



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

**REQUEST FOR PROPOSALS  
FOR  
Enterprise Resource Planning (ERP) Consultant**

City of Los Banos  
520 J Street  
Los Banos, CA 93635  
(209) 827-7000

Release Date  
March 8, 2019

Contact Person:  
Raj Singh, IT Manager

Deadline for Submissions  
April 19, 2019 at 5:00 P.M.

## REQUEST FOR PROPOSALS

# Enterprise Resource Planning (ERP) Consultant

**NOTICE IS HEREBY GIVEN** that the City of Los Banos (“City”) is issuing this Request for Proposals (“RFP”) for an **Enterprise Resource Planning (ERP) Consultant**.

Consultants are solely responsible for ensuring proposals are received by the City on or before the submittal deadline. Proposals must be received no later than 5:00 p.m., on April 19, 2019, 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 three (3) duplicates are to be submitted in sealed packages with the name of the Consultant 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 Submitted proposals may be withdrawn at any time prior to the submission time specified in this RFP, provided notification is received in writing before the submittal deadline. Proposals cannot be changed or withdrawn after the submittal deadline.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 Consultant 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 Consultant 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 [raj.singh@losbanos.org](mailto:raj.singh@losbanos.org)

# REQUEST FOR PROPOSALS

## Enterprise Resource Planning (ERP) Consultant

**RELEASE DATE:** March 8, 2019

**CLOSING DATE/TIME:** April 19, 2019 at 5:00 P.M.  
*All proposals must be received (hardcopy or email) by the closing date and time. Emailed proposals are accepted.*

**CONTACT PERSON:** Raj Singh, IT Manager  
209 827-7000  
raj.singh@losbanos.org

City of Los Banos  
520 J Street  
Los Banos, CA 93635

Hours: Monday – Friday 8:00AM – 5:00PM

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### Introduction

The City of Los Banos (“City”) is requesting sealed proposals for an **Enterprise Resource Planning (ERP) Consultant**. All proposals must be received by the City, no later than **5:00 p.m. on April 19, 2019**. Late proposals will not be considered. The original signed proposal and three (3) duplicates are to be submitted in sealed packages with the name of the Consultant and Proposal for **Enterprise Resource Planning (ERP) Consultant** clearly marked on the outside of the package.

Proposals must be responsive to City’s request. The City shall determine the most responsive and qualified consultant providing the best service at the most reasonable cost. Cost alone shall not be the determinative factor.

The request for proposals does not obligate the City to award a contract or complete the project and the City reserves the right to cancel the solicitation if deemed in its best interest.

### Background

The City of Los Banos, population 39,993 is situated on the west side of Merced County and is the county’s second largest City. The City is conveniently located in the center of California and is about two hours from the cities of San Francisco, Oakland and Sacramento, as well as Yosemite National Park. The City is organized into departments that provide a full range of municipal services, including police, fire, public works, community and economic development, and administration.

The City of Los Banos operates under the Council-Manager form of government, with a five member City Council comprised of four Council Members elected by district with overlapping terms of four years and a Mayor elected at large for a term of two years. The City Council appoints the City Manager and City Attorney. The City is also served by a City Treasurer and City Clerk, both of whom are elected officials. The City is organized into departments that provide a full range of municipal services, including police, fire, public works, community and economic development, and administration. The City's 2017-18 adopted General Fund budget is \$16 million, and the total City budget is \$40.8 million.

The City is seeking proposals from qualified service providers (herein referred to as "Consultant") to help the City with selecting and implementing a new Enterprise Resource Planning (ERP) software package(s). Consultant is expected to enter into a contract with the City to examine existing business processes and procedures, validate existing approaches towards ERP and provide overall project management services through implementation and acceptance of a new ERP system. City's current software for finance and utility billing is from Springbrook, now Acela.

## **Key Action Dates/Timeline**

Below is a desired schedule for initiation of this project; however dates may be subject to change and adjusted as necessary.

Release of RFP: March 08 2019

Deadline for Receipt of Questions: March 20, 2019 at 5:00pm

Last day for addendum and changes to RFP: April 5, 2019 at 5:00 P.M

Deadline for Receipt of Proposal: April 19, 2019 at 5:00 P.M.

Approximate Contract Award Date: June 30, 2019

## **Scope of Services**

1. Consultant shall work with the City to verify and examine existing approach and assumptions the City has in relation to procurement of an ERP system.
2. Consultant shall examine the City's existing (as is) business functions and processes for all departments who will be impacted by the new ERP implementation or with potential for management via the new ERP software.
3. Identify opportunities for automation through technology, identify process improvements and cost recovery opportunities through automation. Consultant shall document high level gaps between current functions, processes, and requirements and best practice functions, processes, and requirements.
4. Based on the findings, the Consultant shall make recommendations to the administration regarding existing approach to the ERP. This recommendation shall also consist of findings whether the City would, based on its business practices, benefit from single software vendor/package solution or a best of breed solution. Regardless of the solution(s) proposed, the system as a whole should be fully integrated.

Outcome 1

If the recommendations are in line with the current approach and validates the current assumptions to a large degree, the Consultant is expected to work with the City to help procure software, hardware, implementation services and provide project management to the project.

#### Outcome 2 (Optional)

If the recommendation is different than the current approach and a vendor or multiple vendors need to be selected, consultant shall prepare Request for Proposals (RFP) to be issued by the City for whole or part of a new ERP software with implementation and/or integration services that will allow for thorough comparison of all qualified vendors. The RFP must be prepared in compliance with the City's purchasing policy and will include scope of work, product specifications, vendor evaluation criteria and other necessary information.

- A. If Outcome 2 is selected, draft presentation for (and lead) vendor pre-proposal conference.
- B. Draft and coordinate responses to vendor questions during the proposal period.
- C. Develop evaluation materials to include criteria, demonstration and interview scripts, scoring criteria, and scoring analysis.
- D. Participates in evaluation of vendors and interviewing process.

Regardless of the outcome chosen as noted above, the Consultant shall lead the City through the ERP software selection and/or procurement process including but not limited to:

5. Work with the City to identify potential risks and develop an ongoing risk management plan.
6. Work with the City to develop a contract and implementation plan. Participate in contract negotiations with the selected vendor to insure a performance based contract where milestones are paid when accomplished.
7. Coordinate any software demonstrations and on-site visits as necessary.
8. Consultant shall provide overall project management services throughout the life cycle of the ERP project including, evaluation, selection and project implementation process.
9. Consultant shall work with the City to establish in-house functional teams, project management team and a project steering committee.
10. Consultant shall, if needed, present findings, recommendations and procurement recommendations to the City Council.

## **Project Deliverables**

1. ERP lifecycle project and vendor management.
2. Project documents necessary to support a project of this size – project plan, risk management plan, timeline, communications plan, executive reports, budget estimate, etc.
3. Requirements Analysis Report detailing the functional and data requirements, including business process workflow needed for the new ERP system.
4. If needed under Outcome 2, develop RFP and related documents for new ERP software and implementation.
5. Evaluation and recommendation of vendor proposals for the new ERP software and implementation.
6. Facilitate ERP implementations, project schedule(s), data migration, vendor relationship management and contract compliance.

## Proposal Content

The Consultant shall be responsible for preparing an effective, clear, and concise proposal. The City is requesting one (1) original and three (3) bound paper copies of the proposal, which must contain at a minimum the following information:

1. Letter of Interest: Please include a letter expressing the Consultant's interest in being considered for the project. Include a statement regarding the consultant's availability to dedicate time, personnel, and resources to this effort. The letter of interest must include a commitment to the availability of the Consultants and all key project staff during the planning period and a proposed schedule designed to meet the City's needs for the Project.
2. Project Understanding and Approach: Please include a statement demonstrating your understanding of the proposed project. Describe your approach to completing the project successfully; methodologies and technologies you would employ; key milestones and processes you would employ. Describe what information you would expect the City to supply.
3. Relevant Experience: Please include information describing the Consultant's experience with Enterprise Resource Planning. Please provide a minimum of five (5) specific examples of the Consultant's relevant experience on Enterprise Resource Planning. At a minimum, the Consultant should provide a list of the most recent projects for which the Consultant has performed similar services of similar size, scope, and complexity. Include the name, contact person, address, phone number and/or e-mail of each party for whom the service was provided, as well as a description of the service performed, the dollar amount of the contract, and the date of performance.
4. Project Manager/Key Staff: Please include information about the specific relevant experience and billing rates for the proposed Project Manager and all other applicable staff. A Project Manager must be designated and must be the principal contact for the City. Information on the experience of the Project Manager (on similar projects) and at least two references for the Project Manager.
5. Proposed Scope of Services: Please provide a Proposed Scope of Services, which is based on the Scope of Work contained in this RFP; and discuss any ideas for modifying, clarifying, or improving the City's proposed scope of work. Provide a realistic working schedule with key deliverables, milestones and tasks.
6. Conflict of Interest Statement: The firm 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.
7. Comments on or Requested Changes to Contract: The City standard professional services contract is included as **Attachment 2** to this Request for Proposals. The proposing firm shall identify any objections to and/or request changes to the standard contract language in this section.

8. Cost Proposal: In a **separate envelope** marked 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 as described in this request for proposals. The total all-inclusive maximum not to exceed 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 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. Please provide a separate line item for the cost of the optional item "Outcome 2" under Scope of Services.
  - b. Manner of Payment: Progress payment will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the consultant's proposal. Interim billings shall cover a period of not less than a calendar month.

**Please note: This project has been budgeted with a not to exceed amount of \$25,000.00.**

## **Evaluation Guidelines**

Based upon the responses to the RFP, the City may interview or ask questions from any or all of the Proposers and/or award the contract without conducting interviews. The successful Proposer will be required to enter into a contract with the City, including insurance/indemnity requirements.

The selection process, including the interview, will focus on:

1. The proposed approach;
2. Previous experience with ERP implementation consulting services for similar size organizations;
3. Clarity of proposal, completeness and inclusion of requested information;
4. Technical capabilities;
5. Cost effectiveness;
6. Reference checks;
7. Professional nature of firm;
8. Demonstrated municipal government experience;
9. Ability to present materials that can be understood by technical and non-technical staff;
10. Qualifications and experience of the firm and staff assigned to provide support;
11. Past performance;
12. Professional standing and financial stability of the firm; and
13. Feasibility of the proposal(s) based upon the proposed scope of service.

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 Consultant'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 decision of whether to award a contract and selection of a consultant will be in the sole discretion of the City Council.

## **Submission Instructions**

The City will not give verbal answers to clarifications regarding information in this RFP, or verbal instructions prior to the submission deadline. All clarifications shall be submitted in writing. A verbal statement regarding same by any person shall be non-binding. The City is not liable for any increased costs resulting from the Consultant accepting verbal directions. Any explanation desired by a Consultant must be requested of the City representative in writing no later than March 20, 2019 at 5:00 p.m.

Inquiries concerning the Request for Proposals and the subject of the Request for Proposals must be made to:

Raj Singh  
IT Manager  
520 J Street  
Los Banos, CA 93635  
(209) 827-7000 ext. 2405  
raj.singh@losbanos.org

**Submission of Proposal:** Proposals submitted by facsimile or emails are not acceptable and will not be considered. The original signed proposal and three (3) duplicates are to be submitted in sealed packages with the name of the Consultant and RFP title clearly marked on the outside of the package. The Proposal shall be received by City Clerk of the City of Los Banos by **5:00 p.m. on April 19, 2019** for a proposal to be considered. The Proposal should address the items listed below. The Proposal should be addressed as follows:

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

**Format for Proposal:** To facilitate the review of responses, all responses are required to adhere to the following requirements with regard to their proposal. The City strongly encourages respondents to ensure that RFP submissions are succinct and clearly organized. If the proposal is not in this format or does not include all of the listed items, it may be deemed non responsive. For ease of handling, all responses are to be provided in a standard 8 ½" x 11" portrait format with binding on the left hand edge.



1. Title Page showing the request for proposals subject; the firm's name; the name, address and telephone number of the contact person; and the date of the proposal.
2. Table of Contents identifying the materials submitted by section and page number.
3. Detailed Proposal following the order set forth in the Proposal Content.

## ATTACHMENT 1

### Special Conditions

#### **Contract and Insurance Requirements.**

The selected consultant shall be required to enter into a City-prepared Professional Services Agreement approved by the City Attorney. Consultants shall be prepared to accept the terms and conditions of the City's Standard Professional Services Agreement including all Insurance Requirements. The successful Consultants 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 Consultant. 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 Consultant.

- **General Liability.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Consultant's general liability policies shall be primary and non-contributory, and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction contracts, an endorsement providing completed operations to the additional insured, ISO form CG 20 37, is also required.
- **Workers' Compensation.** Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.
- **Auto Liability.** Consultant shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than one million dollars (\$1,000,000) per accident. If Consultant owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy
- **Professional Liability.** Consultant shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement. The cost of such insurance shall be included in Consultant's bid.

#### **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 Consultant responding to this RFP, or parties they represent, for obtaining any of the information solicited.

**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.

**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 Consultants will be notified in writing.

**Additional Information.**

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

**Conflict of Interest.**

Consultant 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. Consultant 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. Consultant certifies that to the best of Consultant'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.

**Release of Public Information.**

Consultants 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.

**Non-Assignment.**

If a contract is awarded, the selected Consultant 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.

**Collusion.**

Each Consultant 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 Consultant certifies that the company, its officers, employees and/or agents have not offered or received any kickbacks or inducements from any other bidding Consultant, 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 Consultants. 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 Consultant has interest in more than one proposal for the work being proposed may result in rejection of all bids in which the bidding Consultant is believed to have interest.

**Debarment.**

By submitting a proposal, the Consultant 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.

**Equal Employment Opportunity Compliance.**

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

**Right to Audit.**

The selected Consultant 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 Consultant 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.

**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.

ATTACHMENT 2  
**Professional Services Agreement**  
**FOR <<Description of Services>> SERVICES**  
**[<<Consultant Name>>]**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between the City of Los Banos, a municipal Corporation (herein referred to as “City”) and <<Consultant Name>> (herein referred to as “Consultant”).

RECITALS

A. WHEREAS, City proposes to have Consultant perform the services described herein below;

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code, Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated;

C. WHEREAS, City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement;

D. WHEREAS, City and Consultant desire to contract for specific services described below and desire to set forth their rights, duties and liabilities in the services to be performed; and

E. WHEREAS, no official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

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

[ALTERNATIVE]

<<The term of this Agreement shall commence on the above written date, and shall terminate on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, unless terminated earlier as set forth herein.>>

2. **Scope of Services.** <<Consultant shall provide the professional services described in the City's Request for Proposal (“RFP”) attached hereto as **Exhibit \_\_** and

incorporated herein by reference and Consultant's Response to City's RFP (the "Proposal"). A copy of said Proposal is attached hereto as **Exhibit** \_\_ and incorporated herein by this reference.>>

[ALTERNATIVE]

<< Consultant shall diligently perform all the services described in the Scope of Services attached hereto as **Exhibit** \_\_ and incorporated herein by reference. The City may elect to delete certain tasks of the Scope of Services at its sole discretion.>>

Notwithstanding services described above, the City may request and Consultant may agree to perform other services. The scope of such services and compensation shall be agreed to in writing, signed by both parties and shall become a part of this Agreement.

2.1. 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.

2.2 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 the services shall be performed to completion in a diligent and timely manner. The failure by Consultant to perform the services in a diligent and timely manner may result in termination of this Agreement by City.>>

[ALTERNATIVE]

<< 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** \_\_ 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 foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the services to be provided for the Project, each party hereby agrees to provide notice to the other party so that all delays can be addressed.

4. **Compensation.** <<City shall pay Consultant for the services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Pricing Proposal submitted by Consultant attached hereto as **Exhibit** \_\_ and incorporated herein by reference. Consultant's compensation for all work performed in accordance with this Agreement, including all reimbursable items and sub Consultant fees, shall not exceed <<dollar amount>> unless authorized in writing by the City and approved by the City Council.>>

[ALTERNATIVE]

<< Consultant shall be paid in accordance with the fee schedule set forth in **Exhibit \_\_** attached hereto and made a part of this Agreement (the “Fee Schedule”). Consultant’s compensation shall in no case exceed <<dollar amount.>>>>

[ALTERNATIVE]

<< City shall pay Consultant for the services on a time and expense not-to-exceed basis in accordance with the provisions of and the Project Budget this Section and the Staff Hour and Fee Estimate as well as the Consultant’s Schedule of Charges as set forth in **Exhibit \_\_** and incorporated herein by reference. Consultant’s compensation for all work performed in accordance with this Agreement, including all reimbursable items and sub consultant fees, shall not exceed <<dollar amount>> without additional authorization from City.>>

4.1 Consultant shall submit monthly invoices to City describing the work performed the preceding month. Consultant’s bills shall include the name of the person who performed the work, a brief description of the services performed and the specific Task in the Scope of Services to which it relates, the date the services were performed, the number of hours spent on all work billed on an hourly basis, and a description of any reimbursable expenditures. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City. City shall pay Consultant no later than thirty (30) days after receipt of the monthly invoice by the City.

4.2 City shall reimburse Consultant only for those costs or expenses specifically approved in this Agreement, or specifically approved in advance by City. Unless otherwise approved, such costs shall be limited and in accordance with Schedule of charges set forth in the Proposal attached hereto as **Exhibit \_\_** and incorporated herein by reference.

4.3 Consultant shall not receive any compensation for Additional Work without the prior written authorization of City. As used herein, “Additional Work” means any work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Additional Work shall be billed in accordance with the Billing Rates as set forth in **Exhibit \_\_** and on the terms set forth in this Article 4.

5. **Contract Administration.** The << identify city representative by title>> shall have the authority to act for City under this Agreement. The <<identify city representative by title>> or his/her authorized representative shall represent City in all matters pertaining to the services to be rendered pursuant to this Agreement. Consultant shall designate a representative for purposes of this Agreement who shall have the authority to act for Consultant under this Agreement.

6. **Project Managers.** City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement. Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated <<name of project manager>>, to be its Project Manager. Consultant shall not remove or reassign the Project

Manager without the prior written consent of City. City's approval shall not be unreasonably withheld.

7. **Indemnification.** When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and 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 the 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, and any and all of its employees, officials and agents from and against any liability (including liability for 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, but 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 indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant's performance of this agreement, the Consultant shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

8. **Insurance.** Without limiting Consultant's indemnification of City, and prior to commencement of work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, a policy or policies of liability insurance of the type and amounts described below and in a form satisfactory to City.

A. **Certificates of Insurance.** Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Insurance certificates must be approved by the City Attorney prior to commencement of performance or



issuance of any permit. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement.

B. **Signature.** A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies.

C. **Acceptable Insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City Attorney.

D. **Coverage Requirements.**

i. **Workers' Compensation Coverage.** Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

ii. **General Liability Coverage.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Consultant's general liability policies shall be primary and non-contributory, and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction contracts, an endorsement providing completed operations to the additional insured, ISO form CG 20 37, is also required.

iii. **Automobile Liability Coverage.** Consultant shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than one million dollars (\$1,000,000) per accident. If Consultant owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy.

iv. **Professional Errors and Omissions Insurance.** Consultant shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement. The cost of such insurance shall be included in Consultant's bid.

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.

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 prepared by the Consultant pursuant to this Agreement shall be the property of the City. Such documents shall include but not be limited to all findings, reports, 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.

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. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

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:  
City of Los Banos  
520 J Street  
Los Banos, California 93635  
Attn: <<name>>

To Consultant:  
<<consultant>>  
<<address>>  
<<city, state, zip>>  
Attn: <<name>>

Nothing hereinabove shall prevent either City or Consultant from personally delivering any such notices to the other.

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.

23. **Order of Precedence.** In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the RFP or the Response, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both the Response and the RFP and the Response shall govern over the RFP.

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

<<consultant>>

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
by: <<name and title>>

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

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
by: <<name and title>>

**ATTEST:  
CITY CLERK**

\_\_\_\_\_  
Lucille L. Mallonee, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
William A. Vaughn  
City Attorney