

REQUEST FOR PROPOSALS
Graffiti Abatement Services

NOTICE IS HEREBY GIVEN that the City of Los Banos ("City") is issuing this Request for Proposal ("RFP") for Graffiti Abatement Services. The purpose of this RFP is to select the most qualified proposer to provide the related services to the City. Submitted competitive sealed proposals must be from qualified contractors.

Proposers are solely responsible for ensuring proposals are received by the City on or before the submittal deadline. **Proposals must be received no later than 2:00 p.m. on September 10, 2019** at the following address:

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

An original proposal 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 Contractor 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 Submitted proposals may be withdrawn at any time prior to the submission time specified in this RFP, provided notification is received in writing before the submittal deadline. Proposals cannot be changed or withdrawn after the submittal deadline.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 Contractor 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 Contractor 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 in writing to gary.brizzee@losbanos.org.

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The contract award, if any, will be made to the Contractor 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 in writing to: gary.brizzee@losbanos.org

I. INTRODUCTION

A. General Information

The City of Los Banos is requesting proposals from qualified graffiti abatement service contractors to identify, record, abate, and monitor both private and public properties within the geographic boundaries of the City of Los Banos for occurrences of graffiti. The City is located in the western portion of Merced County, servicing an area of 10.48 square miles with a population of 41,898.

There is no expressed or implied obligation for the City of Los Banos to reimburse responders to this request for any expenses incurred in preparing proposals in response to this request. Materials submitted by respondents are subject to public inspection under the California Public Records Act (Government Code Sec. 6250 et seq.), unless exempt.

To be considered, the original signed proposal and three (3) duplicates of the proposal are to be submitted in sealed packages with the name of the Proposer and RFP title clearly marked on the outside of the package. Proposals must be submitted to Lucille L. Mallonee, City Clerk, 520 J Street, Los Banos, CA 93635, by **no later than 2:00 p.m. on September 10, 2019**. Proposals submitted by facsimile or email are not acceptable and will not be considered. The City reserves the right to reject any or all proposals submitted.

During the evaluation process, the City of Los Banos reserves the right, where it may serve the City's best interest, to request additional information or clarification from proposers, or to allow corrections of errors or omissions. At the discretion of the City of Los Banos, Contractors submitting proposals may be requested to make oral presentations as part of the evaluation process.

The City reserves the right to retain all proposals submitted and to use any idea(s) in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the Contractor of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of Los Banos and the Contractor selected.

It is anticipated the selection of a Contractor will be completed on or before **September 12, 2019**. Following the notification of the selected Contractor, a recommendation and proposed contract will be prepared for review and approval by the City Council at the regularly scheduled City Council meeting on **September 18, 2019**. The City reserves the right to reject any or all proposals, to waive any non-material irregularities or information in any proposal, and to accept or reject any items or combination of items.

B. Term of Engagement

It is the intent of the City to contract for the services presented herein for an initial term of one (1) year. The City of Los Banos reserves the right to extend the term of this contract for three (3) additional one-year terms subject to the satisfactory negotiation of terms, including a price acceptable to both the City and the selected Contractor. The proposal package shall present all-inclusive graffiti abatement service fees for the initial term of the contract.

II. NATURE OF SERVICES REQUIRED

A. Scope of the Work to be Performed

The City desires to hire a graffiti abatement services Contractor who shall routinely patrol the City to identify, record, abate, and monitor both private and public properties within the City limits, for occurrences of graffiti, as desired below.

The selected Contractor shall be required to perform the following tasks:

- Contractor shall conduct three (3) weekly patrols of the City for graffiti. These patrols will include “hotspot” areas, major thoroughfares, alleys, parks, and other areas designated by the City. All graffiti located during said patrols will be promptly cleaned as outlined by this RFP.
 - If, after month number four (4) of the contract, the City determines that the number of weekly patrols requires adjustment, either up or down in frequency, the City and contractor will meet to amend the contract accordingly.
- Respond to and effectively abate all other reported graffiti occurrences within the City as outlined by this RFP.
- Contractor agrees to furnish graffiti removal services as follows:
 - Continued on-going removal of all graffiti utilizing the following techniques where applicable:
 1. Paint over using a color matching technique
 2. Chemical removal
 3. Water pressure, blasting, washing, or soda blasting
 4. Sand blasting
 5. Other method as agreed upon by City
- Digital photography. the Contractor shall photograph each occurrence of graffiti using a digital camera with the following capabilities:
 - A date and time stamp for each photograph.
 - 7.1 megapixel or higher resolution
 - Contractor is expected to provide their own camera
- Provide weekly reports of graffiti occurrences which includes photographs and location of graffiti, categorized by graffiti type, moniker, gang, location, notification type, and/or other agreed upon standard. Reports shall also include information regarding the quantity, type, and origination of all reports of graffiti abatement received by the contractor.
- Monitor and respond to all City website/other message-based efforts to report graffiti to the City.
- Be responsible for private property graffiti abatement process, from first contact and notification of owner/tenant through successful abatement following the requirements of the Los Banos Municipal Code for private property graffiti abatement and the requirements of this RFP.
- Assist with or complete expedient private property graffiti abatement and clean up. Contractor shall obtain all necessary permissions from property owner/tenant prior to graffiti removal.

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RFP for Graffiti Abatement Services

- Special attention and expressed permissions will be sought for unique property clean-up efforts. For example, commercial signage, artwork, or other sensitive graffiti locations.
- Contractor and his/her staff will be expected to meet with the City upon request.
- Contractor shall use commercially accepted color matching/blending techniques and equipment to closely match adjacent painted surfaces.
- All underlying graffiti shall not be visible.
- Graffiti that is painted over shall be done with a paint color that closely matches adjacent surfaces. Such locations where graffiti has been previously painted over using non-matching colors, the area shall be painted over by the Contractor using a color that closely matches the rest of the surface.
- City-owned property shall be removed within two (2) business days.
- Obscene or vulgar graffiti shall be removed within one (1) business day.
- The Contractor shall use high quality commercial paint and appropriate graffiti removal chemical agents. If Contractor intends to use experimental or other non-traditional methods or materials, such methods or materials must be approved in writing by the Chief of Police or his designee, prior to use. The Contractor is responsible for any damage that occurs as a result of their chosen cleaning method.
- Graffiti on natural surfaces, such as unpainted block or wood, shall be removed with water/sand/other method. The Contractor is responsible for any damage that occurs as a result of their chosen cleaning method.
- All work shall be subject to approval of the Chief of Police or his designee.
- The Contractor shall contact the Chief of Police or his designee routinely to assess if there are upcoming events that will determine specific areas of attention that need to be addressed that week.
- Any work in need of correction shall be satisfactorily corrected by the Contractor at the Contractor's own expense within one (1) business day of said notification by the City.
- As approved by the Chief of Police, all Contractor vehicles will be appropriately marked to indicate the name of the Contractor, the vehicle's purpose, and contact information to report graffiti in Los Banos.
- Before the work shall be deemed complete, the entire area shall be placed in a neat and orderly condition. Debris and other excess material related to the graffiti removal process shall be removed from the site.
- Contractor shall have staff available by phone, cell phone or pager, Monday through Friday between 8:00 a.m. and 5:00 p.m. to respond to questions, verification of schedules, call-outs and other non-emergency requests or questions.
- Any damages caused by the Contractor or their employees, equipment, or materials shall be the responsibility of the Contractor.

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- The Contractor shall provide all personnel, equipment, vehicles, tools, materials, supervision, insurance, permits, licenses, and other items and services necessary to perform graffiti abatement services in the City.

B. Work Product Retention

All working papers and reports shall be retained at the Contractor's expense for a period of three (3) years after the working paper or report is provided to the City.

III. PROPOSAL REQUIREMENT

A. General Requirements

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

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

Gary Brizzee
Chief of Police
945 Fifth Street
Los Banos, CA 93635
(209) 827-2501
gary.brizzee@losbanos.org

Submission of Proposal. 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 Proposer 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 no later than 2:00 p.m. on September 10, 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

The proposal shall consist of two parts

1. The Technical Proposal
2. The Cost Proposal

NO DOLLAR AMOUNTS SHOULD BE INCLUDED IN THE TECHNICAL PROPOSAL.

B. Format for Proposal

To facilitate the review of responses, all responses are required to adhere to the requirements listed below 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.

- Title Page showing the Request for Proposals subject; the Contractor’s name; name, address, and telephone number of the contact person; and the date of the proposal.
- Table of Contents identifying the materials submitted by section and page number.
- Original Signed Transmittal Letter briefly stating the Proposer’s understanding of the work to be done and the name(s) of the person(s) authorized to represent the Proposer, title, address, and telephone number.
- Detailed Proposal following the order set forth in Section C below.

C. Contents of Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the Contractor seeking to undertake the graffiti abatement services contract, for the City, in conformity with the requirements of this request for proposals. As such, the substance of proposals will carry more weight than the form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the Contractor and of the particular staff to be assigned to this engagement. It should also specify an approach that will meet the request for proposals requirements.

The Technical Proposal should address all points outlined in the request for proposals, excluding any cost information which shall be submitted in a separate sealed envelope included with the Technical Proposal package. The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer’s capabilities to satisfy the requirements of this Request for Proposals. While additional data may be presented, the following subjects must be included as they represent the criteria against which the proposal will be evaluated.

NO DOLLAR AMOUNTS SHOULD BE INCLUDED IN THE TECHNICAL PROPOSAL.

1. License to Practice in California

An affirmative statement should be included verifying the Contractor and all staff are properly licensed and permitted to perform the services described in this RFP.

2. Description of Qualifications

Please provide a detailed description of the Contractor's qualifications to this RFP.

3. Implementation Plan

Please provide a detailed response to address each task in the scope of work of this RFP.

4. Similar Engagements with Other Government Entities

Please provide a list of a minimum of two (2) public agency client references for whom services similar to those outlined in the RFP are currently, or have been, provided. For each reference listed provide the name of the organization, dates for which the service(s) are/were provided, type of service(s) provided, and the name, address and telephone number of the responsible person within the reference's organization. The City reserves the right to contact any or all of the listed references regarding the audit services performed by the Proposer.

5. Insurance Coverage

The Contractor shall provide Commercial General Liability Insurance coverage in the amount of \$2,000,000 per occurrence; \$4,000,000 general aggregate, and Comprehensive Automobile Liability coverage in the amount of \$2,000,000 combined single limit. Provide Worker's Compensation with statutory limits of liability and Employer's Liability coverage with minimum \$1,000,000 limits of liability. For General Liability and Automobile coverage's, the City of Los Banos must be named as an additional insured. For the Worker's Compensation coverage's provide a Waiver of Subrogation naming the same entity.

D. Contents of Cost Proposal

1. Total Cost, Per Contract Year

The Cost Proposal should contain a detailed breakdown of the cost for performing the services described in this Request for Proposals. The total cost, per contract year, is to contain all direct and indirect costs including all out-of-pocket expenses.

The Cost Proposal shall be submitted in a separate sealed envelope, included with the Proposal package.

2. Manner of Payment

Payments will be made in accordance with the Professional Services Agreement agreed to by the City and Contractor.

IV. EVALUATION PROCEDURES

A. Evaluation Criteria

Proposals will be evaluated using the set forth criteria. Contractors meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and price. The following represent the principal selection criteria, which will be considered during the evaluation process.

- The Contractor's experience to successfully provide graffiti abatement services;
- The ability and willingness of the Contractor to meet all requirements as outlined in the scope of work;
- References and past history of graffiti removal in other communities in providing graffiti abatement service needs to other governmental organizations, or any other organizations;
- Requested changes to City Standard Professional Services Agreement; and
- The thoroughness and conformity of the proposal package and the cost of the 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 Proposer's capabilities, competence, and capacity will be considered as well. The City reserves the right to choose the overall best Contractor according to the City's criteria. The City, and its designated representatives, shall be the sole judge of its own best interest, the proposal, and the resulting negotiated agreement. The City's decisions will be final.

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

The most qualified and responsive proposer will be selected for contract negotiations. If agreement cannot be reached with the first ranked proposer, the City may open negotiations with the next ranked proposer(s). A contract award may be made to the responsible proposer whose proposal will be best for the City considering evaluation factors outlined above. All proposers participating in the process shall be notified in writing of the successful award.

V. SPECIAL CONDITIONS

A. Contract and Insurance Requirements.

The selected proposer shall be required to enter into a City-prepared Professional Services Agreement approved by the City Attorney. Proposers shall be prepared to accept the terms and conditions of the City's Standard Professional Services Agreement including all insurance requirements. The successful Proposer's bid and the terms and conditions stated in this RFP will be made part of the contract between the City of Los Banos and the Proposer. 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 Proposer.

B. 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 Proposer responding to this RFP, or parties they represent, for obtaining any of the information solicited.

C. 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.

D. 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 Proposers will be notified in writing.

E. Proposer's Questions.

The City will not give verbal responses to inquiries regarding information in this RFP, or verbal instructions prior to the submission deadline. All questions shall be submitted in writing to Gary Brizzee, Chief of Police, at gary.brizzee@losbanos.org. A verbal statement regarding same by any person shall be non-binding. The City is not liable for any increased costs resulting from the Proposer accepting verbal directions. Any explanation desired by a Proposer must be requested to the City representative in writing no later than **5:00 p.m. on September 5, 2019**. If explanation is necessary, a reply shall be made in the form of an addendum to the RFP, a copy of which shall be posted on the City's website at www.losbanos.org on or before **September 6, 2019**.

F. Additional Information.

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

G. Conflict of Interest.

Proposer 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. Proposer 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 by the City. Proposer certifies that to the best of Proposer'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.

H. Release of Public Information.

Proposers who respond to this RFP and 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.

I. Non-Assignment.

If a contract is awarded, the selected Proposer 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.

J. Collusion.

Each Proposer 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 Proposer certifies that the company, its officers, employees, and/or agents have not offered or received any kickbacks or inducements from any other bidding Proposer, 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 Proposers. More than one bid from an individual, firm, contractor, partnership, corporation, or association under the same or different names may be rejected. Reasonable grounds for believing that a bidding Proposer has interest in more than one proposal for the work being proposed may result in rejection of all bids in which the bidding Proposer is believed to have interest.

K. Debarment.

By submitting a proposal, the Proposer 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.

L. Equal Employment Opportunity Compliance.

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

M. Right to Audit.

The selected Proposer 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 Proposer shall retain these records for a period of three (3) 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.

Attachments:

Professional Services Agreement

**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 two million dollars (\$2,000,000) per accident. If Consultant owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy.

iv. Professional Errors and Omissions Insurance. Consultant shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and 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

TEMPLATE