



City of
Los Banos
At the Crossroads of California

REQUEST FOR PROPOSALS
for
Stormwater Management Software

Date Released: January 26, 2024

**Questions with regard to submissions, process, or proposals
can be emailed to:**

Rick Justice
Public Works Operations Manager
rick.justice@losbanos.org

**Proposals must be received prior to 2:00 P.M February 12, 2024
at the office of City Clerk**

**City of Los Banos
520 J Street
Los Banos, CA 93635
www.losbanos.org**

TABLE OF CONTENTS

Request for Proposal Stormwater Management Software

Request for Proposal	1
Project Description	3
Background	
Scope of Work	
Additional Services	
Cost Proposal	
General Personnel Requirements	
Deliverables	
Schedule	
Method of Payment	
Materials to Be Provided by the Consultant	
Insurance Requirements	
Exhibit A: Submittal Requirements	7
Exhibit B: Proposal Evaluation	10
Exhibit C: Services.....	13
Exhibit D: Fee Schedule.....	14
Exhibit E: Sample Contract Agreement	15

NOTICE
Request for Proposal
For
Stormwater Management Software

NOTICE IS HEREBY GIVEN that the City of Los Banos is seeking to enter into a professional service agreement with a consultant to develop a comprehensive software program or information management system to assist with the overall management of the stormwater program, which would include but not be limited to tracking, analyzing, and reporting.

All qualified consultants interested in providing these services are invited to submit their proposal. The proposals will be evaluated and ranked according to the criteria provided in Exhibit B, "Proposal Evaluation," of this Request for Proposal (RFP).

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 Exhibit A, "Submittal Requirements."

Submit three (3) hard copies and one (1) electronic copy in PDF format on a USB flash drive of the Consultant's proposal. 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. PST on February 12, 2024**. Proposals shall be submitted in a sealed package clearly marked "**STORMWATER MANAGEMENT SOFTWARE**" and addressed as follows:

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

No late submittals will be accepted. The City may conduct interviews with the top-ranking consultants in order to make a final selection. The successful consultant will be recommended to the City Council for authorization to enter into a Professional Services Agreement for the development of a comprehensive software program for the City stormwater program.

Failure to comply with the requirements set forth in this Request for Proposal 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 Request for Proposal, 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 Consultant is solely responsible for all costs related to the preparation of the proposal.

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

The contract award, if any, will be made to the consultant who, in the City's sole discretion, is best able to perform the required services in a manner most beneficial to the City. **The completed Fee Schedule in Exhibit D shall be submitted with the proposal in its own separately sealed envelope.** The Consultant shall not include this cost proposal in the USB as an electronic file.

The City intends to follow, but will not be bound by, the following selection timeline:

Release of Advertisement of RFP		01/26/2024
Deadline to Submit Questions/Clarifications	5:00 P.M.	02/01/2024
Addendum/Questions/Clarifications Posted	5:00 P.M.	02/06/2024
Deadline for Proposal Submittal	2:00 P.M.	02/12/2024
Award Date (Tentative)		02/21/2024

Any questions with regard to submissions, process, or proposals can be emailed to Rick Justice, Public Works Operations Manager at rick.justice@losbanos.org. Questions shall be submitted before 5:00 P.M. PST on February 1, 2024. Any response to a request for clarification, questions and answers will be posted to the City's website at www.losbanos.org no later than 5:00 P.M. PST on February 6, 2024 and if necessary, shall become a part of the proposal as an addendum.

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

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

PROJECT DESCRIPTION

The City of Los Banos (herein referred to as “City”) is currently seeking a qualified consultant (herein referred to as “Consultant”) to develop a comprehensive software program or information management system to assist with the overall management of the City’s stormwater program, which would include but not be limited to tracking, analyzing, and reporting.

The intent of this RFP is to evaluate each interested consultant specific qualifications, experiences, and select the best-qualified consultant. In addition, all interested consultants shall have sufficient, readily available resources in the form of trained personnel, support services, specialized consultants and financial resources to carry out the work without delay or shortcomings. The work will be performed according to the attached Agreement for Services.

The city intends to award a contract to one successful consultant for the services proposed by that consultant. However, all contracts are subject to approval by the Los Banos City Council, and the city reserves the right to not award any such contract at the discretion of the Council.

BACKGROUND

The City of Los Banos is embarking on a strategic initiative to improve the operational effectiveness of its Public Works Department. This initiative centers on integrating and digitally transforming the Public Works Department, with the goal of developing a comprehensive management system to enhance field operations and public utilities management for a range of regulatory permits and programs, including, but not limited to:

- Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) Permit;
- Waste Discharge Requirements (WDRs) for the Wastewater Treatment Plant;
- Industrial Wastewater Discharge Programs;
- Fats, Oils, and Grease (FOG) Program;
- Wastewater Collection System WDRs;
- Drinking Water Distribution Systems; and
- Solid Waste Management.

As a part of the implementation, data collection, and management of these programs, the City is looking to provide consistency with customer service as well as progressive enforcement of potential violations.

The existing management process for these regulatory programs largely relies on manual methods, with a significant reliance on hand-written documentation that is physically archived. While this approach serves as a crucial mechanism for maintaining backup documentation essential for compliance reporting, it limits management's ability to monitor and understand daily operational activities in real-time as well as to assess/analyze the data.

In response to these operational challenges and with an aim to enhance the granularity of daily operational insights within the Operations Management team, the City is considering the adoption of a database system that streamlines work planning, enables proactive work scheduling based on priority, and optimizes maintenance cycles. This database is intended to not only meet current operational needs but also offer the flexibility to adapt to future regulatory changes, as needed.

Moreover, the City has emphasized the need for a modular development approach for this system. This modular design will facilitate a phased approach to implementation, allowing adequate time for management to train and mentor staff in the new processes and ensure a smooth transition for

the workforce. This proactive and structured approach is anticipated to markedly enhance the operational efficiency, regulatory compliance, and overall management capabilities of the Public Works Department.

SCOPE OF WORK

The services and required Tasks for this RFP can be found in Exhibit C, “Services.”

ADDITIONAL SERVICES

The need for additional type services may be required during the term of the contract. The interested Consultant shall submit a fee schedule for key staff which may be directly involved in the works outside of the scope of services above. This fee schedule shall be on an hourly basis.

COST PROPOSAL

The consultant is to prepare the Fee Schedule attached in Exhibit D based on the tasks as listed in the scope of work and the table for additional service, if requested, based on personnel hourly rate.

GENERAL PERSONNEL REQUIREMENTS

The consultant’s personnel shall be capable, competent, and experienced in performing the types of work in the Contract with minimal instruction. Personnel skill levels 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’s Contract Administrator shall have a documented minimum five (5) years of demonstrated experience acceptable to City in management and delivery of similar projects for local agencies.

In addition to other specified responsibilities, the consultant’s Project Administrator shall be responsible for all matters related to the consultant’s personnel, subconsultants, and consultant’s and subconsultants’ 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 subconsultants’ 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 subconsultants’ personnel.
- e. Maintaining and submitting organized project files for record tracking and auditing.
- f. Assuring that all applicable safety measures are in place.

- g. Providing invoices in a timely manner and providing monthly contract expenditures.
- h. Reviewing invoices for accuracy and completion before billing to City.
- i. Managing subconsultants.
- j. Managing overall budget for Contract and provide report to the City Contract Administrator.
- k. Ensuring compliance with the revisions in the Contract and all specific Task Order requirements.
- l. Knowledge, experience, and familiarity with prevailing wage issues and requirements in the State of California.

DELIVERABLES

As agreed upon by the City and consultant.

SCHEDULE

As agreed upon by the City and consultant.

METHOD OF PAYMENT

Consultant shall be paid based on the Specific Rate of Compensation for this Contract and for the amount as agreed upon by the City and Consultant. 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.

INSURANCE REQUIREMENTS

Before the City executes an Agreement for services, Contractor shall provide a certificate of insurance evidencing the following:

- 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.
- 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.

- 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.
- 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.
- Each liability insurance certificate 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.

EXHIBIT A – SUBMITTAL REQUIREMENTS

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

Proposals shall contain the following information in the order listed:

1. Introductory Letter

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

Rick Justice, Public Works Operations Manager
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 subconsultants 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 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 design engineering services and/or construction engineering 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 Exhibit E.

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

The Request for Proposal includes a Fee Schedule which identifies the scope of work through task to be completed. **The completed Fee Schedule in Exhibit D shall be submitted with the proposal in its own separately sealed envelope.** The Consultant shall not include this cost proposal in the USB as an electronic file.

EXHIBIT 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 RFP. 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 RFP.

The selection process may include oral interviews. The proposer will be notified of the time and place of oral interviews and if any additional information that may be required to be submitted. In the event that the City receives no more than three proposals, the City may opt to not conduct an oral interview.

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.

0	Not Acceptable	Non-responsive, fails to meet RFP 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 RFP.
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 RFP 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 RFP 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 RFP specification.

The consultant determined to be the most qualified, in the City’s sole discretion, shall be based on the following 100 point grading system:

1. Quality of Proposal: 15 points
2. Qualification and Experience: 15 points
3. Organization and Approach: 25 points
4. Past experience: 10 points
5. Staff Availability: 15 points
6. Proposal Format and Completeness: 10 points
7. Project Schedule: 10 points

1. Quality of Proposal (15 points)

- a. Responses to this RFP must be complete. Responses that do not include the proposal content requirements identified within this RFP and subsequent addenda and do not address each of the items listed below will be considered incomplete.

2. Qualifications & Experience (15 points)

- a. Relevant experience, specific qualifications, and technical expertise of the firm and sub-consultants to develop stormwater management software as detailed in the scope of work.

3. Organization & Approach (25 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 Work 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.

4. Past Experience (10 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. Proposal Format and Completeness (10 points)

- a. Attractive, professional appearance. (Cover, internal layout, font type and size, and illustrations/photos)
- b. Clear, concise, error-free.

7. Project Schedule (10 points)

- a. The proposed project schedule will be evaluated on the overall project timeline. The schedule offering the City the short duration with the earliest start will receive the maximum 10 points and the subsequent proposals will receive points based on the weighted average as compared to the highest scoring consultant.

8. Presentation by Team (if applicable) (10 points)

- a. Team presentation conveying project understanding, communication skills, innovative ideas, critical issues and solutions.

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

No.	Evaluation Criteria	Rating (0-5)	Weight	Score (Rating * Weight)
1	Quality of Proposal		15	
2	Qualifications & Experience		15	
3	Organization & Approach		25	
4	Past Experience		10	
5	Staff Availability		15	
6	Proposal Format & Completeness		10	
7	Project Schedule		10	
Total:			100	
8	Presentation by Team- if applicable		10	
Total:			110	

EXHIBIT C – SERVICES

Task 1: Project Management and Coordination

This task will establish and maintain a management framework to ensure the project progresses efficiently and aligns with the City's goals. The consultant will define clear milestones, monitor project timelines, manage resources, and facilitate effective communication with City Staff. Also include in with this task: four meeting with City Staff to assess the project's progress, resolve challenges, and review milestones and objectives.

Task 2: Development of Operations Management Database and Staffing Training

The goal is to encompasses two primary components: the creation of a comprehensive database and the development of specialized interfaces for Construction and Illicit Discharge Detection and Elimination (IDDE) inspections.

Part of the development database, will be to create a specialized interface for Construction and IDDE inspections. These interfaces will be specifically designed to streamline the process of stormwater inspections, aligning with the City's regulatory standards and operational needs. Additionally, it is crucial to incorporate an effective enforcement mechanism within the interface to ensure compliance with the established standards and regulations.

The selected consultant will also develop and provide a virtual database training module for City personnel to be able to understand and utilize the database. The training should be created to ensure a smooth and inclusive transition for all staff members to the new system.

EXHIBIT D – FEE SCHEDULE

Consultant shall provide an itemized schedule of rates and fees which includes all billing amounts and costs for each Task.

Task amounts are considered to be not-to-exceed amounts.

Task 1: Project Management and Coordination \$ _____

Task 2: Development of Operations Management Database and Staff Training ... \$ _____

Consultant Rate Schedule:

The rate for any authorized additional services is shown below:

Position Title	Hourly Rate

EXHIBIT E – SAMPLE CONTRACT AGREEMENT

SAMPLE-SUBJECT TO MODIFICATION

**PROFESSIONAL SERVICES AGREEMENT
FOR LOS BANOS STORMWATER MANAGEMENT SOFTWARE
PROJECT
[INSERT NAME OF CONSULTANT]**

THIS AGREEMENT is made and entered into this ____ day of _____ 2024, 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 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.
- 2. **Scope of Services.** Consultant shall diligently perform all the services described in the Scope of Services attached hereto as **Exhibit A** and incorporated herein by reference. 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 similar fields and circumstances 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 attached hereto as **Exhibit B** 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.** Consultant shall be paid in accordance with the fee schedule set forth in **Exhibit C** 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 the Fee Schedule attached hereto as **Exhibit C** 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 C** and on the terms set forth in this Article 4.

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).

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 Exhibits, 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: _____, 2024

by:

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

Date: _____, 2024

by:

**ATTEST:
CITY CLERK**

Lucille L. Mallonee, City Clerk

APPROVED AS TO FORM:

**William A. Vaughn
City Attorney**

INSERT EXHIBITS

SAMPLE