



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

**CITY OF LOS BANOS  
PUBLIC WORKS DEPARTMENT**

**REQUEST FOR SEALED BIDS**

**FOR SUPPLYING AND INSTALLING PARK  
PLAYGROUND EQUIPMENT CRESTHILLS PARK AND  
COLLEGE GREENS PARK**

City of Los Banos  
Public Works Department  
411 Madison Avenue  
Los Banos, CA 93635  
(209) 827-7056

Mark Fachin P.E.  
Public Works Director/ City Engineer

The sealed bids must be received no later than 2 p.m.

April 28, 2011

By the office of the City Clerk  
in the Council Chambers of City Hall,  
520 J Street  
Los Banos, CA 93635



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

**INVITATION FOR BIDS**

CITY OF LOS BANOS  
PUBLIC WORKS DEPARTMENT  
411 Madison Avenue  
Los Banos, CA 93635  
(209) 827-7056

NOTICE IS HEREBY GIVEN that the LOS BANOS PUBLIC WORKS DEPARTMENT invites and will receive sealed BIDS up to the hour of 2:00 P.M. (Pacific Daylight Savings Time) on April 28, 2011 for the purchase and installation of Park Playground Equipment for City of Los Banos Parks located in the Cresthills Subdivision and College Greens Subdivision. At said time, said bids will be publicly opened and read aloud in the City of Los Banos Council Chambers by the office of the City Clerk at:

**520 "J" Street  
Los Banos, California 93635**

The Los Banos Public Works Department is requesting bids to provide playground equipment and installation, demolition of existing selected park equipment, and provide and install fiber wood chips to playground areas in the identified parks.

Questions regarding the Bid Documents are to be directed in writing to Gary Hutsell, Assistant Public Works Director, 411 Madison Avenue, Los Banos, California 93635 or by email at [Gary.Hutsell@Losbanos.org](mailto:Gary.Hutsell@Losbanos.org).

BIDS shall be submitted only on forms provided in the Bid Packet. Bids shall be in the hands of the City Clerk of the City of Los Banos, 520 J Street, Los Banos, California, 93635 on or before the hour of 2:00 P.M. on April 28, 2011. No late BIDS will be accepted and will be returned unopened. No oral, telegraphic, electronic, facsimile, or telephone submittals or modifications will be considered unless specified.

The Bid Package forms can be obtained from the City of Los Banos website at [www.losbanos.org](http://www.losbanos.org).

This project is subject to current prevailing wage rates and requirements.

The City of Los Banos reserves the right to reject any and/or all BIDS received.

## Information for Bidders

BIDS will be received by the City of Los Banos Office of the City Clerk for the Los Banos Public Works Department (herein called the "OWNER"), at the City Council Chambers of the City of Los Banos, 520 J Street, Los Banos, CA, 93635, until 2:00 p.m. (PDST), on 28th day of June, 2011, then publicly opened and read aloud.

Each BID must contain one original set of bid documents. These documents must be submitted in a sealed envelope and addressed to the OWNER at 520 J Street, Los Banos, CA, 93635. Each sealed envelope containing a BID must be plainly marked on the outside as "**Park Playground Equipment Bid; Attention City Clerk**", and the envelope should also bear on the outside, the name of the BIDDER, and their address. If forwarded by mail, the sealed envelope containing the BID must be enclosed in another envelope addressed to the City of Los Banos at 520 J Street, Los Banos, CA, 93635, and also state "**Park Playground Equipment Bid; Attention City Clerk**"

All BIDS must be made on the required BID form. BID prices must be filled in, in ink or typewritten, and the BID form must be fully completed and executed when submitted unless otherwise indicated. Only one copy of the BID form is required.

The OWNER may waive any informalities or minor defects or reject any and all BIDS. Any BID may be withdrawn prior to the above scheduled time for the opening of BIDS or authorized postponement thereof. Any BID received after the time and date specified shall not be considered. No BIDDER may withdraw a BID within 30 days after the actual date of the opening thereof. Should there be reasons why the BID cannot be awarded within the specified period; the time may be extended by mutual agreement between the OWNER and the BIDDER.

BIDDERS must satisfy themselves as to the accuracy of the conditions in the BID DOCUMENT and review of the Bid Package, Attachments including Addenda. After BIDS have been submitted, the BIDDER shall not assert that there was misunderstanding concerning the information provided in the Bid Documents.

Each BID must be accompanied by a Bid Security payable to the OWNER for an amount not less than \$5,000.00 or a Bidder's Bond executed by a surety authorized by the Insurance Commissioner to transact business of insurance in the State of California. The Bidder's Bond shall be made out to the City of Los Banos for an amount not less than \$5,000.00 and no BID shall be considered unless accompanied by either security.

As soon as the BID amounts have been compared, the OWNER will return the bonds of all except the three lowest responsible BIDDERS. When the Contract is executed, the bid security of the two remaining unsuccessful BIDDERS will be returned. The Bid Security of the successful BIDDER will be retained until the Contract is executed.

The party to whom the Contract is awarded will be required to execute the Agreement within ten (10) calendar days from the date when the NOTICE OF AWARD is delivered to the BIDDER. In case of failure of the BIDDER to execute the Contract, the OWNER may, at his option, consider the Contract in default, in which case the Bid Bond

accompanying the proposal shall become the property of the OWNER. Said check or BID BOND shall be a guarantee that the bidder, if awarded the contract, will execute and deliver required CONTRACT AND RELATED DOCUMENTS, BONDS, INSURANCE within said time.

Each BIDDER is responsible for the review of the Bid Documents. The failure and omission of any BIDDER to do any of the foregoing shall not relieve any BIDDER from any obligation with respect to the BID. Any addendums will be released as necessary at [www.LosBanos.org](http://www.LosBanos.org) .

Minimum wage rates for this Project shall be as determined by the Secretary of Labor. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the prevailing wage rates determined by the Director of the Department of Industrial Relations of the State of California for similar classification of labor, the CONTRACTOR and his SUBCONTRACTOR shall not pay less than the higher wage rate. In accordance with the provisions of Section 1773 of the Labor Code of the State of California, the OWNER has obtained from the Director of the Department of Industrial Relations, the general prevailing rate for each craft, classification, or type of workman required to execute the contract. A copy of said prevailing rate of per diem wages is available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/DLSR/PWD>.

Award of Bid will be to the lowest responsible BIDDER. A conditional or qualified BID will not be accepted.

The City of Los Banos will not be responsible for, nor be bound by, any oral instructions, interpretations, or explanations issued by the City of Los Banos or its representatives. Any request for clarifications or questions of the bid shall be made in writing or email and deliverable to:

City of Los Banos Public Works Department  
Attn: Gary Hutsell  
[Gary.Hutsell@LosBanos.org](mailto:Gary.Hutsell@LosBanos.org)  
411 Madison Avenue  
Los Banos, CA 93635

Requests for clarification or questions shall be delivered to the Public Works Department by 5:00PM on April 21, 2011. Any City response to a request for clarification, questions and answers will be posted to the City's website at [www.losbanos.org](http://www.losbanos.org) not later than 5:00PM, April 22, 2011 and if necessary become a part of the bid as an Addendum.

Proposed timeline of events associated with the awarding and execution of Contract:

Release of Advertisement		April 8, 2011
Deadline to submit questions/clarification	5:00 P.M.	April 21, 2011
Addendums/Questions/Clarifications Posted	5:00 P.M.	April 22, 2011
Bid Opening	2:00 P.M.	April 28, 2011
City Council awards Bid		May 18, 2011

Awarded party to execute Contract	By	May 28, 2011
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In accordance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the proposal. Signing the proposal shall also constitute signature of the Noncollusion Affidavit.

**REQUIRED LISTING OF PROPOSED SUBCONTRACTORS.** -- Each proposal shall have listed therein the name and address of each subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of 1/2 of one percent of his total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. The bidder's attention is invited to other provisions of said Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions. A sheet for listing the subcontractors, as required herein, is included in the Proposal.

**INSURANCE.** -- Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage including operation, products and completed operations. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, \ employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

### Waiver of Subrogation

The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses paid under the terms of this policy which arises from the work performed by the named insured for the City.

### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII.

### Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

### Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**CONTRACTOR AGREEMENT** – The awarded bidder shall enter into the Attachment 1 “**Agreement for the Purchase of Park Playground Equipment between City of Los Banos and (Name of Contractor) for Cresthills Park and College Greens Park**”.

## **BID SPECIFICATIONS**

The Los Banos Public Works Department specifies the following equipment for the Park Playground Equipment.

**The awarded bidder shall demolish designated existing equipment, supply and install Playground Equipment and Wood Fiber Playground Material and submit the final billing invoice prior to June 30, 2011.**

The right is reserved to reject any Bid in which the time frame of work indicated in these Bid Documents cannot be met.

All materials shall be of highest quality and meet commercial grade standards for park equipment and wood fiber playground material including ASTM Standards and National Certified Standards.

All installed Playground Equipment be warranted against defects in materials and workmanship for a period of not less than twelve (12) months. The beginning warranty date shall be based on the product acceptance date. Any or all instructions and forms needed for warranty claims shall be attached with the delivery of the furnishings.

The scope of the Bid shall be the purchase and installation of Playground Equipment, the demolition of designated existing Playground Equipment, and the purchase and installation of Wood Fiber Playground Material as per the requirements and specifications of this Bid.

### **College Greens Park – 700 Pioneer Road at the Intersection of Pioneer Road and Black Hills Avenue.**

- 1. Crawling or Climbing Apparatus (Safety Zone Area 16 feet X 28 feet) including installation.**
- 2. Demolition and removal of existing Merry-Go-Round.**
- 3. Wood Fiber Playground Material approved for playground use. Supply and install 240 Cubic Yards.**

### **Cresthills Park – 1815 College Greens Drive at the intersection of College Greens Drive and Scripps Drive.**

- 4. Play Structure age group 2 – 12 to include three slides, cargo climber, rock climber, deck with roof, ladder, stairs and a separate climbing or crawling apparatus (Safety Zone Area 105 feet X 35 feet) including installation.**
- 5. Demolition of designated existing play structures, slides, fire engine, and rocker animals.**
- 6. Wood Fiber Playground Material approved for playground use. Supply and install 240 Cubic Yards.**

Bid prices shall be based on total cost of products as delivered and installed to Owner.

Bidders must guarantee Bid prices for a period of not less than 75 days.

**BID WILL BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER AND THE AWARD WILL BE BASED ON TOTAL COST FOR ALL LISTED ITEMS.**

## BID FORM

By submission of the BID, each BIDDER certifies, and in the case of a joint BID, each party thereto certifies as to his own organization, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor

PROPOSAL TO: Supply, Install, and Demolish Park Playground Equipment and Supply and Install Wood Fiber Playground Material for the City of Los Banos.

Name of Company: \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone No: (\_\_\_\_) \_\_\_\_\_ Fax No: (\_\_\_\_) \_\_\_\_\_

Sales Tax #: (If out of State) \_\_\_\_\_ Federal ID # \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Item descriptions below are in the same order as numbered in the Bid Specifications.

Item	Qty.	Item Description	Unit Price	Total Price
1.	1	Crawling or Climbing Apparatus (Safety Zone Area 16 feet X 28 feet) including installation. To Include all tax and freight charges.	Lump Sum	
2.	1	Demolition and removal of existing Merry-Go-Round.	Lump Sum	
3.	240CY	Wood Fiber Playground Material approved for playground use. Supply and install.		
4.	1	Play Structure age group 2 – 12 to include three slides, cargo climber, rock climber, deck with roof, ladder, stairs and a separate climbing or crawling apparatus (Safety Zone Area 105 feet X 35 feet) including installation. To include all tax and freight charges.	Lump Sum	
5.	1	Demolition of designated existing play structures, slides, fire engine, and rocker animals.	Lump Sum	
6.	240CY	Wood Fiber Playground Material approved for playground use. Supply and install 240 Cubic Yards.		

Freight: \_\_\_\_\_

Sales Tax: \_\_\_\_\_

**Total Bid Price:** \_\_\_\_\_

**ADDENDUM**

BIDDER acknowledges receipt of the following ADDENDA:

No. \_\_\_\_ 1 \_\_\_\_\_, dated \_\_\_\_\_, 2010, Signed, \_\_\_\_\_

No. \_\_\_\_ 2 \_\_\_\_\_, dated \_\_\_\_\_, 2010, Signed, \_\_\_\_\_

No. \_\_\_\_\_, dated \_\_\_\_\_, 2010, Signed, \_\_\_\_\_

The Bidder shall list the name and address of each subcontractor to whom the Bidder proposes to subcontract portions of the work, as required by the provisions in Information for Bidders.

## **LIST OF SUBCONTRACTORS**

**Description of Portion**

**Name and Address of Work Subcontracted**

# Noncollusion Affidavit

(Title 23 United States Code Section 112 and  
Public Contract Code Section 7106)

To the CITY / COUNTY of \_\_\_\_\_  
*DEPARTMENT OF PUBLIC WORKS.*

In conformance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Noncollusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Affidavit. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

**NOTICE OF AWARD**

To: \_\_\_\_\_

PROJECT Description: SUPPLYING AND INSTALLING PARK PLAYGROUND EQUIPMENT CRESTHILLS PARK AND COLLEGE GREENS PARK

The OWNER has considered the BID submitted by you for the lease of above described area dated----- 2011.

You are hereby notified that your BID has been accepted for SUPPLYING AND INSTALLING PARK PLAYGROUND EQUIPMENT CRESTHILLS PARK AND COLLEGE GREENS PARK in BID Form for a total delivered price of \$0.00.

You are required by the Information for Bidders to execute the Agreement within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement within ten days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your Bid Bond. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by

City of Los Banos  
OWNER

\_\_\_\_\_  
Signature  
this the \_\_\_\_ day of \_\_\_\_\_, 2011

By \_\_\_\_\_  
Print Name  
Title \_\_\_\_\_

By \_\_\_\_\_  
Title Public Works Director/ City Engineer

## **ATTACHMENT 1**

**AGREEMENT FOR THE PURCHASE AND INSTALLATION OF PARK  
PLAYGROUND EQUIPMENT BETWEEN THE CITY OF LOS BANOS  
AND *(CONTRACTOR NAME)* FOR CRESTHILLS PARK AND COLLEGE  
GREENS PARK**

**AGREEMENT FOR THE PURCHASE AND INSTALLATION OF  
PARK PLAYGROUND EQUIPMENT BETWEEN  
CITY OF LOS BANOS AND [NAME OF CONTRACTOR]  
FOR CRESTHILLS PARK AND COLLEGE GREENS PARK**

**THIS AGREEMENT** is made and effective as of \_\_\_\_\_, 2011, between the City of Los Banos, a municipal corporation (hereinafter referred to as "City"), and [**NAME OF CONTRACTOR**], a [**FORM OF ENTITY**], (hereinafter referred to as "Contractor").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**1. TERM**

This Agreement shall commence on \_\_\_\_\_, 2011, and shall remain and continue in effect until tasks described herein are completed, unless sooner terminated pursuant to the provisions of this Agreement.

**2. PURCHASE AND SALE OF EQUIPMENT**

On and subject to the terms and conditions set forth in this Agreement and the Agreement Documents, Contractor agrees to manufacture or acquire, sell and install for the City, Playground Equipment as more particularly described in Exhibit A, attached hereto and incorporated herein as though set forth in full (hereafter "Equipment").

**3. PURCHASE / INSTALLATION PRICE**

The Purchase Price that City agrees to pay to Contractor for the Equipment and Installation is \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Purchase Price is final and shall be paid by City to Contractor upon acceptance of equipment as installed in accordance with the terms of this agreement.

**4. SCOPE OF WORK**

Contractor shall manufacture or acquire and install the equipment as described in the Scope of Work, attached hereto and incorporated herein as Exhibit A. Contractor shall provide and furnish all labor, materials, necessary tools, expendable equipment and all utility and transportation services required for the Work. All of said Work to be performed and materials to be furnished for the Work shall be in strict accordance with the specifications set forth in the Scope of Work. The Work shall be completed within the time set forth in the Scope of Work. Contractor shall not commence the Work until such time as directed by the City.

**5. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

Contractor makes the following representations and warranties to City:

a. Authority and Consents. Contractor has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement. No approvals or consents of any persons are necessary in connection with Contractor's execution, delivery, installation and performance of this Agreement, except for such as have been obtained on or prior to the date hereof. The execution, delivery, installation and performance of this Agreement by Contractor have been duly authorized by all necessary action on the part of Contractor and constitute the legal, valid and binding obligations of Contractor, enforceable against Contractor in accordance with their respective terms.

b. Title and Operating Condition. Contractor has good and marketable title to all of the Equipment manufactured or acquired and installed. All of the Equipment is new and are free and clear of any restrictions on or conditions to transfer or assignment, and City will acquire absolute title to all of the Equipment free and clear of mortgages, liens, pledges, charges, encumbrances, equities, claims, covenants, conditions and restrictions except for such as may be created or granted by City. All of the Equipment are in good operating condition, are free of any defects, and are in conformity with the specifications, descriptions, representations and warranties set forth in the Agreement Documents. Contractor is aware the City is purchasing the Equipment for use as playground equipment and that City is relying on Contractor's warranties that the Equipment is fit for this purpose and the ordinary purposes for which the Equipment is normally used.

c. Workmanship Guaranty. In addition to the manufacturers warranties the quality of the workmanship shall be guaranteed for one year from date of completion.

d. Installation Warranties: Contractor warrants and agrees that it will employ reasonable commercial efforts to provide all installation services identified hereunder and that in the event that either the Equipment, in whole or in part, or some portion of City's real property is damaged due to Contractor's negligence or willful misconduct in performing installation services, Contractor shall be only responsible for all costs associated with repair of real property or replacement of personal property damaged by Contractor's acts.

e. Survival of Representations and Warranties. All representations, warranties, covenants and agreements of the parties contained in this Agreement shall survive the execution, delivery, installation and performance of this Agreement.

## **6. PERFORMANCE**

Time is of the essence in the performance of services under this Contract and the services shall be performed to completion in a diligent and timely manner. Contractor shall at all time faithfully, competently and to the best of his or her ability, experience, and talent perform all tasks described herein. Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement. Contractor shall complete the tasks described herein and submit its final invoice no later than June 30, 2011.

## **7. CITY APPROVAL**

All labor, materials, tools, equipment, and services shall be furnished and work performed and completed subject to the approval of the City or its authorized representatives, and the quality of the workmanship shall be guaranteed for one year from date of acceptance. City shall inspect the Equipment at the time and place of delivery. Such inspection may include reasonable tests and use of the Equipment by City. If, in the determination of City, the Equipment fails to conform to the Agreement IN ANY MANNER OR RESPECT, City shall so notify Contractor within ten (10) days of delivery of the Equipment to City. Failing such notice, the Equipment shall be deemed accepted by City as of the date of receipt.

## **8. REJECTION**

In the event of such notice of non-conformity by City pursuant to the section entitled "City Approval" City may, at its option, (1) reject the whole of the Equipment and Installation, (2) accept the whole of the Equipment and Installation, or (3) accept any commercial unit or units of the Equipment and reject the remainder or the Installation. The exercise of any of the above options shall be "without prejudice" and with full reservation of any rights and remedies of City attendant upon a breach. In the event of such notice and election by City, City agrees to comply with all reasonable instructions of Contractor and, in the event that expenses are incurred by City in following such instructions, Contractor shall indemnify City in full for such expenses.

## **9. NO REPLACEMENT OF CURE**

This Agreement calls for strict compliance. Contractor expressly agrees that both the Equipment and Installation tendered and the tender itself will conform fully to the terms and conditions of the Agreement on the original tender. In the event of rejection by City of the whole of the Equipment or any part thereof pursuant to the Section entitled "Rejection" City may, but is not required to, accept any substitute performance from Contractor or engage in subsequent efforts to affect a cure of the original tender by Contractor.

## **10. INDEMNIFICATION**

The Contractor agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City, its officers, agents, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Contractor's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City.

## **11. AGREEMENT DOCUMENTS**

a. This Agreement including all specifications and drawings, bid documents including exhibits, shall constitute the entire agreement between the parties.

b. In the event any term or condition of the Agreement Documents conflicts with or is contradictory to any term or condition of the Agreement, the provision which imposes the greater obligation on the Contractor shall prevail.

## **12. DEFAULT OF CONTRACTOR**

a. The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event the Contractor is in default for cause under the terms of this Agreement, the City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

b. If the City Manager or his delegate determines the Contractor is in default in the performance of any of the terms or conditions of this Agreement, it shall service the Contractor with written notice of the default. The Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

## **13. INSURANCE REQUIREMENTS**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

### **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

### **Minimum Limits of Insurance**

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2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.

3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

#### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy.

2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given the City.

4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

#### Waiver of Subrogation

The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses paid under the terms of this policy which arises from the work performed by the named insured for the City.

#### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:  
VII.

#### Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

#### Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

### **14. SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

All representations, warranties, covenants and agreements of the parties contained in this Agreement shall survive the execution, delivery, installation and performance of this Agreement.

### **15. LEGAL RESPONSIBILITIES**

The Contractor shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this section.

### **16. PROHIBITED INTEREST**

No officer, or employee of the City of Los Banos shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Contractor, or Contractor's subcontractors for this project, during his/her tenure or for one year thereafter. The Contractor hereby warrants and represents to the City that no officer or employee of the City of Los Banos

has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Contractor or Contractor's sub-contractors on this project. Contractor further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

### **17. INDEPENDENT CONTRACTOR**

a. Contractor is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

### **18. ASSIGNMENT**

The Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Contractor's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Contractor.

### **19. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City:  
City of Los Banos  
520 J Street  
Los Banos, California 93635

Attn: <<name>>

To Contractor:

<<contractor>>

<<address>>

<<city, state, zip>>

Attn: <<name>>

## **20. GOVERNING LAW**

The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Los Banos. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

## **21. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

## **22. MISCELLANEOUS**

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

b. 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.

## **23. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Contractor warrants and represents that he or she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.

IN WITNESS WHEREOF, two identical counterparts of this contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties.

[CONTRACTOR]

Date:

\_\_\_\_\_

by:

CITY OF LOS BANOS, a California  
municipal corporation

Date:

\_\_\_\_\_

by: Steve Rath, City Manager

ATTEST:  
CITY CLERK

\_\_\_\_\_

Lucille L. Mallonee, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

William A. Vaughn, City Attorney

## **EXHIBIT A**

### **SCOPE OF WORK**

The scope of work shall include the purchase and installation of Playground Equipment, the demolition of designated existing Playground Equipment, and the purchase and installation of Wood Fiber Playground Material as per the requirements and specifications of this Agreement.

The Contractor shall demolish designated existing equipment, supply and install Playground Equipment and Wood Fiber Playground Material within 30 working days from the date of contract execution.

All materials shall be of highest quality and meet commercial grade standards for park equipment and wood fiber playground material including ASTM Standards and National Certified Standards.

All installed Playground Equipment shall be warranted against defects in materials and workmanship for a period of not less than twelve (12) months. The beginning warranty date shall be based on the product acceptance date. Any or all instructions and forms needed for warranty claims shall be attached with the delivery of the furnishings.

#### **College Greens Park – 700 Pioneer Road at the Intersection of Pioneer Road and Black Hills Avenue.**

1. Crawling or Climbing Apparatus (Safety Zone Area 16 feet X 28 feet) including installation.
2. Demolition and removal of existing Merry-Go-Round.
3. Wood Fiber Playground Material approved for playground use. Supply and install 240 Cubic Yards.

#### **Cresthills Park – 1815 College Greens Drive at the intersection of College Greens Drive and Scripps Drive.**

4. Play Structure age group 2 – 12 to include three slides, cargo climber, rock climber, deck with roof, ladder, stairs and a separate climbing or crawling apparatus (Safety Zone Area 105 feet X 35 feet) including installation.
5. Demolition of designated existing play structures, slides, fire engine, and rocker animals.
6. Wood Fiber Playground Material approved for playground use. Supply and install 240 Cubic Yards.



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

## PUBLIC WORKS DEPARTMENT

### REQUEST FOR SEALED BIDS

#### FOR SUPPLYING AND INSTALLING PARK PLAYGROUND EQUIPMENT CRESTHILLS PARK AND COLLEGE GREENS PARK

#### ADDENDUM #1

**Notice:** The Bidder is required to acknowledge receipt of this Addendum #1 on Page 11 of the Bid Documents Package with submittal of Bid. The Bid documents are available at [www.LosBanos.org](http://www.LosBanos.org)

#### Clarifications and Answers to Submitted Questions

1. **Clarification** - Information to Bidders Page 1, First Paragraph should read:

“BIDS will be received by the City of Los Banos Office of the City Clerk for the Los Banos Public Works Department (herein called the “OWNER”), at the City Council Chambers of the City of Los Banos, 520 J Street, Los Banos, CA, 93635, until 2:00 p.m. (PDST), on 28th day of April, 2011, then publicly opened and read aloud.”

The original Information provided a date of June 28, 2011. The month of June is incorrect and is revised to state the above date of April 28, 2011.

2. **Clarification** – Bid Specifications Page 8 and Agreement Exhibit A should read:

College Greens Park – 1815 College Greens Drive at the intersection of College Greens Drive and Scripps Drive.

Cresthills Park – 700 Pioneer Road at the Intersection of Pioneer Road and Black Hills Avenue.

The addresses to the Parks were switched and identified incorrectly.

**2. Question - What is the type of Contractor's License is acceptable for the Project?**

A minimum Contractor's License Class B is required for the Project.

**3. Question - What is the estimated cost of the Project?**

The estimated cost range of the complete project is \$75,000.00 to \$85,000.00.

**4. Question - Exhibit A the scope of work. For both parks, 240 cubic yards is listed for Wood Fiber Playground Material, is this correct? A depth of fill was not listed but the square footage of Cresthills Parks is considerably larger then the square footage of College Greens Park. Can you clarify either the required cubic yards of fill or the required depth of fill for each site?**

The amount of wood fiber material stated in the bid documents for both parks is correct. Bids are to be placed based on the specified amounts listed in the Bid Documents.

**5. Question - Do you want the whole area (105 X 35) filled with equipment?**

This area (105 X 35) has been identified as the Safety Zone Area in which equipment can be placed. So the answer would be yes with the equipment stated on the Bid Specifications.

**6. Question - If the whole area is to be filled do you want swings?**

No

**7. Question - Is there a manufacturer and or model number for the equipment or are the very general size and accessories all we have to go on?**

There is no specific manufacturer or model number. The Bid Specifications provide the type of play equipment and it's amenities along with the Safety Zone in which provides the area for the equipment to fit in.

**8. Question - Is there a manufacturer for the bark and size specification?**

No, the City will require the bidder to provide engineered wood fiber playground material that meets ASTM Standards and National Certified Standards.

**9. Question - What is the time of completion?**

It is located in the Bid Specifications and in Section 6 of the Agreement Document. The City requires the successful bidder to complete and submit final billing invoice by June 30, 2011.

**10. Question - Any Liquidated Damages?**

This is addressed in the attached agreement document in Section 12 "Default of Contractor".

**11. Question - After examining the request for bids for supplying and installing park playground equipment, we are wondering if there are any additional specifications on the new playground equipment that the city desires?**

There is no specific manufacturer or model number. The Bid Specifications provide the type of play equipment and it's amenities along with the Safety Zone in which provides the area for the equipment to fit in.



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

**BID OPENING**

**SUPPLYING AND INSTALLING PARK PLAYGROUND EQUIPMENT**  
**CRESTHILLS PARK AND COLLEGE GREENS PARK**  
**THURSDAY, APRIL 28, 2011 @ 2:00 PM**

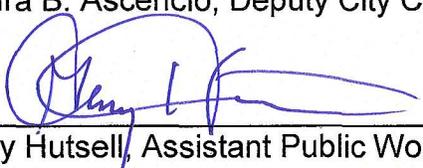
1	Harris Builders, Inc.	\$	93,850.00
2	Maxwell Smart Construction	\$	71,768.59
3	Haskell & Haskell Engineering & Construction Srv.	\$	82,200.00
4	Grover Landscape Services, Inc.	\$	83,432.00
5	Community Playgrounds, Inc.	\$	69,262.93
6	Who Built Creative Builders, Inc.	\$	66,880.00
7	Edwards & Associates	\$	40,553.10

Signed: \_\_\_\_\_

  
Sandra B. Ascencio, Deputy City Clerk

Dated: April 28, 2011

Witness: \_\_\_\_\_

  
Gary Hutsell, Assistant Public Works Director