



City of
Los Banos
At the Crossroads of California

**REQUEST FOR PROPOSALS
FOR
PROFESSIONAL POLLING/
PUBLIC OPINION RESEARCH AND
STRATEGIC COMMUNICATIONS SERVICES**

Proposals must be received
no later than 2:00 p.m.
FRIDAY, SEPTEMBER 15, 2017

**Questions in regard to submissions,
Process, or proposals may be emailed to:**

Alex Terrazas
City Manager
alex.terrazas@losbanos.org

**City of Los Banos
520 J Street
Los Banos, CA 93635
(209) 827-7000 ext. 140
www.losbanos.org**

NOTICE
CITY OF LOS BANOS
Request for Proposals for
Professional Polling/Public Opinion Research and
Strategic Communications Services

Notice is hereby given that the City of Los Banos is seeking proposals from qualified consultants to conduct a public opinion poll and develop strategic recommendations for potential revenue raising measures for City programs and services.

Proposals must be received no later than 2:00 p.m., Friday, September 15, 2017 at Los Banos City Hall, City Clerk's Office, 520 J Street, Los Banos, CA 93635. No late submittals will be accepted.

The City may conduct interviews of the top ranking firms in order to make a final selection.

The successful firms will be recommended to the City Council for authorization to enter into a Professional Services Agreement for the project. It is the City's intention to select at least one firm.

Any questions with regard to submissions, process, or proposals can be emailed to Alex Terrazas at alex.terrazas@losbanos.org.

The Request for Proposals (RFP) can be viewed and/or obtained from the City of Los Banos website at www.losbanos.org.

Acceptance of any proposal submitted pursuant to this RFP shall not constitute any implied intent to enter into an agreement for consulting services. The City reserves the right to reject any and all proposals prior to execution of the agreement.

**REQUEST FOR PROPOSALS
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Introduction

The City of Los Banos (herein referred to as “City”) is located on the Westside of Merced County, approximately seven miles east of the Interstate 5 and State Highway 152 interchange and approximately six miles north of the Interstate 5 and State Highway 165 interchange.

The City is currently seeking proposals from qualified firms or teams of firms with experience in conducting public opinion polls, communicating with the public, and developing strategic recommendations for pursuing revenue raising ballot measures.

The City, on a preliminary basis, has identified high priority Capital Improvement Projects and programs/services that remain unfunded and that do not have a future revenue source available. Exploring new revenue sources is a primary objective in order to maintain current service levels while also meeting the demand of the City’s growing population.

The Scope of Work outlined below shall accomplish the purpose of this Request for Proposals (RFP); to conduct a public opinion survey, evaluate the probability of voter approval of a revenue raising ballot measure and present data to provide guidance on strategies for placing a revenue measure on the ballot. Should the City Council approve the placement of a measure on the ballot, additional services may be necessary for public education and outreach.

Background information on the City, including the current and past budgets, can be found on the City’s website at www.losbanos.org.

Work Scope

The Scope of Work will encompass working with City staff, attending various public meetings, conducting a statistically valid survey, measuring survey results, assessing data developing recommendations for next steps with City staff, and preparing a final report. The selected consultant’s proposed Work Plan and Schedule will form the basis for negotiations of a final Scope of Work for the Professional Services Agreement.

A draft report with an executive summary shall be issued to the City Manager and other staff as determined by the City Manager. The document shall include the summary of findings and recommendations as identified in the Scope of Services. Any other documentation prepared by the consultant shall be provided to the City in electronic format.

A final report shall be issued following staff comments on the draft. In addition, City staff may require a presentation to the City Manager and/or City Council or other City representatives. The report should provide sufficient information for policy decisions regarding operational and service options. Four (4) copies of the final report will be required along with an electronic copy.

The Scope of Work shall be more specifically defined by addressing the following items:

- a. Development of the survey instrument proposed for voter opinion poll and the methodology to be employed for a statistically valid sampling of the registered voters.
- b. Process of conducting and interpreting the public opinion poll, including the sample size based on the City of Los Banos demographics. Include methods used to mitigate language barriers.
- c. Coordination with City to assess the results of the public opinion poll; discuss implications, related issues and alternatives.
- d. Final written report and presentation of results. The final report shall include at a minimum the framework and methodology used; the tabulation of all calls and/or contacts made as part of the survey (refusals, disconnected numbers, busy lines, unanswered calls, number of attempts, communication barriers and age issues); the tabulation of survey results, key findings, and detailed findings; and conclusions and recommendations.

Phase Two

As an additive alternative, include the Scope of Work and cost for organizing and conducting a successful public education effort to increase citizen awareness for the identified need of a new revenue source and facts surrounding the measure. This second phase as an additive alternative may or may not be awarded and/or awarded to a different consulting firm specializing in this type of project.

Submittal Format

All submittals shall be from a Consultant or team of Consultants that has:

1. A demonstrated experience in producing and conducting statistically reliable polling surveys for California sales tax revenue ballot measures.
2. Experience providing strategic guidance and recommendations to California governmental agencies in developing successful revenue ballot measures.

All submittals shall be organized in the format shown below.

Submittal Cover – Include the Request for Proposal title and submittal due date, the name, address, fax number, and the telephone number of the principal firm and contact.

Table of Contents – Include a complete and clear listing of headings and pages to allow easy reference to key information.

Transmittal Letter – The letter must convey a basic understanding of the prospective project and its key objectives and an overview of the Project team. The letter must state why the candidate is interested in pursuing the project, how the project relates to other work the

candidate has successfully performed, consultant philosophy as it pertains to working with cities to evaluate revenue raising opportunities and public opinion polls, and why the candidate should be selected. The letter should be signed both by the principal contact for a potential award, and the letter's signatory must be the person authorized to bind the firm to any subsequent contract with the City.

Team Qualifications and Experience – Provide a clear description of the principal firm's Project Manager and the proposed team with names, resumes, project responsibilities and proposed staffing numbers. Provide a list of all successful ballot measures that have been performed. Experience listed should be from the last three to five years with projects relevant to the Scope of Work in this Project. Each listed experience shall have a Project Manager listed as a reference with name(s) and current telephone number(s). The listed experience should distinguish between the experience and projects of the firm and the individuals.

Firms and personnel listed in this section will be considered committed to the Project. Commitment letters shall be included from all partnering firms.

Organizational Chart – An organizational chart containing the names of all key personnel, joint venture partners, and sub-consultants with titles and their specific task assignment for this Project.

Example of Most Recent Work – Candidates must provide three examples of the most recently completed public polling surveys, reports, and education campaign/materials from other cities along with contact information for public agency references.

Work Plan and Schedule – Consultant shall provide a work plan identifying the major tasks and subtasks anticipated by the Consultant associated with the completion of the guidance package.

Schedule of Fees – Submit a Schedule of Fees, including fees of any partnering firms and a not-to-exceed amount, in a separately sealed envelope included in the submittal package. Provide the hourly rates of individual or firm's staff as well. This information will not be used as a determining factor as to which firm the City will enter into an agreement with. The schedule of fees shall include a task list with a breakdown of the anticipated fee per task.

Response Time – The proposal shall include a description of the individual or firm's resources that allow for a timely delivery of services.

REQUEST FOR PROPOSAL RESPONSES THAT DO NOT INCLUDE THE ABOVE REQUIRED ITEMS WILL BE DEEMED NON-RESPONSIVE AND WILL NOT BE CONSIDERED.

RFP and Evaluation Schedule

The distribution, receipt, and evaluation of proposals, as well as selection of the Consultant, will conform to the following schedule:

Release of the RFP:	August 25, 2017
Proposals Due:	September 15, 2017 by 2:00 pm
Award of Contract:	October 2017

Submittal Dates and Directions

Complete proposals must be submitted in sealed envelopes and received by the City no later than 2:00 p.m. on September 15, 2017. One (1) original and three (3) copies shall be delivered to the address below. Late, faxed, or emailed proposals will not be accepted. All proposals and documents submitted become the property of the City. Information considered proprietary shall be identified as such in the proposal.

Proposal shall be submitted by mail or in person to the following address:

**City of Los Banos
520 J Street
Los Banos, CA 93635
Attn: Lucy Mallonee, City Clerk**

**RE: Professional Polling/Public Opinion Research
and Strategic Communications Services**

Proposal Selection/Evaluation

Proposals will be reviewed by City staff and evaluated to determine which proposals best meet the criteria of the RFP. The final selection will be based on completeness, experience with agencies, technical merit, and time to perform.

The City reserves the right, without qualification, to:

1. Reject all proposals.
2. Exercise discretion and apply its judgment with respect to any proposal submitted.
3. Select a proposal which qualifies based on the following factors:
 - a. Experience of the consultant and staff selected to provide the specified services;
 - b. Record of the consultant in accomplishing work within a required time, and within an established budget;

- c. Record of the consultant responsive to client requests;
- d. Ability to work with City staff;
- e. Financial responsibility (years in business, number of projects completed, annual volume of work in dollars, etc.);
- f. Extent of consultant organization;
- g. Present permanent staff availability;
- h. References.

All interested parties are encouraged to submit proposals to the RFP, as the award is not based solely on lowest cost proposal submitted. Total cost will be taken into consideration, but the consultant's capabilities, competence, and capacity will be considered as well. The City reserves the right to choose the overall best consultant according to the City's criteria. The City, and its designated representatives, shall be the sole judge of its own best interest, the proposal, and the resulting negotiated agreement. The City's decisions will be final. The City reserves the right to award a contract/select a service provider without discussion based upon the initial proposals.

The above factors, along with other factors that the City may deem appropriate, will be used to identify the proposal that represents the best value, which will be the basis for the contract award.

The most qualified and responsive proposer will be selected for contract negotiations. The consultant's proposed lead customer contact or account representative for this engagement will be required to be present at an interview and presentation. If agreement cannot be reached with the first choice proposer, the second choice proposer (and then third and so on) will be contacted with the first choice proposer (or other proposers, in order) dismissed from further consideration on this project. A contract award may be made to the responsible proposer whose proposal will be best for the City considering evaluation factors outlined above. All proposers participating in the process shall be notified in writing of the successful award.

Assumptions

With City Council approval, a successful consultant shall be awarded a Professional Services Agreement. At the discretion of the City, deliverables shall be provided to the City in the form of hard copies as well as electronic copies for all specifications, reports, and all documents, including but not limited to plans, maps, analyses and specifications, and any necessary technical data.

The City Manager, or his designee, will be the main point of contact to facilitate the various services requested.

The City will screen and evaluate proposals primarily on the basis of demonstrated professional expertise. The consultant shall be chosen on the basis of the firm's demonstrated competence, abilities, overall professional qualifications, cost competitiveness, and time to perform.

Questions about the RFP

All inquiries and questions regarding this RFP shall be emailed to Alex Terrazas, City Manager at alex.terrazas@losbanos.org.

Special Conditions

- A. **Contract and Insurance Requirements.** The selected proposer shall be required to enter into a City-prepared Professional Services Agreement approved by the City Attorney (Exhibit A). Proposers shall be prepared to accept the terms and conditions of the City's Standard Professional Services Agreement including all insurance requirements. The successful consultant's bid and the terms and conditions stated in this RFP will be made part of the contract between the City of Los Banos and the consultant. This RFP outlines the specifications and requirements, but not necessarily all of the terms and conditions that will be incorporated into the final agreement between the City of Los Banos and the successful proposer.
- B. **Reservations.** This RFP does not commit the City to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to this RFP, or to procure or contract for work. No payment of any kind will be provided to the consultant responding to this RFP, or parties they represent, for obtaining any of the information solicited.
- C. **Public Records.** All proposals submitted in response to this RFP become the property of the City. Information in the proposal, unless specified as trade protected, may be subject to public review. Any information contained in the proposal that is proprietary must be clearly designated. Marking the entire proposal as proprietary will be neither accepted nor honored. Proprietary information submitted in response to this RFP will be handled in accordance with the California Public Records Act.
- D. **Right to Cancel and Amend.** The City reserves the right to cancel, for any or no reason, in part or in its entirety, this RFP, including but not limited to: selection schedule, submittal date, and submittal requirements. If the City cancels or revises the RFP, all consultants will be notified in writing.
- E. **Proposer's Questions.** The City will not give verbal answers to inquiries regarding information in this RFP nor verbal instructions prior to the submission deadline.
- F. **Additional Information.** The City reserves the right to request additional information and/or clarification from any or all consultants.
- G. **Conflict of Interest.** Consultant covenants that the company, its officers, employees and/or agents presently have no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services requested herein by the City. Consultant further covenants that, in the performance of any contract or agreement resulting from this RFP, no subcontractor or person having such an interest shall be employed. Consultant certifies that to the best of consultant's knowledge, no one who has or will have any financial interest under any contract or agreement resulting from this RFP is an officer or employee of the City.

- H. Release of Public Information. Consultants who respond to this RFP who wish to release information to the public regarding selection, contract award or data provided by the City must receive prior written approval from the City before disclosing such information to the public.
- I. Non-Assignment. If a contract is awarded, the selected consultant shall neither assign, nor delegate, in part or in whole, any duties without the prior written consent of the City which shall not be unreasonably withheld.
- J. Equal Employment Opportunity Compliance. The selected consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The consultant shall take affirmative action to ensure that all employees and applicants for employment shall be treated with equality in all aspects of employment processes including, but not limited to, hiring, transfer, promotion, training, compensation and termination, regardless of their race, creed, color, sex, national origin, age, or physical handicap.
- K. Right to Audit. The selected consultant shall maintain such financial records and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. The selected consultant shall retain these records for a period of three years after final payment, or until they are audited by the City, whichever event occurs first. These records shall be made available during the term of the contract or service agreement and the subsequent three-year period for examination, transcription, and audit by the City or its designees.

Selection Interviews

The City reserves the right to hold selection interviews with any consultant submitting a proposal under this RFP. These interviews will be held solely at the discretion of the City and after the proposal scoring process. The intent of the City is to hold interviews only with top-scoring consultants based on the proposal selection process. The interviews would be attended by representatives of the City, as well as the consultant in responsible charge of any project under this agreement. The selection interview will be used to gain further insight into the consultant capabilities for the purpose of making a selection recommendation.

Anticipated Schedule of Award

Staff anticipates providing recommendations to the City Council for consideration at a Regular City Council meeting being held in October 2017.

**PROFESSIONAL SERVICES AGREEMENT
FOR <<Description of Services>> SERVICES
[<<Consultant Name>>]**

THIS AGREEMENT is made and entered into this ____ day of _____ 20__, by and between the City of Los Banos, a municipal Corporation (herein referred to as “City”) and <<Consultant Name>> (herein referred to as “Consultant”).

RECITALS

A. WHEREAS, City proposes to have Consultant perform the services described herein below; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code, Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

D. WHEREAS, City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

C. WHEREAS, City and Consultant desire to contract for specific services described below and desire to set forth their rights, duties and liabilities in the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, in the subject matter of this Agreement.

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

1. **Term.** <<The term of this Agreement shall commence upon execution of this Agreement and City's issuance to Consultant a notice to proceed for all or a portion of the work and shall terminate upon City's acceptance and payment for all or such portion of the work as was authorized by such notice, unless terminated earlier as set forth herein.>>

[ALTERNATIVE]

<<The term of this Agreement shall commence on the above written date, and shall terminate on the ___ day of _____, 20__, unless terminated earlier as set forth herein.>>

2. **Scope of Services.** <<Consultant shall provide the professional services described in the City's Request for Proposal (“RFP”) attached hereto as **Exhibit __** and incorporated herein by reference and Consultant's Response to City's RFP (the “Proposal”). A

copy of said Proposal is attached hereto as **Exhibit** __ and incorporated herein by this reference.>>

[ALTERNATIVE]

<< Consultant shall diligently perform all the services described in the Scope of Services attached hereto as **Exhibit** __ and incorporated herein by reference. The City may elect to delete certain tasks of the Scope of Services at its sole discretion.>>

Notwithstanding services described above, the City may request and Consultant may agree to perform other services. The scope of such services and compensation shall be agreed to in writing, signed by both parties and shall become a part of this Agreement.

2.1. All professional services shall be performed by Consultant or under Consultant's supervision. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional Consultants in accordance with sound professional practices.

2.2 Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

3. **Time of Performance.** <<Time is of the essence in the performance of services under this Agreement and the services shall be performed to completion in a diligent and timely manner. The failure by Consultant to perform the services in a diligent and timely manner may result in termination of this Agreement by City.>>

[ALTERNATIVE]

<< Time is of the essence in the performance of services under this Agreement and Consultant shall perform the services in accordance with the Project Schedule attached hereto as **Exhibit** __ and incorporated herein by reference. The failure by Consultant to strictly adhere to the schedule may result in termination of this Agreement by City.>>

Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the services to be provided for the Project, each party hereby agrees to provide notice to the other party so that all delays can be addressed.

4. **Compensation.** <<City shall pay Consultant for the services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Pricing Proposal submitted by Consultant attached hereto as **Exhibit** __ and incorporated herein by reference. Consultant's compensation for all work performed in accordance with this Agreement, including all reimbursable items and sub Consultant fees, shall not exceed <<dollar amount>> unless authorized in writing by the City and approved by the City Council.>>

[ALTERNATIVE]

<< Consultant shall be paid in accordance with the fee schedule set forth in **Exhibit** __ attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed <<dollar amount.>>>>

[ALTERNATIVE]

<< City shall pay Consultant for the services on a time and expense not-to-exceed basis in accordance with the provisions of and the Project Budget this Section and the Staff Hour and Fee Estimate as well as the Consultant's Schedule of Charges as set forth in **Exhibit __** and incorporated herein by reference. Consultant's compensation for all work performed in accordance with this Agreement, including all reimbursable items and sub consultant fees, shall not exceed <<dollar amount>> without additional authorization from City.>>

4.1 Consultant shall submit monthly invoices to City describing the work performed the preceding month. Consultant's bills shall include the name of the person who performed the work, a brief description of the services performed and the specific Task in the Scope of Services to which it relates, the date the services were performed, the number of hours spent on all work billed on an hourly basis, and a description of any reimbursable expenditures. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City. City shall pay Consultant no later than thirty (30) days after receipt of the monthly invoice by the City.

4.2 City shall reimburse Consultant only for those costs or expenses specifically approved in this Agreement, or specifically approved in advance by City. Unless otherwise approved, such costs shall be limited and in accordance with Schedule of charges set forth in the Proposal attached hereto as **Exhibit __** and incorporated herein by reference.

4.3 Consultant shall not receive any compensation for Additional Work without the prior written authorization of City. As used herein, "Additional Work" means any work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Additional Work shall be billed in accordance with the Billing Rates as set forth in **Exhibit __** and on the terms set forth in this Article 4.

5. **Contract Administration.** The << identify city representative by title>> shall have the authority to act for City under this Agreement. The <<identify city representative by title>> or his/her authorized representative shall represent City in all matters pertaining to the services to be rendered pursuant to this Agreement. Consultant shall designate a representative for purposes of this Agreement who shall have the authority to act for Consultant under this Agreement.

6. **Project Managers.** City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement. Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated <<name of project manager>>, to be its Project Manager. Consultant shall not remove or reassign the Project Manager without the prior written consent of City. City's approval shall not be unreasonably withheld.

7. **Indemnification.** To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents and employees (collectively, the “Indemnified Parties) from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever, which may arise from or in any manner relate (directly or indirectly) to any work performed or services provided under this Agreement (including the negligent and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, Consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney’s fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant’s performance of this agreement, the Consultant shall provide a defense to the City indemnitees, or at the City’s option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels’ fees, incurred in defense of such claims.

8. **Insurance.** Without limiting Consultant’s indemnification of City, and prior to commencement of work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, a policy or policies of liability insurance of the type and amounts described below and in a form satisfactory to City.

A. **Certificates of Insurance.** Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Insurance certificates must be approved by the City Attorney prior to commencement of performance or issuance of any permit. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement.

B. **Signature.** A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies.

C. **Acceptable Insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders’ Rating of A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best’s Key Rating Guide, unless otherwise approved by the City Attorney.

D. Coverage Requirements.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than One million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Consultant's general liability policies shall be primary and non-contributory, and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction contracts, an endorsement providing completed operations to the additional insured, ISO form CG 20 37, is also required.

iii. Automobile Liability Coverage. Consultant shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than one million dollars (\$1,000,000) per accident. If Consultant owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy.

iv. Professional Errors and Omissions Insurance. Consultant shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement. The cost of such insurance shall be included in Consultant's bid.

E. Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following specific language:

i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant.

ii. This policy shall be considered primary insurance as respects to City, its elected or appointed officers, officials, employees, agents and volunteers as respects to all claims, losses, or liability arising directly or indirectly from the Consultant's operations or services provided to City. Any insurance maintained by City, including any self-insured retention City may have,

shall be considered excess insurance only and not contributory with the insurance provided hereunder.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against City, its elected or appointed officers, officials, employees, agents and volunteers.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its elected or appointed officers, officials, employees, agents or volunteers.

vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, by either party except after thirty (30) calendar days (10 calendar days written notice of non-payment of premium) written notice has been received by City.

8.1 Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

9. **Nondiscrimination.** In the performing of this Agreement, Consultant shall not discriminate against any subcontractor, employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation race, religion, color, national origin, handicap, ancestry, sex or age.

10. **Independent Contractor.** It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the services.

10.1 The Consultant shall at all times remain an independent Contractor with respect to the services to be performed under this Agreement and shall be responsible for the payment of Federal and State Employer Withholding Taxes, Unemployment Insurance Taxes, FICA Taxes, Retirement, Life and/or Medical Insurance, and Worker's Compensation Insurance for the employees of the Consultant or any other person performing services under this Agreement.

Consultant and its employees are not entitled to the rights or benefits afforded to City's employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave, or any other employment benefit. Consultant agrees to indemnify and hold City harmless from any claims, costs, losses, fees, penalties, interest, or damages suffered by City as a result of any claim by any person or entity contrary to the provisions of this Section 10.

11. **Ownership of Documents.** All documents, information and materials of any and every type prepared by the Consultant pursuant to this Agreement shall be the property of the City. Such documents shall include but not be limited to all findings, reports, documents, information and data including, but not limited to, electronic media, computer tapes or discs, files, and tapes furnished or prepared or accumulated by the Consultant in performing work under this Agreement, whether completed or in process.

12. **Confidentiality.** All City information disclosed to Consultant during the course of performance of services under this Agreement shall be treated as confidential and shall not be disclosed to any other persons or parties except as authorized by City, excepting that information which is public record and subject to disclosure pursuant to the Public Records Act, or otherwise required by law. All documents, including drafts, notes and communications that result from the services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information, excepting that information which is public record and subject to disclosure pursuant to the Public Records Act, or otherwise required by law..

13. **Access to Records.** Consultant shall maintain all books, records, documents, accounting ledgers, and similar materials relating to work performed for City under this Agreement on file for at least three (3) years following the date of final payment to Consultant by City. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit and copying at reasonable times, during Consultant's usual and customary business hours. Consultant shall provide proper facilities to City's representative(s) for access and inspection. Consultant shall be entitled to reasonable compensation for time and expenses relate to such access and inspection activities, which shall be considered to be an additional service to the City, subject to the provisions of Section 4 hereinabove.

14. **Conflict of Interest.** The Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

If subject to the Act, Consultant shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

Consultant represents that neither Consultant, nor any of its employees, agents or subcontractors, have a conflict of interest with respect to the work to be performed under this

Agreement, nor shall such individuals, during this term of this Agreement, acquire any interest, which would conflict in any manner with the performances of services hereunder.

15. **Assignment.** This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

16. **Compliance with Laws, Rules, Regulations.** Consultant shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

17. **Integration; Amendment.** This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in it. This Agreement may not be modified or altered except by amendment in writing sign by both parties.

18. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

19. **Waiver/Validity.** Consultant agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver of any other condition of performance under this Agreement. The acceptance by the City of the performance of any work or services by Contractor shall not be deemed to be a waiver of any term or condition of this Agreement.

20. **Jurisdiction.** City and Consultant agree that the law governing this Agreement shall be that of the State of California. Any suit brought by either party against the other arising out of the performance of this Agreement shall be filed and maintained in the County of Merced.

21. **Notice.** Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

To City:
City of Los Banos

[TEMPLATE NON DESIGN/ENGINEERING PROFESSIONAL SERVICES AGREEMENT]

520 J Street
Los Banos, California 93635
Attn: <<name>>

To Consultant:
<<consultant>>
<<address>>
<<city, state, zip>>
Attn: <<name>>

Nothing hereinabove shall prevent either City or Consultant from personally delivering any such notices to the other.

22. **Termination.** City may, in its sole discretion, terminate this Agreement at any time and for any reason whatsoever by giving written notice of such termination to Consultant. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. In the event of such termination, Consultant shall be entitled to compensation for all services rendered and work performed for City to the date of such termination.

23. **Order of Precedence.** In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the RFP or the Response, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both the Response and the RFP and the Response shall govern over the RFP.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

Date: _____, 20__

<<consultant>>

by: <<name and title>>

**CITY OF LOS BANOS, a California
municipal corporation**

[TEMPLATE NON DESIGN/ENGINEERING PROFESSIONAL SERVICES AGREEMENT]

Date: _____, 20__

by: <<name and title>>

**ATTEST:
CITY CLERK**

Lucille L. Mallonee, City Clerk

APPROVED AS TO FORM:

William A. Vaughn
City Attorney

TEMPLATE