



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

REQUEST FOR PROPOSALS  
FOR  
MUNICIPAL CODE ENFORCEMENT SERVICES

Issuance Date  
March 4, 2016

Deadline for Submissions  
April 1, 2016 at 2:00 P.M.

Contact Person  
Stacy Souza Elms, Senior Planner  
City of Los Banos  
520 J Street  
Los Banos, CA 93635  
(209) 827-7000 ext. 133  
[stacy.elms@losbanos.org](mailto:stacy.elms@losbanos.org)

REQUEST FOR PROPOSALS  
Municipal Code Enforcement Services

NOTICE IS HEREBY GIVEN that the City of Los Banos ("City") is issuing this Request for Proposal ("RFP") for Municipal Code Enforcement Services for community preservation. The purpose of this RFP is to select the most qualified agency or firm to provide the related services to the City. Submitted competitive sealed proposals must be from qualified firms.

Firms are solely responsible for ensuring proposals are received by the City on or before the submittal deadline. Proposals must be received no later than 2:00 p.m. on April 1, 2016 at the following address:

City of Los Banos  
Attn: Lucille L. Mallonee, City Clerk  
520 J Street  
Los Banos, CA 93635

An original copy must be signed by a representative authorized to bind the company. Proposals submitted by facsimile or email are not acceptable and will not be considered. The original signed proposal and five (5) duplicates are to be submitted in sealed packages with the name of the firm and RFP title clearly marked on the outside of the package.

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 Submitted proposals may be withdrawn at any time prior to the submission time specified in this RFP, provided notification is received in writing before the submittal deadline. Proposals cannot be changed or withdrawn after the submittal deadline.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

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

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

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

## 1. INTRODUCTION

The City of Los Banos, incorporated in 1907, has an estimated population of approximately 37,000 residents and has a land area of approximately 10.1 square miles. Los Banos is located on the west side of the San Joaquin Valley, in the County of Merced, seven mile east of the junction of State Route 152 and Interstate 5.

The City of Los Banos is a general law city, which operates under the council/manager form of government.

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

The City of Los Banos is requesting proposals from qualified agencies and or consulting firms to provide Code Enforcement Officer(s) to perform and improve municipal code enforcement services for community preservation within a designated area of the City. Duties of the officer(s) will generally include written notification and face-to-face contact with individuals to address various code enforcement violations, monitoring and enforcing a variety of City building, zoning and land use codes, ordinances and regulations, conducting investigations, and providing information on City regulations to homeowners, tenants, and the public and coordinating activities with the City Code Enforcement Division.

The City of Los Banos Police Department oversees the Code Enforcement Division which is comprised of a Police Sergeant, two Code Enforcement Officers, and an Administrative Clerk. The Code Enforcement Division has two main functions: community preservation and animal control services. One of the Code Enforcement Officers is dedicated to community preservation, and the other Code Enforcement Officer is dedicated to animal control services.

The City has been awarded Community Development Block Grant (CDBG) funding for code enforcement activities within a targeted area (described below) of the City. The activities will be funded through September 30, 2018.

## 2. SCOPE

### A. Target Area.

Code Enforcement services will be carried out in the north/east portion of the City; east of Mercey Springs Road/Highway 165 to Badger Flat Road and north of Pacheco Boulevard/Highway 152 to Willmott Avenue and H Street. This area is identified as

Census Tract 22.01 block groups 1-5 and Census Tract 22.02 block group 4. A map of the service area is attached hereto as Attachment A.

The targeted area covers a large portion of the older, more impoverished parts of the City. There are documented issues with shopping carts, unauthorized car ports, abandoned vehicles, and business operated out of homes. This area includes approximately 9,080 low/moderate income residents and 2,465 very low-income residents.

Approximately 89% of the code enforcement calls in 2011-2012 were violations inside of the targeted area. The targeted area is older and affected greatly by slum and blight. Each call received requires the Code Enforcement Officer to respond to the call to confirm a violation, cite the owner with a date for the issue to be resolved, follow up, and if the issue is not resolved, to take further action.

#### B. Requested Services - Generally

The City currently employs two Code Enforcement Officers; however, one position is dedicated to animal control services and the other is dedicated to code enforcement services. The City has been awarded CDBG grant funding to expand the Code Enforcement Division to provide Code Enforcement services to the target area. The City is requesting proposals from qualified agencies or private firms to provide additional Code Enforcement Officer(s) to provide code enforcement services to the target area. The officer(s) will monitor, notify, cite, and follow up on all municipal code violations within the target area.

#### C. Scope of Work

Code enforcement services shall include the following:

- Provide a minimum of one (1) full time code enforcement officer;
- Code enforcement officer(s) shall have a minimum of three years of experience;
- Code enforcement officer(s) shall work out of the City's offices and will keep regular schedule of office hours;
- Investigate violations of City zoning, building, nuisance, and property maintenance laws, file complaints against violators;
- Perform field surveys and investigate complaints of possible zoning, building, nuisance and property maintenance code violations;
- Recognize the need for, and implement appropriate remedial actions to correct violations;

- Perform and document inspections to determine the validity of complaints, and to identify conformance to the applicable codes and ordinances;
- Take photographs and necessary measurements and gather all pertinent facts from the parties involved;
- Prepare and issue a Warning, Notice of Violation, Letters of Non-Compliance and when necessary, administrative citations;
- Have experience in handling reporting requirements for Community Development Block Grant funding;
- Provide daily patrols;
- Provide regular on-going customer service and other technical training for code enforcement officer(s);
- Provide all necessary equipment, uniforms, and vehicles for code enforcement officer(s);
- Provide other professional code enforcement support services as determined by the **Code Enforcement Sergeant**.
- Coordinate all activities with the City's Code Enforcement Division.

### 3. Submittal Format and Content

All respondents are required to follow the format specified below. The contents of the submittal must be clear, concise, and complete. Each section of the submittal *shall be titled* according to the numbering and naming system shown below to aid in expedient information retrieval (NOTE: Respondents shall base their submittals on the "Scope of Work.")

Cover Letter - The cover letter must be on Consultant Firm letterhead and should include in the subject heading "Proposal for Code Enforcement Services April 1, 2016." The cover letter should be brief (two pages maximum), and any changes to the format or deletions of requested materials clearly explained.

Describe how the delivery of services will be provided to City, including the location of the consultant's offices and the response time to City's requests. In addition, describe those conditions, constraints, or problems that are unique to the scope of work that may adversely affect either the cost or work progress; and include the title and signature of the firm's contact person for this procurement. The signatory shall be a person with official authority to bind the company.

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

B. Qualifications and Experience - This section shall contain the following: A description of the consultant firm's experience in providing Code Enforcement Services.

C. The name of the consultant firm's proposed personnel for this contract. The consultant firm's and proposed personnel's experiences in the past five (5) years specifically related to the scope of work of this project. Experiences shall be listed consecutively with name of the City or agency the work was completed for.

D. List of Project Personnel - This list should include the identification of the contact person with primary responsibility for this contract, the field personnel proposed for this contract, and any supervisory personnel.

E. References - Provide a list of at least three (3) current public agency customers in California for whom you have provided comparable services. Please include the agency's name, telephone number, and email address of contact person.

F. Not-to-Exceed Monthly Fee and Schedule of Hourly Rates - The respondent shall provide a Not-to-Exceed Monthly Fee and a Schedule of Hourly Rates.

#### 4. Schedule for Selection and Award

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

Phase	Date
Release of RFP	03/04/2016
Deadline for any questions from vendors	03/18/2016 by 5:00 p.m.
Deadline for posting any amendments to RFP	03/25/2016
Proposal Due Date	04/01/2016 by 2:00 p.m.
Review of Proposals	04/04/2016 thru 04/08/2016
Potential Interview of Vendor(s)	04/18/2016 thru 04/22/2016
Negotiation	04/25/2016 thru 04/29/2016
Selection of Firm approved by City Council	05/04/2016
Implementation of Negotiated Agreement	05/05/2016

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

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

## 5. Evaluation

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

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

- a. Proposed Personnel - qualifications, professional experience and skills of the firm overall and in particular the proposed team members.
- b. Ability to meet the requirements of the scope of services and maximum service delivery timelines through an efficient and effective allocation of resources.
- c. Client References – Performance on similar projects based on input from references. The City also reserves the right to contact the clients that terminated contracts with the firm as listed in the firm's submittal.
- d. Proposed Fee Structure/Cost of Services
- e. Completeness of the proposal submitted and responsiveness to the RFP.
- f. Ability to comply with the City's standard professional services agreement.

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

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

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

## 6. Special Conditions

### A. Contract and Insurance Requirements

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

### B. Business License

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

### C. Term

The term of the contract for the required services is expected to be two (2) years.

### D. Reservations

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

E. Public Records

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

F. Right to Cancel and Amend

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

G. Proposer's Questions

The City will not give verbal answers to inquiries regarding information in this RFP, or verbal instructions prior to the submission deadline. All questions shall be submitted in writing to Stacy Souza Elms, Senior Planner, at [stacy.elms@losbanos.org](mailto:stacy.elms@losbanos.org). A verbal statement regarding same by any person shall be non-binding. The City is not liable for any increased costs resulting from the Firm accepting verbal directions. Any explanation desired by a Firm must be requested of the City representative in writing not later than March 18, 2016 at 5:00 p.m. and if explanation is necessary, a reply shall be made in the form of an addendum, a copy of which shall be posted on the City website at [www.losbanos.org](http://www.losbanos.org) on or before March 25, 2016.

H. Additional Information

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

I. Conflict of Interest

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

J. Release of Public Information

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

K. Non-Assignment

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

L. Collusion

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

M. Debarment

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

N. Equal Employment Opportunity Compliance

The selected firm shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The firm shall

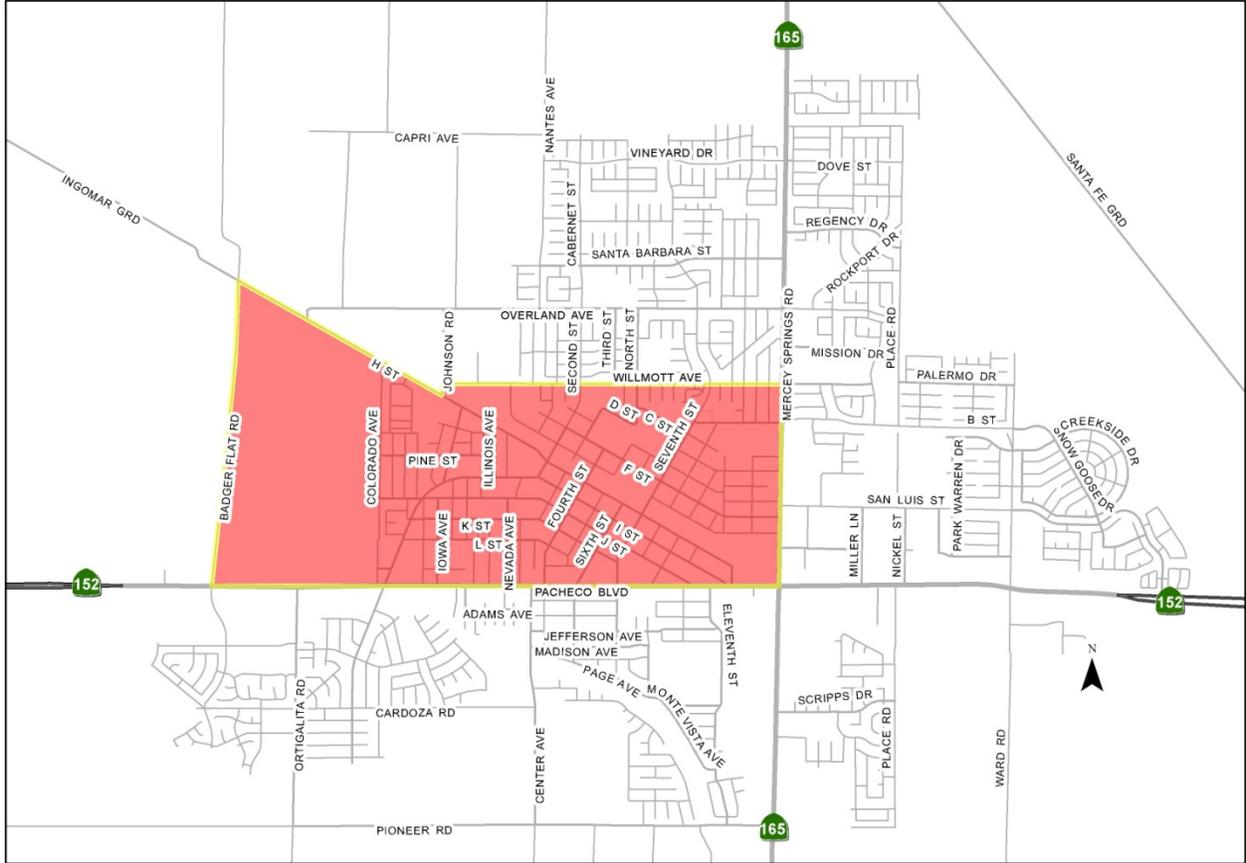
take affirmative action to ensure that all employees and applicants for employment shall be treated with equality in all aspects of employment processes including, but not limited to, hiring, transfer, promotion, training, compensation and termination, regardless of their race, creed, color, sex, national origin, age, or physical handicap.

O. Right to Audit

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

# ATTACHMENT A

## Los Banos Census Tract 22.01 BG 1-5 Census Tract 22.02 BG 4



## ATTACHMENT B

### GENERAL TERMS AND CONDITIONS

1. **Performance of Services/No Assignment.** Time is of the essence in performance of the Services. Consultant represents to City that Consultant possesses, or will arrange to secure from others, all of the necessary professional capabilities, experience, resources and facilities necessary to provide to City the services contemplated under this Agreement. Except as specifically authorized under this Agreement, the services to be provided under this Agreement shall not be assigned, transferred, contracted or subcontracted out without the prior written approval of City.

2. **Hold Harmless and Indemnification.** To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents and employees (collectively, the "Indemnified Parties) from and against any and all claims (including, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, attorney's fees, disbursements and court costs) of every kind and nature that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them in performance, or non-performance, of services under this Agreement.

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

3. **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.

3.1 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.

4. **Insurance.** Unless otherwise agreed, 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 and Employer's Liability Insurance for his or her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by City at least thirty (30) calendar days (10 calendar days written notice of non-payment of premium) prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, contractual liability. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement, or the general aggregate limit shall be at least twice the required occurrence limit.

iii. Automobile Liability Coverage. Consultant shall maintain automobile insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than two million dollars (\$2,000,000) combined single limit for each occurrence.

iv. Professional Errors and Omissions Insurance. Consultant shall maintain professional errors and omissions insurance, which covers the services to be performed in connection with this Agreement in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate.

E. Endorsements. Each general liability and automobile liability insurance policy shall either include or 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, or canceled, by either party except after thirty (30) calendar days (10 calendar days written notice of non-payment of premium) written notice has been received by City.

5. **Ownership of Documents.** All documents, information and materials of any and every type prepared by the Consultant pursuant to this Agreement shall be the property of the City. Such documents shall include but not be limited to data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing work under this Agreement, whether completed or in process. The Consultant shall assume no responsibility for the unintended use by others of any such documents, information, or materials on project(s) that are not related to the scope of services described under this Agreement.

6. **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, or required by law. All documents, including drafts, preliminary drawings or plans, notes and communications that result from the services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information.

7. **Intellectual Property Indemnity.** The Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in Consultant's drawings and specifications provided under this Agreement.

8. **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.

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

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

Consultant warrants that neither Consultant, nor any of its employees, agents or subcontractors, has 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.

10. **Nondiscrimination.** Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

11. **Termination.** In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of seven (7) calendar days, or if more than seven (7) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within seven (7) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

Notwithstanding the above provisions, City shall have the right, at its sole discretion and without cause, to terminate this Agreement at any time by giving seven (7) calendar days prior written notice to Consultant. Consultant In the event of termination under this Section, City shall pay Consultant for services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

12. **Waiver.** A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character. The acceptance by the City of the performance of any work or services by Consultant shall not be deemed to be a waiver of any term or condition of this Agreement.

13. **Amendments.** This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

14. **Controlling Law and Venue.** 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 or otherwise relating to this Agreement shall be filed and maintained in the County of Merced.