



City of
Los Banos
At the Crossroads of California

**REQUEST FOR PROPOSALS (RFP)
FOR
PROFESSIONAL SERVICES TO CONDUCT A
HOTEL MARKET FEASIBILITY STUDY**

Issuance Date
October 28, 2022

Deadline for Submissions
November 30, 2022 by 4:00 P.M.

Contact Person
Stacy Souza Elms
Community & Economic Development Director
City of Los Banos
520 J Street
Los Banos, CA 93635
(209) 827-7000 ext. 2433
stacy.elms@losbanos.org

REQUEST FOR PROPOSAL

NOTICE IS HEREBY GIVEN that the City of Los Banos (“City”) is issuing this Request for Proposal (“RFP”) to solicit proposals from experienced individuals or firms to conduct a ***Hotel Market Feasibility Study*** to provide a professional assessment as to whether the City of Los Banos possesses the current consumer demand to interest a developer in building a lodging property which is financially sustainable for the community.

The proposal should include consultant recommendations that detail the implementation for the development of lodging in Los Banos. Although a specific site has not yet been selected for lodging, several potential sites have been identified within city limits which may provide an opportunity for such development. This list of potential sites will be provided to the consultant once a contract has been signed. The goal for the City of Los Banos is to determine if the market is conducive for a sustainable lodging property and to identify what type of lodging would be most feasible for private sector investment along with hospitality amenities that could be developed to support the lodging property.

Firms are solely responsible for ensuring proposals are received by the City on or before the submittal deadline. **Proposals must be received via mail or email no later than 4:00 p.m. on November 30, 2022** at the following address:

City of Los Banos
Attn: Stacy Souza Elms,
Community and Economic Development Director
520 J Street
Los Banos, CA 93635
Email: stacy.elms@losbanos.org

The proposal shall be signed by a representative authorized to bind the company. Proposals submitted by facsimile are not acceptable and will not be considered. The Proposer shall submit its proposal via email as a PDF attachment with the email subject line: **Hotel Market Feasibility Study**. Verification of receipt of proposal is the responsibility of the submitting firm. In the event that an electronic proposal cannot be submitted, the Proposer may submit a hard copy with the name of the firm and RFP title clearly marked on the outside of the package submitted by the deadline listed above. Late proposals will not be considered.

Failure to comply with the requirements set forth in this RFP may result in disqualification. Proposals and/or modifications received subsequent to the hour and date specified above will not be considered. Submitted proposals may be withdrawn at any time prior to the submission time specified in this RFP, provided notification is received in writing before the submittal deadline. Proposals cannot be changed or withdrawn after the submittal deadline. No handwritten notations or corrections will be allowed. The responding firm is solely responsible for all costs related to the preparation of the proposal.

The City reserves the right to reject all proposals and to waive any minor informalities or irregularities contained in any proposal. Acceptance of any proposal submitted pursuant to this RFP shall not constitute any implied intent to enter into a contract.

The contract award, if any, will be made to the firm who, in the City's sole discretion, is best able to perform the required services in a manner most beneficial to the City.

Any questions with regard to submission, process, or proposal can be emailed to Stacy Souza Elms, Community and Economic Development Director, at stacy.elms@losbanos.org.

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

Acceptance of any proposal submitted pursuant to this Request for Proposal shall not constitute any implied intent to enter into an agreement for services.

INTRODUCTION

The City of Los Banos, incorporated in 1907, has an estimated population of approximately 46,000 residents and has a land area of approximately 10.1 square miles. Los Banos is located on the west side of the San Joaquin Valley, in the County of Merced, seven miles east of the junction of State Route 152 and Interstate 5.

The City of Los Banos is interested in creating greater financial sustainability, while supporting the City's character and scale. Increased investment, including hospitality uses, in the City will help generate new tax revenue while providing the community with a wider range of amenities including personal services, dining, and entertainment. In order to initiate the process and ensure good decision making, the City would like to evaluate the feasibility of developing properties. The Study will be provided to potential hotel developers, management companies, and brands that may be interested in developing in Los Banos. The purpose of this RFP is to solicit competitive proposals to prepare a Hotel Feasibility Study to assist the City in marketing and development of hotel sites.

SCOPE OF WORK

The Proposal is to provide all of the following, but is not limited to:

1. Market Demand Analysis that focuses on future lodging and hospitality demand within the market area;
2. Project Feasibility Study that assesses the viability of hospitality product in Los Banos, identifies market constraints, estimates capital investment required and the expected revenue needed to attract investors;
3. Addresses the potential public incentives that could improve Commercial viability;
4. Financial projections up to five years, with financial pro forma(s) that can be provided to potential hotel developers, lending institutions, management companies and franchises; and breakeven assessment(s);
5. Projected Average Daily Rate (ADR), occupancy, Revenue per Available Room vs. Competing Hotels; and
6. Consultant shall develop a Hospitality Feasibility Study based on the draft Demand Analysis, and Financial Projections. The Study should identify the number and mix of guest rooms; room configuration; food and beverage concept; meeting space requirements; brand affiliation; and other facilities and amenities as appropriate for each property.

SUBMITTAL FORMAT AND CONTENT

All respondents are required to follow the format specified below. The contents of the submittal must be clear, concise, and complete. (NOTE: Respondents shall base their submittals on the "Scope of Work.")

- Cover Letter - Describe how the delivery of services will be provided to the City, including the location of the consultant's offices. In addition, describe those conditions, constraints, or problems that are unique to the scope of work that may adversely affect either the cost or work progress; and include the title and signature of the firm's contact person for this procurement. The signatory shall be a person with official authority to bind the company.
- Qualifications and Experience – A list of qualifications and experience for each person who will be assigned by the prospective consultant or sub-consultant to work on the Project. Describe the role, experience and qualifications of any subconsultants participating in this project and the history of the Consultant and sub-consultant business relationship.
- Statement of Understanding – Provide a concise but detailed description of the process that would be delivered based on the scope of this RFP.
- Project Cost – Submit a schedule of fees for all the services explained in the RFP. Include a Not-to-Exceed Amount and a Schedule of Hourly Rates. This information will not be used as a determining factor as to which firm the City will enter into an Agreement with.
- Project Schedule - Submit a timeline schedule to complete the scope of work.
- Work Samples – Provide copies of three (3) example work products that most closely match the project desired in this RFP and are similar in size and scope to the Project.
- References - Provide a list of at least three (3) current public agency customers in California for whom you have provided comparable services. Please include the agency's name, telephone number, and email address of contact person.

SCHEDULE FOR SELECTION AND AWARD

The following *tentative* schedule is anticipated with regard to this RFP:

Phase	Date
Release of RFP	October 28, 2022
Deadline for any questions from firms	November 16, 2022 by 5:00 p.m.
Deadline for posting any amendments to RFP	November 23, 2022
Proposal due date	November 30, 2022 by 4:00 p.m.
Review of proposals	12/1/22 thru 12/9/22
Potential interview of firm(s)	Week of December 12, 2022
Selection of firm	December 21, 2022

Proposals arriving after the specified date and time will not be considered, nor will late proposals be opened. Each firm assumes responsibility for timely submission of its proposal.

The City reserves the right to change this schedule and/or discontinue the RFP process at any time.

EVALUATION

Proposals will only be considered from firms normally engaged in providing the types of products and services specified herein. The City reserves the right to inspect the Firm's facilities, products, personnel, and organization at any time, or to take any other action necessary to determine the firm's ability to perform. The City reserves the right to reject proposals where evidence or evaluation is determined to indicate inability to perform. The City reserves the right to interview any or all responding firms and/or to award a contract without conducting interviews.

Evaluation will be made on the basis of the criteria noted below. A recommendation of award shall be made to the responsible firm whose proposal is determined to be the most advantageous to the City. The City will attempt to negotiate an agreement with the highest-ranking firm to provide the specified services. If these negotiations are unsuccessful, the City reserves the right to discontinue negotiations and commence negotiations with the next highest-ranking consultant. Nothing herein shall obligate the City to award a contract to any responding firm.

- A. Qualifications, professional experience and skills of the firm overall.
- B. Ability to meet the project objectives, the requirements of the scope of services, and maximum service delivery timelines through an efficient and effective allocation of resources with clear project understanding and approach.
- C. Client References – Performance on similar projects based on input from references.
- D. Proposed Fee Structure/Cost of Services.
- E. Completeness of the proposal submitted and responsiveness to the RFP.
- F. Ability to comply with the City's standard professional services agreement.

All interested parties are encouraged to submit proposals to the RFP, as the award is not based solely on the lowest cost proposal submitted. Total cost will be taken into consideration, but the Proposer's capabilities, competence and capacity will be considered as well. The City reserves the right to choose the overall best firm according to the City's criteria. The City, and its designated representatives, shall be the sole judge of its own best interest, the proposal, and the resulting negotiated agreement. The City's decisions will be final.

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

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

SPECIAL CONDITIONS

A. Contract and Insurance Requirements

The selected proposer shall be required to enter into a city-prepared Professional Services Agreement approved by the City Attorney. See Attachment A for General Terms and Conditions. Proposers shall be prepared to accept the terms and conditions of the City's Standard Professional Services Agreement including all Insurance Requirements. The successful Vendor's bid and the terms and conditions stated in this RFP will be made part of the contract between the City of Los Banos and the contractor. This RFP outlines the specifications and requirements, but not necessarily all of the terms and conditions that will be incorporated into the final agreement between the City of Los Banos and the successful firm.

B. Business License

The successful proposer that is awarded the contract will be required to apply for and obtain a business license in accordance with the Los Banos Municipal Code.

C. Reservations

This RFP does not commit the City to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to this RFP, or to procure or contract for work. No payment of any kind will be provided to the firm responding to this RFP, or parties they represent, for obtaining any of the information solicited.

D. Public Records

All proposals submitted in response to this RFP become the property of the City. Information in the proposal, unless specified as trade protected, may be subject to public review. Any information contained in the proposal that is proprietary must be clearly designated. Marking the entire proposal as proprietary will be neither accepted nor honored. Proprietary information submitted in response to this RFP will be handled in accordance with the California Public Records Act.

E. Right to Cancel and Amend

The City reserves the right to cancel, for any or no reason, in part or in its entirety, this RFP, including but not limited to: selection schedule, submittal date, and submittal requirements.

F. Proposer's Questions

The City will not give verbal answers to inquiries regarding information in this RFP, or verbal instructions prior to the submission deadline. All questions shall be submitted in writing to Stacy Souza Elms, Community and Economic Development Director, at stacy.elms@losbanos.org. A verbal statement regarding same by any person shall be non-binding. The City is not liable for any increased costs resulting from the Firm accepting verbal directions. Any explanation desired by a Firm must be requested of the City representative in writing not later than November 16, 2022 at 5:00 p.m. and if explanation is necessary, a reply shall be made in the form of an addendum, a copy of which shall be posted on the City website at www.losbanos.org on or before November 23, 2022.

G. Additional Information

The City reserves the right to request additional information and/or clarification from any or all vendors.

H. Conflict of Interest

Firm covenants that the company, its officers, employees and/or agents presently have no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services requested herein by the City. Firm further covenants that, in the performance of any contract or agreement resulting from this RFP, no subcontractor or person having such an interest shall be employed. Firm certifies that to the best of vendor's knowledge, no one who has or will have any financial interest under any contract or agreement resulting from this RFP is an officer or employee of the City.

I. Release of Public Information

Firms who respond to this RFP who wish to release information to the public regarding selection, contract award or data provided by the City must receive prior written approval from the City before disclosing such information to the public.

J. Non-Assignment

If a contract is awarded, the selected firm shall neither assign, nor delegate, in part or in whole, any duties without the prior written consent of the City which shall not be unreasonably withheld.

K. Collusion

Each firm certifies that the company, its officers, employees and/or agents are not a party to any collusive action, fraud, or any action that may be in violation of the Sherman Antitrust Act. The firm certifies that the company, its officers, employees and/or agents have not offered or received any kickbacks or inducements from any other bidding vendor, supplier, manufacturer, or subcontractor in connection with the proposal and that the company, its officers, employees and/or agents have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value. Any or all bids shall be rejected if there is any reason to believe collusion exists among the bidding vendors. More than one bid from an individual, firm, partnership, corporation, or association under the same or different names may be rejected. Reasonable grounds for believing that a bidding firm has interest in more than one proposal for the work being proposed may result in rejection of all bids in which the bidding firm is believed to have interest.

L. Debarment

By submitting a proposal, the firm certifies that the company is not currently debarred from submitting proposals and/or bids for contracts issued by any City or political subdivision or agency of the State of California, and that it is not an agent of a person or entity that is currently debarred from submitting proposals and/or bids for contracts issued by any City or political subdivision or agency of the State of California.

M. Equal Employment Opportunity Compliance

The selected firm shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The firm shall take affirmative action to ensure that all employees and applicants for employment shall be treated with equality in all aspects of employment

processes including, but not limited to, hiring, transfer, promotion, training, compensation and termination, regardless of their race, creed, color, sex, national origin, age, or physical handicap.

N. Right to Audit

The selected firm shall maintain such financial records and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. The selected firm shall retain these records for a period of three years after final payment, or until they are audited by the City, whichever event occurs first. These records shall be made available during the term of the contract or service agreement and the subsequent three-year period for examination, transcription, and audit by the City or its designees.

ATTACHMENT A

PROFESSIONAL SERVICE AGREEMENT TEMPLATE

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

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

RECITALS

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

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

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

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

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

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

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

[ALTERNATIVE]

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

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

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

[ALTERNATIVE]

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

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

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

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

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

[ALTERNATIVE]

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

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

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

[ALTERNATIVE]

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

[ALTERNATIVE]

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

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

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

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

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

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

7. **Indemnification.** When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Sub consultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Sub consultants) and the City in the performance of professional services under this agreement.

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant.

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

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

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

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

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

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

D. Coverage Requirements.

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

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than 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. Consultant's general liability policies shall be primary and non-contributory, and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction contracts, an endorsement providing completed operations to the additional insured, ISO form CG 20 37, is also required.

iii. Automobile Liability Coverage. Consultant shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than two million dollars (\$2,000,000) per accident. If Consultant owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy.

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

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

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

ii. This policy shall be considered primary insurance as respects to City, its elected or appointed officers, officials, employees, agents and volunteers as respects to all claims, losses, or liability arising directly or indirectly from the Consultant's operations or services provided to City. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.

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

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

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

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

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

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

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

measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the services.

10.1 The Consultant shall at all times remain an independent Contractor with respect to the services to be performed under this Agreement and shall be responsible for the payment of Federal and State Employer Withholding Taxes, Unemployment Insurance Taxes, FICA Taxes, Retirement, Life and/or Medical Insurance, and Worker's Compensation Insurance for the employees of the Consultant or any other person performing services under this Agreement. Consultant and its employees are not entitled to the rights or benefits afforded to City's employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave, or any other employment benefit. Consultant agrees to indemnify and hold City harmless from any claims, costs, losses, fees, penalties, interest or damages suffered by City as a result of any claim by any person or entity contrary to the provisions of this Section 10.

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

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

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

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

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

Consultant represents that neither Consultant, nor any of its employees, agents or subcontractors, have a conflict of interest with respect to the work to be performed under this Agreement, nor shall such individuals, during this term of this Agreement, acquire any interest, which would conflict in any manner with the performances of services hereunder.

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

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

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

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

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

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

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

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

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

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

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

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

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

<<consultant>>

Date: _____, 20__

by: <<name and title>>

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

Date: _____, 20__

by: <<name and title>>

**ATTEST:
CITY CLERK**

Lucille L. Mallonee, City Clerk

APPROVED AS TO FORM:

William A. Vaughn
City Attorney

TEMPLATE