

C. Funding Amount/Adjustment. If a post Project audit or review indicates that RCTC has provided reimbursement to the City in an amount in excess of the Advance, or has provided reimbursement of ineligible Project costs, the City shall reimburse RCTC for the excess or ineligible payments within 30 days of notification by RCTC.

3.11 Miscellaneous.

A. No Waiver. No waiver of any Event of Default or breach by the City hereunder shall be implied from any omission by RCTC to take action on account of such default, and no express waiver shall affect any default other than the default specified in the waiver and the waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by RCTC to or of any act by the City requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

B. No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of RCTC and the City and no third person, other than a permitted assignee or successor hereunder, shall have any right of action under this Agreement.

C. Notices. All notices or other communication required or permitted to be given hereunder shall be in writing and shall be considered as properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by express courier delivery or personal delivery to the addressee. Notice mailed by U.S. mail shall be effective only if and when received at the addressee's address. For purposes of notice, the addresses of the parties shall be as follows:

RCTC: RIVERSIDE COUNTY TRANSPORTATION COMMISSION
Mailing Address: P.O. Box 12008
Riverside, CA 92502-2208
Attn: Executive Director

CITY: CITY OF CANYON LAKE
31516 Railroad Canyon Road
Canyon Lake, CA 92587
Attn: City Manager

Each party shall have the right to change its address for notice hereunder to any other location by the giving of notice to the other party in the manner set forth above.

D. Applicable Law. This Agreement and all documents provided for herein shall be governed by and construed in accordance with the laws of the State of California.

E. Time. Time is of the essence in this Agreement, and each and every provision hereof in which time is an element.

F. Amendment and Waiver. This Agreement and each provision hereof may be amended, changed, waived, discharged or terminated only by an instrument in writing signed by the parties hereto.

G. Attorney's Fees. The prevailing party in any action arising out of this Agreement shall be entitled to its actual attorney's fees and other related expenses actually incurred.

H. Severability. The invalidity and unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

I. Counterparts. This Agreement may be executed in three or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

J. Headings. The various headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

K. Further Assurances. At any time or from time to time upon the request of RCTC, the City will execute and deliver such further documents and do other acts and things as RCTC may reasonably request in order to effect fully the purposes of this Agreement, and any other Advances Documents and to provide for the payment of the Advances and interest thereon in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the date first herein above written.

RIVERSIDE COUNTY
TRANSPORTATION COMMISSION

CITY OF _____

By: _____
Gregory S. Pettis, Chair

By: _____
Mayor

REVIEWED AND RECOMMENDED
FOR APPROVAL:

ATTEST:

By: _____
Anne Mayer, Executive Director

By: _____
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM

By: _____
Best Best & Krieger LLP, Counsel
Riverside County Transportation
Commission

By: _____
_____, City Attorney

Exhibit List

Exhibit A	Description of Project
Exhibit B	Lease/Lease-Back Agreement
Exhibit C	Commission Policies
Exhibit D	Procedures for Submittal, Consideration and Payment of Invoices

EXHIBIT “A”

DESCRIPTION OF PROJECT

CITY OF CANYON LAKE 2009 MEASURE “A” LOAN PROJECT:

[ATTACHED BEHIND THIS PAGE]

EXHIBIT "B"

Recording requested by
and return to:

CITY OF CANYON LAKE
31516 Railroad Canyon Road
Canyon Lake, CA 92587

=====

LEASE/LEASE-BACK AGREEMENT

by and between

CITY OF CANYON LAKE

and

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

Relating to the Advance of
2009 Measure "A" Local Streets and Roads Funds

Dated as of _____, 2011

=====

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

LEASE/LEASE-BACK AGREEMENT

This Lease/Lease-Back Agreement (this "Lease") executed and entered into as of _____, 2011, is by and between the CITY OF CANYON LAKE (the "City"), a municipal corporation, duly organized and validly existing under the Constitution and laws of the State of California, and the RIVERSIDE COUNTY TRANSPORTATION COMMISSION (the "RCTC"), a public agency, duly organized and existing under and by virtue of the laws of the State of California.

RECITALS

WHEREAS, the City and RCTC have entered into the Agreement for Advance of 2009 Measure "A" Local Streets and Roads Funds dated as of _____, 2011 (the "Advance Agreement") for the purpose of obtaining an advance of certain funds to be received by RCTC on behalf of the City in connection with 2009 Measure "A" Funds (as defined in the Advance Agreement); and

WHEREAS, the Advance Agreement requires that the City repay any Advance (as defined in the Advance Agreement) by pledging the City's Local Streets and Roads Funding (as defined in the Advance Agreement); and

WHEREAS, the Advance Agreement further requires that the City provide additional security to secure repayment in the event Local Streets and Roads Funding are insufficient to repay in full the City's Advance as it becomes due and payable; and

WHEREAS, to provide for such additional security the City desires to enter into this Lease/Lease-Back Agreement between the City and RCTC, pursuant to which the City will lease to RCTC and RCTC will lease back to the City certain property more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease Agreement;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.01 shall, for all purposes of this Lease Agreement, have the meanings herein specified or in the Advance Agreement, which meanings shall be equally applicable to both the singular and plural forms of any of the terms herein defined.

Additional Rental Payments. The term "Additional Rental Payments" means all amounts payable by the City as Additional Rental Payments pursuant to Section 3.02 hereof.

Advance. The term “Advance” shall have the meaning given to such term in the Advance Agreement which defines the term as \$2,500,000.

Advance Agreement. The term “Advance Agreement” means the Agreement for Advance of 2009 Measure “A” Local Streets and Roads Funds dated as of _____, 2011 between the City and RCTC and any amendments thereto.

Advance Repayment. The term “Advance Repayment” or “Advance Repayments” means payment or payments as required to be paid by the City under Section 3.1 the Advance Agreement, as a regularly scheduled payments.

Base Rental Payment Date. The term “Base Rental Payment Date” means the dates upon which the City is required to make Advance Repayments under the Advance Agreement.

Base Rental Payments. The term “Base Rental Payments” means all amounts payable to RCTC from the City as Base Rental Payments pursuant to Section 3.01 hereof.

Commencement Date. The term “Commencement Date” means the date of recordation of this Lease Agreement in the office of the County Recorder of Riverside, State of California.

Local Streets and Roads Funding. The term “Local Streets and Roads Funding” shall have the meaning given to such term in the Advance Agreement.

Independent Financial Consultant. The term “Independent Financial Consultant” means a financial consultant or firm of such consultants generally recognized to be well qualified in the financial consulting field, appointed and paid by the City and who, or each of whom:

- (1) is in fact independent and not under the domination of the City;
- (2) does not have any substantial interest, direct or indirect, with the City; and
- (3) is not connected with the City as a member, officer or employee of the City, but who may be regularly retained to make annual or other reports to the City.

Independent Insurance Consultant. The term “Independent Insurance Consultant” means a nationally recognized independent actuary, insurance company or broker that has actuarial personnel experienced in the area of insurance for which the City is to be self-insured, as may from time to time be designated by RCTC.

Lease or Lease Agreement. The term “Lease” or “Lease Agreement” means this Lease/Lease-Back Agreement and any amendment or supplement hereto.

Net Proceeds. The term “Net Proceeds” means any insurance proceeds or condemnation award in excess of \$50,000, paid with respect to any of the Property, remaining after payment therefrom of all expenses incurred in the collection thereof.

Permitted Encumbrances. The term “Permitted Encumbrances” means, with respect to a Parcel, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to provisions of Article V hereof, permit to remain unpaid; (ii) this Lease Agreement; (iii) any right or claim of any mechanic, laborer,

materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of recording of this Lease Agreement; and (v) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Lease Agreement and to which RCTC and the City consent in writing.

Property. The term “Property” means those certain parcels of real property situated in the City, including all existing facilities and improvements located thereon, which are more particularly described in Exhibit A attached hereto, including any other parcels of real property substituted therefor, to the extent permitted by Section 8.07 hereof.

Rental Period. The term “Rental Period” means the twelve-month period commencing on the Commencement Date and on each anniversary of the Commencement Date during the term of the Lease.

Termination Date. The term “Termination Date” means the date upon which the Advance has been repaid in full.

ARTICLE II LEASE AND LEASE-BACK OF PROPERTY; TERM

Section 2.01. Lease. The City hereby leases to RCTC and RCTC hereby leases from the City the Property, and all existing facilities and improvements located thereon, to have and to hold for the Term of this Lease. RCTC shall pay to the City as and for rental hereunder the sum of \$1.00, and other good and valuable consideration, on or before the date of commencement of the term of this Lease. Such amount shall constitute prepayment in full of all rental payable by RCTC hereunder.

Section 2.02. Lease-Back. RCTC hereby leases-back to the City and the City hereby leases from RCTC the Property, on the terms and conditions hereinafter set forth, and subject to all easements, encumbrances and restrictions that existed as of the Commencement Date.

The leasing to the City from RCTC of the Property shall not effect or result in a merger of the City’s leasehold estate pursuant to this Lease Agreement with its fee estate as lessor hereunder, and RCTC shall continue to have and hold a leasehold estate in the Property pursuant to the terms hereof throughout the term hereof. As to the Property, this Section 2.02 shall be deemed and constitute a sublease.

Section 2.03. Term: Occupancy.

(a) Term. The term of this Lease Agreement shall commence on the Commencement Date, and shall end on the Termination Date.

(b) Occupancy. The City agrees to take possession of the Property on the Commencement Date. The City shall only use and occupy the Property for public purposes.

ARTICLE III RENTAL PAYMENTS

Section 3.01. Base Rental Payments.

(a) In General. Subject to the provisions of Sections 3.05 and 7.02 hereof, the City shall pay on each Base Rental Payment Date to RCTC as Base Rental Payments an amount equal to the difference, if any, between the amount payable as an Advance Repayment on the immediately preceding payment date and the amount of Local Streets and Roads Funding actually applied by RCTC to repay the Advance pursuant to Section 3.2.A. of the Advance Agreement. In the event Local Streets and Roads Funding is sufficient to make all required Advance Repayments on any date when such payments are due, the City shall have no obligation to make any Base Rental Payments hereunder on such dates. Base Rental Payments shall have principal and interest components which correspond to the principal and interest components of payments made under the Advance Agreement. The interest components of the Base Rental Payments shall be paid by the City as and constitute interest paid on the principal components of the Base Rental Payments to be paid by the City hereunder.

The obligation of the City to make the Base Rental Payments does not constitute a debt of the City or of the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limit or restriction, and does not constitute an obligation for which the City or the State of California is obligated to levy or pledge any form of taxation or for which the City or the State of California has levied or pledged any form of taxation.

(b) Maximum Rent: Rental Period. All Base Rental Payments made pursuant to this Section 3.01, together with any Additional Rental paid pursuant to Section 3.02 hereof, for each Rental Period shall not exceed the fair rental value of the Property.

The aggregate annual Base Rental Payments for the Property shall be for the use of the Property during the Rental Period, or portion thereof, in which such payment is scheduled to be made.

Section 3.02. Additional Rental Payments. The City shall also pay, as Additional Rental Payments hereunder in addition to the foregoing Base Rental Payments, such amounts as shall be required for the payment of the following:

(a) All taxes, assessments of any type or nature charged to RCTC or the City or affecting the Property or the respective interests or estates of RCTC or the City therein, or affecting the amount available to RCTC from rentals received hereunder (including taxes or assessments assessed or levied by any governmental agency or district having power to levy taxes or assessments).

(b) Insurance premiums for all insurance required pursuant to Article V of this Lease.

Amounts constituting Additional Rental Payments payable hereunder shall be paid by the City directly to the person or persons to whom such amounts shall be payable. The City shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within sixty (60) days after notice in writing from the Fiscal Agent or RCTC to the City stating the amount of Additional Rental Payments then due and payable and

the purpose thereof.

Section 3.03. Fair Rental Value. Such payments of the foregoing Base Rental Payments and Additional Rental Payments for the Property during each Rental Period, during the term of this Lease Agreement, shall constitute the total rental for said Rental Period. The parties hereto have agreed and determined that the fair rental value of the Property is not less than the Advance Repayments in any given year during the Term hereof. In making such determination of fair rental value, consideration has been given to the appraised value of the Property, the estimated costs of financing the acquisition of property comparable to the Property, the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the City and the general public. Said total rental shall be paid for and in consideration of the use and occupancy of the Property and in consideration of the continued quiet use and enjoyment thereof during each Rental Period for which said rental is to be paid.

Notwithstanding any other provision of this Lease Agreement, in the event that rental payments due hereunder shall be partially abated for any period of time, the rental payments due for such period of time shall not exceed the fair rental value of that portion of the Property available for use and occupancy by the City during such period of time.

Section 3.04. Payment Provisions. Each installment of Base Rental Payments payable hereunder shall be paid in lawful money of the United States of America to or upon the order of RCTC, or to its assigns, or such other place as RCTC or its assigns shall designate. Each Base Rental Payment shall be made no later than the Base Rental Payment Date on which such Base Rental Payment is due. Notwithstanding any dispute between RCTC and the City, the City shall make all rental payments when due without deduction or offset of any kind and shall not withhold any rental payments pending the final resolution of such dispute. In the event of a determination that the City was not liable for said rental payments or any portion thereof, said payments or excess of payments, as the case may be, shall be credited against subsequent rental payments due hereunder or refunded at the time of such determination.

Section 3.05. Rental Abatement. Except as otherwise specifically provided in this Section 3.05 and Section 7.01 hereof, during any period in which, by reason of material damage or destruction there is substantial interference with the use and occupancy by the City of any portion of the Property, rental payments due hereunder shall be abated proportionately, and the City waives the benefits of Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other rights to terminate the Lease by virtue of any such interference and the Lease shall continue in full force and effect. The amount of such abatement shall be agreed upon by the City and RCTC but, subject to Section 3.03 hereof, in no event shall the rental be less than the amount required for the payment of the principal and interest components of the Base Rental Payments, and the Additional Rental Payments, related thereto, as the same become due and payable. The City and RCTC shall calculate such abatement and shall prepare a certificate setting forth such calculation and the basis therefor. Such abatement shall continue for the period commencing with the date of such damage or destruction and ending with the substantial completion of the work of repair or replacement of the Property so damaged or destroyed.

ARTICLE IV MAINTENANCE; ALTERATIONS AND ADDITIONS

Section 4.01. Maintenance and Utilities. Throughout the term of this Lease Agreement, as part of the consideration for rental of the Property, all improvement, repair and maintenance of the Property shall be the responsibility of the City, and the City shall pay from sources other than from the Advance for or otherwise arrange for the payment of all utility services supplied to the Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, ventilation, air conditioning, water and all other utility services, and shall pay for or otherwise arrange for payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on of the City or any assignee or sublessee thereof. In exchange for the rental herein provided, RCTC agrees to provide only the Property.

Section 4.02. Additions to Property. Subject to Section 8.02 hereof, the City and any sublessee shall, at its own expense, have the right to make additions, modifications and improvements to any Property. All such additions, modifications and improvements shall thereafter comprise part of the Property and be subject to the provisions of this Lease Agreement. Such additions, modifications and improvements shall not in any way damage the Property or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is at least equal to the value of the Property immediately prior to the making of such additions, modifications and improvements.

Section 4.03. Installation of City's Equipment. The City and any sublessee may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed items of equipment or other personal property in or upon the Property. All such items shall remain the sole property of such party, in which RCTC shall have no interest, and may be modified or removed by such party at any time provided that such party shall repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement shall prevent the City and any sublessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Property.

ARTICLE V INSURANCE

Section 5.01. Public Liability and Property Damage Insurance. The City shall maintain or cause to be maintained, throughout the term of this Lease Agreement, a standard comprehensive general liability insurance policy or policies in protection of the City and RCTC and their respective members, officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the use or ownership of the Property. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$3,000,000 for personal injury or deaths of two or more persons in a single accident or event, and in a minimum amount of \$500,000 for damage to property (subject to a deductible clause of not to exceed \$200,000) resulting from a single accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of \$3,000,000

covering all such risks. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried or required to be carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City provided such self-insurance complies with the provisions of Section 5.04 hereof. The Net Proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the Net Proceeds of such insurance shall have been paid.

Section 5.02. Title Insurance. The City shall provide, at its own expense, one or more CLTA title insurance policies in form acceptable to RCTC in the aggregate amount of the principal amount of the Advance. Said policy or policies shall insure the City's leasehold estate hereunder in such Property subject only to Permitted Encumbrances. All Net Proceeds received under said policy or policies shall be used to make Advance Repayments; provided, however, that any amounts in excess of amounts necessary to make all Advance Repayments shall be retained by the City. Prior to the Termination Date, each policy of title insurance obtained pursuant hereto or required hereby shall provide that all proceeds thereunder shall be payable to RCTC or its assigns.

Section 5.03. Fire and Extended Coverage Insurance. The City shall procure and maintain, or cause to be procured and maintained throughout the term of this Lease Agreement insurance against loss or damage to any structures constituting any part of the Property by fire and lightning, with extended coverage insurance and vandalism and malicious mischief insurance. A maximum deductible amount of \$100,000 for any one loss shall be allowable. Such insurance shall be in an amount equal to one hundred percent (100%) of the replacement cost of the damaged Property. Such insurance may be maintained as part of or in conjunction with any other fire and extended coverage insurance carried or required to be carried by the City, and may be maintained in the form of self-insurance by the City.

Section 5.04. Additional Insurance Provision: Form of Policies. The City shall pay or cause to be paid when due the premiums for all insurance policies required by Section 5.01 of this Lease, and shall promptly furnish or cause to be furnished evidence of such payments to RCTC. All such policies shall provide that RCTC shall be given thirty (30) days notice of the expiration thereof, any intended cancellation thereof or reduction of the coverage provided thereby.

Section 5.05. Self-Insurance. Any self-insurance maintained by the City pursuant to this Article V shall comply with the following terms:

(i) The self-insurance program shall, in the judgment of an Independent Insurance Consultant, include an actuarially sound claims reserve fund out of which each self-insured claim shall be paid; the adequacy of each such fund shall be evaluated on an annual basis by the Independent Insurance Consultant; and any deficiencies in any self-insured claims fund shall be remedied in accordance with the recommendation of the aforementioned Independent Insurance Consultant;

(ii) The self-insured claims fund shall be held in a separate trust fund by an independent trustee; and

(iii) In the event the self-insurance program shall be discontinued, the actuarial soundness of its claims reserve fund, as determined by the Independent Insurance Consultant shall, be maintained.

Section 5.06. Rental Interruption Insurance. The City shall procure and maintain through the Termination Date rental interruption or use and occupancy insurance, if commercially available, to cover loss, total or partial, of the use of any part of the Facilities during the Term of the Lease Agreement as a result of any of the hazards covered in the maximum remaining scheduled Lease Payments in any future 18 month period payable by the City. The Net Proceeds of such insurance shall be paid to RCTC, and shall be credited towards the payment of the Lease Payments in the order in which such Lease Payments come due and payable.

ARTICLE VI DEFAULTS AND REMEDIES

Section 6.01. Defaults and Remedies. (a) Defaults. If (i) the City shall fail to pay any Base Rental Payment required to be paid hereunder when the same becomes due and payable, (ii) the City shall fail to pay any item of Additional Rental as and when the same shall become due and payable hereunder, or (iii) the City shall breach any other terms, covenants or conditions contained herein, and shall fail to remedy any such breach with all reasonable dispatch within a period of 30 days after written notice thereof from RCTC, or its assignee, to the City, or, if such breach cannot be remedied within such 30 day period, shall fail to institute corrective action within such 30 day period and diligently pursue the same to completion, then and in any such event the City shall be deemed to be in default hereunder.

(b) Remedies. If the City shall be in default hereunder, RCTC shall have the right, at its option, without any further demand or notice, so long as RCTC does not terminate this Lease or the City's right to possession of the Property, to enforce all of its rights and remedies under this Lease Agreement, including the right to recover Base Rental Payments as they become due under this Lease Agreement, pursuant to Section 1951.4 of the Civil Code of the State, by pursuing any remedy available at law or in equity, except as otherwise expressly provide herein.

Each and all of the remedies given to RCTC hereunder or by any law now or hereafter enacted are cumulative and the single or partial exercise of any right, power or privilege hereunder shall not impair the right of RCTC to other or further exercise thereof or the exercise of any or all other rights, powers or privileges. If any statute or rule of law validly shall limit the remedies given to RCTC hereunder, RCTC nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

(c) Attorney's Fees. In the event either RCTC or the City shall prevail in any action brought to enforce any of the terms and provisions of this Lease Agreement, such prevailing party may recover from the losing party a reasonable amount as and for attorney's fees incurred in attempting to enforce any of the terms and provisions hereof.

(d) Waiver. Failure of RCTC to take advantage of any default on the part of the City shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of RCTC to insist upon performance by the City of any term, covenant or

condition hereof, or to exercise any rights given RCTC on account of such default. A waiver of a particular default shall not be deemed to be a waiver of the same or any subsequent default. The acceptance of rent hereunder shall not be, or be construed to be, a waiver of any term, covenant or condition of this Lease Agreement.

**ARTICLE VII
EMINENT DOMAIN; PREPAYMENT**

Section 7.01. Eminent Domain. If all of the Property (or portions thereof such that the remainder is not usable for public purposes by the City) shall be taken under the power of eminent domain, the term hereof shall cease as of the day that possession shall be so taken. If less than all of the Property shall be taken under the power of eminent domain and the remainder is usable for public purposes by the City at the time of such taking, then the Lease Agreement shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary, and in such event there shall be a partial abatement of the rental due hereunder in an amount to be agreed upon by the City and RCTC but, subject to Section 3.03 hereof, in no event shall the rental be less than the amount required for the payment of the principal, and interest components of the Base Rental Payments, and the Additional Rental Payments, as the same become due and payable. Prior to the Termination Date, any award made in eminent domain proceedings for the taking of the Property, or any portion thereof, shall be applied to the payment of Advance Repayments. Any amount of the award in excess of the amount needed to pay all Advance Repayments and any such award made after all of the Base Rental Payments have been fully paid or provision therefor made, shall be paid to the City.

Section 7.02. Prepayment. The City may prepay, from any source of available funds, all or any portion of the Base Rental Payments becoming due hereunder to the same extent as the Advance is subject to prepayment.

**ARTICLE VIII
COVENANTS**

Section 8.01. Right of Entry. RCTC and its assignees shall have the right to enter upon and to examine and inspect the Property during reasonable business hours (and in emergencies at all times) for any purpose connected with RCTC's rights or obligations under this Lease Agreement, and for all other lawful purposes.

Section 8.02. Liens. In the event the City shall at any time during the term of this Lease Agreement cause any changes, alterations, additions, improvements, or other work to be done or performed or materials to be supplied, in or upon the Property, the City shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the City in, upon or about the Property and which may be secured by a mechanics', materialmen's or other lien against the Property or RCTC's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that, if the City desires to contest any such lien, it may do so. If any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, the City shall forthwith pay and discharge said judgment.

Section 8.03. Quiet Enjoyment. The parties hereto mutually covenant that the City, by keeping and performing the covenants and agreements herein contained, shall at all times during the term of this Lease Agreement peaceably and quietly have, hold and enjoy the Property without suit, trouble or hindrance from RCTC.

Section 8.04. Authority Not Liable. RCTC and its members, officers, agents and employees, shall not be liable to the City or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the Property. The City shall indemnify and hold RCTC, its members, officers, agents and employees, harmless from, and defend each of them against, any and all claims, liens and judgments arising from the use of the Property, including, without limitation, death of or injury to any person or damage to property whatsoever occurring in, on or about the Property regardless of responsibility for negligence, but excepting the negligence or willful misconduct of the person or entity seeking indemnity.

Section 8.05. Assignment and Subleasing. Neither this Lease Agreement nor any interest of the City hereunder shall be mortgaged, pledged, assigned, or transferred by the City by voluntary act or by operation by law or otherwise, except with the prior written consent of RCTC, which shall not be unreasonably withheld. The Property may not be subleased in whole or in part by the City without the prior written consent of RCTC. Any such sublease shall be subject to all of the following conditions:

- (i) This Lease Agreement and the obligation of the City to make all rental payments hereunder shall remain obligations of the City;
- (ii) The City shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to RCTC a true and complete copy of such sublease; and
- (iii) No such sublease by the City shall cause the Property to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the Constitution and laws of the State of California.

Section 8.06. Title to Property. During the term of this Lease Agreement, RCTC shall have a leasehold interest in the Property and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, except for those fixtures, repairs, replacements or modifications which are added thereto by the City and which may be removed without damaging the Property, and except for any items added to the Property by the City pursuant to Section 4.03 hereof.

Upon the termination or expiration of this Lease Agreement with respect to the Property, or any portion thereof, (other than as provided in Section 6.01 and 7.01 of this Lease Agreement), all right, title and interest in and to the Property, or such portion thereof, shall vest in the City. Upon any such termination or expiration, RCTC shall execute such conveyances, deeds and other documents as may be necessary to affect such vesting of record.

Section 8.07. Release and Substitution of Property. This Lease Agreement may be modified or amended at any time, if such amendment is to modify or amend the description of the Property in order to release some or all of the real property constituting the Property from the

Lease Agreement, to substitute other real property for such real property constituting said portion of the Property, provided that the City shall have filed with RCTC all of the following:

(a) Executed copies of this Lease Agreement or amendments thereto containing the amended legal description of the Property;

(b) Evidence satisfactory to RCTC that copies of this Lease Agreement or amendments thereto containing the amended legal description of the Property have been duly recorded in the official records of the County Recorder of the County of Riverside;

(c) A certificate of the City, accompanied by evidence satisfactory to RCTC, evidencing that the annual fair rental value of the property which will constitute the Property after such release and substitution will be at least equal to the fair rental value of the Property before such release and substitution;

(d) A CLTA leasehold owner's policy or an amendment or endorsement to an existing policy, resulting in title insurance with respect to the Property after such substitution in an amount at least equal to the amount of such insurance provided with respect to the Property prior to such substitution; each such insurance instrument, when issued, shall name RCTC or its assigns as the insured, and shall insure the leasehold estate of the City in such substituted property subject only to such exceptions as do not substantially interfere with the City's right to use and occupy such substituted property and as will not result in an abatement of Base Rental Payments payable by the City under this Lease Agreement; and

(e) An opinion of counsel stating that such amendment or modification (i) is authorized or permitted by the Constitution and laws of the State of California and this Lease Agreement; (ii) complies with the terms of the Constitution and laws of the State of California and of this Lease Agreement; and (iii) will, upon the execution and delivery thereof, be valid and binding upon RCTC and the City in accordance with its terms.

Section 8.08. Advance.

(a) **Private Activity Bond Limitation.** The City shall assure that the proceeds of the Advance are not used as to cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Internal Revenue Code of 1986, as amended (the "Tax Code").

(b) **Maintenance of Tax Exemption.** The City shall take all actions as necessary as directed by RCTC to assure the exclusion of interest on any tax-exempt obligations of RCTC which are the source of the funding the Advance.

Section 8.09. No Purchase of RCTC Obligations. The City agrees that it will not purchase any tax-exempt obligations of RCTC the proceeds of which were used to provide any of the funds for the Advance.

the City hereunder, including the covenant to pay rentals hereunder, is unenforceable for the full term hereof, then and in such event this Lease Agreement is and shall be deemed to be a Lease Agreement under which the rentals are to be paid by the City annually in consideration of the right of the City to possess, occupy and use the Property, and all of the rental and other terms, provisions and conditions of this Lease Agreement, except to the extent that such terms, provisions and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

Section 10.04. Net-Net-Net Lease. This Lease Agreement shall be deemed and construed to be a “net-net-net lease” and the City hereby agrees that the rentals provided for herein shall be an absolute net return to RCTC, free and clear of any expenses, charges or set-offs whatsoever and notwithstanding any dispute between the City and RCTC.

Section 10.05. Taxes. The City shall pay or cause to be paid all taxes and assessments of any type or nature charged to RCTC or affecting the Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the term of this Lease Agreement as and when the same become due.

The City or any sublessee may, at the City’s or such sublessee’s expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless RCTC or the Fiscal Agent shall notify the City or such sublessee that, in the opinion of independent counsel, by nonpayment of any such items, the interest of RCTC in the Property will be materially endangered or the Property, or any part thereof, will be subject to loss or forfeiture, in which event the City or such sublessee shall promptly pay such taxes, assessments or charges or provide RCTC with full security against any loss which may result from nonpayment, in form satisfactory to RCTC.

Section 10.06. Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease Agreement.

Section 10.07. Amendments. This Lease Agreement and any Ground Lease may be amended in writing as may be mutually agreed by RCTC and the City.

Section 10.08. Execution. This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Lease Agreement. It is also agreed that separate counterparts of this Lease Agreement may separately be executed by RCTC and the City, all with the same force and effect as though the same counterpart had been executed by both RCTC and the City.

IN WITNESS WHEREOF, RCTC and the City have caused this Lease Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CITY OF CANYON LAKE

By: _____

Mayor

(Seal)

Attest:

City Clerk

RIVERSIDE COUNTY TRANSPORTATION
COMMISSION

By: _____
Executive Director

(Seal)

Attest:

Clerk of the Board

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2011, before me, _____,
personally appeared _____ personally known to me OR 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.

WITNESS my hand and official seal.

Signature of Notary

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, 2011, before me, _____, personally appeared _____ personally known to me OR 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.

WITNESS my hand and official seal.

_____Signature of Notary

[SEAL]

EXHIBIT A

DESCRIPTION OF PROPERTY

[ATTACHED BEHIND THIS PAGE]

**EXHIBIT “C”
COMMISSION POLICIES**

1. Local agencies are required to submit Five Year Capital Improvement Plans (CIPs) to the RCTC in order to qualify for Measure A Streets and Roads funds. In order to be eligible to receive monthly disbursements of funding beginning at the start of a fiscal year, agencies are required to submit their CIPs to the RCTC no later than May 31st.

The first year of an agency’s annual CIP update will include a list of the specific projects planned to be constructed in that year including projects in Year 1 of the current CIP which will not be under contract by June 30th of the current year. Year 1 of the CIP will also show expenses for multi-year projects which are expected to be spent for project development work.

Projects to be constructed in Years 2-5 of the CIP are to be listed along with their estimated costs. The specific year for construction may be included, if available, but is not required in the CIP. Costs for multi-year projects, excluding project development costs shown in Year 1, are to be included in the list of Year 2-5 projects.

2. Cities not participating in the Western Riverside County or Coachella Valley Transportation Uniform Mitigation Fee (TUMF) and the Western Riverside County Multi-Species Habitat Conservation Plan (MSHCP) program do not qualify to receive Measure A Streets and Roads allocations (2009 Measure A).
3. Local agencies which are entitled to Measure A funding allocations must demonstrate that they continue to be committed to using their local discretionary funds for local streets and road improvement and maintenance. The local agencies must provide the RCTC with an annual certification that the Measure A funds they are allocated will not replace existing local discretionary funds being used for local transportation purposes. The RCTC cannot issue funds for a new fiscal year until it has received certification of maintenance of effort from the respective agencies. Calculations supporting the MOE certification may be noted by staff as preliminary pending adoption of the annual budget and completion of the annual audit. If the audit or the budget process results in a significant modification to the MOE calculations of CIP, revisions are to be submitted to the RCTC for processing.

EXHIBIT “D”

PROCEDURES FOR SUBMITTAL, CONSIDERATION AND PAYMENT OF INVOICES

1. RCTC recommends that the City incorporate this Exhibit “D-1” into its contracts with any subcontractors to establish a standard method for preparation of invoices by contractors to the City and ultimately to RCTC for reimbursement of City contractor costs.
2. Each month the City shall submit an invoice for eligible Project costs incurred during the preceding month. The original invoice shall be submitted to RCTC’s Executive Director with a copy to RCTC’s Project Coordinator. Each invoice shall be accompanied by a cover letter in a format substantially similar to that of Exhibit “D-2”.
3. Each invoice shall include documentation from each contractor used by the City for the Project, listing labor costs, subcontractor costs, and other expenses. Each invoice shall also include a monthly progress report and spreadsheets showing the hours or amounts expended by each contractor or Contractor for the month and for the entire Project to date. Samples of acceptable task level documentation and progress reports are attached as Exhibits “D-4” and “D-5”. All documentation from the City’s contractors should be accompanied by a cover letter in a format substantially similar to that of Exhibit “D-3”.
4. If the City is seeking reimbursement for direct expenses incurred by City staff for eligible Project costs, the City shall detail the same level of information for its labor and any expenses in the same level of detail as required of contractors pursuant to Exhibit “D” and its attachments.
5. Charges for each task and milestone listed in Exhibit “A” shall be listed separately in the invoice.
6. Each invoice shall include a certification signed by the City Representative or his or her designee which reads as follows:

“I hereby certify that the hours and salary rates submitted for reimbursement in this invoice are the actual hours and rates worked and paid to the contractors or contractors listed.

Signed _____

Title _____

Date _____

Invoice No. _____

7. RCTC will pay the City within 30 days after receipt by the Commission of an invoice. If RCTC disputes any portion of an invoice, payment for that portion will be withheld,

without interest, pending resolution of the dispute, but the uncontested balance will be paid.

8. The final payment under this Agreement will be made only after: (i) the City has obtained a Release and Certificate of Final Payment from each contractor or contractor used on the Project; (ii) the City has executed a Release and Certificate of Final Payment; and (iii) the City has provided copies of each such Release to RCTC.

EXHIBIT D-1

Elements of Compensation

For the satisfactory performance and completion of the Services under this Agreement, the Commission will pay the Contractor compensation as set forth herein. The total compensation for this service shall not exceed (____INSERT WRITTEN DOLLAR AMOUNT____) (\$__INSERT NUMERICAL DOLLAR AMOUNT__) without written approval of the Commission’s Executive Director (“Total Compensation”).

1. ELEMENTS OF COMPENSATION.

Compensation for the Services will be comprised of the following elements: 1.1 Direct Labor Costs; 1.2 Fixed Fee; and 1.3 Additional Direct Costs.

1.1 DIRECT LABOR COSTS.

Direct Labor costs shall be paid in an amount equal to the product of the Direct Salary Costs and the Multiplier which are defined as follows:

1.1.1 DIRECT SALARY COSTS

Direct Salary Costs are the base salaries and wages actually paid to the Contractor's personnel directly engaged in performance of the Services under the Agreement. (The range of hourly rates paid to the Contractor's personnel appears in Section 2 below.)

1.1.2 MULTIPLIER

The Multiplier to be applied to the Direct Salary Costs to determine the Direct Labor Costs is _____, and is the sum of the following components:

1.1.2.1 Direct Salary Costs _____

1.1.2.2 Payroll Additives _____

The Decimal Ratio of Payroll Additives to Direct Salary Costs. Payroll Additives include all employee benefits, allowances for vacation, sick leave, and holidays, and company portion of employee insurance and social and retirement benefits, all federal and state payroll taxes, premiums for insurance which are measured by payroll costs, and other contributions and benefits imposed by applicable laws and regulations.

1.1.2.3 Overhead Costs _____

The Decimal Ratio of Allowable Overhead Costs to the Contractor Firm's Total Direct Salary Costs. Allowable Overhead Costs include general, administrative and overhead costs of maintaining and operating established offices, and consistent with established firm policies, and as defined in the Federal Acquisitions Regulations, Part 31.2.

Total Multiplier _____
(sum of 1.1.2.1, 1.1.2.2, and 1.1.2.3)

1.2 FIXED FEE.

1.2.1 The fixed fee is \$ _____.

1.2.2 A pro-rata share of the Fixed Fee shall be applied to the total Direct Labor Costs expended for services each month, and shall be included on each monthly invoice.

1.3 ADDITIONAL DIRECT COSTS.

Additional Direct Costs directly identifiable to the performance of the services of this Agreement shall be reimbursed at the rates below, or at actual invoiced cost.

Rates for identified Additional Direct Costs are as follows:

<u>ITEM</u>	<u>REIMBURSEMENT RATE</u>
	[<u>insert charges</u>]
Per Diem	\$ /day
Car mileage	\$ /mile
Travel	\$ /trip
Computer Charges	\$ /hour
Photocopies	\$ /copy
Blueline	\$ /sheet
LD Telephone	\$ /call
Fax	\$ /sheet
Photographs	\$ /sheet

Travel by air and travel in excess of 100 miles from the Contractor's office nearest to the Commission's office must have the Commission's prior written approval to be reimbursed under this Agreement.

2. DIRECT SALARY RATES

Direct Salary Rates, which are the range of hourly rates to be used in determining Direct Salary Costs in Section 1.1.1 above, are given below and are subject to the following:

- 2.1 Direct Salary Rates shall be applicable to both straight time and overtime work, unless payment of a premium for overtime work is required by law, regulation or craft agreement, or is otherwise specified in this Agreement. In such event, the premium portion of Direct Salary Costs will not be subject to the Multiplier defined in Paragraph 1.1.2 above.
- 2.2 Direct Salary Rates shown herein are in effect for one year following the effective date of the Agreement. Thereafter, they may be adjusted annually to reflect the Contractor's adjustments to individual compensation. The Contractor shall notify the Commission in writing prior to a change in the range of rates included herein, and prior to each subsequent change.

POSITION OR CLASSIFICATION RANGE OF HOURLY RATES

[sample]

Principal	\$.00 - \$.00/hour
Project Manager	\$.00 - \$.00/hour
Sr. Engineer/Planner	\$.00 - \$.00/hour
Project Engineer/Planner	\$.00 - \$.00/hour
Assoc. Engineer/Planner	\$.00 - \$.00/hour
Technician	\$.00 - \$.00/hour
Drafter/CADD Operator	\$.00 - \$.00/hour
Word Processor	\$.00 - \$.00/hour

- 2.3 The above rates are for the Contractor only. All rates for subcontractors to the Contractor will be in accordance with the Contractor's cost proposal.

3. INVOICING.

- 3.1 Each month the Contractor shall submit an invoice for Services performed during the preceding month. The original invoice shall be submitted to the Commission's Executive Director with two (2) copies to the Commission's Project Coordinator.
- 3.2 Charges shall be billed in accordance with the terms and rates included herein, unless otherwise agreed in writing by the Commission's Representative.
- 3.3 Base Work and Extra Work shall be charged separately, and the charges for each task and Milestone listed in the Scope of Services, shall be listed separately. The

charges for each individual assigned by the Contractor under this Agreement shall be listed separately on an attachment to the invoice.

- 3.4 A charge of \$500 or more for any one item of Additional Direct Costs shall be accompanied by substantiating documentation satisfactory to the Commission such as invoices, telephone logs, etc.
- 3.5 Each copy of each invoice shall be accompanied by a Monthly Progress Report and spreadsheets showing hours expended by task for each month and total project to date.
- 3.6 Each invoice shall indicate payments to DBE subcontractors or supplies by dollar amount and as a percentage of the total invoice.
- 3.7 Each invoice shall include a certification signed by the Contractor's Representative or an officer of the firm which reads as follows:

I hereby certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed.

Signed _____
Title _____
Date _____
Invoice No. _____

4. PAYMENT

- 4.1 The Commission shall pay the Contractor within four to six weeks after receipt by the Commission of an original invoice. Should the Commission contest any portion of an invoice, that portion shall be held for resolution, without interest, but the uncontested balance shall be paid.
- 4.2 The final payment for Services under this Agreement will be made only after the Contractor has executed a Release and Certificate of Final Payment.

EXHIBIT D-2
Sample Cover Letter to RCTC

Date

Ms. Anne Mayer
Executive Director
Riverside County Transportation Commission
4080 Lemon Street, 3rd Floor
Riverside, CA 92501
ATTN: Accounts Payable

Re: Project Title - Invoice #__

Enclosed for your review and payment approval is the City's invoice for professional and technical services that was rendered by our contractors in connection with the 2002 Measure "A" Local Streets and Roads Funding per Agreement No. _____ effective (Month/Day/Year). The required support documentation received from each contractor is included as backup to the invoice.

Invoice period covered is from Month/Date/Year to Month/Date/Year.

Total Authorized Agreement Amount:	\$0,000,000.00
Total Invoiced to Date:	\$0,000,000.00
Total Previously Invoiced:	\$0,000,000.00
Balance Remaining:	\$0,000,000.00

Amount due this Invoice:	\$0,000,000.00 =====
---------------------------------	--------------------------------

I certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the contractors listed.

By: _____
Name
Title

cc:

EXHIBIT D-3
Sample Letter from Contractor to City/County

Month/Date/Year

Ms. Anne Mayer
Executive Director
Riverside County Transportation Commission
P.O. Box 12008
Riverside, CA 92502-2208
Attn: Accounts Payable

Invoice # _____

For **[type of services]** rendered by **[contractor name]** in connection with **[name of project]**
This is per agreement No. XX-XX-XXX effective Month/Date/Year .

Invoice period covered is from Month/Date/Year to Month/Date/Year .

Total Base Contract Amount:	\$000,000.00
Authorized Extra Work (if Applicable)	\$000,000.00

TOTAL AUTHORIZED CONTRACT AMOUNT:	\$000,000.00
Total Invoice to Date:	\$000,000.00
Total Previously Billed:	\$000,000.00
Balance Remaining:	\$000,000.00
Amount Due this Invoice:	\$000,000.00
	=====

I certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed,

By: _____
Name
Title

EXHIBIT D-4
SAMPLE TASK SUMMARY SCHEDULE

EXHIBIT D-5

Sample Progress Report

REPORTING PERIOD: Month/Date/Year to Month/Date/Year
PROGRESS REPORT: #1

A. Activities and Work Completed during Current Work Periods

TASK 01 – 100% PS&E SUBMITTAL

1. Responded to Segment 1 comments from Department of Transportation
2. Completed and submitted Segment 1 final PS&E

B. Current/Potential Problems Encountered & Corrective Action

Problems	Corrective Action
None	None

C. Work Planned Next Period

TASK 01 – 100% PS&E SUBMITTAL

1. Completing and to submit Traffic Signal and Electrical Design plans
2. Responding to review comments