



City of
Los Banos
At the Crossroads of California

**REQUEST FOR QUALIFICATIONS
for
ON-CALL CONSTRUCTION MANAGEMENT SERVICES**

Date Released: September 20, 2023

**Questions with regard to submission, process, or proposal
can be emailed to:**

Niorn Than, P.E.
Public Works Director/City Engineer
niorn.than@losbanos.org

**Proposals must be received prior to 2:00 p.m. October 11, 2023
at the office of City Clerk
City of Los Banos
520 J Street
Los Banos, CA 93635**

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REQUEST FOR QUALIFICATIONS

On-Call Construction Management Services

The City of Los Banos (City) is seeking qualified consulting firms to provide construction management services on an on-call basis. The response to this solicitation will be in the form of a Statement of Qualifications (SOQ).

The City intends to award up to five (5) construction management firms; however, the exact number will be determined depending on the quality, diversity and responsiveness of the SOQ's received. Total amount payable to the Consultant shall not exceed \$300,000 per year. The selected firms would be designated as pre-approved consultants to provide construction management services on an as needed basis to the city for a period of 3 years, with up to two one-year extensions. The city would select from one or more of the pre-approved firms to submit proposals for construction management services for a particular project.

All qualified firms interested in providing these services are invited to submit their SOQs. The SOQs will be evaluated and ranked according to the criteria provided in Appendix B, "Proposal Evaluation," of this Request for Qualifications (RFQ).

It shall be the Consultant's responsibility to check the City of Los Banos' website (www.losbanos.org) to obtain any addenda that may be issued.

The Consultant's attention is directed to Appendix A, "Submittal Requirements."

Submit five (5) hard copies and one (1) electronic copy in PDF format on a USB flash drive of the Consultant's SOQs. The hard copies and USB flash drive shall be mailed or submitted to the City of Los Banos, 520 J Street, Los Banos, CA 93635, prior to **2:00 p.m., Pacific Daylight Time (PDT), on October 11, 2023**. SOQs shall be submitted in a sealed package clearly marked "**ON-CALL CONSTRUCTION MANAGEMENT SERVICES**" and addressed as follows:

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

Submittals received after the time and date specified above will be considered nonresponsive and will be returned to the Consultant.

Any proposals received prior to the time and date specified above may be withdrawn or modified by written request of the Consultant. To be considered, however, the modified submittal must be received prior to **2:00 p.m., PDT, on October 11, 2023**.

Unsigned submittals or submittals signed by an individual not authorized to bind the prospective Consultant will be considered nonresponsive and rejected.

Upon review of submitted proposals, the Selection Committee will determine whether interviews are necessary to determine a Consultant selection. The City reserves the right to hold interviews or make a Consultant selection based solely on the SOQs received.

This RFQ does not commit the City of Los Banos to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure, or contract for services. The City of Los Banos reserves the right to accept or reject any or all SOQs received as a result of this request, to negotiate with any qualified Consultant, or to modify or cancel in part or in its entirety the RFQ if it is in the best interests of the City of Los Banos to do so.

The prospective Consultant is advised that should this RFQ result in recommendation for award of a contract, the contract will not be in force until it is approved and fully executed by the City of Los Banos.

All products used or developed in the execution of any contract resulting from this RFQ will remain in the public domain at the completion of the contract.

The anticipated consultant selection schedule is as follows:

SOQ review and evaluation: October 11, 2023 through October 13, 2023

Oral interviews (if necessary): October 12, 2023 through October 13, 2023

Cost Negotiation: October 16, 2023 through October 17, 2023

Contract Award: October 18, 2023

Any questions related to this RFQ shall be submitted in writing to the attention of Nirorn Than via email at nirorn.than@losbanos.org. Questions shall be submitted before 5:00 p.m. on September 27, 2023. Answers to questions and addendum, if necessary, shall be posted on the City website before 5:00 PM PDT on September 29, 2023.

No oral questions or inquiries about the RFQ shall be accepted.

PROJECT DESCRIPTION AND BACKGROUND

The City of Los Banos (City) will select qualified consulting firms to provide on-call construction management services. The consultant shall have the ability to provide Construction Management Services to the city for various types and sizes of projects (e.g., major or minor sewer trunk main replacement projects, trail construction projects which may include bridges, water main replacement projects, road reconstruction and maintenance projects, or other Public Works capital projects). Your submission should clearly demonstrate how your firm's resources and expertise can meet the construction management needs of the city's projects. Consultants who plan to sublet any of the required services of a project contained in this RFQ shall include the name of the company(ies) and description of project services that may be potentially sublet.

Through this RFQ, the city will evaluate each interested engineering consultant firm's specific qualifications and experience in construction management of public works projects and to select up to seven of the best qualified firms. The selected firms would be designated as pre-approved consultants to provide construction management services on an as needed basis to the city for a period of 3 years, with up to two one-year extensions. The city would select from one or more of the pre-approved firms to submit proposals for construction management services for a particular project. The city would negotiate a contract price which the city determines is fair and reasonable to the city.

This solicitation is not for specific projects, but for specific services. The services are to be rendered for the duration of the contract term. The City intends to award contracts to approximately five (5) construction management firms; however, the exact number will be determined depending on the quality, diversity and responsiveness of the SOQ's received. The City does not guarantee a specific number or dollar amount of projects will be contracted.

SCOPE OF SERVICES

CONSTRUCTION MANAGEMENT NEEDS

The City of Los Banos has a healthy and ambitious Capital Improvement Project program. In order to meet the needs of the capital program, the city uses outside consultants, in addition to city staff. Through this RFQ, the city is seeking qualified consultants to provide construction management services. The city will be involved in managing the project, attending pre-construction and periodic construction status meetings, as well as problem solving and approving change orders, but will be relying on the consultant for day-to-day management of the project. The following is a minimum list of the tasks that the consultant would typically be responsible for, as may be applicable to a particular project:

- Review of contractor submittals, including but not limited to:
 - materials
 - design mixes
 - schedules
 - traffic control plans
 - safety plans
 - storm water pollution prevention plans
 - pay requests
 - shoring plans
 - As-Built drawings
- Verification of pay quantities
- Materials testing as per specifications and in conformance with City of Los Banos Quality Assurance Plan
- Daily diaries of work completed, personnel & equipment used

- Employee interviews related to wages (if required)
- Verification of posting of required labor signs and regulations (if required)
- General inspection of daily work & conformance with project plans & specifications
- Be aware of and have contractor correct any unsafe conditions
- Verification of any required contractor notification of construction work or road closure notifications to residents, businesses, utilities, mail service, trash service, bus service, police, fire, ambulance, etc. as applicable and as may be required in the specifications
- Prepare, in consultation with city, field orders and change orders
- Inspection of detour and construction signing/public safety
- Collection of certificates of compliance and weight/quantity certificates
- Coordination with city departments as applicable
- Resolution of construction issues, in consultation with city and/or contractor
- Resolution of citizen complaints related to the construction
- Checking to make sure slopes are in compliance with ADA requirements (e.g., ADA access ramps, sidewalk cross-slopes, etc.), as well as other ADA compliance issues
- Coordination with Caltrans, Regional Water Quality Control Board, Merced County Association of Governments (MCAG), or other agencies as applicable
- Attend and run pre-construction meeting, periodic construction progress meetings
- Inspect forms prior to concrete pours
- Insure/verify contractor's compliance with environmental document conditions or monitoring plans as may be applicable
- Any other reasonable and customary construction management functions necessary to fairly, efficiently, and safely see a project to a successful completion, in conformance with the plans, specifications

TASK ORDERS

The consultant shall only perform work that is assigned in an authorized Task Order. This Contract does not guarantee that a Task Order shall be issued.

All work performed under this contract will require approval by the City Contract Administrator and issued through a Task Order. A task order shall be requested from the Consultant to identify and refine the scope of services prior to the City issuing the task order. The task order shall identify and refine the scope of services for any specific project. The task order shall detail the tasks required for particular projects, schedule, and projected costs. The costs will be based on the specified rates of compensation in the contract. The Contract Administrator shall confer with the consultant to establish the maximum fee, including expenses, for the specific project and the completion date.

Pursuant to an authorized Task Order, the consultant shall provide engineering services and all necessary personnel, material, transportation, lodging, instrumentation, and the specialized facilities and equipment necessary to satisfy all appropriate agencies and required to ensure compliance with all applicable Federal, State, and Local statutes, laws, codes, regulations, policies, procedures, ordinances, standards, specifications, performance standards, and guidelines, applicable to the consultant's services and work product. The consultant is responsible for supplying and providing all necessary equipment and protective clothing in accordance with City standards.

The potential construction/design projects may vary in scope and size, and may encompass any type of capital improvements including, but not limited to, roadway rehabilitation, widening and/or realignment of existing facilities, relocation of existing facilities, construction of new facilities including storm drain pump or sewer lift stations. The project location, project limits, purpose, expected results, project deliverables, period of performance, project schedule, and scope of work to be performed shall be described in each Task Order.

The consultant shall only perform work that is assigned in an authorized Task Order and an award of a contract does not guarantee any Task Orders will be issued. Work shall not begin until the Task Order has been approved by the Contract Administrator.

The consultant shall maintain a set of project files that shall be provided to the City upon request.

The consultant shall have the ability to respond in a timely and cost-efficient manner to City requests.

GENERAL PERSONNEL REQUIREMENTS

The consultant's personnel shall be capable, competent, and experienced in performing the types of work in this Contract with minimal instruction. Personnel skill level should match the specific job classifications, as set forth herein or in the consultant's Cost Proposal and task complexity. The consultant's personnel shall be knowledgeable about, and comply with, all applicable Federal, State, and Local laws and regulations.

The consultant is required to submit a written request and obtain the City's Contract Administrator's prior written approval for any substitutions, additions, alterations, or modifications to the consultant's originally proposed personnel and project organization, as depicted on the proposed consultant's organization chart or the consultant's cost proposals. The substitute personnel shall have the same job classification as set forth herein or in the consultant's Cost Proposal not exceed the billing rate, and meet or exceed the qualifications and experience level of the previously assigned personnel, at no additional cost to the City.

The consultant Contract Administrator shall be a Registered Professional Engineer licensed in the State of California in good standing with the California State Board for Professional Engineer, Land Surveyors, and Geologists at all times during the Contract period, to perform the tasks described in this Contract and in the Task Orders and shall have a documented minimum ten (10) years of demonstrated experience acceptable to City in management and delivery of capital improvement projects for local agencies.

In addition to other specified responsibilities, the consultant Project Administrator shall be responsible for all matters related to the consultant's personnel, subconsultants, and consultant's and sub-consultants' operations including, but not limited to, the following:

- a. Ensuring that deliverables are clearly defined and those criteria are specific, measurable, attainable, realistic and time-bound.
- b. Supervising, reviewing, monitoring, training, and directing the consultant's and sub-consultants' personnel.
- c. Assigning qualified personnel to complete the required Task Order work in coordination with the City Contract Administrator.
- d. Administering personnel actions for consultant personnel and ensuring appropriate actions taken for Subconsultant personnel
- e. Maintaining and submitting organized project files for record tracking and auditing.
- f. Developing, organizing, facilitating, and attending scheduled coordination meetings, and preparation and distribution of meeting minutes.
- g. Implementing and maintaining quality control procedures to manage conflicts, insure product accuracy, and identify critical reviews and milestones.
- h. Assuring that all applicable safety measures are in place.
- i. Providing invoices in a timely manner and providing monthly Contract expenditures.
- j. Reviewing invoices for accuracy and completion before billing to City.
- k. Managing Subconsultants.
- l. Managing overall budget for Contract and provide report to the City Contract Administrator.

- m. Ensuring compliance with the revisions in the Contract and all specific Task Order requirements.
- n. Knowledge, experience, and familiarity with prevailing wage issues and requirements in the State of California.

DELIVERABLES

As agreed upon by the City and Consultant in a Task Order for each project.

SCHEDULE

As agreed upon by the City and Consultant in a Task Order for each project.

METHOD OF PAYMENT

Consultant shall be paid based on the Specific Rates of Compensation for this Contract and for the amount as agreed upon by the City and consultant in a Task Order for each project. Consultant shall submit request for monthly progress payments.

MATERIALS TO BE PROVIDED BY THE CONSULTANT

Unless otherwise specified, the consultant shall provide all materials to complete the required work in accordance with the delivery schedule and cost estimate outlined in each Task Order.

APPENDIX A – SUBMITTAL REQUIREMENTS

These guidelines are provided for standardizing the preparation and submission of the SOQ's by all consultants. The intent of these guidelines is to assist consultants in preparation of their qualifications, to simplify the review process, and to help assure consistency in format and content.

SOQ's shall contain the following information in the order listed:

1. Introductory Letter

The introductory (or transmittal) letter shall be addressed to:

Nirorn Than, P.E., Public Works Director/City Engineer
411 Madison Ave
Los Banos, CA 93635

The letter shall be on consultant letterhead and include the consultant's contact name, mailing address, telephone number, facsimile number, and email address. The letter will address the consultant's understanding of the services being requested and any other pertinent information the Consultant believes should be included. All addendums received must be acknowledged in the transmittal letter.

The letter shall be signed by the individual authorized to bind the consultant to the proposal.

2. Consultant Information, Qualifications & Experience

The City will only consider submittals from consultants that demonstrate they have successfully completed comparable projects. These projects must illustrate the quality, type, and past performance of the project team. Submittals shall include a detailed description of a minimum of three (3) projects which include the following information:

1. Contracting agency
2. Contracting agency Project Administrator/Contact Person including name, address and phone
3. Contracting agency contact information
4. Contract amount
5. Date of contract
6. Date of completion
7. Consultant Project Administrator and contact information

3. Organization and Approach

1. Describe the roles and organization of your proposed team for this project. Indicate the composition of subcontractors and number of project staff, facilities available and experience of your team as it relates to this contract. Provide an organizational chart.
2. Describe your project and management approach.
3. Describe the roles of key individuals on the team. Provide resumes and references for all key team members. Resumes shall show relevant experience, for the Project's Scope of Work, as well as the length of employment with the proposing Consultant. Key members, especially the Project Administrator, shall have significant demonstrated experience with this type of project, and should be committed to stay with the project for the duration of the project.
4. Demonstrate that the consultant's project Administrator and project staff have sufficient availability and/or that consultant has sufficient resources to timely deliver City's projects.

4. Past Experience on Municipal Projects

Include a description of past municipal construction management projects (minimum of five) in which your firm has been involved, for comparable cities including the following:

- Project Description
- Year of Completion
- Construction Cost (or consultant cost, if not an infrastructure project)
- City Contact

5. Conflict of Interest Statement

Throughout the term of the awarded contract, any person, firm or subsidiary thereof who may provide, has provided or is currently providing construction management services under a contractual relationship with a construction contractor(s) on any City project related to this solicitation.

Similar to the disclosures regarding contractors, all firms are also required to disclose throughout the term of the awarded contract, any design engineering services including claim services, lead project management services and construction engineering services provided to all other clients on any City project listed in this solicitation.

In addition to the disclosures, the consultant shall also provide possible mitigation efforts, if any, to eliminate or avoid any actual or perceived conflicts of interest.

The consultant shall ensure that there is no conflict before providing services to any construction contractor on any of the City's projects related to this solicitation. The submitted documentation will be used for determining potential conflicts of interest. The City will use this documentation to determine whether the firm may provide the specified services under this contract.

If a consultant discovers a conflict during the execution of an assigned task order, the consultant must immediately notify the City Contract Administrator regarding the conflicts of interest. The City Contract Administrator may terminate the Task Order involving the conflict of interest and City may obtain the conflicted services in any way allowed by law. Failure by the consultant to notify the City Contract Administrator may be grounds for termination of the contract.

6. Litigation

Indicate if the proposing consultant was involved with any litigation in connection with prior projects. If yes, briefly describe the nature of the litigation and the result.

7. Contract Agreement

Indicate if the proposing consultant has any issues or needed changes to the proposed contract agreement included as Appendix C.

The consultant shall provide a brief statement affirming that the proposal terms shall remain in effect for ninety (90) days following the date proposal submittals are due.

8. Cost Proposal

In order to assure that the City is able to acquire professional services based on the criteria set forth in the Brooks Act and Government Code 4526, the SOQ shall include the consultant's Specific Rates of Compensation for this contract. ***The Specific Rates of Compensation shall be submitted in a separate sealed envelope from the SOQ.*** The consultant's Specific Rates of Compensation are confidential and shall remain sealed. Upon completion of the consultant selection process, only the cost proposal from the selected consultant shall be opened. All other (unopened) cost proposals shall be returned in accordance with Appendix B.

APPENDIX B – PROPOSAL EVALUATION

EVALUATION PROCESS

All submittals will be evaluated by City Selection Committee. The Committee may be composed of City staff and other parties that may have expertise or experience in the services described herein. The Committee will review the submittals and will rank the proposers. The evaluation of the proposals shall be within the sole judgment and discretion of the Committee. All contacts during the evaluation phase shall be through the Contract Administrator/Project Administrator only. Proposers shall neither contact nor lobby evaluators during the evaluation process. Attempts by Proposer to contact members of the Committee may jeopardize the integrity of the evaluation and selection process and risk possible disqualification of Proposer.

The Committee will evaluate each submittal meeting the qualification requirements set forth in this RFQ. Proposers should bear in mind that any submittal that is unrealistic in terms of the technical or schedule commitments may be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the City requirements as set forth in this RFQ.

The selection process may include oral interviews. The consultants will be notified of the time and place of oral interviews and if any additional information that may be required to be submitted. Interviews may be held with the top ranked candidates. In the event that the City receives no more than three SOQs, the City may opt to not conduct an oral interview.

Upon completion of the evaluation and selection process, only the cost proposals from the top three qualified consultants will be opened to begin cost negotiations. All unopened cost proposals will be returned at the conclusion of the procurement process. Upon acceptance of a cost proposal and successful contract negotiations, staff will recommend a contract be awarded.

EVALUATION CRITERIA

Proposals will be evaluated according to each Evaluation Criteria, and scored on a zero to five point rating. The scores for all the Evaluation Criteria will then be multiplied according to their assigned weight to arrive at a weighted score for each proposal. A submittal with a high weighted total will be deemed of higher quality than a proposal with a lesser-weighted total. The final maximum score for any proposal is five hundred (500) points.

Rating Scale		
0	Not Acceptable	Non-responsive, fails to meet RFQ specifications. The approach has no probability of success. For mandatory requirement this score will result in disqualification of submittal.
1	Poor	Below average, falls short of expectations, is substandard to that which is the average or expected norm, has a low probability of success in achieving project objectives per RFQ.
2	Fair	Has a reasonable probability of success, however, some objectives may not be met.
3	Average	Acceptable, achieves all objectives in a reasonable fashion per RFQ specification. This will be the baseline score for each item with adjustments based on interpretation of submittal by Evaluation Committee members.
4	Above Average/Good	Very good probability of success, better than that which is average or expected as the norm. Achieves all objectives per RFQ requirements and expectations.
5	Excellent/Exceptional	Exceeds expectations, very innovative, clearly superior to that which is average or expected as the norm. Excellent probability of success and in achieving all objectives and meeting RFQ specification.

The Evaluation Criteria Summary and their respective weights are as follows:

No.	Written Evaluation Criteria	Weight
1	Completeness of Response	Pass/Fail
2	Qualifications & Experience	30
3	Organization & Approach	15
4	Past Experience on Municipal Projects	20
5	Staff Availability	15
6	Conflict of Interest Statement	Pass/Fail
7	Proposal Format	5
8	References	15
Subtotal:		100

No.	Interview Evaluation Criteria (if interviews are necessary)	Weight
9	Presentation by Team	10
10	Q&A Response to Panel Questions	15
Subtotal:		25
Total:		125

1. Completeness of Response (Pass/Fail)

- a. Responses to this RFQ must be complete. Responses that do not include the proposal content requirements identified within this RFQ and subsequent addenda and do not address each of the items listed below will be considered incomplete, be rated a Fail in the Evaluation Criteria and will receive no further consideration. Responses that are rated a Fail and are not considered may be picked up at the delivery location within 14 calendar days of contract award and/or the completion of the competitive process.

2. Qualifications & Experience (30 points)

- a. Relevant experience, specific qualifications, and technical expertise of the firm and sub-consultants to conduct construction management services on capital improvement projects.

3. Organization & Approach (15 points)

- a. Describes familiarity of project and demonstrates understanding of work completed to date and project objectives moving forward
- b. Roles and Organization of Proposed Team
 - i. Proposes adequate and appropriate disciplines of project team.
 - ii. Some or all of team members have previously worked together on similar project(s).
 - iii. Overall organization of the team is relevant to City needs.
- c. Project and Management Approach
 - i. Team is managed by an individual with appropriate experience in similar projects. This person's time is appropriately committed to the project.
 - ii. Team successfully addresses Site Planning and Programming efforts.

- iii. Project team and management approach responds to project issues. Team structure provides adequate capability to perform both volume and quality of needed work within project schedule milestones.
 - d. Roles of Key Individuals on the Team
 - i. Proposed team members, as demonstrated by enclosed resumes, have relevant experience for their role in the project.
 - ii. Key positions required to execute the project team's responsibilities are appropriately staffed.
 - e. Working Relationship with City
 - i. Team and its leaders have experience working in the public sector and knowledge of public sector procurement process.
 - ii. Team leadership understands the nature of public sector work and its decision-making process.
 - iii. Proposal responds to need to assist City during the project.
- 4. Past Experience on Municipal Projects (20 points)**
 - a. Consultant demonstrates experience with performance of services within the comparable cities for projects similar in nature to those related to this solicitation.
 - b. Consultant demonstrates successful completion of said projects.
 - c. Consultant is familiar with City standards and procedures.
- 5. Staff Availability (15 points)**
 - a. Consultant demonstrates project team staff is available and able to promptly respond to requests throughout the contract duration in order to timely deliver projects.
- 6. Conflict of Interest Statement (Pass/Fail)**
 - a. Discloses any financial, business or other relationship with the City that may have an impact upon the outcome of the contract or the construction project.
 - b. Lists current clients who may have a financial interest in the outcome of this contract or the construction project that will follow.
 - c. Discloses any financial interest or relationship with any construction company that might submit a bid on the construction project.
- 7. Proposal Format (5 points)**
 - a. Attractive, professional appearance. (Cover, internal layout, font type and size, and illustrations/photos)
 - b. Clear, concise, error-free.
- 8. References (15 points)**
 - a. Provide as reference the name of at least three (3) agencies you currently or have previously consulted for in the past three (3) years.
- 9. Presentation by Team (if necessary) (10 points)**
 - a. Team presentation conveying project understanding, communication skills, innovative ideas, critical issues and solutions.
- 10. Q&A Response to Panel Questions (if necessary) (15 points)**
 - a. Proposer provides responses to various interview panel questions.

Weighted scores for each Proposal will be assigned utilizing the table below:

No.	Evaluation Criteria	Rating (0-5)	Weight	Score (Rating * Weight)
1	Completeness of Response	N/A	Pass/Fail	Pass/Fail
2	Qualifications & Experience		30	
3	Organization & Approach		15	
4	Past Experience on Municipal Projects		20	
5	Staff Availability		15	
6	Conflict of Interest Statement		Pass/Fail	
7	Proposal Format		5	
8	References		15	
9	Presentation by Team		10	
10	Q&A Response to Panel Questions		15	
Total:			125	

APPENDIX C –SAMPLE CONTRACT AGREEMENT

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF LOS BANOS
AND
[CONSULTANT NAME]
FOR
ON-CALL CONSTRUCTION MANAGEMENT SERVICES**

SAMPLE-SUBJECT TO MODIFICATION

**PROFESSIONAL SERVICES AGREEMENT
FOR ON CALL CONSTRUCTION MANAGEMENT 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 Professional Services as described herein below;
- B. WHEREAS, Consultant represents that it is "design professional" as that term is defined by California Civil Code Section 2782.8 and 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 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 City with the services generally described in the Scope of Services attached hereto as **Attachment A.** The specific Services to be provided shall be more particularly described in individual task orders issue by the City as described in Section 4 of this Agreement. The Consultant shall only perform work that is

assigned in an authorized Task Order. This Agreement does not guarantee that a Task Order shall be issued.

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 Consultant shall perform the services in accordance with the Project Schedule set forth in each individual Task Order. The failure by Consultant to strictly adhere to an individual Project Schedule may result in termination of the Task Order and this Agreement by City. No Task Order shall be approved if the time for performance extends beyond the term of this Agreement.

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. **Task Orders and Compensation.** Specific projects will be assigned to Consultant through issuance of Task Orders. The amount to be paid for specific work shall be set forth in the individual Task Orders issued pursuant to this Section 4.

4.1. Except as otherwise agreed to by the parties, 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 Cost Estimate submitted by Consultant and negotiated and agreed to by the parties for each individual Task Order.

4.2. When a project to be performed under this Agreement is identified by the City, the City will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a City Project Coordinator. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. Except as otherwise agreed to by the parties, Consultant's Cost Estimate,

including hourly rates and reimbursable expenses, shall be in accordance with Consultant's current Charge Rate Schedule set forth in **Attachment B** attached hereto and incorporated herein by this reference.

4.3. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both the City and Consultant. A Task Order is of no force or effect until returned to the City and signed by an authorized representative of the City. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by the City.

4.4. Consultant shall not commence performance of work or services until the individual Task Order has been approved by the City, and notification to proceed has been issued by the City's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of the individual Task Order.

4.5. Consultant shall submit monthly invoices to City describing the work performed the preceding month. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order.

4.6. Consultant's bills shall identify the specific Task Order, include the name of the person who performed the work, a brief description of the services performed on each milestone, the date the services were performed, the number of hours spent on all work billed on an hourly basis, and a description and itemization of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) days after receipt of the monthly invoice by the City.

4.7. Monthly invoices shall be mailed to the City's Contract Administrator at the following address:

City of Los Banos,
Public Works Director/City Engineer
411 Madison Avenue,
Los Banos, CA 93635

4.8. City shall reimburse Consultant only for those costs or expenses specifically approved in the Task Order, or specifically approved in advance by City. Unless otherwise approved, such costs shall be limited and in accordance Consultant's current Charge Rate Schedule.

4.9. The total amount payable by the City for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.

4.10. If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

4.11. 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/Task Order 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 Consultant’s current Charge Rate Schedule.

4.12. Consultant’s compensation for all work performed in accordance with this Agreement, including all reimbursable items and sub consultant fees, shall not exceed \$300,000.00 per year during the term of this Agreement.

4.13. Consultant’s Charge Rate Schedule may be adjusted by the Consultant on an annual basis (one time per year) during the term of this Agreement.

5. **Contract Administration.** The Public Works Director/City Engineer shall have the authority to act for City under this Agreement. The Public Works 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.

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 written notice (ten (10) calendar days written notice of non-payment of premium) 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.

10.2. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents. and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City,

including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

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. 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.

11.3. 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).

11.4 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by City or any department thereof at any time that this Agreement is in effect, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of City.

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.

12.3. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

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:
Public Works Director/City Engineer
411 Madison Avenue
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. **Performance to Satisfaction of City.** Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the Public Works Director/City Engineer City Administrator or his or her designee. If the quality of work is not satisfactory, City and Consultant shall meet to review the quality of the work and resolve the matters of concern.

25. **Corrections.** Consultant shall be responsible for its work and results under this Agreement. 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. Failure of Consultant to implement required corrective measures shall result in immediate termination of this Agreement.

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.

28. **Order of Precedence.** In the event of an inconsistency in this Agreement and any of the attached Attachments, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, 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, the conflict shall be resolved by giving precedence in the following order, if applicable: This Agreement, the City's Request for Proposals, the Consultant's Proposal.

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**

INSERT ATTACHMENTS

SAMPLE