



City of
Los Banos
At the Crossroads of California

CITY OF LOS BANOS

**REQUEST FOR QUALIFICATIONS
FOR
ON-CALL PLANNING CONSULTING SERVICES**

Date Released: June 10, 2026

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

Stacy Souza-Elms
Community & Economic Development Director
Stacy.souza@losbanos.org

**Proposals must be received prior to 2:00 p.m. July 1st, 2026
at the office of Lucille Mallonee, City Clerk
City of Los Banos
520 J Street
Los Banos, CA 93635**

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REQUEST FOR QUALIFICATIONS

ON-CALL PLANNING CONSULTING SERVICES

The City of Los Banos (CITY) is seeking qualified planning consulting firms to provide On-Call Planning Consulting Services for a variety of City projects. The response to this solicitation will be in the form of a Statement of Qualifications (SOQ).

The CITY intends to select up to three (3) firms for the requested services; 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 \$300,000.00 for a contract performance period not to exceed 5 years including any amendments.

The Consultant's SOQs will be evaluated and ranked according to the criteria provided in Appendix B, "Proposal Evaluation," of this RFQ.

Addenda to this RFQ, if issued, will be posted on the CITY'S website at:

<https://losbanos.org/category/bids-rfps-and-rfqs/>

It shall be the Consultant's responsibility to contact the CITY 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 received by the City of Los Banos, 520 J Street, Los Banos, CA 93635 prior to **2:00 P.M., Pacific Daylight Savings Time (PDT) on July 1, 2026**. SOQs shall be submitted in a sealed package clearly marked "ON-CALL PLANNING CONSULTING SERVICES" and addressed as follows:

City of Los Banos
Attention: Lucille Mallonee, 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Any proposals received prior to the time and date specified above may be withdrawn or modified by written request of the Consultant.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., July 1, 2026**.

Any questions related to this RFQ shall be submitted in writing to the attention of Stacy Souza Elms, via email at stacy.souza@losbanos.org . Questions shall be submitted before **5:00 PM on June 22, 2026**.

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

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 Statement of Qualifications 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 City also reserves the right and intends to award three contracts resulting from this RFQ. Furthermore, a contract award may not be made based solely on price.

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:

Deadline to Submit Questions: 5:00 PM 6/22/2026

SOQ Due Date : 2:00 PM 7/1/2026

SOQ review and evaluation: 7/6/2026-7/17/2026

Oral interviews (if applicable): 7/20/2026-7/24/2026

Consultant Ranking and Cost Negotiation: 7/27/2026

Contract Award: 8/5/2026

PROJECT DESCRIPTION AND BACKGROUND

The City of Los Banos (City) will select qualified consulting firms to provide on-call planning consulting services. The consultant shall have the ability to provide in-house services, or the capacity to sublet for services associated with one or more proposed projects, including but not limited to: general planning-related development and land use project review, site visits, environmental determinations, technical plan check for planning documents and plans, map review, conformance with Federal, State and local regulations, particularly the California Environmental Quality Act (CEQA) and general compliance with City Standards, Ordinances, and Regulations.

The solicitation is not for specific projects, but for specific services. The services are to be rendered for the duration of the contract term. Task Orders will be issued for specific projects. The CITY does not guarantee a specific dollar amount or number of projects to be awarded under this contract.

SCOPE OF SERVICES

PURPOSE OF WORK AND REQUIRED SERVICES

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. The consultant may provide services to the City including, but not limited to, the following:

- Provide dedicated planning services for development applications for consideration by the Planning Commission and City Council, including completeness review of application materials, identifying the appropriate CEQA pathway, and staff report preparation.
- Analyze projects for compliance with the City's General Plan, Zoning Ordinances, Municipal Code, Airport Land Use Compatibility Plan, Subdivision Map Act, Design Standards Guidelines, applicable specific plans and other policies.
- Transportation Planning
 - Multi-modal transportation planning
 - Traffic and safety analysis, for all modes
 - Multimodal transportation modeling, monitoring and forecasting
 - Transportation Demand Management (TDM) Ordinance/Transportation Management Agency (TMA) management
 - Traffic Impact Analysis
 - Environmental Studies
 - Area-Wide Circulation Plans
 - Corridor Studies
 - Neighborhood Traffic Impacts
 - Policy Analysis
 - Master Plan Development
 - Strategic Transportation Plans
- Compiles and analyzes data on economic, social, environmental, and physical factors affecting land use.
- Meets with developers, engineers, property owners, contractors and other individuals to discuss, advise, explain processes and suggest improvements regarding potential projects, pre-applications, development applications, feasibility analysis, conceptual development plans and code interpretation;
- Ability to write Planning Commission, and City Council staff reports, resolutions, ordinances, conditions of approval, memorandums, public notices and agendas, and give oral presentations.
- Attend public hearings and community meetings as necessary.

- Environmental Review Services
 - Analyze projects for CEQA compliance, prepare environmental determinations and implement associated mitigation and monitoring measures.
 - Issue-specific environmental studies (e.g. biological resources, transportation/traffic analysis, cultural and historic resources).
 - Vehicle Miles Traveled analysis.
 - Environmental consulting, including remedial investigations and design, and regulatory compliance.
- Ability to review projects and provide comments within timelines specified by various regulatory requirements and the City codes (shorter timelines may be required for certain projects).
- Provide strong emphasis on the project management of multiple projects and competing priorities while maintaining quality, meeting schedules and staying within budget.
- Answer public inquiries by telephone, mail (electronic and traditional), or in person at a public counter regarding property zoning and/or General Plan land uses, application submittal requirements, etc.
- Facilitation of special projects.
- Provide services related to the General Plan updates
 - Project Management
 - Review and update various elements of the General Plan
 - Zoning Code amendment
 - Act as the City representative to review and provide oversight on others consultants' work

TASK ORDERS

All work performed under this contract will require approval by the City Contract Administrator and issued through a Task Order. A task orders 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 on-call planning consulting services and all necessary personnel, transportation, lodging, tools, instruments, materials, supplies, 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 projects may vary in scope and size. 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. Work shall not begin until the Task Order has been approved by the Contract Administrator. Some work, however, may require Consultant personnel to mobilize within 24-hour of notifications. Once the work begins, the work shall be performed diligently until all required work has been completed to the satisfaction of the Contract Administrator. The Consultant may direct its employees to work overtime to meet Task Order schedules at the request of the Contract Administrator. All overtime

shall be pre-approved by the Contract Administrator. Overtime shall be worked only when directed in writing by the Contract Administrator and specifically required by the Task Order, and shall only be paid to persons covered by the Fair Labor Standards Act. The City of Los Banos shall not reimburse the Consultant for per diem costs, unless preapproved 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 responsible person shall be a qualified professional experienced with the various planning services for federal and state funded projects and shall be currently employed by the Consultant or its Sub-consultants at the time the deliverables are submitted to the City for consideration under the review and acceptance process.

The Consultant is required to submit a written request and obtain the City'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 substitute personnel shall have significant experience in the work involving a similar project for at a minimum two (2) previous projects, unless otherwise approved by the City's Contract Administrator.

The Consultant Project Manager shall be a Registered Professional Planner with AICP certification in good standing 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 federally and state funded projects for local agencies.

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

- a. Ensuring that deliverables are clearly defined, acceptance tested and that criteria are specific, measurable, attainable, realistic and time-bound; and that the deliverables satisfy the acceptance tests and criteria.
- 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 Sub-consultant 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, ensure 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. Consultant will need to have the ability to provide billing by project to accommodate City's deposit-based fee structure.
- j. Reviewing invoices for accuracy and completion before billing to City.
- k. Managing Sub-consultants.
- l. Managing overall budget for Contract and provide report to the City Contract Administrator.
- m. Monitoring and maintaining required DBE involvement.
- n. Ensuring compliance with the provisions in this Contract and all specific Task Order requirements.
- o. Monitor the health and safety of personnel working in a hazardous environment in accordance with all applicable Federal, State, and Local regulations.
- p. Provide knowledge, experience, and familiarity Quality Control and Quality Assurance (QC/QA).
- q. Possess experience and capability in the review of the test reports within a reasonable time frame of the completion of the tests to avoid delay of the field construction operation.
- r. Knowledge, experience, and familiarity with prevailing wage issues and requirements in 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 specific item of work performed (cost per unit of work) and 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 requests 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 Statement of Qualifications (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:

Stacy Souza-Elms
Community & Economic Development Director
520 J Street
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 wet-signed in blue ink 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 five (5) projects within the past three (3) years which include the following information:

1. Contracting agency
2. Contracting agency Project Manager
3. Contracting agency contact information
4. Contract amount
5. Funding source
6. Date of contract
7. Date of completion
8. Consultant Project Manager and contact information
9. Project Objective
10. Project Description
11. Project Outcome

Describe and list demonstrated experience on projects funded by State and/or Federal funds.

3. Organization and Approach

1. Describe the roles and organization of your proposed team for this on-call Planning Services Contract. 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. Provide list of proposed sub-consultant and their scope of work.
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 projects under this contract, as well as the length of employment with the proposing Consultant. Key members, especially the Project Manager, shall have significant demonstrated experience with this type of contract, and should be committed to stay for the duration of the contract.
4. Provide background for the individual serving the over-the-counter planning role, demonstrating proven ability to work directly with applicants, including on contentious or non-approvable projects.
5. Demonstrate that the Consultant's project manager and project staff have sufficient availability and/or that Consultant has sufficient resources to timely deliver City's time-constrained and Federal and State-funded projects.

4. Scope of Work

1. Include a detailed Scope of Work Statement describing all services to be provided.
2. Describe project deliverables for each phase of your work.
3. Describe your cost control and budgeting methodology for projects to be completed under this contract. Confirm that the billing structure will not call for billing of time for regular supervision or staff development by the supervisor over subordinate staff on the project.

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 Planning Services under a contractual relationship with a construction contractor(s), developers, property owners on any City project to be completed under this contract must disclose the contractual relationship, the dates and the nature of the services. The subconsultants shall also disclose any financial or business relationship with the construction contractor(s), developers, property owners who are working on the projects that are assigned for planning services through task orders on the contract.

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 projects to be completed under this contract. The submitted documentation will be used for determining potential conflicts of interest. The City will use this documentation to determine whether the firm may work on specific projects.

If a Consultant discovers a conflict during the execution of an assigned task order, the Consultant must immediately notify the Contract Administrator regarding the conflicts of interest. The 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 Contract Administrator may be grounds for termination of the contract.

6. 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 SOQ submittals are due.

A contract will not be awarded to a consultant without an adequate financial management and accounting system as required by 49 CFR Part 18, 48 CFR Part 31, and 2 CFR Part 200.

7. 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 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 the City's 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 contact during the evaluation phase shall be through the City Contract Administrator/Project Manager 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's requirements as set forth in this RFQ.

The selection process will include oral interviews. The consultant 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 one SOQ, the City may opt to not conduct an oral interview.

Upon completion of the evaluation and selection process, only the cost proposal from the most qualified consultant 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 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.
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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	Scope of Work	20
5	Staff Availability	10
6	Conflict of Interest Statement	Pass/Fail
7	Familiarity with State & Federal Procedures	10
8	References	15
Subtotal:		100

No.	Interview Evaluation Criteria (if necessary)	Weight
9	Presentation by team	10
10	Qualifications & Experience	15
Subtotal:		25
Total: (if interviews are necessary)		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 on-call materials On-Call Planning Services on both federal and non-federal-aid projects.
- b. Relatable experience interpreting Municipal Code and Zoning Ordinances and applying to project applications.
- c. Thorough understanding of California-Specific regulations regarding planning and building projects, such as California ADU legislation and Builders' Remedy applications as related to

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. Scope of Work (20 points)

- a. Detailed Scope of Services to be provided
 - i. Proposed scope of services is appropriate for all phases of the work.
 - ii. Scope addresses all known project needs and appears achievable in the timeframes set forth in the project schedule.
- b. Project Deliverables
 - i. Deliverables are appropriate to schedule and scope set forth in above requirements.
- c. Cost Control
 - i. Proposer has a system or process for managing cost and budget.
 - ii. Evidence of successful budget management for similar projects.

5. Staff Availability (10 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. Familiarity with State and Federal Procedures (10 points)

- a. Demonstrates past experience administering State and Federal funding programs including but not limited to RSTP, CMAQ, HSIP, ATP, etc.
- b. Demonstrates familiarity with the Federal Aid Program and Caltrans Local Assistance.

8. References (15 points)

- a. Provide as reference the name of at least three (3) agencies you currently or have previously consulted for comparable projects.

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.

APPENDIX C – SAMPLE AGREEMENT

CITY OF LOS BANOS PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into as of _____, 20____ by and between the City of Los Banos, a public agency organized and operating under the laws of the State of California ("City"), and [***INSERT NAME***], a [***INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY***] with its principal place of business at [***INSERT ADDRESS***] (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

(hereinafter referred to as "the Project").

- B. Consultant is duly licensed and has the necessary qualifications to provide such services.
- C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

- a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."
- b. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.
- c. After a project to be performed under this AGREEMENT is identified by LOCAL AGENCY, LOCAL AGENCY 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 LOCAL AGENCY 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. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.

- d. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.

- e. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.
- f. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- g. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- h. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- i. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.
- j. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(NAME OF LOCAL AGENCY/ NAME OF CONTRACT ADMINISTRATOR) (ADDRESS)

- k. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.
- l. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.

- m. If 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.
- n. Task Orders may not be used to amend the language (or the terms) of this AGREEMENT not to exceed the scope of work under this AGREEMENT.
- o. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this AGREEMENT shall not exceed \$ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Time of Performance.

- A. This AGREEMENT shall go into effect on (DATE), contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on (DATE), unless extended by AGREEMENT amendment.
- B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.
- C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the task order in progress only. The maximum term shall not exceed five (5) years.

6. Delays in Performance.

- a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; pandemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

- b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

- a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.
- b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.
- c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care; Performance of Employees

- a. Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.
- b. Consultant's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

9. Assignment and Subcontracting

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates and subcontractors as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

- (i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.
- (ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:
 - (1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.
- (iii) Commercial General Liability Insurance must include coverage for the following:
 - (1) Bodily Injury and Property Damage
 - (2) Personal Injury/Advertising Injury
 - (3) Premises/Operations Liability
 - (4) Products/Completed Operations Liability
 - (5) Aggregate Limits that Apply per Project
 - (6) Explosion, Collapse and Underground (UCX) exclusion deleted
 - (7) Contractual Liability with respect to this Agreement
 - (8) Property Damage
 - (9) Independent Contractors Coverage
- (iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.
- (v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.
- (vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

- (i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.
- (ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

- (iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.
- (iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

- (i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.
- (ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

- (i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

- (ii) Defense costs shall be payable in addition to the limits.

- (iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

- (i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.
- (ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.
- (iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.
- (iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.
- (v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking

such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

- (i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:
 - (1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

- (i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.
- (ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.
- (iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.
- (iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements.

Consultant shall not allow any subcontractors or subconsultants 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 subconsultants 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 subconsultants.

12. Indemnification.

- a. 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, the Project or 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.

- b. 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.

13. California Labor Code Requirements.

- a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
- b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.
- c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free

and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Safety.

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

15. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

16. INTENTIONALLY DELETED

17. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a the Superior Court of California for the County of Merced.

18. Termination or Abandonment

- a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.
- b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

19. Ownership of Documents and Confidential Information.

- a. All deliverables and other documents generated by Consultant in the performance of the Services, including all work papers, work-in-progress, designs, drawings, documents, data, computations, specifications, studies and reports prepared by Consultant as a part of the Services or authorized Additional Services ("Consultant Work Product") shall belong to and be subject to the sole ownership and use of City.
- b. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, drawings and specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.
- c. During the course of the performance of this Agreement, Consultant may receive written or verbal information from City, its representatives or agents, not in the public domain. Such information may include City's know how, trade secrets, and other proprietary and confidential information and Consultant agrees to treat such information as confidential information belonging to City. Consultant agrees that neither it, nor its officers, employees, representatives, agents, successors, or assigns, will disclose such information to any third party or use the same in any manner without the prior written consent of City. Moreover, Consultant agrees to safeguard such proprietary and confidential information from unauthorized disclosure and/or use using the same degree of care it uses to protect its own proprietary and confidential information, but not less than a reasonable standard of care. In the event that disclosure of such information is sought pursuant to any law or regulation, Consultant shall promptly notify City of such fact to allow City to assert whatever exclusions or exemptions may be available to it under applicable law or regulation.

20. Organization

Consultant shall assign _____ as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

21. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

22. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Los Banos

[City Address]

Attn: Gary Brizzee, City Manager

CONSULTANT:

[**INSERT NAME, ADDRESS & CONTACT
PERSON**]

and shall be effective upon receipt thereof.

23. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

24. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

25. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

26. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

27. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

28. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

29. Time of Essence

Time is of the essence for each and every provision of this Agreement.

30. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

31. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

32. Federal Requirements

When funding for the services is provided, in whole or in part, by an agency of the federal government, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF LOS BANOS
AND [***INSERT CONSULTANT NAME***]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF LOS BANOS

[**CONSULTANT'S NAME**]

By: _____
[INSERT NAME]
[INSERT TITLE]

By: _____
[INSERT NAME]
[INSERT TITLE]

ATTEST:

By: _____
[INSERT TITLE]

EXHIBIT A

Scope of Services

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant.