



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

**LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT**

**INVITATION TO BID**

City of Los Banos  
520 J Street  
Los Banos, CA 93635  
(209) 827-7000

Contact Person:

Mason Hurley – Assistant Fire Chief  
(209) 827-7025

Release Date

October 9, 2017

**Mandatory Site Visit**

October 23, 2017

@ 10:00 a.m.

Fire Station Number 1  
333 7<sup>th</sup> Street, Los Banos, CA 93635

**DEADLINE FOR SUBMISSIONS**

**November 6, 2017 @ 2:00pm**

At the Office of the City Clerk  
520 J Street, Los Banos, CA 93635

**NOTICE AND INVITATION TO BIDDERS**

**THE CITY OF LOS BANOS  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT**

**PUBLIC NOTICE IS HEREBY GIVEN** that the City of Los Banos invites sealed bids for the above stated project and will receive such bids in the offices of the City Clerk at 520 J Street., Los Banos, California 93635 up to the hour of **2:00 P.M. November 6, 2017**, at which time they will be publicly opened and read aloud.

A bid summary will then be prepared and posted.

A **MANDATORY** Pre-Bid meeting will be conducted at **10:00 A.M. October 23, 2017** at Fire Station Number 1, 333 7<sup>th</sup> Street, Los Banos, California 93635 to be followed by a field walkthrough at the project site.

**PROJECT DESCRIPTION:** The work consists, in general of: (1) the design and installation of approximately 23,000 feet of 6” thick concrete parking/training area with 7 light pole bases; (2) the design and installation of a 15’ by 20’ 10” thick concrete slab to support existing Convault fuel tank; (3) the design and installation of metal canopy to cover fuel tank and fueling area; and (4) the design and build of American with Disability Act (ADA) compliant Parking and Access Walkways to Two (2) Fire Stations. Please refer to the bid documents.

A full set of bid documents are available for examination at Fire Station #1, 333 7<sup>th</sup> Street, Los Banos, California 93635. Copies are available upon payment of a \$35.00 non-refundable fee (\$85.00 if mailed); or in digital format at the City’s website at [www.losbanos.org](http://www.losbanos.org).

Bids must be prepared on the approved proposal forms in conformance with the Instructions to Bidders and submitted in a sealed envelope.

The Bid is to be delivered in a sealed envelope no later than **2:00 P.M. November 6, 2017**, addressed as follows:

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

Questions should be directed to Mason Hurley, Assistant Fire Chief in writing, via email: [mason.hurley@losbanos.org](mailto:mason.hurley@losbanos.org) by **5:00 p.m. on October 30, 2017**. Any response to a request for clarification, questions and answers will be posted to the City’s website at [www.losbanos.org](http://www.losbanos.org) no later than **5:00 p.m. on November 1, 2017** and if necessary, become a part of the Bid as an Addendum.

## INSTRUCTIONS TO BIDDERS

### THE CITY OF LOS BANOS LOS BANOS FIRE DEPARTMENT CONCRETE AND FUEL TANK CANOPY PROJECT

#### 1. Explanations to Bidders

(a) Any explanation desired by a bidder regarding the meaning or interpretation of the Invitation for Bids, including drawings, specifications, prior approvals, etc., must be requested in writing no later than **5:00 p.m. on October 30, 2017**. Any interpretation made will be in the form of an Addendum to the Invitation for Bids and will be furnished to all prospective bidders. Receipt of Addenda by the bidder must be acknowledged in the space provided on the Bid Form or by letter or transmittal received before the time set for opening of sealed bids. **Verbal explanations or instructions given before the award of the contract will not be binding.**

(b) Questions shall be directed to Mason Hurley, Assistant Fire Chief in writing, via email: by **5:00 p.m. on October 30, 2017**. Any response to a request for clarification, questions and answers will be posted to the City's website at [www.losbanos.org](http://www.losbanos.org) no later than **5:00 p.m. on November 1, 2017** and if necessary, become a part of the Bid as an Addendum.

[mason.hurley@losbanos.org](mailto:mason.hurley@losbanos.org).

Mason Hurley  
Assistant Fire Chief  
520 J Street  
Los Banos, California 93635

#### 2. Proposed timeline of events associated with the awarding of Bid:

Release of Advertisement for Bid		October 9, 2017
Pre-Bid Meeting – On Site - Mandatory	10:00 a.m.	October 23, 2017
Deadline to Submit Questions/Clarifications	5:00 p.m.	October 30, 2017
Addendum/Questions/Clarifications posted	5:00 p.m.	November 1, 2017
Bid Opening	2:00 p.m.	November 6, 2017
City Council Awards Bid		Within 90 days of opening
Issuance of a Notice to Proceed	On or before:	Appx 14 days from Award

#### 3. Conditions Affecting the Work

(a) Before submitting a Bid, each bidder must (1) attend the Mandatory Pre-Bid meeting; (2) examine the bid and contract documents thoroughly; (3) visit the site to be

familiar with local conditions that may in any manner affect cost, progress or performance of the work; (4) be familiar with federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the work; and (5) study and carefully correlate bidder's observations with the Bid and contract documents. Failure to do so will not relieve bidders from responsibility for estimating properly the difficulty or cost of successfully performing the work. The City will assume no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of the contract, unless included in the Bid or contract documents.

(b) The submission of a Bid will constitute an incontrovertible representation by the Bidder that it has complied with every requirement of the request for bids and that the Bid and contract documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the work.

(c) Should a bidder find discrepancies in, or omissions from, the specifications, or should he/she be in doubt to their meaning, he/she shall at once notify the contact person as indicated on the "Cover Sheet". Notification is to be in written form and must be submitted at least seven (7) days prior to the Bid Submittal Deadline. Any interpretations by the City will be made in written form. Any change in requirements will be done in the form of a written addendum. The receipt of any resulting amendment must be acknowledged in accordance with the directions on the amendment. **Oral explanations or instructions given before the award of the contract will not be binding upon the City.**

All other questions should be directed in writing to the contact person shown on the "Cover Sheet" of this Invitation for Bid. **Deadline for submission of questions: October 30, 2017.**

#### 4. Bidder's Qualifications

(a) Contractor must have a current and valid California State Contractor's license sufficient to perform the work.

(b) Contractor must have a current and valid City of Los Banos business license prior to start of the project.

(c) No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

(d) No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial

Relations. Any bid submitted by a contractor or subcontractor not properly licensed and not registered with the Department of Industrial Relations shall be considered nonresponsive and will be rejected.

## 5. Bid Guaranty

(a) The bid guaranty shall be in the form of a bid bond, certified check, or cashier's check, payable to the order of the City of Los Banos, in an amount not less than ten percent (10%) of the Bid. Any bid bond shall be executed by a corporate surety acceptable to the City and authorized to issue such surety bond in the State of California. Bid guaranties, other than bid bonds, will be returned (1) to unsuccessful Bidders as soon as practicable after the opening of bids, and (2) to the successful Bidder upon execution and delivery of all contract documents. However, the City reserves the right to retain the bid guaranty of the second lowest qualified Bidder until the lowest qualified Bidder executes and delivers all required contract documents to the City or until ninety (90) calendar days after bid opening, whichever occurs first.

(b) Failure to furnish a bid guaranty in the proper form and amount, by the time set for the receipt of bids, shall be cause for rejection of the Bid.

(c) If the successful Bidder, upon acceptance of its Bid by the City fails to execute and deliver all contract documents within fourteen (14) calendar days after receipt of City's Notice of Award, the successful Bidder's bid guaranty shall be retained by the City as liquidated damages. Such failure on the Bidder's part to execute and deliver those documents will cause substantial damage to the City, including delay in its construction program, which damage is not easily reduced to monetary terms and, therefore, the full amount of the bid guaranty is properly considered to be liquidated damages.

## 6. Preparation of Bids

(a) Bids shall be submitted on the forms furnished in the bid documents, or copies thereof, and must be manually signed (only typewritten or ink shall be accepted with no erasures or corrections unless properly authenticated by signature) in accordance with the instructions contained herein. All blank spaces shall be filled in. If erasures or other changes appear on the forms, each erasure or change must be initialed by the person signing the Bid. **TELEPHONIC, E MAIL OR FAX BIDS WILL NOT BE CONSIDERED.**

(b) Substitutions for specified materials will not be considered without prior approval of the City.

(c) Modifications of bids already submitted will be considered if received at the office designated in the invitation for bids by the time set for receipt of bids. Telephonic, e mail, or fax modifications will not be considered.

(d) Discrepancies between words and figures shall be resolved in favor of words.

(e) Discrepancies between the indicated sum of any column of figures and the correct sum thereof shall be resolved in favor of the correct sum.

## 7. Submission of Bids

(a) Submission of a signed Bid will be interpreted to mean that the Bidder has thereby agreed to all conditions, instructions, descriptions and specifications contained herein. All bidders shall carefully examine and review the Scope of Work, Special Conditions, and General Terms and Conditions and must fully inform themselves of the conditions and requirement of the items/services to be furnished. Failure to do so will be at bidder's own risk and cannot secure relief on the plea of error, or dispute, or question such specifications and the directions explaining or interpreting them.

(b) Bids must be sealed, marked, and addressed as indicated below. Failure to do so may result in a premature opening of, or a failure to open, such bid, thereby eliminating that Bidder from consideration. If the Bid is mailed, the sealed envelope containing the Bid should be enclosed in another envelope addressed as indicated below.

(c) All bids shall be received no later than **2:00 p.m., local time on November 6, 2017**, delivered or mailed, addressed to:

**City Clerk  
City of Los Banos  
520 J Street  
Los Banos, California 93635**

(d) The envelope containing the original copy of the Bid must be sealed, marked, and labeled as follows:

(1) Name and address of Bidder.

(2) Marked in the lower left-hand corner of the envelope:

**SEALED BID FOR:  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT**

(e) The original Bid shall consist of the documents listed below. The original document and three copies (made by the Bidder) shall be returned with the Bid.

1. Bid Form; SIGNED BY BIDDER
2. Local Business Preference;
3. Non-collusion Affidavit; SIGNED BY BIDDER
4. Debarment and Suspension Certification; SIGNED BY BIDDER
5. Contractor's Certificate Regarding Workers' Compensation; SIGNED BY BIDDER

6. List of Proposed Subcontractors;
7. Experience and Qualifications - Contractor;
8. Experience and Qualifications – Subcontractors; and
9. Bid Bond, or certified check, or cashier's check.

(f) This Invitation to Bid does not commit the City of Los Banos to award a contract or pay any costs associated with the preparation of a Bid proposal.

(g) The City of Los Banos reserves the right to reject any or all bids, to award each item separately, delete portions of the work, and/or waive any informality on any Bid. No Bid may be withdrawn for ninety (90) days after the time set for the opening thereof. Upon award, the bid amount will be in effect for the term of the contract.

**NO FAXED or E MAILED BIDS.**

8. Late Bid, Modification or Withdrawal of Bid by Bidder

(a) Any Bid received by the City after the exact time specified for receipt will be returned unopened. **BIDS RECEIVED AFTER THIS DEADLINE WILL BE REJECTED REGARDLESS OF POSTMARK DATE AND WILL BE RETURNED TO THE BIDDER UNOPENED.**

(b) Any modification or withdrawal of bids must be made in writing and is subject to the same condition as in (a) above. A Bid may be withdrawn by written or transmittal request received from a Bidder prior to the time set for opening bids. A Bid may also be withdrawn in person by a Bidder or the Bidder's authorized representative, provided the representative's identity is made known and the representative signs a receipt for the Bid, but only if the withdrawal is made prior to the time set for opening bids.

9. City Modifications Prior to Date Set for Opening Bids

The City may revise or amend the bid or contract documents, including the specifications and drawings, prior to the date set for opening bids. Such revisions and addenda, if any, will be announced by addenda to the Invitation for Bids. If the revisions and addenda are of a nature which requires material changes in the bid, the date set for opening bids may be postponed by such number of days as in the opinion of the City will enable Bidders to revise their bids. In such a case, the addendum will include an announcement of the new date and time for opening bids.

10. Public Opening of Bids

Bids will be publicly opened at the time set for opening in the Notice and Invitation for Bid. The content of opened bids will be made public for the information of Bidders and others interested, who may be present either in person or by representative.

11. Award of Contract

(a) Award of contract will be made to the low responsible Bidder whose bid, conforming to the Invitation for Bids, is most advantageous to the City, price and other factors considered. The right is reserved, as the interest of the City may require, to reject any or all bids, or to waive any informality or minor irregularity in the bids.

**THE CITY RESERVES THE RIGHT TO REJECT ANY OR ALL BIDS OR ANY PART THEREOF, TO WAIVE ANY INFORMALITIES IN THE BID, AND ALSO TO WITHHOLD AWARD FOR A PERIOD OF NINETY (90) CALENDAR DAYS FROM DATE OF BID OPENING.**

(b) The City Council may, when in its interest, reject any or all bids.

(c) The City may accept any item or combination of items of a bid, unless precluded by the Invitation for Bids or the Bidder includes in its bid a restrictive limitation.

(d) The City may make such investigation as it deems necessary to determine the ability of the Bidder to provide the services requested herein, and the Bidder shall furnish to the City all information and data for this purpose as the City may request. The City reserves the right to reject any bid should the evidence submitted by, or investigation of, the Bidder fail to satisfy the City that such Bidder is properly qualified to carry out the obligations of the Bid and to complete the requirements contemplated therein.

(e) This bid, or any contract that may result from the award of this bid, shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the state of California. Any action brought to enforce the terms, or provision of this bid or any contract that may result from the award of this bid, shall have venue in the County of Merced, State of California.

(f) The Bidder to whom award is made shall execute a written contract with the City in the form of agreement provided, shall secure all insurance and shall furnish all certificates and bonds required by the specifications within fourteen (14) calendar days after receipt of the contract from the City. Failure or refusal to enter into a contract as herein provided or to conform to any of the stipulated requirements in connection therewith shall be just cause for annulment of the award and forfeiture of the bid guarantee. If the successful Bidder refuses or fails to execute the contract, the City may award the contract to the second lowest responsible Bidder. If the second lowest responsible Bidder refuses or fails to execute the contract, the City may award the contract to the third lowest responsible Bidder. On the failure or refusal of such second or third lowest Bidder to execute the contract, each such Bidder's bid securities shall be likewise forfeited to the City.



## **SPECIFICATIONS AND SCOPE OF WORK**

### **THE CITY OF LOS BANOS LOS BANOS FIRE DEPARTMENT CONCRETE AND FUEL TANK CANOPY PROJECT**

The following specifications set forth the specific requirements for (1) the design and installation of approximately 23,000 feet of 6" thick concrete parking/training area with 7 light pole bases; (2) the design and installation of a 15' by 20' 10" thick concrete slab to support existing Convault fuel tank; (3) the design and installation of a metal canopy to cover fuel tank and fueling area; (4) the design and construction of American with Disability Act (ADA) compliant Parking and Access Walkways to Two (2) Fire Stations.

#### **1. GENERAL SCOPE OF WORK:**

The Contractor shall provide all labor, materials, and equipment for the purchase and installation of

- 1) The installation of approximately 23,000 feet of 6" concrete parking/training area.
- 2) The installation of seven (7) concrete light pole bases – Light poles and fixtures will be provided by the City of Los Banos
- 3) The design and installation of a 15' by 20' 10" concrete fuel tank slab adjacent to new parking area.
- 4) Design and installation of a metal canopy large enough to cover the Convault fuel tank and fueling area.
- 5) The design and construction of ADA parking areas and wheel chair access to the front doors of Fire Station #1 & #2.

All necessary site work shall be the responsibility of the Contractor. Coordinate final inspections with the City of Los Banos Building and Fire Departments.

#### **2. SPECIFICATIONS – LABOR AND MATERIALS:**

##### **A. Parking and Training Area – Fire Station #1**

- Provide updated Grading and Drainage Plans for parking/training area. Fire Department has plans that were created in 2009.
- Provide labor and materials to install approximately 23,000 feet of 6" concrete that will be used as a parking and training area for fire apparatus. Minimum of 1/2" rebar tied 12" on center and 7 sack concrete. Concrete is expected to endure heavy fire apparatus traffic without failure. 6" of base compacted to City standards.
- Provide labor and materials to install underground drainage for storm water runoff and connect to underground storm drain system in "C" Street. Connection must be completed to City of Los Banos Public Works standards.

- Provide labor and materials to install seven (7) 24" in diameter, 5' below ground, 3' above ground concrete light pole bases. Light poles, fixtures and electrical conduit have already been purchased and need to be installed.

#### **B. Fueling Slab and Canopy – Fire Station #1**

- Provide labor and materials to install a 15' by 20' 10" thick concrete slab to support existing 4000 gallon Convault fuel tank.
- Provide labor and materials to install necessary underground electrical from existing shop to new fuel tank concrete slab. Two (2) ¾" conduit.
- Provide labor and materials to install 4" concrete filled bollards around fuel tank concrete slab.
- Provide labor and materials to install necessary footings to support a metal canopy over the fuel tank and fueling area. Approximately 30' X 30' metal canopy.
- Provide approved plans, labor and materials to install metal canopy over fuel tank and fueling area. Canopy must have Class 1 Division 1 wiring and lighting.
- Network with Donlee Pump to relocate existing Convault fuel tank to new concrete fuel tank slab.

#### **C. ADA Compliant Parking and Access Walkway Fire Station #1**

- Provide approved plans, labor and materials to install van accessible ADA compliant parking space at Fire Station #1. Approximately 20' X 22'.
- Provide labor and materials to install new approach and sidewalk to new ADA compliant parking area.
- Install a 4' ADA compliant concrete pathway leading from the new ADA compliant parking area to the front door of Fire Station #1.
- Provide labor and materials to install all necessary signage and stripes to meet ADA requirements.

#### **D. ADA Compliant Parking and Access Walkway Fire Station #2**

- Install a 4' ADA compliant concrete pathway leading from single stall ADA compliant parking area to the front door of Fire Station #2.
- Provide labor and materials to install all necessary signage and stripes to meet ADA requirements.

**SPECIAL TERMS AND CONDITIONS**

**THE CITY OF LOS BANOS  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT**

1.0 **PROJECT RESPONSIBILITIES:**

1.1 **City's Project Manager Responsibilities:**

1.1.1 City's point of contact is Mason Hurley, Assistant Fire Chief @ 209-827-7025.

1.1.2 City will provide access to all necessary areas for this project.

1.2 **Contractor's Project Responsibilities:**

1.2.1 Properly disposing of any type of debris, trash, and refuse at the job location at the end of each work day as per Federal/State/Local requirements.

1.2.2 Provide all necessary equipment and specialized tools to complete the job.

1.2.3 Mobilization and any Setup costs shall be included in the total cost(s) of the project.

1.2.4 Contractor shall have an active and current California Contractors License for the type of work being performed.

1.2.5 Contractor shall be responsible for all travel related expenses; City shall not be responsible or reimburse any expenses.

1.2.6 Contractor shall obtain all necessary permits from all of the regulatory agencies for this project and submit copies at the end of the project prior to final payment.

1.2.7 Prevailing wage project, Contractor to submit certified payroll(s) with invoice(s).

2.0 **ADDITIONAL INFORMATION:**

2.1 All costs shall include any materials, equipment labor, and any other incidentals for a complete job.

2.2 All work to conform to State/Local/Federal codes and laws.

2.3 Work shall be performed Monday through Friday between 8:00am and 4:00pm. At the discretion of the City due to operations, hours may vary Monday thru Friday and some weekend work may be involved.

### 3.0 CARE OF THE SITE AND ADJACENT PREMISES:

3.1 The Contractor shall be responsible for the care and preservation of the site on which the work/services are to be performed, and of any adjacent premises and coterminous property as applicable to the agreed upon work/services. Any parts of such premises injured, damaged or disturbed because of the Contractor's work, shall be repaired, and/or replaced, at their sole expense and to the City's complete satisfaction. This section also includes any overhead power and telephone lines.

### 5.0 SCOPE OF WORK:

5.1 The work consists, in general of:

- A. The installation of approximately 23,000 feet of 6" concrete parking/training area.
- B. The installation of seven (7) concrete light pole bases – Light poles and fixtures will be provided by the City of Los Banos
- C. The design and installation of a 15' by 20' 10" concrete fuel tank slab adjacent to new parking area.
- D. Design and build of a metal canopy large enough to cover the Convault fuel tank and fueling area.
- E. The design and build of ADA parking areas and wheel chair access to the front doors of Fire Station #1 & #2.

### 6.0 PRE-CONSTRUCTION CONFERENCE:

6.1 Contractor and the City's representative shall meet at a pre-construction conference to be scheduled after notification of award and prior to the start of the Project. The purpose of the conference is to review job schedules, discuss various aspects of work and clarify procedures.

### 7.0 VERIFICATION OF CONDITIONS:

7.1 The Contractor shall verify all existing conditions and measurements before commencing work. All discrepancies between scope of work specifications and actual field conditions shall be immediately reported to the City's Representative who shall determine if modifications in work are necessary. The Contractor shall not modify the work without prior authorization from the City's representative.

### 8.0 POWER:

8.1 The Contractor shall provide if necessary any temporary service and remove same upon completion of work at their expense.

## 9.0 PROTECTION:

9.1 Contractor shall be fully responsible for accidents to the public and/or damage to public and private property on the site or off site of the work/services. Contractor shall provide and maintain guards, fences, barriers, signs, red lights and other safety devices adjacent to and on the site as may be necessary to prevent accidents to the public and damage to property. At the end of the project, all signs, lights, barriers and other safety devices shall be removed from the project and shall be left clean and orderly.

## 10.0 FINAL CLEAN-UP:

10.1 At the conclusion of each day of construction and prior to the final inspection, the Contractor shall:

10.1.1 Remove all debris as described, waste material, tools, equipment, etc., from project site as applicable.

10.1.2 Restore damaged or marred surfaces to original as approved by City's representative.

10.1.3 Leave all surfaces clean and completed as indicated in the specifications.

## 11.0 PROJECT CLOSE-OUT:

11.1 At the conclusion of all construction the Contractor shall request a final inspection of all work from the City's representative. If any deficiencies are noted, they will be listed by the City's representative as a written memo to the Contractor. Contractor shall complete all listed deficiencies in a timely manner until the work is an acceptable condition.

## 12.0 CONTRACTOR'S RESPONSIBILITY:

12.1 Contractor shall be completely responsible for care and condition of project improvements in their entirety until completion and acceptance by the City. Contractor shall provide such watchmen, guards and security devices as they deem necessary if applicable.

## 13.0 SUBSTITUTIONS:

13.1 Any substitutions of materials, equipment, construction methods, etc. from those noted in the specifications, must be approved in writing by the City's representative prior to their use or application or installation in the field.

#### 14.0 SAFETY:

14.1 The Contractor is responsible for posting signs, installing temporary barriers, fences and taking other necessary measures to protect public from any injury or damage as a result of Contractor's operations. This also includes obtaining any necessary encroachment permits from the City of Los Banos.

#### 15.0 JOB CONDITIONS:

15.1. Use all means necessary to prevent spread of any type of dust or debris during performance of the work of this Section. (If Applicable)

15.2 On-site burning will not be permitted. (If Applicable)

15.3 Use all means necessary to protect existing objects designated to remain and, in the event of damage, immediately make all repairs and replacements necessary to the approval of the City's Representative and at no additional cost to the City.

15.4 Explosives shall not be used on this project.

15.5 All other materials not specifically described but required for the proper completion of the work of this specification shall be selected by the Contractor subject to the approval of the City's Representative.

#### 16.0 LICENSES, PERMITS AND FEES:

16.1 The acquisition of and payment for all permits, licenses and fees related to the work of this project are the sole responsibility of the Contractor. It is the sole responsibility of the Contractor to contact agencies or utilities having jurisdiction over the project to ascertain the extent of permits and fees required and the cost thereof, and to include all such costs in its bid.

16.2 Contractor must have a current and valid City of Los Banos business license prior to start of the project.

## **GENERAL TERMS AND CONDITIONS**

### **THE CITY OF LOS BANOS LOS BANOS FIRE DEPARTMENT CONCRETE AND FUEL TANK CANOPY PROJECT**

#### 1.0 PARAGRAPH HEADINGS AND DEFINITIONS

1.1 Paragraph headings in this Contract are for convenience only, and are not to be construed to define, limit, expand, interpret, or amplify the provisions of this Contract. When initially capitalized in this Contract or amendments hereto, the following words or phrases shall have the meanings specified:

1.2.1 Adjusted Contract Price - The initial Contract Price adjusted for change orders, Force Majeure, termination for convenience or any other reason permitted by this Contract.

1.2.2 Best Efforts - Those efforts which a competent, experienced, and prudent contractor would use to perform and complete the requirements of this Contract in a timely manner, exercising the degree of care, competence, and prudence customarily imposed on a contractor performing similar work in the State of California.

1.2.3 Contract - This agreement, including all referenced documents, between the City of Los Banos and Contractor for the performance of the Work, and subsequent written modifications executed by the City and Contractor.

1.2.4 Contractor - The legal entity which executes this Contract with the City to perform the Work.

1.2.5 Contract Manager- The title of the person designated by the City to be its representative with authority to act for and bind the City.

1.2.6 Documentation - Drawings, plans, models, studies, surveys, specifications, reports, design analysis, data, policies, information, work product, proposals, and any other similar documents or material prepared or used in connection with the Work.

1.2.7 Final Completion Date - The date when the Work is completed in accordance with the Contract, including all Punch List Items.

1.2.8 Force Majeure - An act of God, or event beyond the control of a party, including an act or omission of government, act or omission of civil or military authority, strike or lockout, act of a public enemy, war, blockade, insurrection, riot, epidemic, landslide, earthquake, fire, storm, lightning, flood, washout, or civil disturbance which could not have been avoided through the exercise of reasonable care and prudence.

1.2.9 Price or Contract Price - The total sum to be paid by the City to Contractor for performance of the Work.

1.2.10 Project - Contractor shall furnish all labor, material, equipment and services and perform and complete all work required as per the project specifications.

1.2.11 Project Engineer or Coordinator - The title of the person designated by the City to be its representative with authority to act for the City regarding engineering and construction matters.

1.2.12 Punch List Items - Items of work comprising a part of the Work as set out on a Punch List prepared by the City, with said items to be completed by Contractor consistent with the terms and conditions and scope of the Contract.

1.2.13 Schedule - The time frame for the construction project as established by the City and/or the Contract Documents.

1.2.14 Site - The area where Contractor shall perform the Work.

1.2.15 Work or Scope of Work - All obligations undertaken by Contractor pursuant to the Contract as described in the Bid Documents.

## 2.0 SCOPE OF WORK

2.1 Contractor shall perform and complete the Work in a safe manner, and shall supply all personnel, tools, equipment, and material to complete the Work. The scope of work is further established in the following documents: Invitation to Bid; Bid Documents; and Special Terms and Conditions; General Terms and Conditions; and Agreement.

2.2 The acquisition of and payment for all permits, licenses and fees related to the work of this project are the sole responsibility of the Contractor. It is the sole responsibility of the Contractor to contact agencies or utilities having jurisdiction over the project to ascertain the extent of permits and fees required and the cost thereof, and to include all such costs in the Contract Price.

## 3.0 SCHEDULE

Contractor shall perform and complete the Work within one hundred fifty (150) calendar days after the date in the notice to proceed. After execution of this Contract, Contractor shall develop and submit for City's approval, a detailed construction schedule designed to meet City's project schedule. Any abnormal expenses such as premium time or overtime incurred by Contractor to meet the detailed schedule, unless specifically directed or approved by the City in writing, shall be borne by Contractor.



#### 4.0 COMPENSATION AND PAYMENT

The City shall compensate Contractor through progress payments according to percentage of completion and/or milestones, as agreed hereafter by the parties. The City shall not be obligated to make final payment(s) until Contractor has submitted to the City written evidence that the Work has been fully completed in accordance with this Contract, and satisfactory evidence that all of Contractor's indebtedness in connection with the Work has been paid or written releases provided of all potential liens arising out of this Contract. Upon receipt of such evidence, the City will record a Notice of Completion in Merced County. City shall retain 5% of the Contract Price. Contractor may substitute securities or provide an escrow agreement pursuant to California Public Contracts Code section 22300.

#### 5.0 INSURANCE AND BONDS

5.1 Insurance - Contractor agrees to provide insurance in accordance with the requirements set forth herein. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the requirements, Contractor agrees to modify the existing coverage to do so. The following coverages will be provided by Contractor and maintained on behalf of the City and in accordance with the following requirements:

5.1.1 Commercial General Liability Insurance - Contractor 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 two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Contractor'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.

5.1.2 Workers' Compensation/Employers' Liability - Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Contractor 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.

5.1.3 Automobile Liability Insurance - Contractor 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 two million dollars (\$2,000,000) per accident. If contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy

5.1.4 Endorsements - Each policy shall either include or 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 Contractor.

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 Contractor'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, or canceled, 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.

5.2 Additional Insurance Provisions - Contractor and the City further agree as follows:

5.2.1 This Section supersedes all other sections and provisions of this Contract to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

5.2.2 Nothing contained in this Section is to be construed as affecting or altering the legal status of the parties to this Contract.

5.2.3 The insurance requirements set forth in this Section are intended to be separate and distinct from any other provision in this Contract and shall be interpreted as such.

5.2.4 All insurance coverage and limits provided pursuant to this Contract shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Contract or any other agreement relating to the City or its operations limits the application of such insurance coverage.

5.2.5 Requirements of specific minimum coverage features or limits contained in this Section are not intended as a constraint on coverage, or other requirements, or a waiver of any coverage. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

5.2.6 For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps in furtherance of performance of this Contract.

5.2.7 Unless otherwise approved by the City, Contractor's insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of "A-:VII." Self-insurance will not comply with these insurance specifications.

5.2.8 In the event any policy of insurance required under this Contract does not comply with these requirements or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Contractor.

5.2.9 Contractor agrees to provide evidence of the insurance required herein, satisfactory to the City, consisting of certificate(s) of insurance evidencing all of the coverage required and additional insured endorsement to Contractor's liability policies. Certificate(s) are to reflect that the insurer will provide thirty (30) days notice of any cancellation of coverage. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. Contractor agrees to provide complete certified copies of policies to the City upon request.

5.2.10 Contractor shall provide the City with proof that policies of insurance required herein expiring during the term of this Contract have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished prior to the expiration of the coverage.

5.2.11 Any failure on the part of the City or any other additional insured under these requirements to obtain proof of insurance required under this Contract in no way waives any right or remedy of the City or any additional insured, in this or any other regard.

5.2.12 Contractor shall require all subcontractors or other parties hired for this project to provide general liability insurance with coverage identical to that required for Contractor naming the City, its employees and agents as additional insured where applicable. Contractor shall obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required herein. Contractor shall require that no contract used by any subcontractor, or other contracts Contractor enters into on behalf of the City, will reserve the right to charge back to the City the cost of

insurance required by this Contract. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor contracts with on behalf of the City will be submitted to City for review. Failure of the City to request copies of such agreements will not impose any liability on the City, or its employees.

5.2.13 If Contractor is a limited liability company, general liability coverage must be amended so that the limited liability company and its managers, affiliates, employees, agents, and other persons necessary or incidental to its operation are insured.

5.2.14 Contractor agrees to provide immediate notice to the City of any claim or loss against Contractor that includes the City as a defendant. The City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any claim likely to involve the City.

5.2.15 In the event of any loss that is not insured due to the failure of Contractor to comply with these requirements, Contractor agrees to be personally responsible for any and all losses, claims suits, damages, defense obligations and liability of any kind attributed to the City or its employees as a result of such failure.

5.2.16 Coverage will not be limited to the specific location designated as the address of the project.

5.3 Bonds - Contractor shall furnish the following surety bond with surety acceptable to City.

5.3.1 If the successful bid is in excess of \$25,000, the successful bidder shall be required to post a payment bond in the amount of the bid in accordance with California Civil Code Section §3247. This bond shall give labor and material suppliers direct right of action against the surety. Contractor shall furnish the Payment bond on a form acceptable by the City.

5.3.2 Successful Bidder shall post a Performance Bond in the amount of 100% of the Contract Price by a corporate surety authorized and admitted to issue such surety bond in the State of California.

5.4 Sureties

5.4.1 Should any surety upon any bond furnished in connection with this Contract become unacceptable to the City, or should any such surety fail to furnish reports as to its financial condition as may be requested by the City at any time while the bond is in force, Contractor shall promptly furnish such additional surety or alternate bond at Contractor's expense as may be required by the City to protect the interests of the City or of persons supplying labor or material in the performance of this Contract.

5.4.2 Contractor shall keep the sureties informed as to all material matters or changes affecting the project and this Contract.

## 6.0 INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City, its employees, agents and officials, from any: liability, claims, suits or actions; alternative dispute resolution, losses, expenses, fees, or costs of any kind, whether actual, alleged or threatened; administrative, and regulatory proceedings; and any other costs or expenses of any kind whatsoever without restriction or limitation; so long as such things are in relation to, as a consequence of, arising out of, or in any way attributable actually, allegedly or implied, in whole or in part, to the performance of this Contract. All obligations under this provision are to be paid by Contractor as they are incurred by the City. Without affecting the rights of the City under any provision of this Contract or this section, Contractor shall not be required to indemnify and hold harmless the City as set forth above for liability attributable to the sole fault of the City, provided such sole fault is determined by agreement between the parties or the findings of a court of competent jurisdiction.

## 7.0 GENERAL REQUIREMENTS

7.1 Physical Site Conditions - Contractor shall satisfy itself concerning the nature and location of the Work, the general and local conditions, and other restrictions affecting the Work. The failure of Contractor to acquaint itself with any applicable conditions and restrictions shall not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully performing the Work and completing this Contract, and shall not be grounds for adjusting either the price or the schedule.

7.2 Independent Contractor - Contractor represents that it is fully experienced and properly qualified to perform the Work, is properly licensed in the state where the Work is performed, and is equipped, organized, and financed to perform such Work. The Contractor or a subcontractor of the Contractor shall act as an independent contractor and not as an agent of the City in performing the Work and duties of this Contract.

### 7.3 Performance Requirements

7.3.1 Best Efforts - Contractor shall use Best Efforts in the performance of this Contract. Contractor shall, to the best of its abilities, cooperate with the City to enable the successful completion of the Work according to the terms of this Contract including, but not limited to, commitment of additional resources, material and personnel, if requested by the City, to assure that the Work is properly performed on time and completed in accordance with the provisions of this Contract.

7.3.2 Quality of Equipment Supplied by Contractor - Contractor shall provide and use only such construction equipment and facilities as are capable of producing the quality and quantity of Work required by this Contract within the time specified herein. Upon written notice from the City or its designated representative, Contractor shall promptly

remove from the Site all unsatisfactory construction equipment and facilities furnished or provided by Contractor.

7.4 Precedence of Operating Facilities - Continuity of service of the operating facilities is of the essence. In the event of a conflict of interest between any and all Work and any operating facilities, the operating facilities shall have precedence.

7.5 Responsibility for Work and Material - Contractor shall be responsible for and shall bear all risk of loss of or damage to Work in progress, all Work-related material and equipment delivered to the Site or in transit under Contractor control, until completion and final acceptance of the Work.

## 8.0 CHANGES

8.1 General - Notwithstanding any other provisions of this Contract to the contrary, the City reserves the right for any reason, without invalidating this Contract or without notice to sureties, to make any changes in the Work including the performance of additional services. Such change shall be made in writing by a City representative, except for emergency conditions, where such change shall be confirmed in writing.

8.2 Price of Change - All change orders shall be accepted by Contractor pursuant to the terms contained in this Contract and Contractor shall promptly proceed to implement such change. Should any change result in an increase or decrease in Price or a change in Schedule, Contractor shall, within 10 calendar days following receipt of the written change order, submit to the City a written proposal which illustrates the price for Contractor to perform the change and the proposed adjustment to the Schedule. Sufficient detail shall be given in the proposal to permit a thorough analysis and evaluation. No claim shall be made by Contractor based solely on the number or volume of changes made.

8.3 Price Adjustment - The price of such change will be agreed upon by the parties. If the parties cannot agree, an adjustment will be determined by the City on the basis of Contractor's reasonable expenditures and savings, including a reasonable allowance for overhead and profit.

8.4 Delegation - Only a City officer, or the designated City representative concerning the Project, may issue and sign written change orders on behalf of the City.

8.5 Contractor Objections - In the event a change requested by the City would, in the opinion of Contractor, affect Contractor's ability to meet its obligation under the Contract, Contractor will deliver to the City, within 5 calendar days of receipt of the change request, written notice of the fact before accepting such change request. If the City feels such a change is warranted, an appropriate modification to the Contract shall be made before the Contractor is required to proceed.

8.6 Changes by Contractor - The Contractor may propose changes in the specifications for reasons of improved quality, delivery or economy provided such changes do not impair quality or delivery. Such changes must be approved in writing by the City prior to implementation. Approval shall be at the discretion of the City.

## 9.0 WARRANTY

9.1 Performance and Workmanship - Contractor warrants that the workmanship performed by Contractor and its subcontractors will be performed in accordance with Best Efforts. The warranty period shall be for a period equal to one (1) year after the Final Completion Date.

## 10.0 RETENTION AND ACCEPTANCE OF MATERIAL AND WORKMANSHIP

10.1 Retention - The City shall retain 5% of the Contract price. The retention shall be released (with the exception of 150% of any disputed amount) within 60 days after the date of final completion of the work. Contractor may substitute securities in place of the retained funds withheld by the City. Alternatively, an escrow agreement, in the form prescribed under Ca. Pub. Cont. Code Section 22300, may be used by Contractor.

10.2 Inspection of Work - All Work and materials, both before and after installation, shall be subject to City's inspection, and any deficiencies detected by the City will be addressed by Contractor immediately. The City may take inventory and inspect the Work and witness tests thereon at all reasonable times and places during the progress of the Work. If Contractor covers all or any portion of the Work prior to any inspection or tests as required by the Scope of Work, the cost of any necessary uncovering and replacing shall be borne by Contractor.

### 10.3 Notice of Completion

10.3.1 When Contractor, in its opinion, has completed the performance of the Work, it shall so notify the City in writing that the Work is completed and ready for final acceptance by the City. Within ten (10) calendar days after receipt of such written notice, the City shall inspect the Work and advise Contractor of its concurrence.

10.3.2 If the City advises Contractor that the Work is not satisfactorily completed, the City shall at the time of such notice, submit to Contractor, a Punch List of all additions and corrections necessary for the completion of this Contract.

10.3.3 Upon receipt of the Punch List, Contractor shall commence action with respect thereto at no cost to the City. All corrections shall be made within the time period given in the Contract as established in the Project Schedule. Upon completion of such Work, Contractor shall again notify the City in writing that the Work is completed and ready for final acceptance by the City. Within ten (10) calendar days after receipt of such written notice, the City shall inspect the Work and advise Contractor whether it concurs. The punch List process will continue until the Work is completed to the satisfaction of the

City. Contractor shall be obligated to make good, correct or modify any rejected material or workmanship prior to final acceptance of the Work by the City.

10.3.4 If the City concurs that the Work has been completed satisfactorily, the City will record a Notice of Completion which will specify the Final Completion Date. Such Notice of Completion shall not be unreasonably withheld.

## 11.0 FORCE MAJEURE

In the event either party by reason of a Force Majeure is rendered unable to perform its duties under this Contract, then upon the party giving written notice of the particulars and estimated duration of Force Majeure to the other party within five (5) calendar days after knowledge of the occurrence of the Force Majeure, the party may have the time for performance of its duties extended for the period equal to the time performance is delayed by the Force Majeure. The effects of the Force Majeure shall be remedied with all reasonable dispatch, and the party giving notice shall use Best Efforts to eliminate and mitigate all consequences. A Force Majeure for which notice has not been given shall be an unexcused delay.

## 12.0 DELAYS AND EXTENSION OF TIME

Time for performance may be extended by the City because of delays such as Force Majeure, changes, or suspension. Any such extension shall not be grounds for a claim by Contractor for damages or for additional compensation, except as specifically authorized in this Contract. In the event of delay in the performance of the Work not caused by the City or its representatives, whether or not the cause thereof is within the control of Contractor, the City shall be entitled to suspend the applicable portion of the scheduled payments for the period of such delay.

## 13.0 TERMINATION FOR CONVENIENCE

13.1 General - The City may, at any time, terminate the Contract or any portion of the Work not then completed by giving Contractor written notice of termination. Upon receipt of notice of termination, Contractor, unless the notice requires otherwise, shall (1) discontinue Work on the date and to the extent specified in the notice, except Work necessary to preserve and protect the Work in progress, (2) place no further orders or subcontracts for material, services, or supplies related to terminated Work, (3) make every reasonable effort to procure termination of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work terminated upon terms satisfactory to the City, and (4) otherwise minimize costs and mitigate damages to the City .

13.2 Compensation - In the event of termination under this Section, there shall be an equitable adjustment to the Contract Price taking into account, among other things (1) decreases for Work not performed, (2) the cost of any work requested by the City from the date of termination.



## 14.0 TERMINATION FOR CAUSE; NOTICE AND CURE OF DEFAULT

14.1 General - The City may declare this Contract canceled for default by notifying Contractor in writing, should Contractor at any time (1) materially refuse or neglect to meet the Schedule(s), (2) refuse to supply sufficient and appropriately skilled workmen or equipment to perform the Work, (3) become insolvent or unable to meet its payroll or other current obligations.

14.2 Notice of Termination - Prior to termination for cause, the City shall give Contractor written notice describing such default in reasonable detail and demand that Contractor cure such default within five (5) calendar days after receipt of such notice of default. If Contractor does not cure the default within five (5) calendar days after its receipt of such notice or if the default cannot be cured within such five (5) calendar day period and Contractor has not initiated action or proposed a plan within such five (5) calendar day period to cure the default within a reasonable period which the City reasonably agrees will cure such default, then the City shall have the right to terminate this Contract.

## 15.0 LAWS AND REGULATIONS

Contractor and its employees shall at all times comply with all applicable laws, including those relating to wages, hours, discrimination, and safety (including CAL/OSHA).

## 16.0 EMPLOYEES

### 16.1 Prevailing Wage Law-

16.1.1 Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which this Contract is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Chapter 1 (commencing with Section 1720) Part 7, Division 2 of the Labor Code, shall be paid to all workers employed on this public work.

16.1.2 Should the prevailing wage rate be increased, decreased, or eliminated a corresponding adjustment shall be made to the Contract Price which shall reflect the effect of that change in or elimination of the prevailing wage rate.

### 16.2 Payroll Records

16.2.1 Contractor and its subcontractors shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Project.

16.2.2 The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor.

### 16.3 Apprentices

16.3.1 Section 1777.5 requires the Contractor or Subcontractor employing tradesmen in any apprenticeable occupation to apply to the Joint Apprenticeship Committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen to be used in the performance of the contract.

16.3.2 The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade and if other Contractors on the public works site are making such contributions.

16.3.3 Information relative to apprenticeship standards, contributions, wage schedules and other requirements may be obtained from the State Director of Industrial Relations or from the Division of Apprenticeship Standards.

## 17.0 SAFETY REQUIREMENTS

17.1 General - Contractor shall implement the following general safety precautions:

17.1.1 Safe Work - Contractor shall carry out the Work in a safe manner. Contractor's site representative shall be knowledgeable of all applicable safety rules, regulations and practices that relate to the assigned work. If necessary, a qualified safety representative should be contracted to fulfill this requirement.

## 18.0 GOVERNING LAW AND VENUE

The interpretation, validity, and enforcement of the Contract shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Merced.

## 19.0 AUTHORIZED REPRESENTATIVES AND NOTICES

19.1 Representatives - Prior to commencement of the Work, the City and Contractor shall each designate a representative authorized to act in behalf of each party and shall advise the other party in writing of the name, address and telephone number of such designated representative and shall inform the other party of any subsequent change in such designation. 19.2 Notice and Communications - All communications relating to the day to day activities under this Contract shall be exchanged between the representatives of the City and Contractor. All legal notices and communications required under or related to this Contract shall be in writing, and shall be delivered

personally or mailed by certified mail, postage prepaid, return receipt requested, to the representative of the City and Contractor identified below. Notice shall be effective on the date of delivery.

To the City:

To Contractor:

**Lucille Mallonee, City Clerk  
City of Los Banos  
520 J Street  
Los Banos, CA 92251**

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A party may change or supplement the addresses given above, or designate additional addresses, for purposes of this Section by giving the other party written notice of the new address in the manner set forth above.

19.3 Unfair Business Practice Claims – In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the City all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

19.4 Resolution of Claims – Claims of \$375,000.00 or less shall be addressed as set forth in California Public Contracts Code §§20104, set seq. In general terms, said process contemplates a meet and confer procedure and non-binding mediation as a precursor to litigation.

19.5 Utilities Relocation – The provisions of Government Code Section 4215 are hereby incorporated by this reference. Said section provides, among other things, that the Contractor will be compensated for costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy and for equipment on the Project necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay in completion of the Project when such delay was caused by the failure of the public City or the owner of the utility to provide for removal or relocation of such utility facilities. If Contractor discovers utility facilities not identified by City in the contract plans or specifications, Contractor shall immediately notify City and utility in writing.

## 20.0 ATTORNEYS FEES

If either party to this Contract shall bring any action, claim, appeal, or alternative dispute resolution proceedings, for any relief against the other, declaratory or otherwise, to enforce the terms of or to declare rights under this Contract (collectively, an Action), the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling, or award (collectively, a Decision) granted therein. Any Decision entered in such Action shall provide for the recovery of attorneys' fees and costs incurred in enforcing such Decision. The court or arbitrator may fix the amount of reasonable attorneys' fees and costs on the request of either party. For the purposes of this paragraph, attorneys' fees shall include, without limitation, fees incurred in the following: (1) post judgment motions and collection actions; (2) contempt proceedings; (3) garnishment, levy, and debtor and third party examinations; (4) discovery; and (5) bankruptcy litigation. "Prevailing party" within the meaning of this paragraph includes, without limitation, a party who agrees to dismiss an Action on the other party's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief it seeks.

## 21.0 WAIVER

The failure of the City to insist upon strict performance of any of the terms and conditions of this Contract, or to exercise or delay the exercise of any rights or remedies provided by this Contract or by law, or the acceptance of Work or payment for Work shall not release Contractor from any of the responsibilities or obligations imposed by law or by this Contract and shall not be deemed a waiver of any right of the City to insist upon strict performance of this Contract. None of the provisions of the Contract shall be considered waived by either party except when such waivers are agreed upon in writing by the parties.

## 22.0 ASSIGNMENT

Contractor shall not assign the rights, nor delegate the duties, or otherwise dispose of any right, title, or interest in all or any part of this Contract, or assign any monies due or to become due to Contractor without the prior written consent of the City. Any such approved assignment or delegation shall be for the benefit of, and shall be binding on Contractor, assignee, and all future successors; and shall not relieve Contractor, assignee, or future successors of any duties or obligations. If the City approves any assignment of monies due or to become due to Contractor hereunder, such assignment shall not become effective until at least 30 calendar days after City's approval.

## 23.0 ACCEPTANCE

The City will be deemed to have accepted Contractor's performance of the Work when the City officer or manager signing this Contract, or the designated representative of said officer or manager, records a Notice of Completion that the Work is accepted.



THE CITY OF LOS BANOS  
**LOS BANOS FIRE DEPARTMENT**  
**CONCRETE AND FUEL TANK CANOPY PROJECT**

**BID FORM**

To:  
City of Los Banos  
520 J Street  
Los Banos, California 93635

In response to the Invitation to Bid, the undersigned Bidder having reviewed the Invitation to Bid, the Bid Documents, and Contract Documents hereby proposes to furnish all labor, material, equipment and services and perform and complete all WORK required for Concrete and Fuel Tank Canopy Project as more specifically set forth in the Invitation to Bid, the Bid Documents, and the Contract Documents.

(1) the design and installation of approximately  
23,000 feet of 6" thick concrete parking/training area  
with 7 light pole bases; LS \$ \_\_\_\_\_

(2) the design and installation of a 15' by 20' 10" thick  
Concrete slab to support existing Convault fuel tank; LS \$ \_\_\_\_\_

(3) the design and installation of metal canopy to cover  
fuel tank and fueling area; LS \$ \_\_\_\_\_

(4) the design and construction of American with Disability  
Act (ADA) compliant Parking and Access Walkways to  
Two (2) Fire Stations LS \$ \_\_\_\_\_

TOTAL PRICE \$ \_\_\_\_\_

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(Total Bid Amount in Written Form)

The undersigned certifies under penalty of perjury under the laws of the State of California that the above quotation constitutes a bona-fide offer for the WORK, that undersigned is a duly authorized representative of the company listed, that the quotation is in no way sham or collusive, and that an executed Agreement between the Bidder and City constitutes acceptance of Bidder's total bid for the WORK stated in the Contract Documents.

The undersigned further certifies, under penalty of perjury that the Non-Collusion Affidavit required by Title 23 United States Code, Section 112 and Public Contract Code Section 7106; and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

Performance shall include all work necessary to complete the Project in strict accordance with the Contract Documents and for the price(s) specified by the Bidder in this Bid Form, including all applicable taxes. If applicable, Total Price shall include California sales tax but exclude Federal Excise sales tax; shall include delivery charges.

Bidder certifies that it has examined and is fully familiar with all of the provisions of the Invitation to Bid and any Addenda thereto; that it is submitting this Bid in strict accordance with the Instructions to Bidders; and that it has carefully reviewed the accuracy of all statements attached to this Bid.

Bidder certifies that it has visited and examined the work site, and is satisfied with the nature and location of all work, the general and local conditions to be encountered in the performance of the work, the requirements of the Contract Documents and all other matters which can in any way affect the work or the cost thereof. Bidder further certifies that Bidder has performed such tests deemed necessary for the preparation of this bid.

Bidder is familiar with and is satisfied as to all federal, state and local laws and regulations and necessary licenses and permits that may affect cost, progress and performance of the WORK.

Bidder agrees that this Bid constitutes a firm offer to the City which cannot be withdrawn by Bidder for ninety (90) calendar days from the date of actual opening of bids. If awarded the Contract, Bidder agrees to execute and deliver to the City within fourteen (14) calendar days after receipt of City's Notice of Award, the applicable Agreement and the required Payment Bond, Performance Bond, Certificates of Insurance, and any other required Contract Documents.

Bidder also acknowledges receipt of the following Addenda, which Addenda have been considered by Bidder in submitting this Bid (if none, state "None"):

Addenda Nos. \_\_\_\_\_

### **CONTRACTOR'S LICENSE**

Bidder certifies that Bidder is currently licensed under the California State Contractor's License Law as follows:

Contract License Number: \_\_\_\_\_.

Name of Licensee: \_\_\_\_\_.

Type of License:\_\_\_\_\_.

Issue and Expiration date:\_\_\_\_\_

### **BID SUBMITTAL**

THE UNDERSIGNED HEREBY DECLARES, UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, THAT THE STATEMENTS MADE IN THIS BID PROPOSAL FORM, INCLUDING ALL OF THE ATTACHED STATEMENTS, DESIGNATIONS, CERTIFICATES, AND AFFIDAVITS, ARE TRUE AND CORRECT, AND THAT THEY ARE THE INDIVIDUAL, MANAGING PARTNER, OR CORPORATE OFFICER, DULY AUTHORIZED BY LAW TO MAKE THIS BID ON BEHALF OF CONTRACTOR, AND BY SIGNING BELOW DO MAKE THIS BID ON BEHALF OF CONTRACTOR ACCORDING TO ALL OF THE TERMS AND CONDITIONS SET FORTH OR REFERENCED HEREIN.

Name of Business: \_\_\_\_\_

Doing business as: (*Circle One*): Individual Partnership Corporation LLC Other

Business Address: \_\_\_\_\_

Telephone No.:\_\_\_\_\_ Fax No.:\_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

### **ATTACHMENTS**

Attached are the following forms which have been completed by Bidder and made a part of this Bid:

1. Bid Form; SIGNED BY BIDDER
2. Local Business Preference;
3. Non-collusion Affidavit; SIGNED BY BIDDER
4. Debarment and Suspension Certification; SIGNED BY BIDDER
5. Contractor's Certificate Regarding Workers' Compensation; SIGNED BY BIDDER
6. List of Proposed Subcontractors;
7. Experience and Qualifications - Contractor;
8. Experience and Qualifications – Subcontractors; and
9. Bid Bond, or certified check, or cashier's check.





THE CITY OF LOS BANOS  
**LOS BANOS FIRE DEPARTMENT**  
**CONCRETE AND FUEL TANK CANOPY PROJECT**

**Non-Collusion Affidavit**  
PUBLIC CONTRACT CODE 7106

In conformance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

THE CITY OF LOS BANOS  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT

**Debarment and Suspension Certification**  
TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The Contractor, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, and manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

**Note: The representations made herein are made under penalty of perjury. Any information contained in the BID which is proven false shall be considered nonresponsive and this BID shall be rejected.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

THE CITY OF LOS BANOS  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT

**Local Business Preference**

The City of Los Banos has established a local vendor preference. In evaluating competitive bids, the City Council shall determine the lowest responsible bidder, and any local bidder shall be granted a preference in an amount equal to five (5%) percent of the lowest responsible bid, if that low bid has been submitted by a non-local bidder. If, after deduction of the five (5%) percent preference from a local bidder's bid, it is equal to or less than the lowest bid, the bid shall be awarded to the local bidder. To qualify as a local bidder, firms or individuals must submit written proof of the address of their principal place of business and a copy of their current City business license with each bid for which a preference is claimed. Proof of address is normally the address to which contract and payments will be sent. Local preference only applies to supplies, materials and/or equipment, and will not apply to bids conducted with other public agencies nor when prohibited by State or Federal statutes or regulations to be awarded to the lowest responsible bidder, or otherwise exempted from local preferences. A total amount of such a preference granted in a single bid shall not exceed Five Thousand and No/100ths (\$5,000.00) Dollars over a non-local bidder.

**ARE YOU CLAIMING A LOCAL BUSINESS PREFERENCE?**

\_\_\_\_\_ **YES**                      \_\_\_\_\_ **NO**

**If yes,** attach written proof of the address of your principal place of business and a copy of your current City business license.

THE CITY OF LOS BANOS  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT

**Contractor's Certificate Regarding Workers' Compensation**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

THE CITY OF LOS BANOS  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT

**Contractor's Experience And Qualifications**

This certification and the responses herein shall assist the City in determining the lowest responsive responsible bidder. The undersigned Bidder represents that it is competent, knowledgeable and has the special skills on the nature, extent and inherent conditions of the work to be performed on this project. Bidder further acknowledges that these inherent conditions existent in the construction of particular facilities may create, during construction, unusual or unsafe conditions hazardous to persons and property. Bidder expressly acknowledges that it is aware of such risks and that it has the skill and experience to foresee and to adopt protective measures to adequately and safely perform the construction work with respect to such hazards.

None of the requirements herein are to determine pre-qualification to bid on the Project, but are part of the City's evaluation of bids received.

If the answer to any of questions 1 through 3 is "no", or if the answer to any of questions 4 through 6 is "yes", the Bidder shall provide an explanation of its answer, including the reasons why its answer shall not result in it being disqualified from being awarded the Contract. However, an exemption explanation letter does not guarantee acceptance of Bid. In accordance with all applicable public contract laws, the City shall retain the right to reject unqualified Bidders, which shall render the Bid non-responsive

1. Bidder possesses a valid and current California Contractor's license for the project for which it intends to submit a bid.

Yes \_\_\_\_ No \_\_\_\_

2. Bidder will comply with and provide all insurance as defined in the Contract Documents.

Yes \_\_\_\_ No \_\_\_\_

3. Bidder has current Workers' Compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et. seq.

Yes \_\_\_\_ No \_\_\_\_

4. Has your contractor's license been revoked at any time in the last five (5) years?

Yes \_\_\_\_ No \_\_\_\_

5. Has a surety firm completed a contract on your behalf, or paid for completion because your firm was default terminated by the project owner within the last five (5) years?

Yes \_\_\_\_ No \_\_\_\_

6. At the time of submitting this qualification form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?

Yes \_\_\_\_ No \_\_\_\_

7. At any time during the last five (5) years, has your firm, or any of its owners or officers been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract?

Yes \_\_\_\_ No \_\_\_\_

8. The Bidder has been engaged in the contracting business, under the present business name for \_\_\_\_\_ years and has experience in work of a nature similar to this project which extends over a period of \_\_\_\_\_ years (Bidder must show at least five (5) years of related experience).

The Bidder, as a Contractor, has never failed to satisfactorily complete a contract awarded to him, except as follows:

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9. For the Owner to consider the Bidder properly experienced in work of similar nature to this project, the Bidder must list at least three (3) references for projects successfully completed within the last five (5) years. Required information: Project name and location; Owner's representative and telephone number; and date of completion.

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THE CITY OF LOS BANOS  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT

**Subcontractor's Experience And Qualifications**

This certification and the responses herein shall assist the City in determining the lowest responsive responsible bidder. To be eligible for an award of Contract, the Bidder must submit this signed certification from each proposed Subcontractor listed in the List of Proposed subcontractors.

The subcontractor represents that it is competent, knowledgeable, and has special skills on the nature, extent, and inherent conditions of the work to be performed. The subcontractor further acknowledges that there are certain peculiar and inherent conditions existent in the construction of the particular facilities which may create, during the construction program, unusual or peculiar unsafe conditions hazardous to persons and property. The subcontractor expressly acknowledges that it is aware of such peculiar risks and that it has the skill and experience to foresee and to adopt protective measures to adequately and safely perform the construction work with respect to such hazards.

None of the requirements herein are to determine pre-qualification to bid on the Project, but are part of the City's evaluation of bids received.

If the answer to any of questions 1 through 4 is "no", or if the answer to any of questions 5 through 7 is "yes", the Bidder shall provide an explanation of its answer, including the reasons why its answer shall not result in it being disqualified from being awarded the Contract. However, an exemption explanation letter does not guarantee acceptance of Bid. In accordance with all applicable public contract laws, the City shall retain the right to reject unqualified Bidders, which shall render the Bid non-responsive.

1. Subcontractor possesses a valid and current California Contractor's license for the project for which its portion of the work.

Yes \_\_\_\_ No \_\_\_\_

2. Subcontractor will comply with and provide all insurance as defined in the Contract Documents.

Yes \_\_\_\_ No \_\_\_\_

3. Subcontractor has current Workers' Compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et. seq.

Yes \_\_\_\_ No \_\_\_\_





[FORM]

THE CITY OF LOS BANOS  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT

Bid Bond

(Not required if Certified Check of Cashier's Check accompanies Bid)

KNOW ALL PERSONS BY THESE PRESENTS: That we \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto the City of Los Banos, in the sum of \$\_\_\_\_\_ [5% OF THE TOTAL AMOUNT OF THE BID] for the payment of which sum we hereby bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly as set out more fully herein.

The condition of the foregoing obligation is such that, whereas the above principal is about to submit to the City of Los Banos a bid for the performance of the work for the above project in compliance with the plans and specifications therefore and pursuant to a published notice inviting bids.

Now, if the bid of the principal is accepted and the work awarded to the principal by the City of Los Banos, and if the principal shall fail or neglect to enter into a contract, therefore, in accordance with the provision of said bid and the accompanying Instructions to Bidders and to furnish adequate faithful performance and labor and material surety bonds and certificates of insurance to the satisfaction of the City of Los Banos; then the total sum guaranteed by this bond is forfeited to the City of Los Banos as liquidated damages.

In the event suit is brought by the City of Los Banos and judgment is entered in its favor, the surety shall pay all costs incurred by the City in such suit, including reasonable attorneys' fees to be fixed by the Court, in addition to the above sum.

WITNESS our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

(Seal)

By \_\_\_\_\_ Name/Title \_\_\_\_\_

(Seal)

NOTE: Signatures of those executing for the surety must be properly acknowledged.

Bond No. \_\_\_\_\_

[FORM]

THE CITY OF LOS BANOS  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT

Notice of Award

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_  
Project: \_\_\_\_\_  
\_\_\_\_\_

The City has considered the Bid submitted by you for the above described WORK dated \_\_\_\_\_, 20\_\_\_\_\_.

You are hereby notified that your Bid has been accepted for the unit and lump sum prices set forth in the Bid Schedule totaling \$\_\_\_\_\_.

You are required by the Information for Bidders to execute the Agreement and furnish the required Contractor's Performance Bond and Payment Bond and Certificates of Insurance within fourteen (14) calendar days for the date of this Notice to you.

If you fail to execute said Agreement and to furnish said Bonds within fourteen (14) days from the date of this Notice, said City will be entitled to consider all your rights arising out of the City's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The City will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the City.

\_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_

ACCEPTANCE OF NOTICE  
Receipt of the above NOTICE OF AWARD  
is hereby acknowledged by

\_\_\_\_\_  
(Name of Contractor)

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

[FORM]

THE CITY OF LOS BANOS  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT

**Agreement**

This AGREEMENT ("Agreement") is made and effective \_\_\_\_\_, 2017, by and between City of Los Banos, a municipal corporation ("City"), and \_\_\_\_\_ ("Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

City and Contractor agree as follows:

**1. Scope of Work.**

**I. PROJECT/SCOPE OF WORK**

The Contractor shall furnish all labor, materials, equipment, tools, utility services, and transportation and perform and complete all work required in connection with the **LOS BANOS FIRE DEPARTMENT CONCRETE AND FUEL TANK CANOPY** (hereinafter "Project") in accordance with the specifications and scope of work as described in the Invitation to Bid and the Contract Documents and the Contractor's Bid ("Work").

**2. Contract Documents.**

The Complete Contract Documents set forth herein include:

- a. This Agreement.
- b. Special Terms and Conditions.
- c. General Terms and Conditions.
- d. Notice and Invitation to Bidders and Bid Documents.
- e. Addenda.
- f. Bid Form; Bid Schedule; Local Business Preference; Non-collusion Affidavit; Debarment and Suspension Certification; Contractor's Certificate Regarding Workers' Compensation; List of Proposed Subcontractors; Experience and Qualifications - Contractor; Experience and Qualifications – Subcontractors.
- g. Performance Bond.
- h. Labor and Materials Payment Bond.
- i. Project Construction Schedule.
- j. Notice of Award.
- k. Notice to Proceed.
- l. Change Orders.

The documents comprising the complete contract are collectively referred to as the Contract Documents. Any and all obligations of the City and the Contractor are fully set forth and described therein. All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents.

2.1 Modifications. The Contract Documents may not be modified orally or in any manner other than in writing. All such written modifications shall become part of the Contract Documents.

2.2 Entire Agreement. The Contract Documents comprise the entire integrated understanding between the City and Contractor concerning the Scope of Work to be performed for this Project. All prior negotiations or stipulations regarding this matter, which preceded or accompanied the executing of these Contract Documents, are conclusively deemed to be superseded by these Contract Documents. The Contract Documents are complementary; what is called for in one is binding as if called for by all. To the extent that portions of the Contract Documents are not attached to this Agreement, they shall be deemed incorporated here by reference.

### **3. Contract Price.**

City will pay Contractor in accordance with the Total Bid Price shown on the Bid Form in the total amount of \$\_\_\_\_\_. The Contractor's compensation shall include all costs incurred by the Contractor in the performance of the Work, including: furnishing all labor (including supervision), materials, equipment, tools, transportation, permits, and services necessary to complete the Scope of Work (including costs to protect the Work, and all damages to the Work prior to acceptance of the Work by the City, unless otherwise specifically provided in the Contract Documents).

(a) Based upon Applications for Payment submitted to the City by the Contractor the City shall make progress payments on account of the Contract Sum to the Contractor as provided in the General Conditions.

(b) This Agreement is subject to the provisions of Article 1.7 (commencing at Section 20104.50) of Division 2, Part 3 of the Public Contract Code regarding prompt payment of contractors by local governments. Article 1.7 mandates certain procedures for the payment of undisputed and properly submitted payment requests within thirty (30) days after receipt, for the review of payment requests, for notice to Contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with that Article. This Agreement hereby incorporates the provisions of Article 1.7 as though fully set forth herein.]

(c) Final payment, constituting the entire unpaid balance of the Agreement Sum, shall be paid by the City to the Contractor no sooner than thirty-five (35) days after a Notice of Completion has been recorded, unless otherwise stipulated in the Notice of

Completion, provided the work has then been completed and accepted by the City, and the Agreement fully performed.

(d) Public Contract Code Section 22300 permits the substitution of securities for any monies withheld by public entity to ensure performance under a contract, at the request and expense of the Contractor.

#### **4. Contract Time.**

After the Contractor has provided all submittals required by the Invitation to Bid and Contract Documents, and following execution of the Agreement by the City, the City shall issue a Notice to Proceed to the Contractor. Contract time shall commence upon receipt date of the Notice to Proceed.

All work under this contract shall be completed before the expiration of one hundred fifty (150) calendar days from the commencement date specified in the Notice to Proceed. If Contractor shall be delayed in the work by the acts or neglect of City, or its employees or those under it by contract or otherwise, or by changes ordered in the work, or by strikes, lockouts by others, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the City, or by any cause which the City shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the City may decide.

#### **5. Liquidated Damages.**

If Contractor fails to complete the Work within the Contract Time, Contractor shall pay to the City, as liquidated damages and not as a penalty, \$500.00 per day for each calendar day after the expiration of the Contract Time that the Work remains incomplete.

#### **6. Contractor Representative.**

At all times during the progress of the Work, Contractor shall have a competent foreman or superintendent ("Contractor Representative") on site with authority to act on behalf of the Contractor. The Contractor shall, at all times, keep the City Chief Building Official informed in writing of (a) the name and telephone number of the Contractor Representative, and (b) the names and telephone numbers of all subcontractors performing the Work.

#### **7. Subsurface Hazardous Materials**

(a) In the event trenches or other excavations extend deeper than four (4) feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the City in writing of any:



1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with the provisions of existing law.
2. Subsurface or latent physical conditions at the site differing from those indicated.
3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Contract.

(b) Upon receipt of said notification the City will investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of or the time required for performance of any part of the work, the City will issue a change order under the procedures described in the General Conditions.

(c) In the event that a dispute arises between the City and the Contractor whether the conditions materially differ, or involve hazardous waste or cause a decrease or increase in the Contractor's cost of or time required for performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all work to be performed under the Agreement. The Contractor shall retain any and all rights provided either by Agreement or by law which pertain to the resolution of disputes and protests between the contracting parties.

## **8. Contract Bonds.**

Concurrently with the execution of this Agreement by the Contractor, and before the commencement of any Work, the Contractor shall file with the City surety bonds satisfactory to the City in the amounts, and for the purposes, set forth in the Contract Documents.

Bonds shall be duly executed by a responsible corporate Surety, licensed and authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California. Each bond shall be signed by both the Contractor and Surety and the signature of the authorized agent of the Surety shall be notarized.

The Contractor shall pay all bond premiums, costs and incidentals. Should any bond become insufficient due to an increase in the contract amount, the Contractor shall obtain supplemental bonding within 10 days.

Should any Surety at any time be unsatisfactory to the City, notice will be given the Contractor to that effect. No further payments shall be deemed due or will be made under the Agreement until a new Surety shall qualify and be accepted by the City.

Changes in the work, or extensions of time, made pursuant to the Agreement, shall in no way release the Contractor or Surety from their obligations. The requirement for notifying the Surety of such changes or extensions shall be waived by the Surety.

#### **9. Insurance.**

Concurrently with the execution of this Agreement by the Contractor, and prior to the commencement of any Work, the Contractor shall furnish evidence to the City that all of the insurance requirements required by the Contract Documents, have been satisfied.

#### **10. Permits, Licenses, and Compliance with Law.**

The Contractor shall obtain and maintain all necessary permits and licenses for the performance of the Work.

#### **11. Default.**

In case of default, the City may give written notice to the Contractor and the Contractor's bonding agent that if the default is not remedied within ten (10) calendar days or the Contractor does not provide adequate written assurance to the satisfaction of the City that the cure will be forthcoming, the Contractor's control over the work may be terminated as of the date specified in the written notice.

Upon such termination of control the City may enter upon and take possession of the entire work for the purpose of completing the work. The City may, at its sole option and without further notice to anyone, complete the work by day labor, by contract entered into by negotiations, by competitive bidding, by calling upon the performance of the performance bond surety, or by other means as the City, in its discretion, shall elect.

After termination of the Contractor's control over the work as herein provided, the Contractor shall not be entitled to any further payments under the contract until the entire work thereunder has been fully completed and finally accepted by the City. After such completion and acceptance, if the "unpaid balance of the contract price" (as defined in the next paragraph) exceeds the sum of the amounts expended by the City in taking over and completing the work, including all managerial and administrative expense incurred by the City on account thereof and the amount of all damages incurred by the City by reason of the Contractor's default, such excess shall be paid to the Contractor. If the said amount expended exceeds the unpaid balance, the Contractor and his surety shall be liable to the City for the difference. At the Contractor's request, the expense incurred by the City in taking over and completing the work, and the amount of any damage incurred by the City by reason of the Contractor's default shall be audited and certified by an independent third party, whose certificate thereof shall be binding and conclusive upon the parties.

For the purposes of the computations required by the paragraph above, the "unpaid balance of the contract price" shall be the original contract price as adjusted by any

change orders issued prior to termination of the Contractor's control, less all payments made on account thereof prior to such termination, and less any and all amounts withheld or paid pursuant to stop notices filed with the City upon claims of subcontractors or others from equipment, labor or materials furnished to the work on behalf of the Contractor.

The exercise of remedies provided for in this sub-section, for default by the Contractor, shall be in addition to, and shall not be deemed a waiver by the City of any other rights or remedies due the City under the contract provisions, for default by the Contractor.

### **12. Final Acceptance of Work.**

Prior to final acceptance of the Work by the City, the Contractor shall be solely responsible for maintaining the quality of the Work, and maintaining safety at the Project site. The Contractor's obligation to perform the Work shall not be satisfied until after the City Chief building Official has made a written determination that all obligations under the Agreement have been satisfied, all outstanding fees and charges have been paid, and the City has accepted the Work as complete.

### **13. Warranty.**

The Contractor shall fully warrant all materials and equipment furnished under the terms of this Agreement against poor and inferior quality, for a period of not less than **one (1) year** from date of the final acceptance by the City. While under warranty, Contractor shall repair or replace inoperable materials or equipment in a timely manner to minimize the disruption of City operations.

If within one (1) year after the date of City acceptance, any work is found to be defective, the Contractor shall promptly without cost to the City and in accordance with the City's written instructions, correct such defective work. If the Contractor does not promptly comply with the terms of such instructions within ten (10) working days after written demand by the City, the City may have the defective work corrected. The City may also correct defective work immediately in cases of emergency where delay would cause serious risk of loss or damage. All direct, indirect and consequential costs of correcting defective work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) shall be absorbed by the Contractor.

### **14. Independent Contractor Status.**

Contractor is an independent contractor. All persons working for or under the direction of the Contractor are the Contractor's employees, agents or Subcontractors, and they shall not be deemed agents, servants or employees of the City.

### **15. Attorney's Fees.**

If any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

### **16. Indemnification.**

Contractor shall indemnify, defend, and hold harmless the City, and its officers, employees, and agents ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Contractor's performance of its obligations under this agreement or out of the operations conducted by Contractor, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Contractor's performance of this agreement, the Contractor 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.

### **17. Assignment And Delegation.**

This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Contractor's duties be delegated, without the written consent of the City.

### **18. Contractor's Representations.**

In order to induce City to enter into this Agreement Contractor makes the following representations:

(a) Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

(b) Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

(c) Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

(d) Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including

applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.

(e) Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

(f) The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

### **19. Miscellaneous Provisions.**

18.1 Wage Rates. The California general prevailing wage rates determined by the Director of Industrial Relations are made a part of this Agreement. Nothing in the Contract Documents shall be interpreted in a manner conflicting with these rates. Neither the notice inviting bids nor this Agreement shall constitute a representation of fact as to the prevailing wage rates upon which the Contractor or any subcontractor may base any claim against City. It shall be mandatory upon Contractor and upon any subcontractor to pay not less than the specified rates to all laborers, workers, and mechanics employed in the execution of the Agreement. Contractor agrees to comply with all provisions of Section 1775 of the Labor Code.

18.2 Access to Records. Contractor 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 Contractor 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 Contractor's usual and customary business hours. Contractor shall provide proper facilities to City's representative(s) for access and inspection.

18.3 Nondiscrimination. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

18.4 Compliance with Laws. Contractor shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all work prepared by Contractor shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

18.5 Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective party as follows:

City:

City of Los Banos  
Mason Hurley, Assistant Fire Chief  
333 7<sup>th</sup> Street  
Los Banos, CA 93635

Contractor

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated above, or (2) three working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

18.6 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

18.7 Severability. In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.

18.8 Jurisdiction and venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Merced.

IN WITNESS WHEREOF, two identical counterparts of this contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties.

CITY OF LOS BANOS,  
A California municipal corporation

Date:

\_\_\_\_\_  
by: ALEX TERRAZAS, City Manager

ATTEST:  
CITY CLERK

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

APPROVED AS TO FORM:

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

CONTRACTOR

Date:

\_\_\_\_\_  
by:  
title:

**CERTIFICATE OF CONTRACTOR**

I, \_\_\_\_\_(Name)

certify that that \_\_\_\_\_  
(Company Name)

is in good standing and has complied with all applicable laws and regulations, and that I have been expressly authorized by the proper parties in this entity to execute the Agreement on behalf of the above-named entity.

[CONTRACTOR]

Date:

\_\_\_\_\_  
by:  
title:

[THIS FORM MUST BE NOTARIZED]



[FORM]

THE CITY OF LOS BANOS  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT

Notice To Proceed

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_  
Project: \_\_\_\_\_  
\_\_\_\_\_

You are hereby notified to commence WORK in accordance with the Agreement dated \_\_\_\_\_, 2017, on or before \_\_\_\_\_2017, and you are to complete the Work by \_\_\_\_\_, 2017.

You are required to return an acknowledged copy of this NOTICE TO PROCEED to the CITY.

\_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_

ACCEPTANCE OF NOTICE  
Receipt of the above NOTICE TO PROCEED  
is hereby acknowledged by

\_\_\_\_\_  
(Name of Contractor)

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

[FORM]

THE CITY OF LOS BANOS  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT

Change Order

CONTRACTOR: \_\_\_\_\_

Order No. \_\_\_\_\_

Date: \_\_\_\_\_

The following changes are hereby made to the CONTRACT DOCUMENTS:  
Justification:

Change to CONTRACT PRICE:

Original CONTRACT PRICE: \$ \_\_\_\_\_

Current CONTRACT PRICE adjusted by previous  
CHANGE ORDER: \$ \_\_\_\_\_

The CONTRACT PRICE due to this CHANGE ORDER  
will be (increased) (decreased) by: \$ \_\_\_\_\_

The new CONTRACT PRICE including this  
CHANGE ORDER will be: \$ \_\_\_\_\_

Change to CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased)  
by calendar days. \_\_\_\_\_

The date for completion of all WORK will be: \_\_\_\_\_

*The undersigned hereby agrees to the above-described amendment of the Contract.*

---

CONTRACTOR

---

CITY

**This Change Order shall become a part of the Contract Documents only upon signature of both parties.**

[FORM]

THE CITY OF LOS BANOS  
LOS BANOS FIRE DEPARTMENT  
CONCRETE AND FUEL TANK CANOPY PROJECT

Payment Bond

We, \_\_\_\_\_  
as CONTRACTOR, and \_\_\_\_\_  
as Surety, jointly and severally, bind ourselves, our heirs, representatives, successors  
and assigns, as set forth herein, to the **City of Los Banos** (herein called "CITY") for  
payment of the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_),  
lawful money of the United States. CITY has awarded the Contract and entered into an  
Agreement with the CONTRACTOR for the construction of:

**[ENTER PROJECT TITLE]**

If CONTRACTOR or any of his SUBCONTRACTORS fails to pay any of the persons  
named in Section 3181 of the California Civil Code, or amounts due under the  
Unemployment Insurance Code with respect to work or labor performed under the  
Contract or during the one-year guarantee period, or for any amounts required to be  
deducted, withheld, and paid over to the Franchise Tax Board from the wages of  
employees of the CONTRACTOR and his SUBCONTRACTORS pursuant to Section  
13020 of the Unemployment Insurance Code, with respect to such work and labor, then  
Surety will pay the same in an amount not exceeding the sum specified above, and also  
will pay, in case suit is brought upon this bond, such reasonable attorney's fees as shall  
be fixed by the court.

This bond shall insure to the benefit of any of the persons named in Section 3181 of the  
California Civil Code, so as to give a right of action to them or their assigns in any suit  
brought upon this bond.

Surety agrees that no change, extension of time, alteration, or addition to the terms of  
the Contract, or the work to be performed, or the Provisions shall in any way affect its  
obligation on this bond, and it does hereby waive notice thereof.

CONTRACTOR and Surety agree that should Owner become a party to any action on  
this bond that each will also pay Owner's reasonable attorney's fees incurred therein in  
addition to the above sum.

[SIGNATURE PAGE BEGINS ON NEXT PAGE]

Executed in four original counterparts on: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Contractor

(Seal if Corporation)

By: \_\_\_\_\_

Title: \_\_\_\_\_

(Attach Acknowledgment of Authorized Representative of Contractor)

Any claims under this bond may be addressed to:

\_\_\_\_\_ (name and address of Surety)

\_\_\_\_\_

\_\_\_\_\_ (name and address of Surety's agent for service of  
process in California, if different from above)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (phone number of Surety's agent in California)

(Attach Acknowledgment)  
Surety

\_\_\_\_\_

By

\_\_\_\_\_

(Attorney-in-Fact)

Notice: No substitution or revision to this bond form will be accepted. Sureties must be authorized to do business in and have an agent for service of process in California.

All bond forms must be acknowledged before a Notary Public by both the CONTRACTOR and the Surety. Attorneys-in-fact who sign bond forms must file with each bond a certified and effective dated copy of their power of attorney.