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August 11, 2010

Hon. John D. Kirihara
Presiding Judge of the Superior Court of California,
County of Merced
627 West 21st Street
Merced, California 95340

Dear Presiding Judge Kirihara:

Internal Audit Services (IAS) of the Judicial Council of California, Administrative Office of the Courts, presents its audit report entitled, *Merced Superior Court, Limited Review of the New Downtown Courthouse Construction Costs and Other Related Matters* dated June 2010.

In accordance with a request from Merced Superior Court (Court), IAS has conducted a limited review of the accounting of revenues and expenditures for the New Downtown Courthouse construction project in Merced, California. The report on this review is attached.

In May 2009, the Court Executive Officer requested the limited review as indicated above. The results of this limited review (refer to section II, Scope and Methodology), indicate that it generally appears that the revenue sources can be accounted for and reports provided summarized the expenditures made. It is also concluded based on the information and reports provided by the County, that there appears to be residual, or excess, construction funds of at least \$802,000 that should be allocated back to the various funding sources of the construction project. These funding sources include the local Courthouse Construction Fund, the State Court Facilities Construction Fund, and the Court.

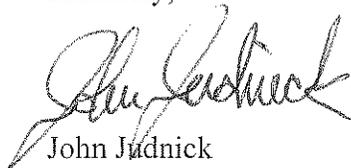
There are also other significant issues detailed in the report that include:

- Incorrectly using the Court's annual \$310,000 contribution of civil assessment funds prior to using CCF funds to support the debt service payments. This is the reverse of the order specified in the 2005 Construction MOU and the Certificates of Participation debt service documents which required the CCF to be used first. Additionally, this does not comply with Government Code Section 76223.
- The lack of consideration of interest and other investment revenue as part of the construction budget.

The Court's responses to the issues and recommendations contained in the report are included in the report. Additionally, the Court on August 9, 2010, provided a final letter to IAS concerning the review and that letter is included at the end of the report in Section VI, Court's Response to Report. The County has been very cooperative in addressing the corrective measures and accounting recommendations that were discussed with it. The County, while not formally responding to the report, did state in an email to IAS that they "did want to respond that no formal comments from the County does not represent our concurrence with your findings and recommendations."

If you have any questions concerning the attached audit report, please do not hesitate to contact me.

Sincerely,



John Judnick
Senior Manager
Internal Audit Services

Attachments

cc:

Mr. Kathleen Goetsch, Executive Officer
Ms. Jody Patel, Regional Administrative Director, AOC, Northern/Central Region
Mr. Lee Willoughby, Director, AOC, Office of Court Construction and Management



Merced Superior Court:
Limited Review of the New
Downtown Courthouse
Construction Costs and Other
Related Matters

REPORT OF INTERNAL
AUDIT SERVICES

JUNE 2010



ADMINISTRATIVE OFFICE
OF THE COURTS

FINANCE DIVISION
INTERNAL AUDIT SERVICES

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I. EXECUTIVE SUMMARY

Internal Audit Services (IAS) of the Administrative Office of the Courts (AOC) was requested by the Merced Superior Court (Court) to perform a limited review of the final accounting for the construction of the New Downtown Courthouse (Courthouse) in Merced, California. The limited review would cover the funding sources, including the interest and investment revenue earned, and the construction expenditures. Additionally, IAS was requested to review the funding of and the initial related debt service payments related to the construction of the Courthouse.

Our overall conclusion from the records provided and reviewed, is that it generally appears that the revenue sources can be accounted for and reports provided summarized the expenditures made. IAS can also conclude based on the information provided by the County, that there appears to be residual, or **excess**, construction funds of at least \$802,000 that should be allocated back to the various funding sources of the construction project, specifically the Courthouse Construction Fund (CCF), the State Court Facilities Construction Fund, and the Court. There are also other significant issues detailed below that were identified from this review including:

- Incorrectly using the Court's annual \$310,000 contribution of civil assessment funds prior to using CCF funds to support the debt service payments. This is the reverse of the order specified in the 2005 Construction MOU and the Certificates of Participation debt service documents which required the CCF to be used first. Additionally, this does not comply with Government Code Section 76223.
- The lack of consideration of interest and other investment revenue as part of the construction budget.

History

On April 5, 2005, the County of Merced (County), the Merced Superior Court, and the AOC entered into a Construction Memorandum of Understanding (Construction MOU) to document the agreement and conditions concerning the funding sources and the budgeted construction expenditures totaling \$19,740,279 for the construction of the Courthouse. The project was collaboratively funded by the County, the Court, and the State, using:

- courthouse construction funds;
- civil assessment funds;
- court funds;
- a \$3,040,000 capital appropriation from the judicial branch's State Court Facilities Construction Fund (SCFCF); and
- \$10.2 million of 25 year Series 2005 Certificates of Participation (COP) issued by the County.

Revenues from fines, fees, and penalty assessments deposited in the Courthouse Construction Fund, together with the Court's \$310,000 of annual civil assessment monies (Failure to Appear) would be used to support the debt service payments on the COP. The MOU required that the CCF is to be used first before the Court's civil assessment funds to support the debt service payments. The MOU also specified the various responsibilities and obligations of the County, the Court, and the AOC.

The design and construction of the Courthouse was a County managed project with input from the Court and the AOC's Office of Court Construction and Management (OCCM). The Courthouse construction was started in June 2005, after 15 years of planning, and was considered substantially complete in March 2007. The Court moved into the Courthouse in April 2007. During the design and construction period, it appears that if OCCM was more involved, especially with respect to the budget completeness in accordance with the provisions in the MOU (AOC Responsibilities and Obligations), that some of the issues in this report could have been mitigated or brought to light sooner.

Under the Trial Court Facilities Act of 2002, the AOC and the County entered into a transfer of responsibility agreement on December 12, 2006 for the Courthouse. The transfer agreement provided for the transfer of title from the County to the State on behalf of the Judicial Council of California at such time as the bonded indebtedness encumbering the Courthouse would be fully paid and all other conditions satisfied. The last payment on the COP is scheduled to occur in June 2030.

County Construction Records

In May 2009, the Court communicated to IAS its concern that a final accounting for the Courthouse as required by the Construction MOU had not been received from the County. The Court and IAS met with the County in August 2009 concerning this and in May 2010 the County provided the Court with a high level accounting (total by fiscal year) reports of funding sources, construction expenditures, and the COP debt service payments. The timeframe is indicative of the County not dedicating a fiscal person to the project. The lack of dedication of a fiscal person is also directly associated with the difficulties the County has encountered in providing accurate and timely financial information upon request of the Court and IAS.

The County referred to the reports it provided as "Transaction Analysis Reports" (See Appendix V. 5 for the reports) since it had to analyze general ledger funds to determine both how it used them and how it should have used them. The County provided the Transaction Analysis Reports for the following funds:

- Courthouse Construction Fund (CCF) - to account for the revenues as specified by the Board of Supervisor's resolution and the expenditures related to the construction of the New Downtown Courthouse and the associated COP debt service payments.
- Superior Court Debt Service Fund – to account for the annual \$310,000 civil assessment (Failure to Appear) funds received from the Court.
- Debt Service – Justice Facility Fund – this is a pass through fund to record the monies transferred from the CCF and the Court's civil assessment funds (initially deposited in the Superior Court Debt Service Fund) to support the COP debt service payments issued to finance the construction of the New Downtown Courthouse.
- Capital Projects Fund – Justice Facility – this fund was established by the County to record the funding sources including the interest and investment revenue and the expenditures incurred in the construction of the New Downtown Courthouse.

The County also established County Trust Fund # 2466 to track the deposit of the \$3,040,000 funding received from the State Court Facilities Construction Fund. According to the County, this trust fund was

drawn to a zero balance on June 13, 2007. This fund, however, was allocated interest revenue on June 30, 2007, and as of June 16, 2010, it had interest revenue totaling \$15,394 in it.

Additionally, the County issued 2005 COP required a separate certificate reserve fund and the balance in this fund at June 30, 2009 totaled \$766,000. This reserve fund is maintained by a third party trustee as required by the COP documents and is reported by the County as a restricted asset in its Comprehensive Annual Financial Report (CAFR) entitled “Non-Major Debt Service Fund, Courthouse Construction COP”.

The County submitted Transaction Analysis Reports reported the following balances at May 11, 2010.

Account Balances Related to the Construction of the New Downtown Courthouse

Descriptions	Source: County Submitted Transaction Analysis Reports Balance at May 11, 2010	Source: Additional Information from the County Balance at June 16, 2010	Source: County Comprehensive Annual Financial Reports (CAFR) Balance at June 30, 2009	Total
Courthouse Construction Fund (Fund 2451)	\$ 790,510	-	-	\$ 790,510
Superior Court Debt Service Fund (Fund 2482)	1,077,224	-	-	1,077,224
Debt Service - Justice Facility Fund (Fund 1802)	176,429	-	-	176,429
Capital Projects Fund – Justice Facility (Capital Projects Fund) - Fund 1812	3,651	-	-	3,651
2005 COP Certificate Reserve Fund	-	-	\$ 766,637	766,637
County Trust Fund 2466	-	\$ 15,394	-	15,394
Total	\$ 2,047,814	\$ 15,394	\$ 766,637	\$2,829,845

Significant Issues

A summary of the significant issues identified by IAS follows:

1. Incorrect Order of Funds Used To Support the Debt Service Payments

This resulted in the over-statement of the CCF balance and under-statement of the Superior Court Debt Service Fund balance at June 30, 2009 by at least \$1,008,043 plus interest and investment revenue of \$67,938.

The 2005 Construction MOU and the 2005 COP debt service documents require that the funds in the CCF are to be used first toward the debt service payments with the Court’s \$310,000 annual civil assessment payments covering any difference between the debt service requirements and the CCFs. Government Code (GC) section 76223 also provides that the total amounts deposited from the Court’s civil assessments may not exceed in any fiscal year the amount payable on the construction costs less any amount payable by the CCF. Construction costs also include the payment on the bonded indebtedness or other encumbrance used to finance the construction.

The Court started making the \$310,000 civil assessment contribution in 2005/2006, which is also the year the debt service payments started. From 2005/2006 to 2008/2009, the County used the civil assessment funds first rather than the CCF to support the debt service payments. This resulted in the over-statement of the CCF balance at June 30, 2009 by at least \$1,008,043 (plus interest and investment revenue of \$67,938). Additionally, it resulted in a corresponding under-statement in the Superior Court Debt Service Fund by the same amount.

Utilization of an incorrect methodology in the usage of the funds resulted in non-compliance with GC 76223 – that limited the use of the Court’s civil assessment funds to augment the CCF for the payment of construction costs. This was communicated to the County and the County immediately made the necessary adjustments in its accounting system including allocating interest and investment revenue of \$67,938 to the Superior Court Debt Service Fund. See the table on the previous page for the adjusted balance at May 11, 2010.

2. Allocation of the Excess Construction Funds of at least \$802,000 – Methodology to be Determined

The funding plan specified in the 2005 Construction MOU did not include an amount estimated for interest and other investment revenue earned on the funding sources while the construction was in progress. The County of Merced allocated \$919,971 of interest and other investment revenue earned on the construction funds while the funds were deposited with the County and the Trustee (involved in the COP facility lease/sublease arrangements). This resulted in a residual excess of construction funds of approximately \$766,000 that currently reside in the CCF as of May 11, 2010. Due to the budgetary constraints on the Courthouse project, if known and budgeted for, these funds could have avoided elimination of design changes made to accommodate the budget imposed on the Courthouse project.

Additionally, there is also an estimated \$36,000 of excess construction funds currently residing in the Capital Projects Fund, County Trust Fund # 2466, and with the AOC.

The Court should discuss with the OCCM the methodology to be used in allocating the excess construction funds totaling at least \$802,000 (\$766,000 plus \$36,000) to the CCF, the Court, and the State Court Facilities Construction Fund (SCFCF) noting the provision in the Construction MOU regarding the return of any remaining capital funds to the SCFCF. Once the methodology is agreed upon, it should be communicated to the County and a final accounting of the excess construction funds can be obtained from the County.

3. Interpretation of a Provision in the COP’s Facilities Sublease Agreement (which is part of the COP agreement) – Resulting in the CCF Funds Not Used Appropriately

Section 3.06 of the Facilities Sublease Agreement provided that the amounts on deposit in the CCF shall be applied solely for payment of the costs of the Courthouse construction project or for the payment of the base rental payments and if and to the extent that the amounts on deposits in the CCF are not sufficient to pay the base rental payments for any rental period, such rental payments shall be paid by the County

...from amounts on deposit in the Courthouse Construction Civil Assessment Fund. (Note: The base rental payments refers to the COP debt service payments).

Once the allocation of the excess construction funds to the CCF is determined resulting in the CCF reporting a *balance on deposit*, the amount on deposit in the CCF should then be used *first* to support the debt service payments before the Court's civil assessment funds are used. This will result in further delay in the usage of the Court's civil assessment funds to support the debt service payments. This information should be communicated to the County to assist the County in its accounting of the CCF and the Court's civil assessment funds in support of the debt service payments.

4. The County Submitted Transaction Analysis Report for the Capital Projects Fund Contained only High Level and Not Detailed Information

The information contained in the County submitted Transaction Analysis Report for the Capital Projects Fund reporting total construction expenditures of \$19,787,146 was provided at a high level – only the annual expenditures charged per fiscal year from 2003/2004 thru May 11, 2010 were reported. Since the County did not provide an updated “Budget against Actual Expenditures Spreadsheet” detailing the expenditures incurred by line item, IAS updated the most recent spreadsheet (January 2009) received from the County with transactions that occurred from March to July 2009 according to the County's Department of Public Works “Accounts Payable” listing. IAS compared the total construction expenditures per the Transaction Analysis Report to the total expenditures per the updated “Budget against Actual Expenditures Spreadsheet” and the variance between these two reports of .08% is not considered material.

While the Court believes that the County's Department of Public Works (DPW) performed an excellent job in managing the Courthouse project and bringing the project to conclusion, the Court expressed concern about the increase in some of the budgeted line items and the expenditures charged to the Courthouse project. Specifically, the concern was centered on reasonableness and appropriateness of the additional charges by the County's Department of Public Works for professional charges and the removal of the relocatables and the associated landscaping costs. Details on these charges are in the table on the next page.

While the Court and IAS requested documentation concerning the above, the documentation was not supplied by the County. The Court and IAS relied on the accuracy of the County submitted reports. Moreover, the County individual charged with the construction of the Courthouse has since retired from the County so that detailed and historical knowledge regarding the construction of the Courthouse is no longer resident with the County.

Source: County DPW's "January 2009 Budget against Actual Spreadsheet" and "Accounts Payable Listing – March to July 2009"

Description	Original Budget per the 2005 Construction MOU	Revised Budget per County DPW spreadsheet dated January 15, 2009	Variance in Budget (B-A)	Charged to Construction Project per DPW Reports	Variance Between Amount Charged and the Revised Budget (D-B)
	A	B	C	D	E
DPW Charges:					
DPW (Professional Service)	\$215,000	\$215,000	-	\$215,000	-
DPW (Professional Service) - additional project management & inspection - delay	-	129,321	\$129,321	120,761	\$(8560)
Inspection	140,000	151,000	11,000	151,000	-
Total DPW Charges	355,000	495,321	140,321	486,761	(8,560)
Relocatables and Associated Landscaping:					
Remove relocatables, restore walks, irrigations and landscaping, sprinkler valves, disconnect phone services - Department 5,7, 8 and the criminal trailer	-	73,908	73,908	70,307	(3,601)
Total Relocatables and Associated Landscaping	-	\$73,908	\$73,908	\$70,307	\$ (3,601)

II. SCOPE AND METHODOLOGY

Internal Audit Services (IAS) of the Administrative Office of the Courts (AOC) was requested by the Merced Superior Court (Court) to perform a limited review of the final accounting for the construction of the New Downtown Courthouse (Courthouse) in Merced, California. The limited review would cover the funding sources, including the interest and investment revenue earned, and the construction expenditures. Additionally, IAS was requested to review the funding of and the initial related debt service payments related to the construction of the Courthouse.

IAS' review was limited to the following:

- Inquiries, interviews, and discussions with Court, County, and AOC's Office of Court Construction and Management (OCCM) personnel regarding the funding sources including the interest and investment revenue, the construction expenditures, and the associated COP debt service payments for the construction of the New Downtown Courthouse.
- Review and analysis of the terms specified in the 2005 Construction MOU, the 2003 Trial Court Facilities Agreement, and the 2005 Certificates of Participation (COP) debt service documents.
- Review and analysis of the Transaction Analysis Reports (See Appendix V.5 for the reports received) and other information including the annual Courthouse Construction Fund report received from the County related to the construction of the New Downtown Courthouse in Merced. The funds reviewed included:
 - Courthouse Construction Fund
 - Superior Court Debt Service Fund
 - Debt Service - Justice Facility Fund
 - Capital Projects Fund - Justice FacilitySince the information contained in the County submitted Transaction Analysis Reports was provided at a high level, IAS' review consisted mainly of inquiries and interview of the County personnel charged with the report preparation and review of some of the general ledger details made available to IAS.
- High level review of the "January 2009 Budget to Actual spreadsheet" detailing the budgeted and actual construction expenditures by line item received from the County's Department of Public Works (DPW). This spreadsheet was updated by IAS for information received from DPW's Accounts Payable Listing for the period March to July 2009. The review focused on discussions and interviews concerning the :
 - Charges by the DPW for managing the construction.
 - Reasonableness of professional fees paid to the architect and the outside construction management firm.
 - Costs associated with the removal of the trailers.
 - Costs associated with the landscaping of County property resulting from the removal of the trailers.

- Since the construction of the Courthouse is a County managed project, IAS did not review the various contracts the County entered into or the associated invoices including the timesheets to support the personnel time charged to the construction project because they reside with the County. While the Court and IAS requested the information and documents mentioned previously, they were not made available to IAS.

III. BACKGROUND

A. General Background

Statutes

The Lockyer-Isenberg Trial Court Funding Act of 1997 (Assembly Bill 233, Escutia and Pringle) provides for the transfer of primary obligation for funding of court operations from counties to State. The restructuring of funding of trial court operations accomplished by the Lockyer-Isenberg Trial Court Funding Act of 1997 ended a dual system of county and State funding and created a more stable and consistent funding source for trial court operations. Counties, however, continued to bear primary responsibility for trial court facilities.

In 2003, the Trial Court Facilities Act of 2002 (Senate Bill 1732) was enacted into law. This legislation finalized the goal of trial court funding reform envisioned in the Lockyer-Isenberg Trial Court Funding Act of 1997 by authorizing the transfer of title and management responsibility for court facilities from the counties to the State. Most of the county courthouses and related facilities have since transferred to the state.

Court Facilities

The Superior Court of California, County of Merced operates in court facilities that serve population centers principally located near the Interstate 5 and Highway 99 corridors. The Court currently operates in the following facilities and all of its facilities have since transferred to the state or have been consolidated with other facilities:

Source: OCCM's Completed Transfer Agreements through December 29, 2009 and lease agreements

Building Name	Agreement Type	Executed Agreement Date	Effective Date of Transfer
New Downtown Merced Courthouse	Deferred Transfer of Title*	December 12, 2006	April 2, 2007
Old Court (New Courts Bldg)	Transfer of Title	December 12, 2006	February 21, 2007
Los Banos Courtroom	Transfer of Responsibility	June 19, 2007	June 25, 2007
Iris Garrett Juvenile Justice Correctional Complex	Transfer of Responsibility	June 19, 2007	June 25, 2007
Criminal Trailer, Department 5, 7 and 8 (in trailers)	Consolidated	December 12, 2006	The trailers have since been removed and the Court has relocated to the new Courthouse.
Adobe Building	Consolidated	December 12, 2006	The Judicial Council entered into a lease agreement with the County on behalf of the Court for the West Wing portion of the Adobe Building. Lease term was extended to June 30, 2011.
Department 4 (currently known as Courtroom10)	Consolidated	December 12, 2006	The Judicial Council entered into a lease agreement with the County on behalf of the Court. Lease term is from July 1, 2007 to June 30, 2011.
Family Law Court	Consolidated	December 12, 2006	Relocated to new Courthouse.
Jury Assembly Building	Consolidated	December 12, 2006	Relocated to new Courthouse.

* Delayed transfer of title until the bonded indebtedness encumbering this property is fully paid and satisfied. The last payment on this indebtedness is scheduled for June 2030.

The New Downtown Merced Courthouse (The Courthouse)

The design and construction of the New Downtown Courthouse located at 2260 “N” Street, Merced, California, was managed by the County of Merced with input from the Court and the AOC’s Office of Court Construction and Management (OCCM). The project was collaboratively funded by the County, the Court, and the State, using county courthouse construction funds, civil assessment funds, court funds, and a capital appropriation from the judicial branch's State Court Facilities Construction Fund.

The Courthouse, a 57,600-square-foot building is the first new court facility to be constructed in Merced since 1950. This new courthouse has five jury-capable courtrooms with full holding facilities, one non-jury courtroom for Family Court and space for potential build-out for a seventh courtroom which was subsequently converted to a public counter space and office space for court staff. The Courthouse will also replace six court facilities: Consolidation of Department Five modular building, Department Seven and Eight modular building, Criminal Clerks modular building, the Jury Assembly Room Building, and the leased Family Law Court.

The Los Banos Courthouse

SB1407 was enacted by the state Legislature in 2008 to provide up to \$5 billion in funding for 41 new and renovated court facilities using court user fees rather than the State’s general fund.

In November 2009, the New Los Banos Courthouse in Merced received funding authorization by the State Public Works Board. This authorization enables the AOC to proceed with the site selection, environmental review, and preliminary plans which is the initial portion of architectural design. The proposed Los Banos Courthouse project would replace the current courthouse with a modern, secure, and functionally appropriate courthouse. It would expand court services in western Merced County by providing a jury assembly room and adding a family law division and family law proceedings, including mediation and self-help services. It would also provide one additional courtroom to accommodate a planned new judgeship.

B. Government Code Section and Agreements

GC 76223 – Limitation on the Use of the Court’s Civil Assessment Funds - Failure to Appear

California Rules of Court (CRC) 10.810 specifies allowable and unallowable court costs. While some facility related costs are allowable use of court funds, for example, interior painting, replacement and maintenance of flooring, and space rental for records storage, facility related costs involving construction are unallowable court costs.

To address the issue noted above, the Legislature enacted Government Code section 76223 as part of the Trial Court Facilities Act of 2002 (Senate Bill 1732) to allow the Merced Superior Court to use its civil assessment (failure to appear) funds to augment other funds made available for the construction of court facilities in Merced - pursuant to a written agreement entered into prior to January 1, 2004 between the County Board of Supervisors and the Presiding Judge of the Court. GC 76223 also specified limitation on the use of the Court’s civil assessment funds to ensure that the County of Merced receives court funds (civil assessments – failure to appear) only as are reasonable and necessary for the construction of the Courthouse. See Section III. D for more detail.

Trial Court Facilities Agreement (Agreement)

To implement the provisions of GC 76223, the County board of supervisors and the presiding judge of the superior court executed the "Trial Court Facilities Agreement" (Agreement) on December 23, 2003. This Agreement provided that the County will continue to use revenues from the Courthouse Construction Fund (CCF) and Civil Assessments as provided in Penal Code section 1214.1 to fund the construction of the Courthouse. The Agreement further provided that the Court may deposit additional court funds as may be necessary to pay for the construction of the proposed courthouse and to repay the related County borrowings.

2005 Construction Memorandum of Understanding (2005 Construction MOU)

Additionally, on April 5, 2005, the County, Court, and the AOC entered into a Construction MOU to document the funding sources and the budgeted construction expenditures totaling \$19,740,279 for the construction of the New Downtown Courthouse. The MOU also specified the various responsibilities and obligations of the County, the Court, and the AOC.

C. Construction Funding Sources

Funding Sources:

The April 5, 2005 Construction MOU specified the funding sources for the construction of the New Downtown Courthouse. The funding sources included funds from the Courthouse Construction Fund, the Court's reserve, the State Court Facilities Construction Fund, and the net proceeds from the County's issuance of the \$10.2 million 2005 Certificates of Participation (COP).

Budgeted/Estimated Funding Sources:	Dollar Amounts
Transfers from the Courthouse Construction Fund (CCF) to the Capital Projects Fund - Justice Facility (County Fund 1812 /Budget Unit 17400)	\$ 1,190,963
Courthouse Construction Fund (Estimated Balance at June 30, 2005)	5,700,000
Court Contribution from Local Court Reserves	709,566
State Court Facilities Construction Fund	3,039,750
Net Proceeds from the \$10.2 million Series 2005 COPs	9,100,000
Total Budgeted/Estimated Funding Sources	\$ 19,740,279

The Courthouse Construction Fund (CCF)

- According to the 2005 Construction MOU, the estimated funding sources from the CCF are as follows:

Description	Amount
Part I: Transfers from the CCF to the Capital Projects Fund - Justice Facility (County Fund 1812/Budget Unit 17400):	
Beginning Balance Oct 12, 2001	\$ 56,644
17400/87997 "Justice Facility" M.P.	360,000
17400/87997 "Justice Facility" D.D.S.	227,319
17400/87997 "Justice Facility" C.M.	65,000
17400/87997 "Justice Facility" C.D.S	482,000
Subtotal - Part I	1,190,963
Part II: Courthouse Construction Fund (Estimated Balance at June 30, 2005)	5,700,000
Subtotal - Part II	5,700,000
Total - Part I and II	\$ 6,890,963

- Based on available information, the \$1,190,963 (See Part I in the table on the previous page) represents *estimated* construction expenditures that were already incurred by the County and transferred from the CCF to the Capital Projects Fund by the time the Construction MOU was finalized in April 2005.
- According to the County submitted transaction analysis report for the Capital Projects Fund, a total of \$1,229,143 (this includes the July 1, 2003 Capital Projects Fund beginning balance of \$268,443 and see section IV. A, Table A on page 17) was transferred from the CCF to this Fund prior to the end of June 30, 2005. According to the County, the difference of \$38,180 between the \$1,190,963 noted in the Construction MOU and the \$1,229,143 reported in the Capital Projects Fund appears to be budget (estimated) to actual difference.
- The CCF balance at June 30, 2005 was *estimated* at \$5.7 million in the Construction MOU but the *actual* CCF balance was \$5,643,123 – a difference of \$56,877 – due again to budget (estimated) against actual difference.

Court Contribution from Local Court Reserves

- In addition to the Court's commitment of civil assessment funds (Failure to Appear) in the amount of \$310,000 per year for the repayment of the COP debt service payments, the Court also committed a total of \$710,000 (estimated at \$709,566 in the Construction MOU) in local Court reserves from existing civil assessment monies to fund the construction project. The Court made the \$710,000 contribution in 2006/2007.

The State Court Facilities Construction Fund

- \$3,040,000 (estimated at \$3,039,750 in the Construction MOU) was received from the State Court Facilities Construction Fund in accordance with the California State Budget Act of 2005 and the 2005 Construction MOU to support the New Downtown Courthouse project.
- The 2005 Budget Act also included the provisional language that if the County of Merced has not executed the transfer of its responsibilities and/or title for the following facilities, the New Downtown Courthouse, New Courts Building (Department 1 through 3), Jail Court (Department 4), Department 5 Modular, Department 7 and 8 Trailer, Adobe Building, Criminal Trailer, and the Jury Assembly Room, to the state, by January 1, 2007, then the County shall pay back the construction funds used for this project.
- According to OCCM's listing of Completed Transfer Agreements through December 29, 2009, the executed transfer agreement date for the above facilities is December 12, 2006.

\$10.2 Million Series 2005 Certificates of Participation (COP)

- Certificates of Participation (COP) are defined as lease financing agreements in the form of tax exempt securities similar to bonds. In COP financing, title to a leased asset is assigned by the lessor to a trustee (non-profit corporation) that holds it for the benefit of the investors, the certificate holders. By entering into a tax-exempt lease financing agreement a public agency is

using its authority to acquire or dispose of property, rather than its authority to incur debt. This financing technique provides long-term financing through a lease or lease-purchase agreement that legally does not constitute indebtedness under the State constitutional debt limitation. (Despite this, the term "debt" is generally still used in describing the obligation.) It is not subject to other statutory requirements applicable to bonds, including the requirement of a vote of citizens.

- In 2005, the County issued a \$10.2 million, 25 year COP to finance the construction of the Courthouse. According to the loan documents, the net proceeds of the COP totaled \$9.1 million (net of issuance costs, underwriter’s discount, and the required certificate reserve fund). Balance of the certificate reserve fund at June 30, 2009 totaled \$766,000. See Section IV. F of this report for discussion of this reserve fund.
- Interest is payable semiannually each June 1st and December 1st, with the principal payment due annually on December 1st. The COP debt service payment commenced on December 1, 2005 with the last interest and principal payment scheduled to occur on June 1, 2030. The average interest and principal payment equals \$661,000 per year.
- According to the County’s Comprehensive Annual Financial Report for the year ended June 30, 2009, the 2005 COP debt service requirements to maturity are as follows:

Year Ending June 30	Principal	Interest	Total
2010	\$ 295,000	\$ 368,631	\$ 663,631
2011	305,000	359,044	664,044
2012	310,000	349,131	659,131
2013	325,000	338,901	663,901
2014	335,000	327,851	662,851
2015-2019	1,860,000	1,446,931	3,306,931
2020-2024	2,260,000	1,042,221	3,302,221
2025-2029	2,790,000	514,305	3,304,305
2030	635,000	27,781	662,781
Total	\$ 9,115,000	\$ 4,774,796	\$ 13,889,796

- Revenues from fines, fees, and penalty assessments deposited in the Courthouse Construction Fund, together with the Court’s \$310,000 of annual civil assessments monies (Failure to Appear) would be used to support the debt service payments.
- As an integral part of the COP financing arrangement, the County of Merced entered into a “*facility lease*” agreement with the Merced County Public Facilities Corporation (Corporation) to obtain financing for the construction of the Courthouse. The Corporation was established to render financial assistance to the County by financing and constructing public building and facilities – financing is done via the sale of the COPs to investors. The County subsequently entered into a “*facility sublease*” agreement with the Corporation where the County makes base rental payments to the Corporation on the sublease agreement. The base rental payments made by the County represent the repayment of the financing received from the Corporation from the original lease agreement. The Corporation then assigned all its rights to receive the base rental payments to a

trustee that will receive the rental payments for the benefit of the owners of the COPs. (*Note: The base rental payments refer to the COP debt service payments – this is part of the COP financing arrangement.*)

- According to the COP documents, initially, the County Administration Facilities (Facilities) consisting of the County Administrative Building and a separate mechanical building will be the facilities subject to the leasehold of the lease and sublease agreements. After the completion of the New Downtown Courthouse, this Courthouse will be substituted for the facilities. This substitution occurred in July 2009.

D. Methodology Utilized for Debt Service Payments

The 2005 Construction MOU and the 2005 COP debt service documents **require** that CCF funds are to be used first toward making COP debt service payments with the Court's annual \$310,000 civil assessment funds (Failure to Appear) funding the difference between the debt service payments and the CCF. Moreover, Government Code section 76223 specified the limitation on the use of the Court's civil assessment funds to support the debt service payments - which may not exceed in any fiscal year the amount payable on the construction costs (including payment on bonded indebtedness) less any amounts paid by the Courthouse Construction Fund.

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- Section 2.7 provided that upon repayment of the bonded indebtedness, County shall have no right to any balance in the CCF that exceeds the amount of CCF obligated for payment of the bonded indebtedness for the construction of the Courthouse.

The County shall have no right to use any portion of civil assessments that may exist or accrue after the bonded indebtedness is repaid.

Any annual accruals of civil assessments or CCFs that exceed the amount required from that fund to repay the bonded indebtedness *shall remain in its respective fund segregated and unencumbered* and shall not be used for any purpose other than permitted under this MOU.

- Exhibit E-1 of the 2005 Construction MOU – New Proposed Justice Facility with State Funding - provides that as protection against shortfall in resources, bond documents require *CCFs to be used first towards debt service with the \$310,000 from the local court funding the difference between the debt service payment and the CCFs*. Bond documents also require that any remaining amount of the \$310,000 to be placed in trust to cover any potential shortfall in future years.

\$10.2 million Series 2005 Certificates of Participation (COP) – Facilities Sublease Agreement Dated June 1, 2005

Section 3.06 – Sources of Payment of Base Rental Payments provides that:

- (a) The County hereby covenants and agrees that *amounts on deposit in the CCF* shall be applied solely for payment of the costs of the Courthouse construction project or for the payment of the base rental payments.

(b) If and to the extent that the amounts on deposits in the CCF are not sufficient to pay the base rental payments for any rental period, such rental payments shall be paid by the County ...from amounts on deposit in the Courthouse Construction Civil Assessment Fund.

(Note: The base rental payments refer to the COP debt service payments – this is part of the COP financing arrangement.)

GC 76223 – Limitation on the Use of the Court’s Civil Assessments for Failure to Appear Funds

- GC 76223 specified the conditions pertaining to the construction of court facilities in Merced County by the County of Merced for any construction pursuant to a written agreement entered into prior to January 1, 2004 between the board of supervisors and the presiding judge of the superior court:
- Revenue received in Merced County from civil assessments for Failure to Appear, pursuant to Section 1214.1 of the Penal **Code**, shall be available, in an annual amount not to exceed the amount agreed upon by the board of supervisors and the presiding judge of the superior court, for the purpose of augmenting other funds made available for construction.
- The total amounts deposited from civil assessments may not exceed in any fiscal year the amount payable on the construction costs less (1) any amounts paid by the courthouse construction fund and (2) any other amounts paid from other sources except for any amounts paid pursuant to subdivision GC 76223 (b) – courts funds other than court funds received from the Trial Court Trust Fund and other State sources.

Costs of construction also include the payment on the bonded indebtedness or other encumbrance used to finance the construction.

E. County General Ledger Funds Used

The County utilizes the following funds to track the funding sources including the interest and investment revenue earned on the funding sources, the construction expenditures, and the debt service payments for the New Downtown Courthouse:

- Courthouse Construction Fund (CCF) - (County Fund 2451) – to account for the revenues as specified by the Board of Supervisor’s resolution and expenditures related to the acquisition, rehabilitation, construction of the Courthouse, and financing (including the COP debt service payments) of courtrooms, a courtroom building or buildings containing facilities necessary or incidental to the operation of the justice system, or court facilities.
- Superior Court Debt Service Fund - (County Fund 2482) – to account for the annual \$310,000 civil assessment (Failure to Appear) funds received from the Court. The Court started making the annual \$310,000 payment in FY 2005/2006 (the same year the County started making the COP debt service payments).

- Debt Service – Justice Facility Fund - (County Fund 1802) – this is a pass through fund to account for the funds transferred from the CCF and the Court’s civil assessment funds to support the COP debt service payments issued to finance the construction of the New Downtown Courthouse.
- Capital Projects Fund – Justice Facility - (County Fund 1812/Budget Unit 17400) – this fund was established by the County to record the funding sources including the interest and investment revenue earned on the funding sources and the expenditures incurred in the construction of the New Downtown Courthouse.

County Trust Fund # 2466 - was established to track the deposit of the \$3,040,000 funding received from the State Court Facilities Construction Fund.

Additionally, the 2005 COP issued by the County required a certificate reserve fund and the balance in this fund at June 30, 2009 totaled \$766,000. This reserve fund is maintained by a third party trustee as required by the COP documents. According to the County, this reserve fund is not recorded in the County’s accounting system (FIRMS) but is included by the County as a restricted asset in its *Comprehensive Annual Financial Report (CAFR)* under “Non-Major Debt Service Fund, Courthouse Construction COP.

IV. RESULTS OF WORK

A. Construction Funding Sources

The 2005 Construction MOU specified the funding sources for the construction of the Courthouse (See Table A, Column A). The County established the Capital Projects – Justice Facility Fund (Capital Projects Fund) as an accounting mechanism to track the funding sources including the interest and investment revenue earned on the funding sources, and the associated expenditures for the construction of the Courthouse.

In May 2010, the County provided the Court a Transaction Analysis Report for the Capital Projects Fund for the period 2003/2004 thru May 11, 2010. The County allocated a total of \$919,971 (Table A, Column C, Row 10) in interest and other investment revenue (including minor adjustments) to the Capital Projects Fund which was earned by the funding sources while the construction was in progress and the funds were not yet needed to pay for construction expenditures. Interest and other investment revenue were apportioned quarterly to the Capital Projects Fund based on the balance maintained within the County Treasury. Furthermore, according to the County, bond proceeds were placed with a third party trustee and invested in various financial instruments. The allocation of \$919,971 of interest and other investment revenue resulted in the CCF not having to contribute \$869,453 into the construction project as specified in the 2005 Construction MOU (Table A, Column E, Row 3).

Table A
Construction Funding Sources

Source – Transaction Analysis Report for the Capital Projects Fund

Row	Funding Sources	Estimated/Budgeted Per 2005 Construction MOU	Per County Submitted Transaction Analysis Report 2003/2004 thru May 11, 2010			Difference (D-A)
			Principal ***	Interest and Other Investment Revenue ***	Total Contributed (B + C)	
		A	B	C	D	E
1	Transfers to Budget Unit 17400 (Fund 1812 - Capital Projects Fund) represent construction expenditures incurred and charged to the CCF - thru June 30, 2005.	\$ 1,190,963	\$ 1,229,143	\$ -	\$1,229,143**	\$ 38,180
2	CCF Balance at June 30, 2005	5,700,000	4,792,367	-	4,792,367	(907,633)
3	Sub-total from the CCF (Row 1 and 2)	6,890,963	6,021,510	-	6,021,510	(869,453)
4	2005 Certificates of Participation - Net Proceeds*	9,100,000	9,100,000	643,774	9,743,774	643,774
5	State Court Facilities Construction Fund (SCFCF)	3,039,750	3,039,750	202,495	3,242,245	202,495
6	Court Contribution - Local Court Reserves	709,566	709,566	494	710,060	494
7	Interest Revenue	-	-	69,645	69,645	69,645
8	Subtotal - Others (Row 4 to Row 7)	12,849,316	12,849,316	916,408	13,765,724	916,408
9	Other Revenue	-	-	3,563	3,563	3,563
10	Total Funding (Row 3, 8, and 9)	\$ 19,740,279	\$18,870,826	\$ 919,971	\$19,790,797**	\$ 50,518

* The debt service payments due on the 2005 Certificates of Participation are supported by the deposits in the Courthouse Construction Fund and augmented by the Court's annual contribution of \$310,000 civil assessments funds.

** Includes the Capital Projects Fund beginning balance at July 1, 2003 of \$268,443.

*** Includes minor adjustments totaling \$ 684 for the funding received from the State Court Construction Fund (From \$3,039,750 to \$3,040,000) and Court reserves (from \$709,566 to \$710,000).

1. Determine the Methodology in Allocating the Estimated \$766,000 Excess Construction Funds Currently Residing in the Courthouse Construction Fund

The funding plan specified in the 2005 Construction MOU did not include an amount estimated for interest and other investment revenue earned on the funding sources while the construction was in progress. The County of Merced allocated \$919,971 (See Table A on the previous page) of the revenue earned on the construction funds while the funds were deposited with the County and the Trustee during construction. Since some of the \$919,971 was utilized for construction expenditures, this resulted in excess construction funds of approximately \$766,000 currently in the CCF as of May 11, 2010. (See Table B, Row 11). Due to the budgetary constraints on the Courthouse project, if known and budgeted for, these funds could have avoided elimination of design changes made to accommodate the budget imposed on the Courthouse project.

Section 2.7 of the Construction MOU provided that, “At the completion of the construction of the Court Facility, County shall return any remaining capital funds to the State Court Facilities Construction Fund.”

**Table B
Calculation of Excess Construction Funds Residing in the CCF**

Row	Descriptions	Dollar Amount
1	Funding Sources:	
2	Estimated per the 2005 Construction MOU	\$ 19,740,279
3	Adjustments: (1) \$56,877 - difference between the CCF balance at 6/30/2005 - per the MOU, estimated at \$5.7 million while the actual balance is \$5,643,123 and (2) \$46,867 - excess of actual expenditures over the MOU budgeted amount - See Row 8.	(103,744)
4	Interest and Other Investment Revenue Allocated to the Capital Projects Fund (See Table A, Col C, Row 10).	919,971
5	Total Funding Sources	\$20,556,506
6	Expenditures:	
7	Estimated per the 2005 Construction MOU	19,740,279
8	Per the Transaction Analysis Report as of May 11, 2010 - for the Capital Projects Fund, total expenditures totaled \$19,787,146. Per the 2005 MOU, budgeted expenditures totaled \$19,740,279. This resulted in excess expenditures of \$46,867.	46,867
9	Total Construction Expenditures Charged to the Capital Projects Fund	19,787,146
10	Excess Construction Funds - Difference Between the Total Funding Sources and Construction Expenditures (Row 5-9)	\$769,360
Breakdown of the \$769,360		
11	Excess Funds Residing in the CCF: The CCF did not contribute \$869,453 that it should have per the Construction MOU (See Table A , Column E, Row 3) less (1) \$56,877 adjustment due to the difference between the June 30, 2005 estimated CCF balance per the MOU and the actual CCF balance of \$5,643,123 and (2) expenditures in excess of the amount budgeted in the MOU of \$46,867 that was charged to the CCF.	765,709*
12	Excess Funds Residing in the Capital Projects Fund - Balance at May 11, 2010.	3,651
13	Total Excess Construction Funds in the CCF and the Capital Projects Fund (Row 11 and 12)	\$ 769,360

*CCF balance at May 11, 2010 was \$790,510.

Recommendation

The Court should discuss with the Office of Court Construction and Management (OCCM) the methodology in allocating the estimated \$766,000 of excess construction funds that currently resides in the CCF noting the provision in the Construction MOU regarding the return of any remaining capital funds to the State Court Facilities Construction Fund (SCFCF). See the table below for options of how the estimated \$766,000 excess construction funds could be allocated amongst the CCF, the Court, and the SCFCF.

Once the methodology is agreed upon, it should be communicated to the County and a final accounting of the excess construction funds can be obtained from the County. See also related discussion in Section B.

Table C
Options to Allocation of the \$766,000 Excess Construction Funds

Description	Option 1: Calculation Based on the Funding Sources Estimated in the 2005 Construction MOU			Option 2: Calculation Based on the County Submitted Transaction Analysis Report for the Capital Projects Fund 2003/2004 thru May 11, 2010 (Actual Amount Contributed)		
	Funding Amount	Percentage	Estimated Excess Amount	Funding Amount	Percentage	Estimated Excess Amount
Transfers to Budget Unit 17400 (Fund 1812 - Capital Projects Fund) representing construction expenditures incurred and charged to the CCF - through 6/30/2005	\$ 1,190,963			\$ 1,229,143		
Courthouse Construction Fund (CCF) Balance at June 30, 2005	5,700,000			4,792,367		
Sub-total from the CCF	6,890,963	34.91%	\$ 267,396	6,021,510	31.91%	\$ 244,424
2005 Certificates of Participation - Net Proceeds – debt service payments are funded by the CCF and the Court’s civil assessment funds	9,100,000	46.10%	353,116	9,100,000	48.22%	369,385
State Court Facilities Construction Fund (SCFCF)	3,039,750	15.40%	117,954	3,039,750	16.11%	123,389
Court Contribution - Local Court Reserves	709,566	3.59%	27,534	709,566	3.76%	28,803
Total Funding (Not including Interest and Investment Revenue)	19,740,279	100.00%	\$ 766,000	18,870,826	100.00%	\$ 766,000
Interest and Investment Revenue	-			919,971		
Total Funding including Interest and Investment Revenue	\$19,740,279			\$ 19,790,797		

Superior Court Response

Agreed: The Court prefers that the allocation follow Option 2 as this is based on actual numbers. We will work with the OCCM and the county to distribute these funds including obtaining a final accounting from the County regarding the distribution of the excess construction funds.

2. Determine the Methodology in Allocating the Additional Excess Construction Funds Estimated at \$36,000 Currently Residing in Other County Funds and the AOC

In addition to the \$766,000 estimated excess construction funds currently residing in the CCF, there are also the following additional excess construction funds:

Funds Residing With	Balance at	Dollar Amount
The County - Capital Projects Fund	May 11, 2010	\$ 3,651
The County Trust Fund # 2466 (Remaining Interest allocated to the funding from the State Court Facilities Construction Fund - that was not transferred to the Capital Project Fund)	June 16, 2010	15,394
The Administrative Office of the Courts (Rebate received from the Merced Irrigation District for energy saving products purchased for the New Downtown Courthouse)	May 11, 2010	17,238
Total - Other Excess Construction Funds		\$ 36,283

Recommendation

Similar to the issue and recommendation noted in 1 above, the Court should discuss with the Office of Court Construction and Management (OCCM) the methodology in allocating the estimated \$36,000 of excess construction funds that currently reside in the County Treasury and the AOC noting the provision in the Construction MOU regarding the return of any remaining capital funds to the State Court Facilities Construction Fund. This should also be communicated to the County to obtain a final accounting of the excess construction funds.

Superior Court Response

Agreed: The Court prefers that the allocation follow Option 2 presented as this is based on actual numbers. We will work with the OCCM and the county to distribute these funds.

B. Courthouse Construction Fund

GC 76100 provides that for the purpose of assisting any county in the acquisition, rehabilitation, construction, and financing of courtrooms, a courtroom building or buildings containing facilities necessary or incidental to the operation of the justice system, or court facilities, the board of supervisors may establish in the county treasury a Courthouse Construction Fund (CCF) into which shall be deposited the amounts specified in the resolutions adopted by the board of supervisors in accordance with this chapter.

The County Board of Supervisors (BOS) established the CCF in 1984. The BOS resolution # 92-56 authorized the deposit of \$2.25 of the \$7 of \$10 GC 76000 (a) criminal and non-parking penalty assessments into the CCF.

The County retained the CCF under GC 70325(a) for the payment of existing bonded indebtedness on the Courthouse, and is required to submit annual updates on all receipts and expenditures from the CCF, within 90 days of the end of each fiscal year.

In April 2005, pursuant to GC 70404 that required the Administrative Director of the Courts' (ADOC) approval of expenditures and encumbrance of the CCF effective 1/1/2004, the County received the ADOC's approval to encumber a total of \$13.7 million of the CCF for the construction document phase, bidding, construction, construction management, and all related costs for the New Downtown Courthouse. The total requested amount was based on the *estimated* construction costs *at that time* of \$14.5 million.

The 2005 Construction MOU and the related \$10.2 million Series 2005 Certificates of Deposit (COP) documents require that CCF monies are to be used first toward the debt service payments with the \$310,000 from the Court's civil assessment monies funding the difference. These funds are required to be accounted for in separate funds since the civil assessment funds are funded by the Court and are to be used only to augment the CCF.

In addition, GC 76223(c) specified the limitation on the use of the Court's civil assessment funds to support the debt service payments. The limitation was that it may not exceed in any fiscal year the amount payable on the construction costs (including payment on bonded indebtedness) less any amounts paid by the Courthouse Construction Fund. (See Section III. D of this report.)

Moreover, the 2005 COP Facilities Sublease Agreement dated June 1, 2005, Section 3.06 – Sources of Payment of Base Rental Payments provides that:

- (a) The County hereby covenants and agrees that amounts on deposit in the CCF shall be applied solely for payment of the costs of the Courthouse construction project or for the payment of the base rental payments.
- (b) If and to the extent that the amounts on deposits in the CCF are not sufficient to pay the base rental payments for any rental period, such rental payments shall be paid by the County ...from amounts on deposit in the Courthouse Construction Civil Assessment Fund.

1. The CCF was Not Used First to Support the Debt Service Payments as Specified in the MOU, the COP Debt Service Documents, and the Provisions of GC 76223(c)

IAS reviewed the CCF transactions from 2003/2004 to 2008/2009 and noted that the County deposited the Court's \$310,000 annual civil assessment funds into the Superior Court Debt Service Fund (Fund 2482). To support the COP debt service payments, the County transferred annually the full \$310,000 civil assessment monies from the Superior Court Debt Service Fund into another fund, the Debt Service – Justice Facility Fund (Fund 1802). The Debt Service – Justice Facility Fund is a pass-through fund used to accumulate the Court's \$310,000 annual civil assessment monies and the CCF monies needed to support the debt. The difference between the Court's annual \$310,000 civil assessment funds and the annual COP debt service payments is then transferred from the Courthouse Construction Fund (Fund 2451) into this fund. Therefore, the Court's civil assessment monies are used first to support the debt service payments and the CCF is used to cover the shortfall.

This is the reverse of the provisions specified in the 2005 Construction MOU and the COP debt documents which provided that the CCF is to be *first* then the Court's civil assessment monies. This resulted in:

- o The CCF balance at June 30, 2009 of \$1.9 million was **over-stated** by CCF monies that should have been used first to support the COP debt service payments.
- o The Court's civil assessment monies residing in the Superior Court Debt Service Fund was **under-stated** by the amount that was used first to support the debt service payments instead of the CCF.

The error in the methodology used in supporting the COP debt service payments (the Court's civil assessment funds first rather than the CCF) also resulted in the non-compliance with the provision of GC 76223(c) that limited the use of the Court's civil assessment monies to support the debt service payments – CCF is to be used first then the Court's civil assessment funds.

Resolution

The error in the methodology in using the Court's civil assessment funds first rather than the CCF was communicated by IAS and Court management to the County in August 2009. The County subsequently made the necessary adjustments in March 2010 and the adjusted balances at May 11, 2010 for the two funds per the County submitted Transaction Reports are as follows:

Table D

Source – County Submitted Reports from 2003/2004 thru May 11, 2010

Row	Descriptions	CCF (Fund 2451) A	Superior Court Debt Service Fund (Fund 2482) B
1	County Reported Balance, June 30, 2009	\$ 1,933,434	\$ 397
2	Add:		
3	CCF Revenues from July 1, 2009 to May 11, 2010	352,142	-
4	Interest and Investment Revenue	17,379	8,352
5	Miscellaneous	748	5,752
6	Less:		
7	Transfers to the Capital Projects Fund (Budget Unit 17400/Fund 1812) for Construction Expenditures.	(80,200)	-
8	Transfers of Total CCF Revenues from July 1, 2009 to May 11, 2010 to the Debt Service - Justice Facility Fund - to support the COP debt service payments	(370,270)	-
9	Transfers to the Superior Court Debt Service Fund - for the Court's civil assessment funds that are not yet needed to support the COP debt service payments. (See Table E below)	(1,008,043)	1,008,043
10	Transfers to the Superior Court Debt Service Fund - for interest and investment revenue allocated to the \$1,008,043.	(60,237)	60,237
11	Miscellaneous	5,557	(5,557)
12	County Adjusted Balance, May 11, 2010	\$ 790,510	\$ 1,077,224

The primary adjustment to the Courthouse Construction Fund involved the transfer of \$1,008,043 (See Table D, Column A, Row 9) from the Courthouse Construction Fund to the Superior Court Debt Service Fund.

This was to return the portion of the Court's civil assessment monies that was used first (in error) to support the debt service payments. The \$1,008,043 was calculated based on total *annual* CCF revenues less the *annual* COP debt service payments to arrive at the portion that should be augmented by the civil assessment funds. (See Table E below for details).

Table E

Detail of the \$1,008,000 Transferred from the CCF to the Superior Court Debt Service Fund

Row	Descriptions	2005/2006	2006/2007	2007/2008	2008/2009	Total
		A	B	C	D	E
Source: Debt Service - Justice Facility Fund (Fund 1802) - the fund used to record the COP Debt Service Payments:						
1	Total COP Debt Service Payments (Interest and Principal)	\$649,495	\$ 663,531	\$ 660,431	\$ 662,181	\$2,635,638
2	Administrative Fees and Office Expenses	50	1,850	1,850	1,875	5,625
3	Interest and Investment Revenue Allocated to this Fund	(3,043)	(1,391)	(1,940)	(283)	(6,657)
4	Total Debt Service Payments and Administrative Charges, Net of Interest and Investment Revenue	646,502	663,990	660,341	663,773	2,634,606
Source: Courthouse Construction Fund (Fund 2451):						
5	Total CCF Revenues (Including Interest and Investment Revenue)	582,626	657,823	604,252	558,144	2,402,845
Analysis - Sources of Funds Needed to Support the Debt Service Payments - as specified in the MOU and COP Documents - CCF first then the Court's civil assessment funds:						
6	From the CCF - see row 5 above	582,626	657,823	604,252	558,144	2,402,845
7	From the Court's Civil Assessment Funds - deposited in the Superior Court Debt Service Fund- to augment the CCF (Row 4 -6)	63,876	6,167	56,089	105,629	231,761
8	Total Funds Needed to Support the COP Debt Service Payments (Row 6 + 7)	646,502	663,990	660,341	663,773	2,634,606
The County Used the Civil Assessment Funds First (\$310,000 per year) to Support the Debt Service Payments, then the CCF - which is the reverse of the methodology specified in the MOU and COP Documents:						
9	The Court's Civil Assessment Funds - deposited in the Superior Court Debt Service Fund that was transferred to the Debt Service - Justice Facility Fund to support the debt service payments. The CCF made up the difference.	310,000	310,000	310,000	310,000	1,240,000
Adjustments Made by the County in March 2010 After Discussion with IAS and Court Management:						
10	Adjustments (principal portion) - transferred from the CCF to the Superior Court Debt Service Fund - since the CCF should have been used first. Actual amount of transfer was \$1,008,043 - difference of \$196. (Row 9-7) *	\$246,124	\$ 303,833	\$ 253,911	\$ 204,371	\$1,008,239*

* The County also allocated \$60,237 in interest and investment revenue to the \$1,008,043 civil assessment monies and transferred the amount from the CCF to the Superior Court Debt Service Fund. Interest and investment revenue was calculated quarterly by the County based on revenue earned by the County from its investments.

Recommendations

1. The Court should discuss with OCCM the resolution to the excess construction funds that should be allocated to the CCF. (See Appendix 3 and 4 of this report.)
2. Once the allocation of the amount to the CCF is determined, the Court should also discuss with the County the interpretation of the Section 3.06 of the Facilities Sublease Agreement which provided that the amounts on deposit in the CCF shall be applied solely for payment of the costs of the

Courthouse construction project or for the payment of the base rental payments and if and to the extent that the *amounts on deposits in the CCF* are not sufficient to pay the base rental payments for any rental period, such rental payments shall be paid by the County ...from amounts on deposit in the Courthouse Construction Civil Assessment Fund.

Therefore, if due to the allocation of the excess construction funds which resulted in the CCF reporting a balance on deposit, this amount on deposit in the CCF should then be used first to support the debt service payments before the Court's civil assessment funds.

3. The Court should continue to monitor the transfers from the CCF and the Superior Court Debt Service Fund to the Debt Service Justice Facility Fund to ensure that the CCF is used first to support the debt service payments.

Superior Court Responses

1. Agreed: The excess construction funds should be allocated to the Court Construction Fund.
2. Agreed: We agree with IAS' interpretation of the Facilities Sublease Agreement. We have requested comments back from the County on this point and wait to receive their response.
3. Agreed: We will continue to monitor the various funds and their uses.

C. Superior Court Debt Service Fund (Civil Assessments)

The County established the Superior Court Debt Service Fund (Fund 2482) to track the Court's \$310,000 annual civil assessment fund contribution. Transfers are then made from the Superior Court Debt Service Fund into another fund, the Debt Service Justice Facility Fund (Fund 1802) to support the COP debt service payments.

GC 76223(a) provides that revenue received in Merced County from civil assessments for Failure to Appear, pursuant to Section 1214.1 of the Penal Code, shall be available, in an annual amount not to exceed the amount agreed upon by the board of supervisors and the presiding judge of the superior court, for the purpose of augmenting other funds made available for construction.

Trial Court Facilities Agreement (December 24, 2003)

- According to the *Trial Court Facilities Agreement* between the County and the Court and pursuant to GC 76223, for the purpose of augmenting other funds made available for the construction of the Courthouse, the Court agreed to deposit in an annual amount of \$310,000 civil assessment monies (Failure to Appear) in an account or accounts to be designated by the County... The Court agreed that this shall start July 1, 2004 and continue through and including the 30th year thereafter after any borrowings are made for any construction related to the Courthouse.
- In 2005/2006, the County established the Superior Court Debt Service Fund to track the Court's annual \$310,000 civil assessment contribution. The Court did not start depositing the annual \$310,000 civil assessment monies in the County treasury until 2005/2006 since the debt service payments on the 25 year Series 2005 COP did not start until 2005/2006.

- The County transfers the civil assessment monies residing in the Superior Court Debt Service Fund to another County fund, the Debt Service - Justice Facility Fund to support the COP debt service payments.

April 5, 2005 Construction MOU

- Exhibit E-1 of the 2005 Construction MOU specified that as Protection against shortfall in resources – Bond documents require **CCFs to be used first** towards debt service with the \$310,000 from the local court funding the difference between the debt service payments and the CCFs.

Facilities Sublease Agreement by and between Merced County Public Facilities Corporation and the County of Merced (June 1, 2005) which is Part of the COP Documentation

- Section 1.01 Definitions - Courthouse Construction Civil Assessments Fund – means the fund by that name **established** by the County pursuant to the Trial Court Facilities Agreement and in which civil assessments for failure to appear are deposited pursuant to GC 76223.

The County established this fund but named it the Superior Court Debt Service Fund (Fund 2482).

- Section 3.06 - Sources of Payment of Base Rental Payments (refers to the COP debt service payments) - provided that the CCF should be used first to support the debt service payments.

1. The County Used the Civil Assessment Funds First rather than the CCF to Support the COP Debt Service Payments

IAS reviewed the transactions in the Superior Court Debt Service Fund and noted that from 2005/2006 to 2008/2009, the County transferred the full \$310,000 annual civil assessment funds from the Superior Court Debt Service Fund (Fund 2482) to the Debt Service Justice Facility Fund (Fund 1802) to support the COP debt service payments. The difference between the annual civil assessment funds and the annual debt service payments is then augmented by transfers from the Courthouse Construction Fund (Fund 2451). This is the reverse of the terms specified in the Construction MOU and the COP debt service documents which provided that CCFs should be used first to support the debt service payments.

Resolution

This was communicated by IAS and Court management to the County in August 2009. The County subsequently made the necessary adjustments in March 2010 by transferring \$1,008,043, including interest and investment revenue of \$60,237 from the Courthouse Construction Fund (CCF) to the Superior Court Debt Service Fund to reimburse the Superior Court Debt Service Fund for civil assessment monies that should not have been deducted from the Fund. (See also Section IV. B – Courthouse Construction Fund). The adjusted balance of the Superior Court Debt Service Fund at May 11, 2010 is shown in Table F on the next page.

See related discussions in Section IV. B – Courthouse Construction Fund and Section IV. D – Debt Service Justice Facility Fund for the findings related to the allocation of the excess construction funds that currently reside in the Courthouse Construction Fund, other County funds, and with the AOC.

Table F
Superior Court Debt Service Fund
(where the Court's civil assessment monies reside)

Row	Descriptions	Dollar Amount
Analysis of the Amount that Should Reside in the Superior Court Debt Service Fund (If the CCF was used first as specified in the MOU , COP Documents and GC 76223):		
1	The Court's Civil Assessments Funds \$310,000 per year x 4 years (FY 2005/2006 to 2008/2009)	\$ 1,240,000
2	Less: The yearly amount needed from the Civil Assessment Funds to Support the COP Debt Service Payments: (See Section IV.B - CCF - Table E, Col E, Row 7)	
3	FY 2005/2006	63,876
4	FY 2006/2007	6,167
5	FY 2007/2008	56,089
6	FY 2008/2009	105,629
7	Total Civil Assessment Funds Needed to Support the Debt Service Payments (Row 2 to 6)	231,761
8	Superior Court Debt Service Fund Balance (not including interest and investment revenue) at June 30, 2009 - Row 1 less 7 (The actual amount transferred from the CCF to the Superior Court Debt Service Fund was \$1,008,043 – difference of \$196.)	1,008,239
Reported by the County (including Subsequent Adjustments):		
9	County Reported Balance at June 30, 2009	397
10	Adjustments Made by the County in March 2010:	
11	Transfers from Fund 2451 - CCF (since the Court's Civil Assessment Fund was used first rather than the CCF as specified in the MOU. (See Section IV.B - CCF)	1,008,043
12	Transfers from Fund 2451 - CCF (For interest and investment revenue allocated to the \$1,008,043.)	60,237
13	Transfers from Fund 1802- Debt Service Justice Facility Fund (for interest and investment revenue allocated to the civil assessment funds that should not have been used to support the debt service payments.	7,701
14	Net of Miscellaneous Revenue/Interest and Investment Revenue/Other Expenditures in 2009/2010	846
15	Adjusted Balance at May 11, 2010 - reported by the County in its Transaction Analysis Report for the Superior Court Debt Service Fund (Note: The Court made the 2009/2010 \$310,000 annual civil assessment contribution in June 2010.)	\$ 1,077,224

Recommendation

The Court should continue to monitor the transfers from the CCF and the Superior Court Debt Service Fund to the Debt Service Justice Facility Fund to ensure that CCFs is used first to support the COP debt service payments.

Superior Court Response

Agreed: We will continue to monitor the transfers from the various funds.

D. Debt Service - Justice Facility Fund

The County utilizes the Debt Service – Justice Facility Fund (Debt Service Fund) as a pass through fund to record the transfers of the Court’s civil assessment monies residing in the Superior Court Debt Service Fund (Fund 2482) and the Courthouse Construction Fund (Fund 2451) to support the COP debt service payments. (See table below.) Due to the nature of the fund, since it is used only to accumulate funds to make the debt service payments, at the end of each fiscal year, this fund should have a zero or minimal balance. See findings noted in Section IV. B – Courthouse Construction Fund and Section IV. C – Superior Court Debt Service Fund regarding the order of funds used to support the debt service payments.

Debt Service – Justice Facility Fund

Row	Descriptions	Dollar Amount
Analysis of the Amount that should Reside in the Debt Service - Justice Facility Fund (If the CCF was used first as specified in the MOU, COP Documents, and GC 76223):		
Transactions from 2005/2006 to 2008/2009:		
1	COP Debt Service Payments from 2005/2006 to 2008/2009 (including county administrative charges, net of interest revenue) See Section IV.B - CCF, Table E, Row 4	\$(2,634,606)
2	CCF Revenues from 2005/2006 to 2008/2009 - see Section IV.B- CCF, Table E, Row 5	2,402,845
3	Difference - to be Augmented by the Civil Assessment Funds Residing in the Superior Court Debt Service Fund	231,761
Transactions from July 1, 2009 to May 11, 2010:		
4	CCF Revenues transferred to the Debt Service Justice Facility Fund (Fund 1802)	370,270
5	COP Debt Service Payment (Interest) - due December 1, 2009 - including county administrative charges	(186,140)
6	Interest and investment revenue transferred from the Debt Service - Justice Facility Fund to the Superior Court Debt Service Fund- for civil assessment monies that should not have been used to make the COP debt service payments.	(7,701)
7	Debt Service - Justice Facility Fund - Balance at May 11, 2010	\$176,429
Reported by the County (including Subsequent Adjustments):		
8	County Reported Balance at June 30, 2009	5,752
9	Adjustments Made by the County in March 2010:	
10	Transfer of the Ending Balance at June 30, 2009 to the Superior Court Debt Service Fund	(5,752)
11	Transfer of Interest/Investment Revenue to the Superior Court Debt Service Fund	(7,701)
12	Transfer of CCF Revenues from July 1, 2009 to May 11, 2010 to Support Debt Service Payments	370,269
13	COP Interest Payment Due on December 1, 2009	(184,314)
14	County Administrative Charges and Others	(1,825)
15	Adjusted Balance at May 11, 2010 as Reported by the County in its Transaction Analysis Report	\$176,429

The balance at May 11, 2010 of \$176,429 resulted primarily from the excess of CCF revenues transferred (in 2009/2010) over the first debt service payment due in this fiscal year. The second debt service payment is due in June 2010.

No reportable issue noted in the transactions that occurred in the Debt Service – Justice Facility Fund since this fund is only used by the County to accumulate funds transferred from the CCF and the Superior Court Debt Service Fund (for civil assessment monies) to support the COP debt service payments.

E. Capital Projects Fund – Justice Facility

Some of the provisions of the April 5, 2005 Construction MOU:

- The funding for the court project totaling \$19,740,279 is derived from sources that include the Courthouse Construction Fund (established pursuant to GC 76100), capital funds from the State Court Facilities Construction Fund (SCFCF), the Court’s contribution from local revenue reserves, and the net proceeds of \$9.1 million from the 2005 Certificates of Participation (COPs) issued by the County to finance this project. (See Section III.C Funding Sources for detail). In addition, the Court committed \$310,000 per year of civil assessment revenues (Failure to Appear) for the repayment of bonded indebtedness.
- The total project cost with capital funds (representing the \$3,040,000 from the State Court Facilities Construction Fund) will be \$19,740,279.

The County will ensure that all expenditures from the CCF and Civil Assessments are consistent with the conditions of approval from the AOC, the terms of the Trial Court Facilities Agreement, and the terms of this MOU. County will ensure that all expenditures from the Capital Funds (State Court Facilities Construction Fund) are consistent with the conditions of approval from the AOC and the Department of Finance.

- The County shall be solely responsible for all costs related to and associated with the construction of the New Downtown Courthouse, including, but not limited to, payment of all bonded indebtedness or any form of financing incurred by the County for this Courthouse.
- In the event that the actual cost of the Court Project exceeds the Total Court Project Cost, the County shall be responsible for all costs to complete the Court Project.
- The County will be solely responsible for administering the Court Project and the Contract subject to AOC approval or review and comment.
- Once the court project is complete, the AOC will accept the transfer and assume responsibility for the court facility.
- The County will provide the AOC and the Court annual accounting of all revenues and expenditures from the CCF, Civil Assessments, and Capital Funds (State Court Facilities Construction Fund) for the Court Project - the construction of the New Downtown Courthouse.

County Report (Transaction Analysis Report) for the Capital Projects Fund– Justice Facility

The New Downtown Courthouse, located at 2260 N Street, Merced, CA is a collaborative project by the County, the Court, and the AOC. The County managed construction was started in June 2005 and was

scheduled to be completed in eighteen months, in December 2006. However, due to the rainy weather condition in late 2006 and significant problems encountered in the existing utility line that had to be corrected, the construction was not considered substantially completed until March 2007. The Court received the certificate of occupancy dated March 30, 2007 from the County of Merced and the Court moved into this Courthouse in April 2007.

The Courthouse has five jury-capable courtrooms with full holding facilities, a non-jury courtroom for Family Court, and space for potential build-out for a seventh courtroom which was subsequently converted to a public counter space and office space for court staff.

Although the County Department of Public Works (DPW) personnel charged with the construction provided the Court with a “Budget against Actual Expenditures Spreadsheet” on a regular basis, the latest information received by the Court was dated January 2009. In May 2009, the Court still had not received the final accounting of the funding sources including the interest and investment revenue and the associated expenditures incurred in the construction of the Courthouse, including the use of the Court’s civil assessment funds to support the debt service payments.

IAS and Court management met with the County in August of 2009. In May 2010, the County provided the Court with the Transaction Analysis Report for the Capital Projects Fund covering the period 2003/2004 to May 11, 2010. The Capital Projects Fund is used by the County to track the funding sources including interest and investment revenue and construction expenditures incurred in the construction of the Courthouse. Table G provides an analysis of the Capital Projects Fund from July 1, 2003 through May 11, 2010.

Table G

Source: County Transaction Analysis Report for the Capital Projects Fund

Row	Descriptions	Amount
1	Beginning Balance, July 1, 2003	\$ 268,443
2	Add: Funding Sources	
3	Courthouse Construction Fund	5,753,067
4	Interest Revenue (including investment revenue)	69,645
5	State Aid for Construction (State Court Facilities Construction Fund) *	3,242,245
6	Long Term Debt Proceeds (2005 COP net proceeds)*	9,743,774
7	Court Reserves*	710,060
8	Other Revenue	3,563
9	Total Funding Sources (Row 3 to 8)	19,522,354
10	Total Funds Available for Construction (Row 1 + 9)	19,790,797
11	Less: Construction Expenditures	
12	2003/2004	465,161
13	2004/2005	933,215
14	2005/2006	5,688,388
15	2006/2007	11,777,532
16	2007/2008	761,920
17	2008/2009	80,730
18	2009/2010 (thru May 11, 2010)	80,200
19	Total Construction Expenditures (Row 12 to 18)	19,787,146
20	Ending Balance, May 11, 2010 (Row 10 - 19)	\$ 3,651

*Includes interest and investment revenue.

The information contained in the Transaction Analysis Report for the Capital Projects Fund was provided at a high level – limited to the total amount of expenditures for each fiscal year. The County did not provide an updated “Budget against Actual Expenditures Spreadsheet” (Spreadsheet) prepared by the County Department of Public Works (DPW) detailing the budgeted and actual construction expenditures by line item. This spreadsheet was updated by IAS for information received from DPW’s Accounts Payable Listing for the period March to July 2009. See Table H on page 31.

The County revised some of the individual line item within the budget (See Table H, Column A and B) which resulted in increase budgeted costs in some areas with corresponding decrease in others, but the total budgeted construction costs of \$19.7 million remained the same. IAS also noted an immaterial variance between the total construction costs reported in the Transaction Analysis Report for the Capital Projects Fund and the Updated Budgeted to Actual Expenditures Spreadsheet (See Table I on page 32).

Based on IAS’ discussions with Court management with limited input from County personnel, the revisions in the budgeted line items from “new construction” to “administration” and “furniture, fixture, and equipment” (See Table H) were primarily due to the conversion of the potential *build-out space* for a seventh courtroom to a public counter and office space for court staff which resulted in increase budgeted architectural, risk management, and the County DPW professional charges. Other reasons for the revisions and increased costs include delay caused by the weather, problems in the existing utility lines, various change orders including the installation of steel floor beams to support the Court’s power files, increase in budgeted amount for furniture, fixtures, and equipment, and DPW charges for the removal of the relocatables and trailers and the associated landscaping costs.

While the Court believes that the County’s Department of Public Works (DPW) performed an excellent job in managing the Courthouse project and bringing the project to conclusion, it expressed concern about the increase in some of the budgeted line items and the associated costs relating to the additional charges by the County DPW for professional charges and the removal of the relocatables and the associated landscaping costs (See Table H). Since the construction of the Courthouse is a County managed project and the Court and IAS did not have access to the supporting documentations related to these charges, the Court and IAS relied on the accuracy of the County submitted reports. Moreover, the County individual charged with the construction of the New Downtown Courthouse has since retired from the County so that much historical knowledge regarding the construction of the Courthouse is no longer resident with the County.

Table H

Source – DPW’s Budget against Actual Expenditures Spreadsheet dated January 2009 (updated by IAS for Additional Charges Listed in the DPW’s Accounts Payable Listing)

Description	Original Budget per the 2005 Construction MOU	Revised Budget per County DPW spreadsheet dated January 15, 2009	Variance in Budgets (B-A)	Charged to Construction Project per DPW Report	Variance Between the Amount Charged and the Revised Budget (D-B)
	A	B	C	D	E
ADMINISTRATION					
DPW (Professional Service)	\$ 215,000	\$ 215,000	-	\$ 215,000	-
DPW (Professional Service) Additional project management & inspection - delay	-	129,321	\$129,321	120,761	\$(8,560)
Inspection	140,000	151,000	11,000	151,000	-
Nacht and Lewis Architect	1,235,988	1,396,446	160,458	1,396,446	-
Kitchell Construction Management	530,000	607,099	77,099	607,099	-
Construction Testing and Engineering- materials testing	114,650	129,918	15,268	129,918	-
Environmental review (URS CEQA) technical study and negative declaration	42,147	42,147	-	42,147	-
Other Administration costs	111,352	14,149	(97,203)	22,466	8,317
ADMINISTRATION SUBTOTAL	2,389,137	2,685,080	295,943	2,684,837	(243)
FURNITURE, FIXTURES & EQUIPMENT (included some minor construction type work)					
Power files	192,500	239,696	47,196	239,696	-
Furniture Phase I - cubicles, tables, chairs and desks	660,000	651,137	(8,863)	651,137	-
Furniture Phase II - cubicles, tables, chairs and desks	-	383,152	383,152	383,152	-
Other furniture, fixtures, and equipment including network equipment and engineering - some were reimbursements to the Court	239,750	264,015	24,265	299,514	35,499
Signs (monument, interior signs, directional signs, traffic, bronze plaques, state seal granite)	68,950	126,918	57,968	126,640	(278)
Water line diversion, resurface and restripe parking lot, relocate parking lot	-	43,393	43,393	43,393	-
Remove relocatables, restore walks, irrigations and landscaping, sprinkler valves, disconnect phone services - Department 5,7, 8 and the criminal trailer	-	73,908	73,908	70,307	(3,601)
FURNITURE, FIXTURES & EQUIPMENT SUBTOTAL	1,161,200	1,782,219	621,019	1,813,839	31,620
NEW CONSTRUCTION					
Base Bid	14,122,000	15,272,930	1,150,930	15,272,930	-
Alt Bid and Change Order - break room partition, AV equipment, Evidence AV equipment irrigation and landscaping, fencing and motorized gates, metal screen on roof, steel beams	620,761	-	(620,761)	-	-
Contingencies:					
Contingency (County)	431,000	-	(431,000)	-	-
Contingency (Court)	709,566	-	(709,566)	-	-
Escalation contingency - State	306,615	-	(306,615)	-	-
Total Contingency and Escalation	1,447,181	-	(1,447,181)	-	-
TOTAL NEW CONSTRUCTION SUBTOTAL	16,189,942	15,272,930	(917,012)	15,272,930	-
GRAND TOTAL - ADMINISTRATIVE COSTS, FURNITURE, FIXTURES, AND EQUIPMENT AND NEW CONSTRUCTION	\$19,740,279	\$ 19,740,229	\$(50)	\$19,771,606	\$31,377

Table I
Variance in Total Construction Expenditures

Source of Information	Amount
County Submitted Transaction Analysis Report for the Capital Projects Fund - for the period 2003/2004 thru May 11, 2010 - See Table G, Row 19	\$ 19,787,146
Updated Budgeted to Actual Expenditures Spreadsheet, Total Expenditures Charged to the Construction Projects Fund - See Table H, Col D	19,771,606
Variance - Represents .08% of Total Expenditures	\$ 15,540

1. The County Submitted Transaction Analysis Report for the Capital Projects Fund Contained only High Level Information

IAS' review of the construction expenditures was performed at a high level and consisted primarily of discussions with Court, County and OCCM's personnel involved in the Courthouse construction project. Discussion centered on areas the Court had concern with. IAS did not review any construction invoices and the associated contracts since the construction of this Courthouse is a County managed project and these documents reside with the County and were not made available to IAS.

Recommendations

1. Court to request the County to close the Capital Projects Fund to ensure that no additional construction costs are charged to this Fund.
2. Court to also track the CCF, the Superior Court Debt Service Fund, and the Debt Service Justice Facility Fund to ensure that no additional construction costs are charged to these funds.

Superior Court Responses

1. Agreed: The Court has asked the County to close the Capital Projects Fund.
2. Agreed: The Court will monitor these funds to be sure no additional construction costs are charged.

F. The 2005 COP - Certificate Reserve Fund

The 2005 Certificates of Participation (COP) required a certificate reserve fund of \$664,043 which is equal to the maximum amount of base rental payments remaining to be made by the County pursuant to the lease agreement during any of the twelve-month period ending June 1.

The COP documents provided that the certificate reserve fund requirement shall be deposited with the Trustee (The Bank of New York Trust Company, N.A.) in a separate special fund to be held by the Trustee for and on behalf of the County, known as the "Facilities Sublease Certificate Reserve Fund".

In addition, if on June 1 or December 1 of any year the amount in the certificate reserve fund exceeds the certificate reserve fund requirement, the Trustee, if the County is not in default of the COP sublease and trust agreements, *shall pay the amount of the excess to the County*. The County informed IAS and the Court that it accumulates the reserve fund in anticipation of paying off the COP earlier.

According to the County, this certificate reserve fund is not recorded in the County accounting system (FIRMS). The County however reported this reserve fund in its Comprehensive Annual Financial Report (CAFR) as a restricted asset under “Non-Major Debt Service Fund, Courthouse Construction COP” and reported the following balances in the table below.

Certificate Reserve Fund

Source: County CAFR

Fiscal Year	Beginning Reserve Fund	Initial Deposit	Interest and Investment Revenue Allocated to the Reserve Fund	Ending Reserve Fund
		(June 2005)		
2004/2005	\$ -	\$ 664,044	\$ -	\$ 664,044
2005/2006	664,044	-	15,281	679,325
2006/2007	679,325	-	46,102	725,427
2007/2008	725,427	-	29,748	755,175
2008/2009	755,175	-	11,462	766,637
Total			\$ 102,593	

At June 30, 2009, the certificate reserve fund had an ending balance of \$766,637. The increase of \$102,593 from the original reserve amount of \$664,044 was due to the interest and investment revenue allocated to the certificate reserve fund.

Recommendation

The Court should track this certificate reserve fund balance on an annual basis.

Superior Court Response

Agreed: The Court will track this fund on an annual basis.

V. APPENDICES

- 1. Memorandum of Understanding Regarding Construction of Merced Court Facility**
- 2. Certificates of Participation Summary Extract**
- 3. Analysis of County Reported Balances at May 11, 2010**
- 4. Analysis of Funds Available to Support the 2005 COP Debt Service Payments**
- 5. County Submitted Transaction Analysis Reports**

APPENDIX 1

Memorandum of Understanding Regarding Construction of Merced Court Facility

Memorandum of Understanding
Construction of Merced Court Facility

**MEMORANDUM OF UNDERSTANDING
REGARDING CONSTRUCTION OF MERCED COURT FACILITY**

THIS MEMORANDUM OF UNDERSTANDING REGARDING THE CONSTRUCTION OF MERCED COURT FACILITY ("MOU") is made and entered into on this 5th day of April, 2005 ("Effective Date"), by and between the County of Merced, a political division of the State of California ("County"), the Judicial Council of California, an entity established by the Constitution of the State of California, validly existing under the laws of the State, acting by and through the Administrative Office of the Courts ("AOC"), the staff agency to the Judicial Council, and the Superior Court of California, County of Merced ("Court").

BACKGROUND TO AND PURPOSE OF MOU.

A. The County has designed, and desires to construct and complete a new court facility (the "Court Facility") for the Court located at 2260 "N" Street, Merced, California 95340 as legally described in Exhibit "A", attached hereto and incorporated herein (the "Land"). The County desires to fund in part, the design, development, construction, and all other elements associated with the completion of the Court Facility (collectively, the "Court Project") by encumbering and expending funds from its local Courthouse Construction Fund, established pursuant to Government Code Section 76100 ("CCF"), pursuant to the written approval from the Administrative Director of the Court, attached hereto as Exhibit "B" and incorporated herein by this reference, and from deposits made by the Court of Civil Assessments collected pursuant to Government Code Section 76223 ("Civil Assessments"), as provided in the Trial Court Facilities Agreement between the County and Court dated December 23, 2003, attached hereto as Exhibit "C" and incorporated herein by this reference. In addition, the County desires to fund the Court Project in part as a Capital Project from the State Court Facilities Construction Fund ("Capital Funds"), pending approval of the appropriation in the State of California, Fiscal Year 2005-06 Budget Act. AOC desires to fund the Court Project in part from Capital Funds in order to relocate the Merced County Family Court into a secured court facility.

B. Once the Court Project is complete, the AOC will accept the transfer and assume responsibility for the Court Facility, subject to all applicable provisions of the Trial Court Facilities Act of 2002 ("the Act") and the terms and conditions of a Transfer Agreement for the Court Facility which the parties shall negotiate and enter into separate and apart from this MOU. Without relieving or burdening the County as the entity solely and exclusively responsible for all aspects of the Court Project, which includes without limitation administration by County personnel, testing contracts, architectural work, assistance during construction, and construction management, the parties to this MOU seek to memorialize their various responsibilities and obligations to ensure that the expenditures for the Court Project be consistent with any conditions placed on the CCF or Capital Funds and that the Court Project be constructed in accordance with such design, plans, specifications, and other documents which have been reviewed and mutually approved or consented to by the County, AOC, and Court, as delineated in this MOU.

C. It is the intent of the parties to this MOU to work together cooperatively and in good faith as partners in this Court Project according to each party's respective responsibilities and obligations.

THEREFORE, the County, AOC, and Court hereby agree as follows:

1. The foregoing provisions of the Background to and Purpose of MOU are true and correct and are incorporated into this MOU by this reference.

2. County Responsibilities and Obligations

A. Funding and Financing

2.1 The County shall be solely responsible for all costs related to and associated with the Court Project, including, but not limited to, payment of all bonded indebtedness or any form of financing incurred by County for this Court Project. The parties acknowledge that the completed Court Project will be used exclusively as a court facility. The parties acknowledge that the amount of the Total Court Project Cost will vary depending on whether or not the Capital Funds are appropriated for this Court Project, as referenced in 2.1.1 and 2.1.2. The parties recognize that as of the Effective Date, the Total Court Project Cost is a preliminary estimate based on the good faith judgment and past experience of the County, and the actual cost for completing the Court Project may be greater or less than the Total Court Project Cost for various reasons, including, but not limited to, a more-precise definition of the scope of work required for the Court Project, changing market conditions, change orders, and the general competitiveness of the bidding process for the Court Project. In the event that the actual cost of the Court Project exceeds the Total Court Project Cost herein, the County shall be responsible for all costs to complete the Court Project, subject to Section 2.1.1 and Section 2.11 herein. Neither the Court nor the AOC shall be responsible for any costs of the Court Project, including any shortage between the actual Court Project Cost and the available funds that may result from the failure of the State to appropriate Capital Funds, except as provided in Section 2.11 herein.

2.1.1 If the Capital Funds are appropriated for this Court Project, the Total Court Project Cost with Capital Funds will be \$19,740,000, which amount is itemized in Exhibit "D-1" attached hereto and incorporated herein by this reference. In that event, the Court Project will consist of six (6) finished court rooms and shelled out space for one (1) additional court room. The Court Facility is described as "Approved Construction Documents with Capital Funds dated November 2, 2004."

In the event that Capital Funds are insufficient to buy back all of the value engineered items and/or bid alternates as itemized in Exhibit "D-1", then the AOC, in consultation with the Court, will have exclusive authority to select which value engineered items or bid alternates will be included in the Court Project.

The parties will work cooperatively and expeditiously to effect transfer of responsibility for those court facilities that are relocated to the Court Facility pursuant to SB 1732 prior to the occupancy of the completed Court Facility.

2.1.2 If the Capital Funds are not appropriated for this Court Project, the Total Court Project Cost will be \$16,701,000, which amount is itemized in **Exhibit "D-2"** attached hereto and incorporated herein by this reference. In that event, the Court Project will consist of four (4) finished court rooms and shelled out space for three (3) additional court rooms, shelled out space for the holding cells, and shelled out space for the security tunnel under the building. The Court Facility is described as "Approved Construction Documents without Capital Funds as indicated by Change Order #1, dated April 6, 2005."

The parties will work cooperatively and expeditiously to effect transfer of responsibility for those court facilities that are relocated to the Court Facility pursuant to SB 1732 prior to the occupancy of the completed Court Facility.

2.2 County has prepared complete and accurate funding plans and accountings for the Court Project both with Capital Funds and without Capital Funds, attached hereto as **Exhibits "E-1" and "E-2" and incorporated herein**. County intends to complete the Court Project pursuant to one of the two funding plans, and County will consult with AOC and the Court prior to making any changes to either funding plan.

2.3 County's use of CCF, Civil Assessments, and Capital Funds is conditioned on the AOC's approval of the bonded indebtedness plan. For the purposes of this MOU, the term "bonded indebtedness" is defined pursuant to the Act (Govt. Code section 70301(a)). The County has met and conferred with the AOC to describe its bonded indebtedness plan, and AOC has approved that bonded indebtedness plan subject to the following:

- a. County will provide AOC with a complete set of all bonded indebtedness documents within five (5) business days after County's execution of said documents.
- b. The County's executed bonded indebtedness documents shall ensure:
 - i. There will be no further encumbrance on the title to the building or the underlying real property following the retirement of the bonded indebtedness.
 - ii. The term of the bonded indebtedness will not exceed 25 years from the date of execution of the bonded indebtedness documents.
 - iii. There will be no restriction on the Court's exclusive use of the Court Facility during or following the term of the bonded indebtedness, except in the event of default by County.
 - iv. Prepayment of the principal or interest of the bonded indebtedness will be allowed.

2.4 County will each month provide to the AOC and Court for review and comment copies of all pay applications and expenditures for the Court Project for the previous month, subject to County's final determination.

2.5 County will ensure that all expenditures from the CCF and Civil Assessments are consistent with the conditions of approval from the AOC, the terms of the Trial Court Facilities Agreement (**Exhibit "C"**), and the terms of this MOU. County will ensure that all expenditures from the Capital Funds are consistent with the conditions of approval from the AOC and the Department of Finance.

2.6 County will provide AOC and Court annual accounting of all revenues and expenditures from the CCF, Civil Assessments, and Capital Funds for this Court Project.

2.7 At the completion of the construction of the Court Facility, County shall return any remaining Capital Funds to the State Court Facilities Construction Fund. Upon repayment of the bonded indebtedness, County shall have no right to any balance in the CCF that exceeds the total amount of CCF obligated for payment of the bonded indebtedness for this Court Project, as shown in **Exhibits "E-1" and "E-2"**. The parties acknowledge that the Court's obligation to provide Civil Assessments for this Construction Project is established as shown in **Exhibits "C" and "E-1" or "E-2"**. County shall have no right to use any portion of Civil Assessments that may exist or accrue after the bonded indebtedness is repaid. Any annual accruals of Civil Assessments or CCF's that exceed the amount required from that fund to repay the bonded indebtedness shall remain in its respective fund segregated and unencumbered and shall not be used for any purpose other than as permitted under this MOU.

B. Construction Activities

2.8 County has developed a complete design ("**Design**"), specifications ("**Specifications**"), and all other documents necessary to complete the Court Project (which, collectively with the Design and Specifications, shall be hereinafter referred to as the "**Construction Documents**"). County will solicit, award, and execute a contract and other ancillary agreements related to such contract (collectively, the "**Contract**") to perform and complete the construction of the Court Project in accordance with the Construction Documents, and all applicable federal, state, and local laws, codes, regulations, requirements, and ordinances. AOC has reviewed and approved the 100% Construction Documents for the Court Project dated September 14, 2004, pursuant to the Trial Court Facilities Guidelines developed by the Task Force on Court Facilities and adopted by the Judicial Council on July 1, 2002 ("**Guidelines**"), the entire scope of the AOC's review authority.

2.9 County has provided to AOC the approved construction package dated November 2, 2004, in its entirety including, but not limited to the bids, specifications, addenda, and any change order, all of which AOC has approved

2.10 County will obtain prior written approval from the AOC for all discretionary change orders that are qualitative (affecting the function, appearance, sustainability, or operational maintenance of the Court Facility) or quantitative (affecting the timing or cost of the Court Project). The parties shall work together to develop an approval form and the deadlines for the County's submittal and the AOC's response.

2.10.1 The parties acknowledge that timely field decisions will best serve the interests of the Construction Project, both in cost and time. The County will inform the AOC on no less than a weekly basis of all approved, necessary field directives. County will not finalize pricing of the resulting change orders or incorporate the field directives into change orders without AOC's written review and comment.

2.11 AOC may request County to implement design changes related to the Court Project if the overall effect of the changes does not increase the costs of the Court Project to the County, or the AOC agrees to pay any extra costs caused by the changes, pursuant to Govt. Code section 70331(d). County agrees to implement said changes requested by AOC subject to the restrictions in this section 2.11, except as prohibited by local building ordinances.

2.12 County will provide to AOC and Court all logs, schedules, and project notes from weekly construction meetings for AOC's written review and comment.

2.13 County will be solely responsible for administering the Court Project and the Contract subject to AOC approval or review and comment, as provided herein.

2.14 County will and does indemnify, defend and hold harmless the Court, the AOC, and the State of California (hereinafter "State Parties") from and against all loss, cost, damage, expense, and/or liability of any and every kind and nature (including but not limited to reasonable attorney fees and costs) incurred, suffered by, or claimed against any one or more of the State Parties, by reason of, arising out of, or relating to the Court Project or the administration of the Court Project at all times prior to the County's filing of a notice of completion, except when and to the extent that any such loss, cost, damage, expense, and/or liability arise out of or relate to the negligence or willful misconduct of any one or more of the State Parties.

C. Schedule

2.15 County anticipates that this Court Project will be substantially completed within approximately eighteen (18) months from the date of award of the pending contract for construction. County will make reasonable efforts to complete construction of the project in a timely manner. County will provide informational notices to AOC and the Court regarding significant changes in schedule for completion of the construction. County will provide AOC and Court with all contractor schedule updates, notices of delay, and any recovery schedules. Any time extension or delay damage will be subject to the provisions of Section 2.10.1. The parties acknowledge that unforeseen events may arise which could cause delays to completion of the project.

3. AOC Responsibilities and Obligations

3.1 AOC will serve in an approving role relating to the functionality of the Court Project.

3.2 AOC will timely review and comment, as appropriate, to change orders pursuant to the Guidelines. AOC will not review the Court Project or its revisions or change orders for compliance with any building regulations, codes, or laws.

3.3 AOC will coordinate its reviews, comments, and approvals as provided herein with the Court.

3.4 AOC will recommend and submit to the Department of Finance all required documentation in support of a request for \$3,040,000 of Capital Funds for the Court Project. AOC will use its best efforts to facilitate the award of the Capital Funds for this Court Project.

3.5 AOC will review the bonded indebtedness documents pursuant to the provisions of Section 2.3.

3.6 AOC will participate in field visits at least once a month but no more than once a week to observe and comment on the progress of the Court Project.

3.7 AOC will conduct all reviews in a timely manner consistent with the Court Project schedule.

3.8 AOC will review any changes to the Court Project or Contract for consistency with the Guidelines.

4. Court Responsibilities and Obligations

4.1. Court will document to the AOC and County any Court commitments to provide funding for, or the execution of, the Court Project, including, but not limited to, construction, fixtures, furnishings, or equipment. In addition to the commitment of Civil Assessments in the amount of \$310,000 per year for the repayment of bonded indebtedness for the Court Project, the Court has also committed a total of \$710,000 in local revenue reserves for the Court Project.

4.2 Court will address any questions or concerns about the Court Project through AOC for resolution by AOC and Court.

4.3 Court will conduct all reviews in a timely manner consistent with the Court Project schedule.

5. Future Transfer of Court Facility. After County's completion and acceptance of the Court Project, the parties will work cooperatively and expeditiously to effect a transfer of responsibility and deferred transfer of title to the Court Facility from the County to the State of California on behalf of the Judicial Council. County agrees not to encumber the completed Court Facility or the underlying real property upon the completion of the Court Facility and the repayment of the bonded indebtedness.

6. Project Representatives. Each party hereby designates a project representative during construction as shown herein. Each party shall provide notice to the other parties of any

change in the designation of its project representative pursuant to Section 8.3 herein. All parties agree to ensure that any new Project Representative will possess a level of knowledge and experience necessary for the successful completion of the Court Project, and will provide to the other parties at the time of the notice of change in designation of the Project Representative relevant information relating to the new Project Representative's abilities as a Project Representative.

County	Paul Fillebrown, Director Department of Public Works County of Merced 345 West 7th Street Merced, CA 95340-6041 209/722-7602 Pfillebrown@co.merced.ca.us
AOC	Susan Iverson, OCCM Project Manager Office of Court Construction & Management Administrative Office of the Courts 455 Golden Gate Avenue San Francisco, CA 94102-3688 415/865-8810 Susan.Iverson@jud.ca.gov
Court	Kathleen Goetsch, Court Executive Officer Superior Court of California, County of Merced 627 West 21st Street Merced, CA 95340 209/725-4127 Kathie.goetsch@mercedcourt.org

7. Dispute Resolution. In the event of a dispute between the parties arising under or relating to this MOU, the parties agree that they shall attempt to resolve the dispute through unassisted negotiation. If after seven (7) days the parties are not able to resolve the dispute through unassisted negotiation, any party may give the other parties a written request for a meeting between designated representatives for each party for the purpose of resolving the dispute. Such meeting shall be held within fourteen (14) days of the receipt of such request. If the meeting fails to occur or fails to resolve the dispute, nothing in this MOU shall preclude the Parties from exercising their legal remedies.

8. Miscellaneous

8.1 Entire MOU. This MOU contains the entire and complete agreement of the parties with respect to the subject matter of this MOU, and supersedes any and all other previous or concurrent understandings, arrangements, or agreements, oral or written. No promises, representations, warranties, or inducements of any kind exist between any of the parties to this MOU except as expressly set forth in this MOU.

8.2 Amendment. No addition to or modification of the terms of this MOU shall be valid unless made in a written amendment to this MOU, which is formally approved and signed by each of the parties to this MOU.

8.3 Notices. Any notices required or permitted hereunder shall be in writing and may be: (i) personally delivered; (ii) sent by certified United States mail, first class postage prepaid, with return receipt requested; or (iii) sent by reputable overnight deliver service; addressed as set forth below or to such other place as a party hereto may designate by subsequent written notice to the other party delivered in any manner permitted by Section 5.4. Notices shall be deemed delivered on the date received in the office of the party to whom the notice is addressed; provided, however, that notices delivered on the day that is not a business day shall be deemed received at 9:00 a.m. on the next succeeding business day of the recipient:

If to the County: County Executive Officer
2222 M Street
Merced, California 95340

with a copy to: Auditor - Controller
2222 M Street
Merced, California 95340

If to the Court: Court Executive Officer
Superior Court of California
County of Merced
627 West 21st Street
Merced, CA 95340

If to the AOC: Office of Court Construction and Management
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102
Attn: Manager, Design and Construction Services

with a copy to: Office of the General Counsel
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102
Attn: Managing Attorney, Real Estate Unit

Provided, however, that any and all audit requests and notices by the County relating to alleged violation by AOC of this MOU shall also be directed to:

Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102
Attention: Business Service Manager

8.4 Authority. The County, AOC, and Court each certifies that it is duly authorized and empowered to execute, enter into, and perform its obligations set forth in this MOU, and each further certifies that the individual signing this MOU on its behalf has been duly authorized to execute this MOU on behalf of the party, and may legally bind the party to the terms and conditions of this MOU.

8.5 Counterparts. The parties agree that this MOU may be executed in three counterparts each of which will be effective in the same way as an original.

IN WITNESS WHEREOF, this MOU has been executed as of the date first above written.

**JUDICIAL COUNCIL OF CALIFORNIA, AN
ENTITY OF THE STATE OF CALIFORNIA,
ACTING BY AND THROUGH THE
ADMINISTRATIVE OFFICE OF THE COURTS**

By: _____
Name: _____
Title: _____

COUNTY OF MERCED

By: Jerry Robinson - APR 05 2005
Name: GERALD R. O'BANLON
Title: CHAIRMAN

**APPROVED AS TO LEGAL FORM
RUBEN E. CASTILLO
MERCED COUNTY COUNSEL**

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MERCED**

By: _____
Name: _____
Title: _____

BY: _____

Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102
Attention: Business Service Manager

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IN WITNESS WHEREOF, this MOU has been executed as of the date first above written.

JUDICIAL COUNCIL OF CALIFORNIA, AN
ENTITY OF THE STATE OF CALIFORNIA,
ACTING BY AND THROUGH THE
ADMINISTRATIVE OFFICE OF THE COURTS

By: [Signature]
Name: Grant Walker
Title: Business Services Manager

COUNTY OF MERCED

By: _____
Name: _____
Title: _____

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MERCED

By: _____
Name: _____
Title: _____

REC'D APR 15 2005

Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102
Attention: Business Service Manager

8.4 Authority. The County, AOC, and Court each certifies that it is duly authorized and empowered to execute, enter into, and perform its obligations set forth in this MOU, and each further certifies that the individual signing this MOU on its behalf has been duly authorized to execute this MOU on behalf of the party, and may legally bind the party to the terms and conditions of this MOU.

8.5. Counterparts. The parties agree that this MOU may be executed in three counterparts each of which will be effective in the same way as an original.

IN WITNESS WHEREOF, this MOU has been executed as of the date first above written.

JUDICIAL COUNCIL OF CALIFORNIA, AN
ENTITY OF THE STATE OF CALIFORNIA,
ACTING BY AND THROUGH THE
ADMINISTRATIVE OFFICE OF THE COURTS

By: _____
Name: _____
Title: _____

COUNTY OF MERCED

By: _____
Name: _____
Title: _____

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MERCED

By: Frank Dougherty
Name: FRANK DOUGHERTY
Title: Presiding Judge

EXHIBIT A
[Legal Description of Land]

EXHIBIT "A"

LEGAL DISCRIPTION

All of Lots 1,2,3,4,5,6,7 & 8 in Block 73 as shown on the "SUPPLEMENTAL MAP TO TOWN OF MERCED" filed for record in Book 1, of Official Plats, Page 12 Merced County Records. And also shown in Volume 2 of Official Plats, Page 12, Merced County Records. Situated in Section 19, Township 7 South, Range 14 East, M.D.B. & M.

Excepting therefrom; That portion conveyed to the City of Merced, filed for record in Volume 3344, Official Records, Page 670, Merced County Records, described as follows; Beginning at the northeasterly corner of said Lot 1; thence S 24°40' W., along the easterly line of said lot 1, 15.00 feet; thence northwesterly along a curve concave to the southwest having a radius of 15.00 feet through a central angle of 89°59'31" an arc distance of 23.56 feet to a point on the northerly line of said lot 1; thence S 65°19'31" E., along said northerly line 15.00 feet to the point of beginning.

Reserving therefrom all easements of record or otherwise acquired.

EXHIBIT B
CCF Approval from AOC



Exhibit B

Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

April 1, 2005

Mr. James L. Brown
Assistant County Executive Officer
County of Merced
2222 M Street
Merced, California 95340

Re: Approval of Request for Expenditure—Courthouse Construction Fund

Dear Mr. Brown:

On February 4, 2005, we gave conditional written approval for expenditure of current funds and encumbrance of future revenues from the Merced County Courthouse Construction Fund for use toward the construction of the new Merced County Courthouse project.

Subsequently, through the sharing of additional information, further discussion, and the development of a Memorandum of Understanding (MOU), the conditions of approval were removed. Therefore, upon your execution of the attached MOU, the use of the requested court construction funds is approved.

~~Mr. James L. Brown~~

April 1, 2005

Page 2

I would also like to take this opportunity to express our appreciation for Merced County's diligent efforts to build a new, functional, and secure court facility to benefit the community and the California court system.

Sincerely,



William C. Vickrey
Administrative Director of the Courts

WCV/KD/lr

Enclosure

cc: Hon. Frank Dougherty, Presiding Judge, Superior Court of Merced County
Ms. Kathie Goetsch, Executive Officer, Superior Court of Merced County
Mr. Michael Roddy, Regional Administrative Director, AOC Northern/Central
Regional Office
Ms. Christine M. Hansen, Director, AOC Finance Division

EXHIBIT C

[Trial Court Facilities Agreement]

1 TRIAL COURT FACILITIES AGREEMENT

2 This Agreement is made by and between the Presiding Judge of the Merced County
3 Superior Court, (the "Superior Court" or "Court"), and the Board of Supervisors of the
4 County of Merced, California, acting for and on behalf of the County of Merced, a political
5 subdivision of the State of California, (the "County").

6 RECITALS

7 WHEREAS, in 2002 the California Legislature enacted SB 1732, being Chapter
8 1082 of the Statutes of 2002, to provide for trial court facilities; and,

9 WHEREAS, as a part of SB 1732, the Legislature enacted Government Code
10 section 76223 to specially provide that, notwithstanding any other law, certain conditions
11 enumerated therein pertain to the construction of court facilities in Merced County by the
12 County of Merced for any construction pursuant to a written agreement between the
13 Presiding Judge of the Superior Court of Merced County and the Board of Supervisors of
14 the County of Merced, California; and,

15 WHEREAS, the Presiding Judge of the Superior Court of Merced County and the
16 Board of Supervisors of the County of Merced, California, (each a "Party" and
17 collectively, the Parties"), desire to implement the provisions of Government Code section
18 76223 and to execute an agreement in accordance with its terms prior to January 1, 2004,
19 provided that such an agreement provides that the County of Merced will continue to use
20 revenues from the Courthouse Construction Fund, as defined in Government Code section
21 76100, and use civil assessments, as provided for in Penal Code section 12141, to fund the
22 construction of the proposed Merced County Superior Courthouse, and that such an
23 agreement further provides that the Superior Court may deposit such additional court funds
24 as may be necessary to pay for construction of the proposed courthouse and to repay
25 County borrowings related thereto

26 NOW, THEREFORE, pursuant to the authority given them under Government
27 Code section 76223 and other provisions of law, and in consideration of the foregoing
28 presents and the mutual promises made herein, the Board of Supervisors of the County of

1 Merced and the Presiding Judge of the Merced County Superior Court hereby agree as
2 follows:

3 AGREEMENT

4 1. RECITALS. The foregoing Recitals are true and correct and are
5 incorporated into this Agreement.

6 2. TRIAL COURT FACILITIES DEFINED. As used in this Agreement, the
7 term "Trial Court Facilities" shall mean the Merced County Superior Courthouse project,
8 proposed to be constructed on the southeast corner of 23rd and N streets in the City of
9 Merced, with a projected size of approximately 50,000 to 60,000 square feet, and with
10 estimated construction costs of approximately Fourteen Million Six Hundred Thousand
11 Dollars (\$14,600,000.00) to be financed from existing resources and future borrowings.

12 3. DEDICATION OF COURTHOUSE CONSTRUCTION FUNDS. County
13 shall dedicate to the Trial Court Facilities project all revenue received into the Courthouse
14 Construction Fund, established pursuant to Government Code section 76100, et seq.,
15 except for any revenue expended by the County prior to the Effective Date of this
16 Agreement. The County agrees to provide Merced County Superior Court an annual
17 accounting of Courthouse Construction Fund revenues used to repay any borrowings made
18 for any construction related to the Trial Court Facilities.

19 4. CONTINUED DEPOSITS OF CIVIL ASSESSMENTS. Pursuant to
20 Section 76223(a) of the Government Code, and for the purpose of augmenting other funds
21 made available for construction of court facilities, revenue received in Merced County
22 from civil assessments for Failure to Appear, pursuant to Section 1214.1 of the Penal
23 Code, shall continue to be available for use by Merced County and shall be deposited by
24 the court therefore in an account or accounts to be designated by the County in an annual
25 amount of Three Hundred Ten Thousand And No/100 (\$310,000.00). The Court agrees
26 that these deposits shall start on July 1, 2004, and continue through and including the 30th
27 year thereafter or the 30th year after any borrowings are made for any construction related
28 to the Trial Court Facilities, whichever comes later. Notwithstanding the foregoing and

1 any rights the County may have to extend the term of or refund any borrowings related to
2 the construction of the Trial Court Facilities, the Superior Court's obligation to make
3 available revenues under this paragraph shall not exceed 35 years beyond the Effective
4 Date of this Agreement and under no circumstances shall continue past the date all
5 borrowing and construction costs related to the construction of the Trial Court Facilities
6 have been satisfied.

7 5. DEPOSITS OF ADDITIONAL COURT FUNDS. The Parties recognize
8 that the Presiding Judge of the Merced County Superior Court may agree to make available
9 local court funds, up to a stated amount, in the courthouse construction fund in accordance
10 with Section 76223(b) of the Government Code . The Parties agree that if such additional
11 funds are necessary towards the purpose of paying construction costs and borrowings
12 related to the Trial Court Facilities, the Parties will work together in good faith to amend
13 this Agreement to provide for such funds , subject to any limitations described in Section
14 76223 of the Government Code.

15 6. LIMITATION ON DEPOSITS OF CIVIL ASSESSMENTS Pursuant to
16 Section 76223(c) of the Government Code, and to ensure that the County receives court
17 funds only as are reasonable and necessary for construction of Trial Court Facilities and
18 related costs, the total amounts deposited under Section 4 of this Agreement may not
19 exceed in any fiscal year the amount payable on the construction costs less (a) any amounts
20 paid by the local Courthouse Construction Fund and (b) any other amounts paid from other
21 sources except for any amounts paid pursuant to Section 5 of this Agreement. In any fiscal
22 year that the stated amount under Section 4 exceeds the above limitation, the Merced
23 County Superior Court agrees to deposit the difference between the stated amount under
24 Section 4 and the above limitation in a separate account or accounts to be designated by the
25 County to be applied towards future years' cost of construction when amounts under
26 Section 3 and Section 4 are insufficient towards the amount payable on construction costs
27 in a fiscal year

28

1 7. LIMITATION ON DEPOSITS OF ADDITIONAL COURT FUNDS.

2 Pursuant to Section 76223(d) of the Government Code, and to ensure that the County
3 receives court funds only as are reasonable and necessary for construction of the Trial
4 Court Facilities and related costs, the total amounts deposited under Section 5 of this
5 Agreement shall not exceed in any fiscal year the amount payable on the construction costs
6 less (a) any amounts paid by the Courthouse Construction Fund, (b) any amounts paid
7 pursuant to Section 4 of this Agreement, and (c) any other amounts paid from other
8 sources except for any amounts paid pursuant to Section 5 of this Agreement. In any fiscal
9 year that the stated amount under Section 4 exceeds the above limitation, the Superior
10 Court agrees to deposit the difference between the stated amount under Section 4 and the
11 above limitation in a separate account or accounts to be designated by the County to be
12 applied towards future years' cost of construction when amounts under Section 3 and
13 Section 4 are insufficient towards the amount payable on construction costs in a fiscal year

14 8. SUBSEQUENT LEGISLATION. Pursuant to Section 76225(e) of the

15 Government Code, the parties hereto agree that if legislation is passed and becomes
16 effective transferring the responsibility for court facilities to the State, and such legislation
17 permits the transfer of the bonded indebtedness or other encumbrance on court facilities
18 together with revenue sources for payment of the bonded indebtedness or other
19 encumbrance, the revenue sources provided for by Section 76223 of the Government Code
20 may also be transferred to the State

21 9. COSTS OF CONSTRUCTION. As used in this Agreement, the costs of

22 construction include the payment on the bonded indebtedness or other encumbrance used
23 to finance the construction.

24 10. INSUFFICIENT FUNDS. The parties recognize the difficulty of predicting

25 with certainty the actual costs of constructing the Trial Court Facilities, and enter this
26 Agreement with certain expectations and understandings of the likely costs therefor,
27 among them the understanding that neither the County nor the Superior Court cannot
28 guarantee the construction of a courthouse no matter the cost or impact to the County

1 Therefore, the parties agree that if the funds available for construction of the Trial Court
2 Facilities are insufficient, or that the budget threatens to exceed available funds, then the
3 parties hereto shall consult on a cooperative basis to attempt to work out a mutually
4 acceptable resolution of budgetary and related issues, including possible termination or
5 renegotiation of this Agreement.

6 11. IMPACT OF GOVERNMENT CODE SECTION 70404. The Parties
7 recognize that Section 70404 of the Government Code may require the County to obtain
8 approval from the Administrative Director of the Courts prior to expending or
9 encumbering courthouse construction funds after January 1, 2004. The Parties agree to
10 interpret this Agreement in such a manner as to be consistent with and, if necessary, to
11 work in good faith to amend this Agreement to ensure it complies with Government Code
12 Section 70404.

13 12. LEGISLATIVE DISCRETION PRESERVED. Nothing in this Agreement
14 shall operate or be interpreted to restrict, limit, bind or direct the lawful exercise of
15 legislative discretion by the Merced County Board of Supervisors, including its discretion
16 to proceed or not proceed at any time with courthouse construction or any activity related
17 thereto, the borrowing of funds or the issuance of debt for courthouse construction
18 purposes, or any related matter.

19 13. BINDING EFFECT. This Agreement shall inure to the benefit of and be
20 binding upon each party hereto, their predecessors, successors in interest, subsidiaries,
21 affiliates, representatives, assigns, agents, officers, directors, employees and personal
22 representatives, past, present and future. The parties specifically agree that this Agreement
23 and the terms reflected herein are premised on factors which are applicable only to the
24 parties and circumstances stated herein, and that this Agreement is not made for the benefit
25 of or intended to apply to any other person, public entity or circumstance not specifically
26 enumerated herein.

27 14. FURTHER ACTIONS; FURTHER DOCUMENTS. To the extent any
28 further or additional things or acts are required by to be done or taken by any of the parties

1 hereto to effectuate this Agreement, each party binds itself to do such things and take such
2 acts, including those to be done or taken through the exercise of executive or
3 administrative authority, to fully carry out the purposes and intent of this Agreement and
4 the provisions of the Government Code set forth herein. Furthermore, to the extent further
5 documents or instruments are required to be executed by any of the parties to effectuate
6 this Agreement, each party hereto agrees to execute and deliver such other and further
7 documents as may be required to carry out the terms of this Agreement.

8 15. REPRESENTATION. Each party represents and acknowledges that each
9 of them has been represented by counsel with respect to this Agreement and all matters
10 covered by or related to herein. Each party has been fully advised with respect to all rights
11 which are affected by this Agreement, and each party has authorized and directed their
12 respective attorneys or representatives to execute and deliver such other and further
13 documents or instruments as may be required to carry out the terms of this Agreement.

14 16. NO MODIFICATION EXCEPT IN WRITING. This Agreement contains
15 the entire agreement between the parties as to its subject matter and may not be altered,
16 amended, or modified in any respect, except by a writing duly executed by the party to be
17 charged. All prior agreements, understandings, oral agreements and writings as to the
18 subject matter of this Agreement are expressly superseded hereby and are of no further
19 force or effect.

20 17. ENFORCEMENT. This Agreement may be enforced by any of the parties
21 hereto for the failure of any other party to comply with its terms and to seek any remedy
22 available under law or equity, including specific performance or injunction.

23 18. LEGAL AUTHORITY. Each party warrants to the other that it has the
24 power and authority to enter into this Agreement on behalf of itself, its predecessor(s) in
25 interest, and any successors in interest. Each party warrants to the others that each has the
26 legal authority to enter into and be legally bound by this Agreement, that each has
27 exercised its discretion in connection with its Constitutional and statutory responsibilities.

28

1 and that each determined that this Agreement is a lawful and valid act and is undertaken in
2 accordance with all applicable California constitutional and statutory provisions.

3 19. HEADINGS. Paragraph headings are used herein for convenience only and
4 shall have no force or effect in the interpretation or construction of this Agreement. As
5 used in this Agreement, the singular shall include the plural and the masculine shall
6 include the feminine and neuter genders.

7 20. COUNTERPARTS. This Agreement may be executed in counterparts, each
8 of which shall be deemed an original, but all of which together shall constitute one and the
9 same agreement.

10 21. EFFECTIVE DATE. This Agreement shall be effective and binding upon
11 all the parties upon execution by all the parties hereto.

12 IN WITNESS WHEREOF, the parties below named have executed this Agreement
13 in the County of Merced, State of California, as of the date and year last below written

14 Dated, December 23, 2003

PRESIDING JUDGE OF THE
SUPERIOR COURT, COUNTY OF
MERCED

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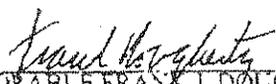
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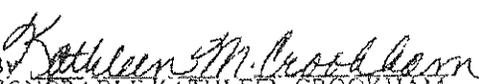
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Dated, December 24, 2003


HONORABLE FRANK J. DOUGHERTY

BOARD OF SUPERVISORS OF THE
COUNTY OF MERCED, CALIFORNIA


BY HONORABLE KATHLEEN CROOKHAM,
CHAIR

APPROVED AS TO LEGAL FORM:
RUBEN CASTILLO,
MERCED COUNTY COUNSEL

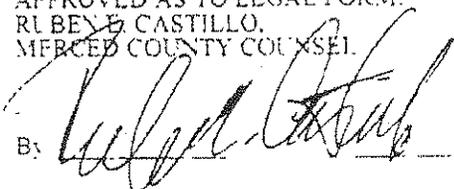
By 

EXHIBIT D
Construction Project Cost

APRIL 1, 2005

NEW COURT BUILDING, MERCED COUNTY

ITEMIZED ACCOUNTING of TOTAL PROJECT COSTS INCLUDING STATE FUNDING

ITEM	BUDGET	EXPENDED	BALANCE	REMARKS
DPW/PS	215,000	129,796	85,204	
MERCED COUNTY BUILDING SERVICES DIVISION	1,120	1,120	0	
INSPECTION (20 Months)	140,000		140,000	
DPW/FLEET	73	73	0	
RECORDER / COUNTY CLERK	50	50	0	
ARCHITECT (Needs Assessment)	0	0	0	HOK State Contract
NACHT & LEWIS-ARCHITECT (Phase I) \$73,000	0	0	0	Included Below
N&L (Design+Amendments #1,2,3,&4)	1,221,788	900,067	321,721	
N&L Add'l rendering & Struct fee for GeoPier \$10,175				Amendment No 1
N&L Add'l fee for IT wiring design \$10,555				Amendment No 4
N&L Add'l charge print 20 x 8 color renderings \$200	200		200	
N&L ADDNL Fee for 6 tons of steel floor beams	14,000		14,000	
PRINTING for CONSTRUCTION	16,000	9,060	6,940	
KITCHELL CONSTRUCTION MANAGMNT (15 months)	434,000	100,094	333,906	
KITCHELL ADDITIONAL C M FEE for THREE MONTHS	96,000		96,000	
PRINTING for C.M.	3,200		3,200	
TWINING-geologic hazards subsurface, drainage, soil bearing)	1,250	1,250	0	
TWINING-Review GeoPier System (Foundation pier design)	950	950	0	
TWINING-Review completed C D 's, Soils inspection excavation	10,450		10,450	
TWINING- Soils test for lime treatment to bldg pad	2,000		2,000	
MATERIALS TESTING	100,000		100,000	
BEDESENS--TOPOGRAPHIC SURVEY	3,600	3,600	0	
MID VALLEY PUBLICATIONS-ADVERTISEMENT	417	417	0	
Fresno Bee \$1991, Merced Sun Star \$347 60	2,339	2,339	0	
URS CEQA / TECHNICAL STUDY	25,000	25,000	0	
URS CEQA / NEGATIVE DECLARATION	17,147	17,147	0	
UTILITY FEES	84,553		84,553	
SOFT COST SUBTOTAL				
FURNITURE, FIXTURES & EQUIPMENT				
POWER FILES	192,500		192,500	
CUBICLES, TABLES, CHAIRS, DESKS	660,000		660,000	
FURNISHINGS, PICTURES, PLANTS, MATS	16,500		16,500	
SIGNS, INTERIOR	38,000		38,000	
MONUMENT SIGN & LOCATION SIGNS	26,000		26,000	
PUBLIC WORKS SIGNS, TRAFFIC	4,950		4,950	
AV DESIGN	0		0	INCLUDED ABOVE
NETWORK EQUIPMENT & ENGINEERING	55,000		55,000	
FIBER OPTIC CABLE, COPPER LINE & TRENCH	132,250		132,250	
TELEPHONES	36,000		36,000	
FF & E SUBTOTAL				
CONSTRUCTION				
BASE \$14,122,000-C O NO 1 \$746,608+Addn'l Add Alt Bids \$481,000	14,122,000		14,122,000	
ADD ALT BID NO 1 FINISH COURT ROOM #7 \$320,000	0		0	
ADD ALT BID NO 2 Break Room Parth \$27,000	27,000		27,000	
ADD ALT BID NO 3A AV Equipment	181,000		181,000	
ADD ALT BID NO 3B Evidence AV Equipment \$34,000	34,000		34,000	
ADD ALT BID NO 4 "M" St Irng & Landscape \$17,000	17,000		17,000	
ADD ALT BID NO 5 Single Ply Membrane Roofg	(40,000)		(40,000)	
ADD ALT BID NO 6 Fencing & Motorized Gates \$58,000	58,000		58,000	
ADD ALT BID NO 7 ALT FDN (GeoPier)	(184,000)		(184,000)	
ADD ALT BID NO 8 Metal Screen on Roof \$345,000	345,000		345,000	
CHANGE ORDER NO 1 DELETE VALUE ENGINEERING	(746,608)		(746,608)	
CHANGE ORDER NO 2 STEEL BEAMS UNDER C R #7	60,000		60,000	
CHANGE ORDER NO 3 ADD VALUE ENGINEERING	746,608		746,608	

STATE (ALT BID AND CHANGE ORDER BUY BACK)	122,761		122,761	
CONTINGENCY (COUNTY)	431,000		431,000	
CONTINGENCY (COURT)	709,566		709,566	
ESCALATION/CONTINGENCY (STATE)	306,615		306,615	
CONSTRUCTION SUBTOTAL				
TOTAL PROJECT COST				
FUNDING SOURCES				
BEGINNING BALANCE Oct 17, 2001	56,644	56,644		
17400/87997 \$360,000 "Justice Facility" M P	360,000	360,000		
17400/87997 \$227,319 "Justice Facility" D D'S	227,319	227,319		
17400/87997 \$65,000 "Justice Facility" C M	65,000	65,000		
17400/87997 \$482,000 "Justice Facility" C D'S	482,000	482,000		
Court Contribution from Local Revenue Reserves	709,566		709,566	
State Funds (State Court Facilities Construction Fund)	3,039,750		3,039,750	
Courthouse Construction Funds Approx. (est. bal as of 6/30/05)	5,700,000		5,700,000	
Net Bond Proceeds	9,100,000		9,100,000	

\$ 19,740,279

APRIL 1, 2005

NEW COURT BUILDING, MERCED COUNTY

ITEMIZED ACCOUNTING of TOTAL PROJECT COSTS NOT INCLUDING STATE FUNDING

ITEM	BUDGET	EXPENDED	BALANCE	REMARKS
DPW/PS	175,000	129,796	45,204	
MERCED COUNTY BUILDING SERVICES DIVISION	1,120	1,120	0	
INSPECTION (20 Months)	100,000		100,000	
DPW/FLEET	73	73	0	
RECORDER / COUNTY CLERK	50	50	0	
ARCHITECT (Needs Assessment)	0	0	0	HOK State Contract
NACHT & LEWIS-ARCHITECT (Phase 1) \$73,000	0	0	0	Included Below
N&L (Design+Amendments #1,2,3,&4)	1,221,788	900,067	321,721	
N&L Add'l rendering & Struct fee for GeoPier \$10,175				Amendment No 1
N&L Add'l fee for IT wiring design \$10,555				Amendment No 4
N&L Add'l charge print 20 x 8 color renderings \$200	200			
N&L ADDNL Fee for 6 tons of steel floor beams	14,000		14,000	
PRINTING for CONSTRUCTION	16,000	9,060	6,940	
KITCHELL CONSTRUCTION MANAGMENT (15 months)	434,000	100,094	333,906	
KITCHELL ADDITIONAL C M FEE for THREE MONTHS	90,000		90,000	
PRINTING for C M	3,200		3,200	
TWINING-geologic hazards subsurface, drainage, soil bearing)	1,250	1,250	0	
TWINING-Review GeoPier System (Foundation pier design)	950	950	0	
TWINING-Review completed C D 's, Soils inspection excavation	10,450		10,450	
MATERIALS TESTING	100,000		100,000	
BEDESENS--TOPOGRAPHIC SURVEY	3,600	3,600	0	
MID VALLEY PUBLICATIONS-ADVERTISEMENT	417	417	0	
Fresno Bee \$1991, Merced Sun Star \$347 60	2,339	2,339	0	
URS CEQA / TECHNICAL STUDY	25,000	25,000	0	
URS CEQA / NEGATIVE DECLARATION	17,147	17,147	0	
UTILITY FEES	84,553		84,553	
SOFT COST SUBTOTAL				
FURNITURE, FIXTURES & EQUIPMENT				
POWER FILES	110,000		110,000	
CUBICLES, TABLES, CHAIRS, DESKS	220,000		220,000	
FURNISHINGS, PICTURES, PLANTS, MATS	0		0	
SIGNS, DIRECTIONAL, MONUMENT	15,000		15,000	
SIGNAGE	20,000		20,000	
PUBLIC WORKS SIGNS, TRAFFIC	0		0	
AV DESIGN	0		0	INCLUDED ABOVE
NETWORK EQUIPMENT & ENGINEERING	50,000		50,000	
FIBER OPTIC CABLE, COPPER LINE & TRENCH	115,000		115,000	
TELEPHONES	36,000		36,000	
FF & E SUBTOTAL				
CONSTRUCTION				
BASE BID	14,122,000		14,122,000	
ADD ALT BID NO 1 FINISH COURT ROOM #7 \$320,000	0		0	
ADD ALT BID NO 2 Break Room Part's \$27,000	0		0	
ADD ALT BID NO 3A AV Equipment	181,000		181,000	
ADD ALT BID NO 3B Evidence AV Equipment \$34,000	0		0	
ADD ALT BID NO 4 "M" St Irng. & Landscape \$17,000	0		0	
ADD ALT BID NO 5 Single Ply Membrane Roofg	(40,000)		(40,000)	
ADD ALT BID NO 6 Fencing & Motorized Gates \$58,000	0		0	
ADD ALT BID NO 7 ALT PDN (GeoPier)	(184,000)		(184,000)	
ADD ALT BID NO 8 Metal Screen on Roof \$345,000	0		0	
CHANGE ORDER NO 1 VALUE ENGINEERING	(746,000)		(746,000)	
CHANGE ORDER NO 2 STEEL BEAMS UNDER C R #7	60,000		60,000	

Exhibit D-2

CONTINGENCY (C O)	441,000		441,000	
CONSTRUCTION SUBTOTAL				
TOTAL PROJECT COST				
FUNDING SOURCES				
BEGINNING BALANCE Oct 17, 2001	56,644	56,644		
17400/87997 \$360,000 "Justice Facility" M.P	360,000	360,000		
17400/87997 \$227,319 "Justice Facility" D D'S	227,319	227,319		
17400/87997 \$65,000 "Justice Facility" C M	65,000	65,000		
17400/87997 \$482,000 "Justice Facility" C D 'S	482,000	482,000		
Court Contribution from Local Revenue Reserves	709,566		709,566	
Courthouse Construction Funds Approx.	5,700,000		5,700,000	
Net Bond Proceeds	9,100,000		9,100,000	

\$ 16,700,529

Exhibit E

County Funding Plan and Accounting

New Proposed Justice Facility With State Funding

(Estimated \$'s in Millions)

Total Project Costs\$19.7 m

Projected Financing Plan

- Merced County Superior Court – Existing Civil Assessments- \$0.7 m
- State Capital Facilities Fund..... \$3.0 m
- Courthouse Construction Fund..... \$6.9 m
- Certificates of Participation – Net Proceeds..... \$9.1 m
 - Estimated Annual Debt Service (per attached 25 yr. scenario) \$710,000
 - Resources Available for Debt Service
 - Annual Courthouse Construction Funds \$400,000
 - Civil Assessments per Govt. Code 76223..... \$310,000
 - Assumptions:
 - ✓ *Courthouse Construction Fund (CCFs) –*
 - Existing Fund – Includes deposits of Courthouse Construction Funds and Criminal Justice Funds. The Criminal Justice Funds deposits are through June 30, 2003.
 - Future Revenues - Conservative estimated based on 5 year historical average. This source has been historically unpredictable at the local level due to the various changes in statutes and distribution of fines over the years.
 - ✓ *Civil Assessments –* Per Government Code Section 76223 and local agreement with Merced County Superior Court.
 - ✓ *Protection against shortfall in resources –* Bond documents require CCFs to be used first towards debt service with the \$310,000 from the local court funding the difference between the debt service payment and the CCFs. Bond documents also require that any remaining amount from the \$310,000 be placed into trust to cover any potential shortfall in future years.
 - ✓ *State Capital Facilities Fund –* Amount necessary to complete facility and fund the Valued Engineering Items.

New Proposed Justice Facility w/o State Funding

(Estimated \$'s in Millions)

Total Project Costs \$16.7 m

Projected Financing Plan

- Merced County Superior Court – Existing Civil Assessments- \$0.7 m
- Courthouse Construction Fund..... \$6.9 m
- Certificates of Participation – Net Proceeds..... \$9.1 m
 - Estimated Annual Debt Service (per attached 25 yr. scenario) \$710,000
 - Resources Available for Debt Service
 - Annual Courthouse Construction Funds \$400,000
 - Civil Assessments per Govt. Code 76223..... \$310,000
 - Assumptions:
 - ✓ *Courthouse Construction Fund (CCFs) –*
 - Existing Fund – Includes deposits of Courthouse Construction Funds and Criminal Justice Funds. The Criminal Justice Funds deposits are through June 30, 2003.
 - Future Revenues - Conservative estimated based on 5 year historical average. This source has been historically unpredictable at the local level due to the various changes in statutes and distribution of fines over the years.
 - ✓ *Civil Assessments* – Per Government Code Section 76223 and local agreement with Merced County Superior Court.
 - ✓ *Protection against shortfall in resources* – Bond documents require CCFs to be used first towards debt service with the \$310,000 from the local court funding the difference between the debt service payment and the CCFs. Bond documents also require that any remaining amount from the \$310,000 be placed into trust to cover any potential shortfall in future years.

California Government Code Section 76223

Government Code

76223. Notwithstanding any other provision of law, the following conditions pertain to the construction of court facilities in Merced County by the County of Merced for any construction pursuant to a written agreement entered into prior to January 1, 2004 between the board of supervisors and the presiding judge of the superior court:

(a) Revenue received in Merced County from civil assessments for Failure to Appear, pursuant to Section 1214.1 of the Penal Code, shall be available, in an annual amount not to exceed the amount agreed upon by the board of supervisors and the presiding judge of the superior court, for the purpose of augmenting other funds made available for construction.

(b) The presiding judge of the superior court may agree to make available court funds, up to a stated amount, other than funds received from the Trial Court Trust Fund or other state sources, in the Courthouse Construction Fund.

(c) The total amounts deposited under subdivision (a) shall not exceed in any fiscal year the amount payable on the construction costs less (1) any amounts paid by the courthouse construction fund and (2) any other amounts paid from other sources except for any amounts paid pursuant to subdivision (b).

(d) The total amounts deposited under subdivision (b) shall not exceed in any fiscal year the amount payable on the construction costs less (1) any amounts paid by the courthouse construction fund, (2) any amounts paid pursuant to subdivision (a) of this section, and (3) any other amounts paid from other sources except for any amounts paid pursuant to subdivision (b).

(e) If legislation is passed and becomes effective transferring the responsibility for court facilities to the state, and the legislation permits the transfer of the bonded indebtedness or other encumbrance on court facilities together with revenue sources for payment of the bonded indebtedness or other encumbrance, the revenue sources provided for by this section may also be transferred to the state.

(f) As used in this section, the costs of construction also includes the payment on the bonded indebtedness or other encumbrance used to finance the construction.

APPENDIX 2
Certificates of Participation Summary Extract

NEW ISSUE - BOOK ENTRY ONLY

**RATINGS: S&P: "AAA" (Insured)
S&P: "A-" (Underlying Rating)**

In the opinion of Orrick, Herrington & Sutcliffe LLP, San Francisco, California, Special Counsel, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest evidenced by the Series 2005 Certificates is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Special Counsel, interest evidenced by the Series 2005 Certificates is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Special Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. Special Counsel expresses no opinion regarding any other tax consequences related to the ownership of, or accrual or receipt of interest evidenced by, the Series 2005 Certificates. See "Tax Matters" herein.

\$10,200,000

**COUNTY OF MERCED, CALIFORNIA
CERTIFICATES OF PARTICIPATION, SERIES 2005
(County Courthouse Project)**



**Evidencing and Representing Fractional Undivided Interests of the Owners
Thereof in Base Rental Payments to be Made by the
County of Merced to the Merced County Public Facilities Corporation**

Dated Date: Date of Delivery

Due Date: June 1, as shown below

The County of Merced (the "County") Certificates of Participation, Series 2005 (County Courthouse Project) (the "Series 2005 Certificates") are being executed and delivered to provide funds (i) to finance the acquisition, design, construction and financing of a courthouse to be located within the County (the "Project"), (ii) to fund the Certificate Reserve Fund, and (iii) to pay certain costs of issuance incurred in connection with the Series 2005 Certificates. See "Estimated Application of Certificate Proceeds" herein.

Interest represented by the Series 2005 Certificates will be payable semiannually each June 1 and December 1, commencing on December 1, 2005. See "The Series 2005 Certificates" herein. The Series 2005 Certificates will be executed and delivered in book-entry form only and, when delivered, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Series 2005 Certificates. Individual purchases of the Series 2005 Certificates will be made in book-entry form only. Purchasers of the Series 2005 Certificates will not receive certificates representing their ownership interests in the Series 2005 Certificates purchased. The Series 2005 Certificates will be issuable in the principal amount of \$5,000 and any integral multiple thereof. Principal and interest payments represented by the Series 2005 Certificates are payable directly to DTC by The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), from Base Rental Payments (as defined herein). Upon receipt of payments of principal and interest, DTC will in turn distribute such payments to the beneficial owners of the Series 2005 Certificates. See "Introduction - Book-Entry System" herein and Appendix D - "Book-Entry System" attached hereto.

The Series 2005 Certificates are subject to prepayment prior to maturity, as described herein. See "The Series 2005 Certificates - Prepayment" herein.

Pursuant to the Facilities Sublease, dated as of June 1, 2005 (the "Sublease"), by and between the County and Merced County Public Facilities Corporation (the "Corporation"), the County will make Base Rental Payments from amounts on deposit in the Courthouse Construction Fund (the "Courthouse Construction Fund"). The County covenants in the Sublease to apply amounts on deposit in the Courthouse Construction Civil Assessments Fund (the "Courthouse Construction Civil Assessments Fund") solely to the payment of Base Rental Payments in the event of an insufficiency of amounts on deposit in the Courthouse Construction Fund. The County also covenants in the Sublease that, as long as the Facilities, as defined in the Sublease, are available for the County's use and possession, it will take such action as may be necessary to include all Base Rental Payments and Additional Payments provided for therein (if and to the extent that the amounts on deposit in the Courthouse Construction Fund and the Courthouse Construction Civil Assessments Fund are not sufficient to pay the Base Rental Payments for any Rental Period) in its annual budgets, and it will make the necessary appropriations for such payments, except to the extent such payments are abated in accordance with the Sublease. The County's obligation to make Base Rental Payments is subject to abatement in the event of damage or destruction to, or condemnation of or title defects to, the Facilities or a portion thereof. See "Security and Sources of Payment for the Series 2005 Certificates - Abatement" herein.

Payment of the principal of and interest represented by the Series 2005 Certificates when due will be insured by a financial guaranty insurance policy to be issued by Ambac Assurance Corporation simultaneously with the delivery of the Series 2005 Certificates. See "Certificate Insurance" herein and Appendix F - "Specimen Financial Guaranty Insurance Policy" attached hereto.



THE OBLIGATION OF THE COUNTY TO MAKE BASE RENTAL PAYMENTS AND TO PAY ADDITIONAL PAYMENTS UNDER THE SUBLEASE DOES NOT CONSTITUTE AN OBLIGATION OF THE COUNTY FOR WHICH THE COUNTY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE COUNTY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION. NEITHER THE SERIES 2005 CERTIFICATES NOR THE OBLIGATION OF THE COUNTY TO MAKE BASE RENTAL PAYMENTS OR TO PAY ADDITIONAL PAYMENTS UNDER THE SUBLEASE CONSTITUTES AN INDEBTEDNESS OF THE COUNTY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION.

This cover page contains information for quick reference only. It is not a summary of this issue. Potential purchasers must read the entire Official Statement to obtain information essential to making an informed investment decision.

The following firm served as financial advisor to the County.



Maturity Schedule

**\$7,285,000 Serial Certificates
Base CUSIP No. 587657**

Maturity (June 1)	Principal Amount	Interest Rate	Price or Yield	CUSIP No.	Maturity (June 1)	Principal Amount	Interest Rate	Price or Yield	CUSIP No.
2006	\$255,000	3.00%	2.65%	DD6	2016	\$360,000	3.75%	100	DP9
2007	270,000	3.00	2.75	DE4	2017	370,000	3.80	3.85	DQ7
2008	275,000	3.00	2.85	DF1	2018	385,000	4.00	100	DR5
2009	285,000	3.00	2.95	DG9	2019	400,000	4.00	4.05	DS3
2010	295,000	3.25	3.10	DH7	2020	415,000	4.125	100	DT1
2011	305,000	3.25	3.20	DJ3	2021	435,000	4.20	100	DU8
2012	310,000	3.30	100	DK0	2022	450,000	4.25	100	DV6
2013	325,000	3.40	100	DL8	2023	470,000	4.25	100	DW4
2014	335,000	3.50	100	DM6	2024	490,000	4.30	100	DX2
2015	345,000	3.60	3.65	DN4	2025	510,000	4.30	100	DY0

\$1,095,000 4.35% Term Certificates due June 1, 2027 Priced to Yield 100% - CUSIP No: 587657EA1
\$1,820,000 4.375% Term Certificates due June 1, 2030 Priced to Yield 100% - CUSIP No.: 587657ED5

The Series 2005 Certificates will be offered when, as and if executed and delivered, and received by the Underwriter, subject to the approval as to validity by Orrick, Herrington & Sutcliffe LLP, San Francisco, California, Special Counsel, and certain other conditions. Certain legal matters will be passed upon for the County by its Disclosure Counsel, Hawkins Delafield & Wood LLP, Los Angeles, California, and for the County by the County Counsel. It is anticipated that the Series 2005 Certificates in definitive form will be available for delivery to DTC in New York, New York, on or about June 7, 2005.

Dated: May 24, 2005

APPENDIX 3
Analysis of County Reported Balances at May 11, 2010

APPENDIX 3: ANALYSIS OF COUNTY REPORTED BALANCES AT May 11, 2010

County Funds Used to Track the Funding Sources and Expenditures Related to the Construction of the Courthouse

Descriptions	Courthouse Construction Fund (Fund 2451)	Superior Court Debt Service Fund (Fund 2482)	Debt Service - Justice Facility (Fund 1802)	Capital Projects Fund (Fund 1812)	2005 COP Certificate Reserve Fund and County Trust Fund 2466	Total (A to E)
Part A: Per Information Provided	A	B	C	D	E	F
Per County Submitted Transaction Analysis Reports, Balance at May 11, 2010	\$ 790,510	\$ 1,077,224	\$ 176,429	\$ 3,651	\$ -	\$ 2,047,814
Per CAFR - Balance at June 30, 2009	-	-	-	-	766,637	766,637
Additional Information from County - County Trust Fund 2466	-	-	-	-	15,394	15,394
Total Balance - Part A	\$ 790,510	\$ 1,077,224	\$ 176,429	\$ 3,651	\$ 782,031	\$ 2,829,845
Part B: Analysis to Arrive at County Reported Balance at May 11, 2010:						
Beginning balance: CCF at July 1, 2003/ Superior Court Debt Service and the Debt Service Justice Facility Fund Balance at July 1, 2005/Capital Projects Fund Balance at July 1, 2003	5,498,540	-	-	268,443	-	5,766,983
CCF revenues including interest and miscellaneous revenues:						
2003/2004 to 2004/2005	1,108,859	-	-	-	-	1,108,859
2005/2006 to 2008/2009	2,402,845	-	-	-	-	2,402,845
July 1, 2009 to May 11, 2010	370,269	-	-	-	-	370,269
Funding Sources - see Section IV.E for Table G detail - exclude beginning balance at 7/2003 of \$268,443 Civil assessment funds contributed by the Court - 2005/2006 to 2008/2009 (\$310,000/year x 4 years) - see next line below for transfers between funds.	-	-	-	19,522,354	-	19,522,354
Transfers to/ from:	-	-	-	-	-	-
Transfers for the Court's civil assessments funds that were used in error to support the COP debt service payments - 2005/2006 to 2008/2009. (\$310,000 per year x 4 years = \$1,240,000 less \$261,761 needed for COP debt service payments - \$196 minor adjustments = \$1,008,043) See Section V.B - Courthouse Construction Fund.	(1,008,043)	1,008,043	-	-	-	-
Transfers for the interest and investment revenue related to the Court's civil assessment funds	(60,237)	60,237	-	-	-	-
Transfers for the interest and investment revenue related to the Court's civil assessments funds	-	7,701	(7,701)	-	-	-
Transfers for construction expenditures - 2003/2004 to 2008/2009	(5,672,867)	-	-	-	-	(5,672,867)
Transfers for construction expenditures - July 1, 2009 to May 11, 2010	(80,200)	-	-	(80,200)	-	(160,400)
Transfers - miscellaneous	5,557	(5,557)	-	-	-	-
Transfers for COP debt service payments - 2005/2006 to 2008/2009	(1,400,358)	-	1,400,358	-	-	-
Transfers for COP debt service payments - July 1, 2009 to May 11, 2010	(370,269)	-	370,269	-	-	-
Expenditures:						
COP debt service payments - 2005/2006 to 2008/2009	-	-	(2,635,640)	-	-	(2,635,640)
COP debt service payments - July 1, 2009 to May 11, 2010	-	-	(184,314)	-	-	(184,314)
Construction expenditures charged to the fund	-	-	-	(19,706,946)	-	(19,706,946)
Miscellaneous/Interest Revenue (other expenditures - county admin charges)	(3,586)	6,800	(6,543)	-	-	(3,329)
Balance:						
Per County Comprehensive Annual Financial Report (CAFR) and County Trust Fund 2466	-	-	-	-	782,031	782,031
Balance per Analysis, May 11, 2010 - Part B	790,510	1,077,224	176,429	3,651	-	2,047,814
Total Balance - Part B	\$ 790,510	\$ 1,077,224	\$ 176,429	\$ 3,651	\$ 782,031	\$ 2,829,845

APPENDIX 4

Analysis of Funds Available to Support the 2005 COP Debt Service Payments

Appendix 4

Analysis of Funds Available to Support the 2005 COP Debt Service Payments

Table A: Summary - Analysis of Funds Available to Support the 2005 COP Debt Service Payments (See Table B for detail)

From Table B Row	Description	Estimated Courthouse Construction Fund	Estimated Superior Court Debt Service Fund (\$310,000/yr from the Court)	Estimated Debt Service Justice Facility Fund	Sub-total (A, B, C)	COP Certificate Reserve Fund (\$26,000 estimated annual investment revenue)	Total (D + E)	COP Principal Balance *
		A	B	C	D	E	F	
1	Balance at May 11, 2010 per County submitted transaction analysis report (Includes July 1, 2009 thru May 11, 2010 transactions)	\$790,510	\$1,077,224	\$176,429	\$2,044,163	-	\$2,044,163	
2	Balance at June 30, 2009 - per County CAFR	-	-	-	-	\$766,637	766,637	
4	Excess Construction Funds residing in the CCF	(766,000)	-	-	(766,000)			
5	Allocation of the estimated excess construction funds of \$766,000 currently residing in the CCF - % based on funding sources in the Construction MOU: CCF (include COP) 81.01%, SCFCF 15.40% and Court 3.59%	620,537	-	-	620,537			
6	Allocation of the estimated excess construction funds of \$36,000 currently residing in the other County funds and the AOC - % same as above	29,164	-	-	29,164			
13	Estimated Balance at June 30, 2010	445,323	1,387,224	-	1,832,547	792,637	2,625,184	\$ 8,820,000
19	Estimated Balance at June 30, 2011	348,480	1,757,985	-	2,106,465	818,637	2,925,102	8,515,000
25	Estimated Balance at June 30, 2012	256,549	2,130,921	-	2,387,470	844,637	3,232,107	8,205,000
31	Estimated Balance at June 30, 2013	159,848	2,506,110	-	2,665,958	870,637	3,536,595	7,880,000
37	Estimated Balance at June 30, 2014	64,197	2,883,633	-	2,947,830	896,637	3,844,467	7,545,000
43	Estimated Balance at June 30, 2015	-	3,233,844	-	3,233,844	922,637	4,156,481	7,200,000
49	Estimated Balance at June 30, 2016	-	3,519,782	-	3,519,782	948,637	4,468,419	6,840,000

*From the COP debt payment schedule.

Assumptions to the Analysis:

- Allocation of Estimated Excess Construction Funds: The Courthouse Construction Fund (CCF) is allocated 81.01% of the total *estimated* excess construction funds totaling \$802,000 (\$766,000 - currently residing in the CCF and \$36,000 - currently residing in other county funds and with the AOC). The percentage was based on the percentage of funding received from the CCF (34.91%) and the COP net proceeds as specified in the 2005 Construction MOU (46.10%). (See Section IV.A CCF, Table C, Option # 1).
- Interpretation of Section 3.06 of the Facilities Sublease Agreement - which provided that the ***amount on deposit*** in the CCF shall be applied solely for payment of the costs of the courthouse construction project or for the payment of the base rental payments (meaning the COP debt service payments) and to the extent that the amounts on deposits in the CCF are not sufficient to pay the base rental payments for any rental period, such rental payments shall be paid by the County .. from amounts on deposit in the Courthouse Construction Civil Assessment Fund. This

is interpreted to mean that as long as there is *money on deposit* in the CCF, the CCF is to be used first in its entirety before transfer is made from the Court’s civil assessment funds. At June 30, 2010, after the excess construction funds have been allocated to the CCF, the CCF reported an estimated balance of \$445,323 – which is available to support the COP debt service payments.

- Average annual CCF revenue of \$569,000 was calculated based on the annual total CCF revenue including interest and investment revenue for the past five fiscal years – 2005/2006 to 2009/2010.
- Average annual interest revenue on the \$310,000 civil assessment funds received per year from the Court was calculated based on the average interest rate allocated to the Superior Court Service Fund from 2006 to 2009.
- Average annual interest and investment revenue of \$26,000 that was allocated to the 2005 COP certificate reserve fund was calculated based on the average revenue earned from 2005/2006 to 2008/2009.

Based on the information available and the assumptions made, it appears that:

- The CCF has *money on deposit* to fully (100%) support the COP debt service payments until the fiscal year ended June 30, 2014 when the CCF ending balance is estimated at \$64,197. (See Table A, row 37 and Table B, row 37)
- Beginning in fiscal year 2014/2015, the Court’s civil assessment funds currently residing in the Superior Court Debt Service Fund will be utilized to support the debt service payments. The estimated court’s civil assessment funds that would be utilized are as follows:
 - Fiscal Year ended June 30, 2015 \$29,729 (See Table B, row 42)
 - Fiscal Year ended June 30, 2016 \$96,506 (See Table B, row 48)

After the two transfers above to support the debt service payments, the Superior Court Debt Service Fund reported a balance at June 30, 2016 of \$3.5 million.

Starting in fiscal year 2015/2016 and going forward, with the beginning CCF balance estimated at zero, presuming that the average annual CCF revenues is approximately \$569,000, it appears that \$97,000 would be needed from the Superior Court Debt Service Fund to support the COP debt service payments.

- At June 30, 2016, there appears to be an estimated \$4.5 million to support the \$6.8 million principal balance due on the 2005 COP debt service payments. (See Table B for detail).

Source of Funds	Estimated Balance at June 30, 2016
Superior Court Debt Service Funds	\$3,519,782
The COP Certificate Reserve Fund*	948,637
Total Available Funds (Row A)	4,468,419
The COP Principal Balance (Row B)	6,840,000
Balance - Debt Payment (Row A -B)	\$(2,371,581)

*Per County, the reserve fund is normally used to pay off the debt early.

- The \$10.2 million Series 2005 COP documents referred to the Courthouse Construction Civil Assessments Fund in numerous instances. The County named this fund the “Superior Court Debt Service Fund.”

The Facilities Sublease agreement (an essential component of the COP financing arrangement) between the County and the Merced County Public Facilities Corporation specifically referred to the “Trial Court Facilities Agreement dated December 24, 2003.” This agreement documented the Court’s annual commitment of \$310,000 civil assessment funds to augment the funds available for construction of court facilities. This agreement was referenced as Exhibit C in the 2005 Construction MOU.

Table B: Analysis of Funds Available to Support the 2005 COP Debt Service Payments (Detail)

Row	Description	Estimated Courthouse Construction Fund	Estimated Superior Court Debt Service Fund	Estimated Debt Service Justice Facility Fund	Sub-total (A, B, C)	Certificate Reserve Fund (\$26,000 estimated annual investment revenue)	Total (D + E)	COP Principal Balance
		A	B	C	D	E	F	
1	Balance at May 11, 2010 per County submitted transaction analysis report (include July 1 to May 11, 2010 transactions)	\$ 790,510	\$ 1,077,224	\$ 176,429	\$ 2,044,163	-	\$ 2,044,163	
2	Balance at June 30, 2009 - per County CAFR	-	-	-	-	\$766,637	766,637	
3	Estimated Excess Construction Funds:							
4	Excess Construction Funds residing in the CCF	(766,000)	-	-	(766,000)			
5	Allocation of the estimated excess construction funds of \$766,000 currently residing in the CCF - % based on funding sources in the Construction MOU: CCF (include COP) 81.01%, SCFCF 15.40% and Court 3.59%	620,537	-	-	620,537			
6	Allocation of the estimated excess construction funds of \$36,000 currently residing in the other County funds and the AOC - % same as above	29,164	-	-	29,164			
	Transactions after May 12, 2010 to June 30, 2010 :							
7	Court's civil assessment contribution for 2009/2010	-	310,000	-	310,000			
8	Estimated CCF revenues for May and June 2010	74,000	-	-	74,000			
9	Estimated CCF revenue transferred to support COP debt service payments	(74,000)	-	74,000	-			
10	Second COP payment for 2009/2010 (due June 2010)	-	-	(479,316)	(479,316)			

Row	Description	Courthouse Construction Fund	Superior Court Debt Service Fund	Debt Service Justice Facility Fund	Sub-total (A, B, C)	Certificate Reserve Fund (\$26,000 estimated annual investment revenue)	Total (D + E)	COP Principal Balance
11	Subtotal	674,210	1,387,224	(228,887)	1,832,547			
12	Transfer from the CCF to support debt payments	(228,887)		228,887	-			
13	Estimated Balance at June 30, 2010	445,323	1,387,224	-	1,832,547	792,637	2,625,184	\$ 8,820,000
2010/2011 Transactions								
14	Estimated average annual CCF revenues for CCF / Interest and Investment Revenue for Superior Court Debt Service Fund	569,000	60,761	-	629,761			
15	Court's civil assessment contribution	-	310,000	-	310,000			
16	COP debt service payments - include the annual \$1,800 charge by the County	-	-	(665,843)	(665,843)			
17	Subtotal	1,014,323	1,757,985	(665,843)	2,106,465			
18	Transfer from the CCF to support debt payments	(665,843)		665,843	-			
19	Estimated Balance at June 30, 2011	348,480	1,757,985	-	2,106,465	818,637	2,925,102	8,515,000
2011/2012 Transactions								
20	Estimated average annual CCF revenues for CCF / Interest and Investment Revenue for Superior Court Debt Service Fund	569,000	62,936	-	631,936			
21	Court's civil assessment contribution	-	310,000	-	310,000			
22	COP debt service payments - include the annual \$1,800 charge by the County	-	-	(660,931)	(660,931)			
23	Subtotal	917,480	2,130,921	(660,931)	2,387,470			

Row	Description	Courthouse Construction Fund	Superior Court Debt Service Fund	Debt Service Justice Facility Fund	Sub-total (A, B, C)	Certificate Reserve Fund (\$26,000 estimated annual investment revenue)	Total (D + E)	COP Principal Balance
24	Transfer from the CCF to support debt payments	(660,931)	-	660,931	-			
25	Estimated Balance at June 30, 2012	256,549	2,130,921	-	2,387,470	844,637	3,232,107	8,205,000
2012/2013 Transactions								
26	Estimated average annual CCF revenues for CCF / Interest and Investment Revenue for Superior Court Debt Service Fund	569,000	65,189	-	634,189			
27	Court's civil assessment contribution	-	310,000	-	310,000			
28	COP debt service payments - include the annual \$1,800 charge by the County	-	-	(665,701)	(665,701)			
29	Subtotal	825,549	2,506,110	(665,701)	2,665,958			
30	Transfer from the CCF to support debt payments	(665,701)		665,701	-			
31	Estimated Balance at June 30, 2013	159,848	2,506,110	-	2,665,958	870,637	3,536,595	7,880,000
2013/2014 Transactions								
32	Estimated average annual CCF revenues for CCF / Interest and Investment Revenue for Superior Court Debt Service Fund	569,000	67,523	-	636,523			
33	Court's civil assessment contribution	-	310,000	-	310,000			
34	COP debt service payments - include the annual \$1,800 charge by the County	-	-	(664,651)	(664,651)			
35	Subtotal	728,848	2,883,633	(664,651)	2,947,830			
36	Transfer from the CCF to support debt payments	(664,651)		664,651	-			
37	Estimated Balance at June 30, 2014	64,197	2,883,633	-	2,947,830	896,637	3,844,467	7,545,000

Row	Description	Courthouse Construction Fund	Superior Court Debt Service Fund	Debt Service Justice Facility Fund	Sub-total (A, B, C)	Certificate Reserve Fund (\$26,000 estimated annual investment revenue)	Total (D + E)	COP Principal Balance
2014/2015 Transactions								
38	Estimated average annual CCF revenues for CCF / Interest and Investment Revenue for Superior Court Debt Service Fund	569,000	69,940	-	638,940			
39	Court's civil assessment contribution	-	310,000	-	310,000			
40	COP debt service payments - include the annual \$1,800 charge by the County	-	-	(662,926)	(662,926)			
41	Subtotal	633,197	3,263,573	(662,926)	3,233,844			
42	Transfer from the CCF to support debt payments	(633,197)	(29,729)	662,926	-			
43	Estimated Balance at June 30, 2015	-	3,233,844	-	3,233,844	922,637	4,156,481	7,200,000
2015/2016 Transactions								
44	Estimated average annual CCF revenues for CCF / Interest and Investment Revenue for Superior Court Debt Service Fund	569,000	72,444	-	641,444			
45	Court's civil assessment contribution	-	310,000	-	310,000			
46	COP debt service payments - include the annual \$1,800 charge by the County	-	-	(665,506)	(665,506)			
47	Subtotal	569,000	3,616,288	(665,506)	3,519,782			
48	Transfer from the CCF to support debt payments	(569,000)	(96,506)	665,506	-			
49	Estimated Balance at June 30, 2016	\$ -	\$ 3,519,782	\$ -	\$ 3,519,782	\$948,637	\$ 4,468,419	\$ 6,840,000

APPENDIX 5
County Submitted Transaction Analysis Reports

COUNTY OF MERCED
TRANSACTION ANALYSIS (ACTUAL)
FUND #2451 - SUPERIOR COURT - COURTHOUSE CONSTRUC FUND

Row	Description	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	Thru 5/11/10
	Beginning balance	5,498,539.88	5,733,360.32	5,643,123.80	1,986,254.51	1,990,490.56	1,794,740.42	1,933,434.23	5,498,539.88
	Revenues:								
	CCF Revenues (Court fines, R&R collections, GCS collections)	409,494.29	433,382.32	471,392.28	552,588.40	514,067.61	503,793.83	352,142.39	3,236,861.12
	Interest	130,192.15	121,060.31	110,816.43	104,005.98	89,376.75	53,474.88	17,379.49	0.00
	Miscellaneous	13,709.95	1,020.85	417.00	1,228.50	807.00	874.50		626,305.99
(1)	Total revenues	553,396.39	555,463.48	582,625.71	657,822.88	604,251.36	558,143.21	370,269.88	3,881,972.91
	Expenditures:								
	17400/93185 - Trf for Courthouse const.	(315,000.00)	(645,700.00)	(3,850,000.00)	(250,000.00)	(550,000.00)	(62,167.40)	(80,200.00)	(960,700.00)
	17400/93185 - Trf for Courthouse const.			(389,495.00)	(403,580.83)	(250,000.00)	(357,282.00)	(370,269.88)	(4,792,367.40)
	71300/93185 - Trf for DS	(3,575.95)	0.00	0.00	(6.00)	(1.50)	0.00	(1.50)	(1,770,627.71)
	Miscellaneous								(3,584.95)
	JE#11994						To #02482		(1,008,042.91)
	JE#11994						Interest To #02482		(60,236.93)
	JE#12511						From #02482		5,557.58
(2)	Total expenditures	(318,575.95)	(645,700.00)	(4,239,495.00)	(653,586.83)	(800,001.50)	(419,449.40)	(1,513,193.64)	(8,590,002.32)
	Ending balance	5,733,360.32	5,643,123.80	1,986,254.51	1,990,490.56	1,794,740.42	1,933,434.23	790,510.47	790,510.47

(1) Those revenues which are not noted as interest apportionments or are clearly marked as coming from the Courts. Includes all revenues made on deposit permits.

(2) To correctly classify JE#12246 dated 4/01/08. This JE was originally recorded as an expenditure. It was subsequently determined to be the correction of an error in posting and should have been classified as a reduction of revenue. The reduction of revenue and the elimination of the expenditure was made on this spreadsheet under the column for the 07/08 fiscal year. As a result of this reclassification, a similar amount had to be returned from fund #02482. JE#12511 makes that correction. The amount was posted here as an expenditure (instead of as a revenue) so as to not contaminate the formula used to determine the proper amount to be transferred to 01802-71300-93185 - which is tied to current year revenues.

COUNTY OF MERCED
TRANSACTION ANALYSIS (PER MOU)
FUND #2451 - SUPERIOR COURT - COURTHOUSE CONSTRUCTION FUND

Row	Description	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	Thru 5/11/10
	Beginning balance	5,498,539.88	5,733,360.32	5,643,123.80	1,793,123.80	1,543,117.80	993,116.30	930,948.90	5,498,539.88
	Revenues:								
	CCF Revenues (Court fines, R&R collections, GCS collections)	409,494.29	433,382.32	471,392.28	552,588.40	514,067.61	503,793.83	352,142.39	3,236,861.12
	Interest	130,192.15	121,060.31	110,816.43	104,005.98	89,376.75	53,474.88	17,379.49	626,305.99
	Miscellaneous	13,709.95	1,020.85	417.00	1,228.50	807.00	874.50	748.00	18,805.80
(1)	Total revenues	553,396.39	555,463.48	582,625.71	657,822.88	604,251.36	558,143.21	370,269.88	3,881,972.91
	Expenditures:								
	17400/93185 - Trf for Courthouse const.	(315,000.00)	(645,700.00)	(3,850,000.00)	(250,000.00)	(550,000.00)	(62,167.40)	(80,200.00)	(960,700.00)
	17400/93185 - Trf for Courthouse const.			(389,495.00)	(403,580.83)	(250,000.00)	(357,282.00)	(370,269.88)	(4,792,367.40)
	71300/93185 - Trf for DS	(3,575.95)	0.00	0.00	(6.00)	(1.50)	0.00	(1.50)	(1,770,627.71)
	Miscellaneous								(3,584.95)
	JE#11994						To #02482		(1,008,042.91)
	JE#11994						Interest To #02482		(60,236.93)
	JE#12511						From #02482		5,557.58
(2)	Total expenditures	(318,575.95)	(645,700.00)	(4,239,495.00)	(653,586.83)	(800,001.50)	(419,449.40)	(1,513,193.64)	(8,590,002.32)
	Ending balance	5,733,360.32	5,643,123.80	1,986,254.51	1,990,490.56	1,794,740.42	1,933,434.23	790,510.47	790,510.47

(1) Those revenues which are not noted as interest apportionments or are clearly marked as coming from the Courts. Includes all revenues made on deposit permits.

(2) Assumes that all fund revenues are transferred to 01802-71300-93185 to fund debt service obligations. As of the date of printing, all revenues in the current year may not have yet been transferred.

COUNTY OF MERCED
TRANSACTION ANALYSIS / (YAL)
FUND #2482 - SUPERIOR COURT DEBT SERVICE FUND

Description	06/30/04	06/30/05	06/30/06	06/30/07	06/30/08	06/30/09	Thru 5/11/10 2009/2010
Beginning balance	0.00	0.00	0.00	130.97	176.98	270.25	397.10
Revenues							
From Courts - Civil Assessments			310,000.00	310,000.00	310,000.00	310,000.00	1,240,000.00
Interest			130.97	46.01	93.27	126.85	650.74
				From 01802-71300-93185	From 01802-71300-93185	From 02451	5,752.37
					Interest From #02451	60,236.93	1,047.84
					Interest From 01802-71300-93185	7,701.14	5,752.37
					Interest From 01802-71300-93185	310,126.85	1,008,042.91
					310,093.27	310,126.85	7,701.14
							2,322,781.19
							0.00
Expenditures							
01802-71300-93187			310,000.00	310,000.00	310,000.00	310,000.00	1,240,000.00
							5,557.58
							1,245,557.58
Total expenditures	0.00	0.00	310,000.00	310,000.00	310,000.00	310,000.00	1,245,557.58
Ending balance	0.00	0.00	130.97	176.98	270.25	397.10	1,077,223.61

COUNTY OF MERCED
TRANSACTION ANALYSIS (MOL)
FUND #2482 - SUPERIOR COURT DEBT SERVICE FUND

Description	06/30/04	06/30/05	06/30/06	06/30/07	06/30/08	06/30/09	Thru 5/11/10 2009/2010
Beginning balance	0.00	0.00	0.00	246,255.14	550,133.93	804,137.62	1,008,634.80
Revenues							
From Courts - Civil Assessments			310,000.00	310,000.00	310,000.00	310,000.00	1,240,000.00
Interest			130.97	46.01	93.27	126.85	650.74
					Interest From #02451	60,236.93	1,047.84
					Interest From 01802-71300-93185	7,701.14	60,236.93
							7,701.14
							0.00
Total Revenues	0.00	0.00	310,130.97	310,046.01	310,093.27	310,126.85	68,588.81
Expenditures							
01802-71300-93187			63,875.83	6,167.22	56,089.58	105,629.67	231,762.30
							0.00
Total expenditures	0.00	0.00	63,875.83	6,167.22	56,089.58	105,629.67	231,762.30
Ending balance	0.00	0.00	246,255.14	550,133.93	804,137.62	1,008,634.80	1,077,223.61

(1) Only the portion of the annual \$310K received from the Courts which is needed to cover debt service expenditures (Fund #1802), less the revenues earned in fund #2451 and any interest earned in fund #1802.

COUNTY OF MERCED
TRANSACTION ANALYSIS (ACTUAL)
FUND #1802 (80871300) - DEBT SERVICE - JUS. FACILITY

Description	06/30/04	06/30/05	06/30/06	06/30/07	06/30/08	06/30/09	06/30/09	06/30/09	Thru 5/31/10
Beginning balance	0.00	0.00	0.00	52,993.46	102,584.19	2,243.25	5,752.37		0.00
Revenues									
93185 - Courts Construction Assessments		389,495.00	403,580.83	250,000.00	357,282.00	370,269.88	1,770,627.71		(5,752.37)
		JEF#11994			To #02482		(7,701.14)		(7,701.14)
		JEF#11994			Interest To #02482		0.00		1,240,000.00
93187 - Courts Civil Assessments	310,000.00	310,000.00	310,000.00	310,000.00	310,000.00	310,000.00	0.00		1,240,000.00
94200 - Interest	3,043.37	1,940.32	283.38	0.00	0.00	0.00	0.00		6,658.23
Total Revenues	0.00	702,538.37	714,971.99	561,940.32	667,565.38	356,816.37	3,003,832.43		
Expenditures									
21700 - Office Expense - General		50.00	1,850.00	1,800.00	1,800.00	75.00	25.00		150.00
21803 - Prof & Spec Serv - Debt Admin. Fees		394,494.91				1,800.00			7,300.00
33120 - Interest Payment		255,000.00	393,531.26	385,431.26	377,181.26	184,315.63			394,494.91
33121 - Interest Expense									1,940,459.41
33520 - Principal Payment									255,000.00
33530 - Principal Payments - LTD									830,000.00
Total expenditures	0.00	649,544.91	665,381.26	662,281.26	664,056.26	186,140.63	2,827,404.32		
Ending balance	0.00	52,993.46	102,584.19	2,243.25	5,752.37	176,428.11	176,428.11		
Per FIRMS	0.00	52,993.46	102,584.19	2,243.25	5,752.37				
Variance	0.00	0.00	0.00	0.00	0.00	0.00	0.00		0.00

COUNTY OF MERCED
TRANSACTION ANALYSIS (PER MOU)
FUND #1802 (80871300) - DEBT SERVICE - JUSTICE FACILITY

Description	06/30/04	06/30/05	06/30/06	06/30/07	06/30/08	06/30/09	06/30/09	06/30/09	Thru 5/31/10
Beginning balance	0.00	0.00	0.00	0.00	0.00	0.00	0.00		0.00
Revenues									
(2) 93185 - Courts Construction Assessments		582,625.71	657,822.88	604,251.36	558,163.21	370,269.88	2,773,113.04		(7,701.14)
		JEF#11994			Interest To #02482		(7,701.14)		(7,701.14)
(1) 93187 - Courts Civil Assessments	63,875.83	6,167.22	56,089.58	105,629.67	231,762.30				6,658.23
94200 - Interest	3,043.37	1,940.32	283.38	0.00	0.00	0.00	0.00		3,003,832.43
Total Revenues	0.00	649,544.91	665,381.26	662,281.26	664,056.26	362,568.74	3,003,832.43		
Expenditures									
21700 - Office Expense - General		50.00	1,850.00	1,800.00	1,800.00	75.00	25.00		150.00
21803 - Prof & Spec Serv - Debt Admin. Fees		394,494.91				1,800.00			7,300.00
33120 - Interest Payment		255,000.00	393,531.26	385,431.26	377,181.26	184,315.63			394,494.91
33121 - Interest Expense									1,940,459.41
33520 - Principal Payment									255,000.00
33530 - Principal Payments - LTD									830,000.00
Total expenditures	0.00	649,544.91	665,381.26	662,281.26	664,056.26	186,140.63	2,827,404.32		
Ending balance	0.00	52,993.46	102,584.19	2,243.25	5,752.37	176,428.11	176,428.11		
Per FIRMS	0.00	52,993.46	102,584.19	2,243.25	5,752.37				
Variance	0.00	0.00	0.00	0.00	0.00	0.00	0.00		0.00

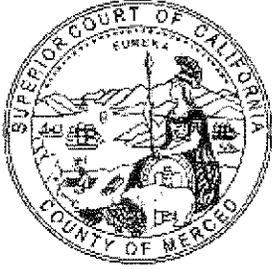
(1) Only the portion of the annual \$310K received from the Courts which is needed to cover debt service expenditures, less the revenues earned in fund #2451 and any interest earned in this fund.

(2) By FYE this revenue will tie to the revenue generated in Fund #2451. As of the date of printing, all revenues in the current year may not have yet been transferred.

COUNTY OF MERCED
TRANSACTION ANAL
FUND #1812 (BU#17400) - CAPITAL PROJ. - JUSTICE FACILITY

Description	06/30/04	06/30/05	06/30/06	06/30/07	06/30/08	06/30/09	Thru 5/11/10 2009/2010
Beginning balance	268,443.41	120,798.55	166,869.37	1,663,067.53	226,690.28	18,244.48	73.48
Revenues							
93185 - Courts Construction Assessments	315,000.00	645,700.00	3,850,000.00	250,000.00	550,000.00	62,167.40	80,200.00
94200 - Interest	2,516.44	322.47	23,300.86	39,524.18	3,475.07	391.15	14.90
95410 - State Aid For Construction				3,242,245.15			
97220 - Long Term Debt Proceeds		333,264.00	3,311,284.79	6,099,224.92			
97990 - Other Revenue				710,060.00			
97991 - Other Revenue State Dated...							
Total Revenues	317,516.44	979,286.47	7,194,585.65	10,341,154.25	553,475.07	62,558.55	83,777.71
Expenditures							
83689 - Remodel Sup. Ct. Bldg A	282.58						
87997 - Justice Facility	464,878.72	933,215.65	5,688,387.49	11,777,531.50	761,920.87	80,729.55	80,200.00
Total expenditures	465,161.30	933,215.65	5,688,387.49	11,777,531.50	761,920.87	80,729.55	80,200.00
Ending balance	120,798.55	166,869.37	1,663,067.53	226,690.28	18,244.48	73.48	3,651.19
							3,562.81
							19,522,354.14
							282.58
							19,786,863.78
							19,787,146.36
							3,651.19

VI. COURT'S RESPONSE TO REPORT



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED**

SUPERIOR COURTS BUILDING
627 W. 21ST STREET
MERCED, CALIFORNIA 95340

JOHN D. KIRIHARA, Presiding Judge
BRIAN L. MCCABE, Assistant Presiding Judge

CAROL ASH, Judge
MARK BACCIARINI, Judge
HUGH M. FLANAGAN, Judge
MARC A. GARCIA, Judge
RONALD W. HANSEN, Judge
DAVID W. MORANDA, Judge
DONALD J. PROIETTI, Judge
RALPH J. COOK, Commissioner
GERALD W. CORMAN, Commissioner
HARRY L. JACOBS, Commissioner

KATHLEEN GOETSCH, Court Executive Officer

MERCED SUPERIOR COURT
(209) 725-4100

Date: August 9, 2010

To: John A. Judnick
Senior Manager
Internal Audit Services
Administrative Office of the Courts

From: Kathleen Goetsch
Court Executive Officer
Superior Court of California
County of Merced

Re: Court Response to Limited Review of the New Downtown Courthouse
Construction Costs and Other Related Matters

Our Court is very appreciative of the work of the AOC Internal Audit (IAS) department for this thorough and complete review. The document sorts out the various funds and the broader issues and gives the Court an excellent base going forward. While it would have been better if the interest funds discovered had been available for the New Courthouse project, we are pleased that the funds are now properly accounted for and available for future bond payments. Also, once our County completely analyzed the issues raised, they were cooperative and thorough in their response and we appreciate their work not only on this review, but in implementing the needed changes to the various accounting matters.

Our Court has previously provided to Internal Audit Services its responses to the specific recommendations made resulting from the review. Please refer to the review report for Court's specific responses.

Cc: Hon John Kirihara
Presiding Judge
Superior Court of California
County of Merced