



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

REQUEST FOR PROPOSALS  
FOR  
RETAIL RECRUITMENT STRATEGY AND SERVICES

Issuance Date  
November 18, 2022

Deadline for Submissions  
December 2, 2022 at 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](mailto:stacy.elms@losbanos.org)

**REQUEST FOR PROPOSALS**  
**Retail Recruitment Strategy and Services**

NOTICE IS HEREBY GIVEN that the City of Los Banos (“City”) is issuing this Request for Proposal (“RFP”) for retail, restaurant, hospitality, and downtown recruitment strategy and services to support economic development efforts. The purpose of this RFP is to select the most qualified agency or firm to provide the related services to the City.

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 December 2, 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](mailto: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: **RETAIL RECRUITMENT STRATEGY AND SERVICES**. 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 Submitted proposals may be withdrawn at any time prior to the submission time specified in this RFP, provided notification is received in writing before the submittal deadline. Proposals cannot be changed or withdrawn after the submittal deadline.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.

Please submit all inquiries to [stacy.elms@losbanos.org](mailto: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](http://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.

## I. INTRODUCTION

The City of Los Banos, incorporated in 1907, has an estimated population of approximately 46,639 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 a general law city, which operates under the council/manager form of government.

The City is a “full service city” and provides a wide range of services. These services include: police and fire protection; animal control; code enforcement, water and sewer service, building safety regulation and inspection; street lighting; land use planning and zoning; housing and community development; maintenance and improvement of streets and related structures; traffic safety maintenance and improvement; and full range of recreational programs.

The City of Los Banos is seeking to identify and select a qualified consultant to implement a plan for retail, restaurant, hospitality, and downtown recruitment strategy and services to support economic development efforts.

## II. SCOPE

### A. Scope of Work

Consultant and professional services shall include the following:

- Conduct and update demographic and psychographic analysis, retailer gap analysis, and identify key retailers that are a fit for Los Banos and the larger trade area and that represent an increase in retail quality for Los Banos over existing retail options in the City.
- Develop an overall retail recruitment strategy for Los Banos based on the above items and other relevant factors.
- Develop a strategy and approach to attract retailers to downtown Los Banos.
- Develop a strategy and approach to attract hospitality operators/ developers to Los Banos.
- Provide mobile GPS analytics to understand and identify visitor profiles and to quantify the regional trade area to support retail attraction efforts.

- Develop presentation quality materials, pitch decks, maps, demographic profiles, etc. for use by the City in recruiting and engaging retailers, brokers, and developers.
- Create customized materials and pitches for specific retailers, brokers, and developers on an as needed and requested basis for meetings and presentations.
- Assist the City in implementing the retail recruitment strategy by helping to develop meaningful relationships, conducting meetings with retailers and their agents, and facilitating handoffs to developers when mutual interest is established.
- Assist the City in preparing for key retail trade events and conferences (i.e. ICSC@Monterey, RECON, ICSC@Western, etc.) to include preparation of presentation and meeting materials, scheduling of meetings, and attendance at meetings as requested by the City.
- Provide regular project reports and presentations of data that is driven to demonstrate a return on the investment to the City.

### III. 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. Each section of the submittal *shall be titled* according to the numbering and naming system shown below to aid in expedient information retrieval (NOTE: Respondents shall base their submittals on the "Scope of Work.")

Cover Letter - The cover letter must be on Consultant Firm letterhead and should include in the subject heading "Proposal for Retail Recruitment Strategy and Services." The cover letter should be brief (one page maximum), and any changes to the format or deletions of requested materials clearly explained.

Describe how the delivery of services will be provided to City, including the location of the consultant's offices and the response time to City's requests. 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.

- A. Methods and Strategic Plan - Describe methods and plan for carrying out the Scope of Work.

- B. Qualifications and Experience - This section shall contain the following: A description of the consultant firm's experience in providing Retail Recruitment Strategy and Relationship Services.
- C. The name of the consultant firm's proposed personnel for this contract. The consultant firm's and proposed personnel's experiences in the past five (5) years specifically related to the scope of work of this project. Experiences shall be listed consecutively with name of the City or agency the work was completed for.
- D. List of Project Personnel - This list should include the identification of the contact person with primary responsibility for this contract and any supervisory personnel.
- E. 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.
- F. Not-to-Exceed Monthly Fee and Schedule of Hourly Rates - The respondent shall provide a Not-to-Exceed Monthly Fee and a Schedule of Hourly Rates.

IV. Schedule for Selection and Award

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

Phase	Date
Release of RFP	11/18/22
Deadline for any questions from vendors	11/23/2022 by 5:00 p.m.
Deadline for posting any amendments to RFP	11/29/2022
Proposal Due Date	12/2/22 by 4:00 p.m.
Review of Proposals	12/5/22 thru 12/9/22
Potential Interview of Vendor(s)	12/12/22 thru 12/22/22
Selection of Firm approved by City Council	1/4/23

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.

V. 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. Proposed Personnel - qualifications, professional experience and skills of the firm overall and in particular the proposed team members
- B. Ability to meet the requirements of the scope of services and maximum service delivery timelines through an efficient and effective allocation of resources
- C. Client References – Performance on similar projects based on input from references. The City also reserves the right to contact the clients that terminated contracts with the firm as listed in the firm's submittal.
- 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.

VI. 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. Term

The term of the contract for the required services is expected to be three (3) years; however, term length is subject to change prior to award of contract.

D. 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.

E. 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.

F. Right to Cancel and Amend

The City reserves the right to cancel, for any or no reason, in part or in its entirety, this RFP, including but not limited to: selection schedule, submittal date, and submittal requirements. If the City cancels or revises the RFP, all firms will be notified in writing.

G. 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](mailto: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 23, 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](http://www.losbanos.org) on or before November 29, 2022.

H. Additional Information

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

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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  
TEMPLATE PROFESSIONAL SERVICES AGREEMENT

**SAMPLE-SUBJECT TO MODIFICATION**

**PROFESSIONAL SERVICES AGREEMENT  
FOR PROFESSIONAL DESIGN SERVICES  
FOR RETAIL RECRUITMENT CONSULTING SERVICES  
[INSERT NAME OF CONSULTANT]**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 202\_, by and between the City of Los Banos, a municipal Corporation (herein referred to as “City”) and [\_\_\_\_\_, **INSERT CONSULTANT NAME AND TYPE OF ENTITY**] (herein referred to as “Consultant”).

**RECITALS**

A. WHEREAS, City is in need of Retail Recruitment Consulting Services as 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 the 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]**

**[ALTERNATIVE]**

1. **Term.** 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 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.

2.1. 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.

2.2. 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.

2.3. 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]**

3. **Time of Performance.** 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.]

3.1. 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. all

reimbursable items and sub Consultant fees, shall not exceed **[INSERT DOLLAR AMOUNT]** unless authorized in writing by the City and approved by the City Council.]

**[ALTERNATIVE]**

4. **Compensation.** 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 **[INSERT DOLLAR AMOUNT]**.

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 Community and Economic Development Director shall have the authority to act for City under this Agreement. The Community and Economic Development Director 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.

7. **Indemnification.** To the fullest extent permitted by law, Consultant shall defend (with counsel of City’s choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action,

costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

7.1. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

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 not less than two million dollars (\$2,000,000) in the annual 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.

8.2 Consultant shall not allow any subcontractors or sub consultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or sub consultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or sub consultants.

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. **Subcontracting.** Nothing contained in this contract or otherwise, shall create any contractual relation between the City and any sub consultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to the City for the acts and omissions of its sub consultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its sub consultant(s) is an independent obligation from the City's obligation to make payments to the Consultant.

11.1. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the City's Contract Administrator.

11.2. Consultant shall pay its sub consultants within ten (10) calendar days from receipt of each payment made to Consultant by the City.

11.3. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this Agreement to be applicable to sub consultants.

11.4. Any substitution of sub consultant(s) must be approved in writing by City's Contract Administrator prior to the start of work by the sub consultant(s).

12. **Ownership of Documents.** All documents, information and materials of any and every type furnished or prepared by the Consultant or any of its subcontractors pursuant to and in the course of performance of this Agreement shall be and remain the sole and exclusive property of the City. Such documents, information and materials shall include but not be limited to all findings, reports, plans, specifications, studies, drawings, estimates, 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. City shall have the sole right to use such documents, materials and information in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such documents, materials and information to City upon prior written request.

12.1. All Documents shall be considered works made for hire and all Documents and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of the City without restriction or limitation upon their use, duplication or dissemination by the City. Consultant shall not obtain or attempt to obtain copyright protection as to any Documents.

12.2. Nothing herein shall constitute or be construed to be any representation by Consultant that the work product is suitable in any way for any other project except the one

detailed in this Agreement. Any reuse by City for another project or project location shall be at City's sole risk.

13. **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.

14. **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.

15. **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.

15.1. 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.

15.2. 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.

16. **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.

17. **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.

18. **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. City's city manager, or designee, may execute any such amendment on behalf of City.

19. **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.

20. **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.

21. **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.

22. **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:  
Stacy Souza Elms  
Community and Economic Development Director  
520 J Street  
Los Banos, California 93635

To Consultant:  
**[INSERT NAME AND ADDRESS  
OF CONSULTANT]**

Nothing hereinabove shall prevent either City or Consultant from personally delivering any such

notices to the other.

23. **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.

24. **Corrective Measures.** Consultant will promptly implement any corrective measures required by City regarding the requirements and obligations of this Agreement. Consultant will be given a reasonable amount of time as determined by the City to implement said corrective measures. Failure of Consultant to implement required corrective measures shall result in immediate termination of this Agreement.

25. **Corrections.** In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant. In addition to all other available remedies, the City may deduct the cost of such correction from any retention amount held by the City or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

26. **Acceptance Of Facsimile Or Electronic Signatures.** The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract will be considered signed when the signature of a party is delivered by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.

27. **Authority.** The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein.

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

**[INSERT NAME OF CONSULTANT]**

Date: \_\_\_\_\_, 202\_

\_\_\_\_\_ **by:**

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

Date: \_\_\_\_\_, 202\_

\_\_\_\_\_ **by:**

**ATTEST:  
CITY CLERK**

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

**APPROVED AS TO FORM:**

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

**Exhibit A**

SAMPLE



**Exhibit B**

SAMPLE