



City of
Los Banos
At the Crossroads of California

REQUEST FOR PROPOSALS
for
SOLID WASTE CONSULTANT SERVICES

Proposals must be received
no later than 4:00 P.M. PDT
April 2, 2019

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

Greg Pimentel
Assistant Public Works Director
greg.pimentel@losbanos.org

**City of Los Banos
Public Works Department
411 Madison Avenue
Los Banos, CA 93635
209-827-7056
www.losbanos.org**

NOTICE

Request for Proposals For Solid Waste Consultant Services

NOTICE IS HEREBY GIVEN that the City of Los Banos is seeking proposals from qualified consultants for the development of Organic Waste Ordinance/Rates and Solid Waste Contract Procurement services.

Submit five (5) hard copies and one (1) reproducible scope of the proposal in a sealed package clearly marked **“Solid Waste Consultant Services”**. Submittals must be received no later than 4:00 p.m., Tuesday, April 2, 2019 and addressed as follows:

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

No late submittals will be accepted. The City may conduct interviews of the top ranking firms in order to make a final selection. The successful firm will be recommended to the City Council for authorization to enter into a Professional Services Agreement for Solid Waste Consulting Services with the City of Los Banos. Any questions with regard to submissions, process, or proposals can be emailed to Greg Pimentel, Assistant Public Works Director at greg.pimentel@losbanos.org. The Request for Proposal can be viewed and/or obtained from the City of Los Banos website at www.losbanos.org.

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 Submitted proposals may be withdrawn at any time prior to the submission time specified in this Request for Proposal, provided notification is received in writing before the submittal deadline. Proposals cannot be changed or withdrawn after the submittal deadline.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

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

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

REQUEST FOR PROPOSALS

Introduction

The City of Los Banos (herein referred to as “City”) is currently seeking a qualified solid waste consultant firm (herein referred to as “Consultant”) with experience in solid waste, recycling, and organic waste consulting services. The Consultant shall provide consulting services for the study of rates for the collection and disposal of organic waste and the preparation of an ordinance on the separation, processing, and disposal of organic waste. The Consultant will provide services for the procurement of a Solid Waste Contract for the collection, hauling, processing, and disposal of solid waste, recyclables, organics, used oil, and other materials which can be diverted from landfills.

The work scope will be separated into two (2) tasks and the term of the Professional Services Agreement for Solid Waste Consultant Services (herein referred to as “Agreement”) will be outlined in the Agreement. The Agreement shall become effective upon execution by both parties.

Work Scope

Throughout the entire length of the project services, Consultant shall work directly with the City to establish scheduled meetings in person, by phone, and/or video conferences. Consultant shall have comprehensive knowledge of all State, County, and Local regulations regarding the collection, hauling, processing, and disposal of all types of waste including solid waste, universal waste, designated waste, E-waste, construction & demolition waste, hazardous waste, used oil/filters, recyclables, and organic waste. Consultant shall have comprehensive knowledge of franchise contract provisions, state and local environmental challenges, best management practices, industry standards, options for service, and charges for rates. The work scope shall be separated into two (2) primary tasks, as follows:

TASK #1 – Develop Organic Waste Ordinance with Rates

1. Review the City ordinances and rates for its collection, hauling, processing, and disposal of existing services.
2. Work with the current Solid Waste Contractor for the City to develop an acceptable disposal rate for organic waste as mandated by the State.
3. Research options for the management of organic waste in the State through Merced County for developing a reasonable disposal rate to process organics which meet mandates of AB 1826.
4. Draft and prepare an ordinance with applicable disposal rates which are agreeable to the Contractor and acceptable to the City for adoption. The target date for the adoption and implementation is January 2020 for the collection, hauling, processing, and/or disposal of organic waste.

TASK #2 – Develop Contract Agreement of Solid Waste Contractor

1. Draft and prepare a Request for Proposals (RFP) for the solicitation of contractors to provide Solid Waste services for the City under contractual franchise agreement.
2. Prepare a list of potential providers and invite each provider to submit a proposal.

3. Assist with conducting a pre-proposal meeting with prospective proposers and the preparation of the written response(s) of any subsequent addenda to the RFP.
4. Develop the written criteria and the methodology to evaluate and rank each proposal submitted.
5. Coordinate any site visits to facilities of potential service providers and prepare questions for City to ask providers during visit.
6. Prepare a technical analysis of each proposer to verify the ability to comply with, provide for, and meet the requirements of a contract period.
7. Evaluate each proposer's experience and ability to perform the contract through references. Analyze the financial capability and strength of the proposer to perform in the contract.
8. Assist the City in negotiating services, terms, rates, and the preparation of a final agreement for approval by Council.
9. Work with City staff in the preparation of report and presentation to Council for the recommendation and/or options for the procurement of a solid waste contractor. The target date for the resolution approving a solid waste contractor is March 2021. The target date to initiate (roll out) service is July 2021 for the collection, hauling, processing, and/or disposal of solid waste services.

Submittal Format

Consultant shall submit five (5) bound copies and one reproducible copy of the proposal. The proposal shall be typed and must contain no more than 10 typed pages. A 12-point font size is required for the cover letter, background, references, project team flow chart, proposed scope of services, and conflict of interest statement. Smaller fonts are allowed for tables, charts, and exhibits. The following information shall be included:

- Cover Letter – This letter should briefly introduce the firm, summarize the firm's general qualifications, include an executive summary of the specific approach which will be used to deliver the work scope; and identify the individual(s) name, address and phone number authorized to negotiate Agreement terms and compensation.
- Background – Provide history of the firm's consulting experience which specifically addresses the individual or firm's experience at producing solid waste ordinances, rates, and contracts for service.
- References – The proposal shall include a list of recently completed projects that are similar in scope and function to this Request for Proposal. Provide a description of the project, client name, and the name, title, and telephone number of the primary contact person.
- Project Team Flow Chart – The proposal shall include an organizational chart and describe the organizational structure that is proposed to deliver work scope to the City including support staff.
- Proposed Scope of Services – Provide a scope of services based on work scope contained in this Request for Proposal; discuss any ideas for modifying, clarifying, or improving the City's work scope; provide a realistic project schedule with key tasks, milestones, and deliverables.
- Conflict of Interest Statement – Consultant shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this contract. Particular attention should be paid to compliance with Government Code section 1090.

NOTE: the following shall be inserted at the end of the proposal and will not count towards the 10 page typed limit. Consultant shall submit the following:

- **Sample Work** – A maximum of two adopted ordinances and one franchise contract shall be included as representative samples of Consultant past work for similar cities.
- **Project Team Resumes** – Submit resumes of all key personnel/support staff that will produce work product for this project. Describe their qualifications, education, and professional licensing.
- **Changes to Agreement** – The City standard professional services agreement contract is included as Attachment 1 in this Request for Proposal. The Consultant shall identify any objections to and/or request changes to the standard contract language in this section of the proposal.
- **Cost Proposal** – In a **separately sealed envelope** marked “[Firm’s Name] Cost Proposal” provide the following:
 - a. Total all-inclusive Not to Exceed maximum price – the cost proposal should contain all pricing information relative to performing the scope of work for both Task 1 and Task 2 as described in this Request for Proposal. The total all-inclusive not to exceed maximum price is to contain all direct and indirect costs including all out-of-pocket expenses. Provide a budget for each major milestone for the entire scope of work services. The proposed budget should be inclusive of all meetings, conference calls, site visits and deliverables. The budget should include a list of anticipated reimbursable expenses with rates charged for each.
 - b. Manner of Payment – Progress payments will be made on the basis of hours of work completed during the course of the engagement and the out-of-pocket expenses incurred in accordance with Consultant proposal. Interim billing shall cover a period of not less than a calendar month.

Proposal Submission

Complete proposals must be submitted in sealed envelopes and received by the City no later than 4:00 P.M. PDT on April 2, 2019. Late, faxed or emailed proposals will not be accepted. All proposals and documents submitted become the property of the City. Information considered proprietary shall be identified as such in the proposal.

Proposal shall be submitted by mail or in person to the following address:

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

Re: Solid Waste Consulting Services

Selection Schedule

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

Advertisement of RFP	March 1, 2019
Deadline for Questions Submitted by Email	March 22, 2019
Response to Written Email Questions	March 26, 2019
Deadline for Proposal Submittal	April 2, 2019, 4:00 P.M. PDT
Interviews, if necessary	May 13-17, 2019
Award Date	June 5, 2019
Target Project Completion Date (Task 1&2)	June 30, 2021

Questions about the RFP

All inquiries and questions regarding this Request for Proposal shall be emailed to Greg Pimentel, Assistant Public Works Director at greg.pimentel@losbanos.org. No oral questions or inquiries about the RFP shall be accepted.

Insurance Requirements

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

- General liability insurance of \$1,000,000 and automobile insurance coverage of \$1,000,000 indicating the City as an additional insured.
- Professional Liability (errors and omissions) insurance providing a minimum coverage of \$1,000,000 and not less than two million dollars (\$2,000,000) in the annual aggregate.
- Workers' Compensation Coverage and Employer's Liability Insurance.
- Each liability insurance certificate shall state that coverage afforded therein is primary and shall bear endorsements that provide the City be given at least 30 days written notice before any material change or cancellation of such policy, for any reason.

Evaluation Guidelines

Based upon the response to the Request for Proposal, the City may interview or ask informal questions from any or all of the Consultants and/or award the Agreement without conducting interviews. The successful Consultant will be required to enter into an Agreement with the City, including insurance/indemnity requirements.

The selection process, including any interviews or questions, will focus on the following:

1. The proposal approach
2. Previous experience with solid waste services for similar size organizations
3. Clarity of proposal, completeness, and inclusion of requested information
4. Technical capabilities
5. Reference checks
6. Professional nature of firm

7. Demonstrated municipal government experience
8. Ability to present materials that can be understood by technical and non-technical staff
9. Qualifications and experience of the firm and staff assigned to provide support
10. Past performance
11. Professional standing and financial stability of the firm
12. Cost effectiveness
13. Feasibility of the proposal based upon the proposed scope of services

All interested parties are encouraged to submit proposals, as the award is not solely on the lowest cost proposal submitted. Total cost will be taken into consideration, but the Consultant 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 decision 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 decision of whether to award a contract and selection of a Consultant will be at the sole discretion of the City Council.

Attachment 1

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF LOS BANOS
AND
[CONSULTANT NAME]
(Solid Waste Consulting Services)**

THIS AGREEMENT is made and entered into this day of _____ 2019, by and between the City of Los Banos, California, a municipal corporation, (“City,”) and [CONSULTANT NAME], a [partnership, corporation, etc.] (“Consultant”).

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California.
- B. City desires to engage Consultant as an independent contractor to provide professional solid waste consulting services for two specific tasks. Task #1 – Develop an ordinance for the processing of organic waste with a disposal rate. Task #2 – Prepare the contract agreement with solid waste contractor for the collection, hauling, processing, and disposal of solid waste materials.
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.
- D. City desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **Term.** The term of this Agreement shall commence upon execution of this Agreement and City’s issuance to Consultant a “Notice to Proceed” for all or a portion of the work and shall terminate upon City’s acceptance and payment for all or such portion of the work as was authorized by such notice, unless terminated earlier as set forth herein.

2. **Scope of Services.** Work Scope Task 1 and Task 2 attached hereto as Exhibit A, incorporated herein by reference to be performed by Consultant and shall be performed to the satisfaction of the City.

2.1 Consultant shall provide such services when given written instruction to do so by the Public Works Director, or his designee. Consultant shall diligently perform all the services described in the Scope of Work.

- 2.2 All professional services shall be performed by Consultant or under Consultant's supervision. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional Consultants in accordance with sound professional practices.
- 2.3 Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

3. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and Consultant shall perform the services in accordance with the Project Schedule attached hereto as Exhibit B and incorporated herein by reference. The failure by Consultant to strictly adhere to the schedule may result in termination of this Agreement by City.

Notwithstanding the forgoing, Consultant shall not be responsible for delays due to causes beyond Consultant reasonable control. However, in the case of any such delay in the delivery of services to be provided for the Work Scope, each party hereby agrees to provide notice to the other party so that all delays can be addressed.

4. **Compensation.** City shall pay Consultant for all work performed in accordance with this Agreement, including all reimbursable items and sub consultant fees, which shall not exceed \$[ENTER DOLLAR AMOUNT] for Task #1. City shall pay Consultant for all work performed in accordance with this Agreement, including all reimbursable items and sub consultant fees, which shall not exceed \$[ENTER DOLLAR AMOUNT] for Task #2. Consultant shall be paid for services in accordance with Consultant's Schedule of Fees (hourly rates) attached hereto as Exhibit C and incorporated herein by reference. The hourly rates in Exhibit C shall remain in effect during the term of this Agreement. Consultant shall submit monthly invoices to City describing the work performed the preceding month. Consultant's bills shall include the name of the person who performed the work, a brief description of the services performed and/or the specific task in the Scope of Work to which it relates, the date the services were performed, the number of hours spent on all work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City staff.

- 4.1 City shall reimburse Consultant only for those costs or expenses specifically approved in this Agreement, or specifically approved in advance by City.
- 4.2 Consultant shall not receive any compensation for Extra Work without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Work and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be billed in accordance with the Schedule of Fees as set forth in Exhibit C and on the terms set forth in this Article 4.

5. **Administration.** The Public Works Director shall administer this Agreement on behalf of the City. The Public Works Director or his/her authorized representative shall represent City in all matters pertaining to the services to be rendered pursuant to this Agreement.

6. [THIS SECTION INTENTIONALLY OMITTED]

7. **Indemnification.** When the law establishes a professional standard of care for Consultant services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City, any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs and expenses including legal counsel's fees, and costs but only to the extent the Consultant (and its Sub consultants) are responsible for such damages, liabilities and costs on a comparative basis of fault between Consultant (and its Sub consultants) and the City in the performance of professional services under this Agreement.

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, any and all of its employees, officials, and agents from and against any liability (including liability from claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, by not limited to officers, agents, employees, or subcontractors of Consultant.

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.

In the event the City indemnities are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant performance of this Agreement, the Consultant shall provide a defense to the City indemnities, or at the City's option, reimburse the City indemnities their costs of defense, including reasonable legal counsel's fees, incurred in defense of such claims.

8. **Insurance.** Without limiting Consultant 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 one million dollars (\$1,000,000) 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 one million dollars (\$1,000,000) 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 not less than two million dollars (\$2,000,000) in the annual aggregate.

E. Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following specific language:

i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant.

ii. This policy shall be considered primary insurance as respects to City, its elected

or appointed officers, officials, employees, agents and volunteers as respects to all claims, losses, or liability arising directly or indirectly from the Consultant's operations or services provided to City. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against City, its elected or appointed officers, officials, employees, agents and volunteers.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its elected or appointed officers, officials, employees, agents or volunteers.

vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, by either party except after thirty (30) calendar days (10 calendar days written notice of non-payment of premium) written notice has been received by City.

8.1 Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

8.2 All subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured to the subconsultant's policies.

9. **Nondiscrimination.** In the performing of this Agreement, Consultant shall not discriminate against any subcontractor, employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation race, religion, color, national origin, handicap, ancestry, sex or age.

10. **Independent Contractor.** It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the services.

10.1 The Consultant shall at all times remain an independent Contractor with respect to the services to be performed under this Agreement and shall be responsible for the payment of Federal and State Employer Withholding Taxes, Unemployment Insurance Taxes, FICA Taxes, Retirement, Life and/or Medical Insurance, and Worker's Compensation Insurance for the employees of the Consultant or any other person performing services under this Agreement. Consultant and its employees are not entitled to the rights or benefits afforded to City's employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave, or any other employment benefit. Consultant agrees to indemnify and hold City harmless from any claims, costs, losses, fees, penalties, interest, or damages suffered by City as a result of any claim by any person or entity contrary to the provisions of this Section 10.

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

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

12. **Confidentiality.** All City information disclosed to Consultant during the course of performance of services under this Agreement shall be treated as confidential and shall not be disclosed to any other persons or parties except as authorized by City, excepting that information which is public record and subject to disclosure pursuant to the Public Records Act, or otherwise required by law. All documents, including drafts, notes and communications that result from the services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information, excepting that information which is public record and subject to disclosure pursuant to the Public Records Act, or otherwise required by law.

13. **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.

14. **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 represents that neither Consultant, nor any of its employees, agents or subcontractors, have a conflict of interest with respect to the work to be performed under this Agreement, nor shall such individuals, during this term of this Agreement, acquire any interest, which would conflict in any manner with the performances of services hereunder.

15. **Assignment.** This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City.

15.1 Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Consultant shall be fully responsible to City for all acts and omissions of the subconsultant. Nothing in this Agreement shall create any contractual relationship between City and subconsultant nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subconsultant other than as otherwise required by law.

16. **Compliance with Laws, Rules, Regulations.** Consultant shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

17. **Integration; Amendment.** This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in it. This Agreement may not be modified or altered except by amendment in writing sign by both parties.

18. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

19. **Waiver/Validity.** Consultant agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver of any other condition of performance under this Agreement. The acceptance by the City of the performance of any work or services by Contractor shall not be deemed to be a waiver of any term or condition of this Agreement.

20. **Jurisdiction.** City and Consultant agree that the law governing this Agreement shall be that of the State of California. Any suit brought by either party against the other arising out of the performance of this Agreement shall be filed and maintained in the County of Merced.

21. **Notice.** Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

To City:
Mark Fachin
Public Works Director/City Engineer
411 Madison Avenue
Los Banos, California 93635

To Consultant:
[NAME]
[TITLE]
[ADDRESS]
[ADDRESS]

22. **Termination.** City may, in its sole discretion, terminate this Agreement at any time and for any reason whatsoever by giving written notice of such termination to Consultant. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. In the event of such termination, Consultant shall be entitled to compensation for all services rendered and work performed for City to the date of such termination.

[SIGNATURE PAGE BEGINS ON NEXT PAGE]

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

[CONSULTANT NAME]

Date:

by: [CONSULTANT CONTACT]
[TITLE]

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

Date:

by: Alex Terrazas
City Manager

**ATTEST:
CITY CLERK**

**Lucille L. Mallonee
City Clerk**

APPROVED AS TO FORM:

**William A. Vaughn
City Attorney**