

SAN LUIS OBISPO COUNCIL OF GOVERNMENTS

1150 Osos St., Suite 202

San Luis Obispo

CA 93401

**REQUEST FOR PROPOSALS
DEFICIENCY ANALYSIS &
NEXUS STUDY**

Questions regarding this Solicitation should be directed to:

James Worthley, Senior Planner

(805) 788-2002

jworthley@slocog.org

Proposals (seven copies) must be received no later than 5:00 p.m.
on April 11, 2007

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REQUEST FOR PROPOSALS
DEFICIENCY ANALYSIS & NEXUS STUDY

I. OVERVIEW

The San Luis Obispo Council of Governments (SLOCOG) is soliciting proposals from consulting firms (CONSULTANT) to develop a Regional Deficiency Analysis and NEXUS Study based on the Regional Traffic Model (RTM) for the San Luis Obispo Region. The purpose of this study is to analyze and evaluate anticipated development activities in the region and its effects on the performance of the regional roadway system. Deficiencies will be identified and necessary improvements to provide adequate levels of service will be recommended. These recommendations will be used for future planning exercises in the region, and as the basis to develop a development impact fee system for the region.

The study will be performed under the guidance of SLOCOG staff and a Project Development Team (PDT) with representation from SLOCOG's partner agencies including: the seven cities in the region, San Luis Obispo County (County), the California Department of Transportation (Caltrans) District 5, and the Air Pollution Control District (APCD). All reports and plans produced during the study will be reviewed by and discussed with the PDT. The study is scheduled to be completed before July 1st 2008.

It is the intent of the RFP to request a scope of work, offer of services, and identification of specific costs for each task (separately). CONSULTANTS are encouraged to submit proposals identifying tasks (and subtasks) that can be completed and delivered for this project.

This solicitation in no way obligates SLOCOG to award a contract for the services described herein, nor will SLOCOG assume any liability for the costs incurred in the preparation and transmittal of proposals in response to this solicitation.

SLOCOG reserves the right to not accept any proposal, to reject any or all proposals, to reject any part of any proposal, to negotiate and modify any proposal, and to waive any defects or irregularities in any proposal at SLOCOG's sole discretion.

Furthermore, SLOCOG shall have the sole discretion to award the contract, as it may deem appropriate to best serve the interests of SLOCOG. In this regard, SLOCOG may consider demonstrated quality of work, responsiveness, comparable experience, professional qualifications, assigned personnel, references, and proposed fees.

If you have questions regarding this solicitation, contact James Worthley, Senior Planner, at 805-788-2002.

II. BACKGROUND

San Luis Obispo County is located within the area known as the Central Coast of California. The County is bordered on the north by Monterey County, on the south by Santa Barbara County, and on the east by Kern County. There are seven incorporated cities in San Luis Obispo County: Arroyo Grande, Atascadero, Grover Beach, Morro Bay, Paso Robles, Pismo Beach and San Luis Obispo along with several unincorporated communities including Los Osos, Templeton, Santa Margarita, Cayucos, Nipomo, Cambria, Oceano, Avila Beach, San Miguel, San Simeon Acres, Shandon, Creston, and Whitley Gardens. The population of San Luis Obispo County was 258,208 in 2004.

SLOCOG is the regional transportation planning agency which encompasses all of the incorporated cities and unincorporated communities of San Luis Obispo county. Currently inter-regional travel (on US 101 and State Routes 1, 33, 41, 46, 58, 166, 227) through the County and recreational travel to the area constitutes the two major components of the region's "external" travel. Weekday commuter as well as recreational travel interactions occurs between the cities and communities within the region.

III. SCOPE OF WORK

This scope of work describes the CONSULTANT's tasks and responsibilities for developing the Regional Deficiency Analysis and NEXUS Study. The Deficiency Analysis is intended to evaluate the anticipated performance of the regional roadway system in 2030 based on the projected growth scenario in the region (adopted by SLOCOG Board). In addition to identifying deficiencies, improvement projects will be recommended which will ensure an adequate level of service for the planning horizon year.

The NEXUS study is intended to satisfy the requirements of California Government Code Chapter 5 Section 66000-66008 Fees for Development Projects (also known as California Assembly Bill 1600 (AB 1600) or the Mitigation Fee Act) which governs imposing development impact fees in California.

The Mitigation Fee Act requires that all local agencies in California, including cities, counties, and special districts follow two basic rules when instituting impact fees. These rules are as follows:

1. Establish a nexus or reasonable relationship between the development impact fee's use and the type of project for which the fee is required.
2. The fee must not exceed the project's proportional "fair share" of the proposed improvement and cannot be used to correct current problems or to make improvements for existing development.

The purpose of the study is to establish the nexus, or reasonable relationship, between new land development projects in the region and the proposed development impact fee that will be used to improve regional transportation facilities. It will also identify the proportional "fair share" of the improvement cost attributable to new developments.

DEFICIENCY/SELECT LINK ANALYSIS

Task 1.1 Establish Evaluation Criteria-

The CONSULTANT, under the guidance of the PDT, shall develop evaluation criteria by which the performance of the network can be judged. The summary shall describe the evaluation criteria established by the CONSULTANT.

DELIVERABLE 1: Summary of proposing performance measures, deficiency standards and evaluation criteria.

Task 1.2 Identify Present and Future Congestion Levels-

Once evaluation criteria have been agreed upon, the CONSULTANT should identify current and future 2030 congestion levels using the SLOCOG Regional Traffic Model as a basis. The focus for the analysis should include all Freeways, Highways, Interchanges, as well as the SLOCOG-approved Routes of Regional Significance and their intersections.

DELIVERABLE 2: Summary of model results for each deficiency and presentation of analysis of deficiencies attributable to growth on the designated network.

Task 1.3 Identify Improvements to Mitigate Future Traffic Congestions -

The consultant shall next develop a set of improvements that can reasonably be made to mitigate the deficiencies identified in Task 1.2. The improvements should provide for the desired system performance per Task 1.1 criteria. Cost estimates for these improvements should also be provided. **Cost estimates should be more than sketch -level planning, but less than the level of detail required for a Project Study Report.**

DELIVERABLE 3: Summary of improvements recommended to mitigate the projected deficiencies and associated cost estimates.

Task 1.4 Draft Final Deficiency Report

The CONSULTANT will compile a final report and will present to the SLOCOG board, in order to inform them of the findings. The final report will be made available to the public for review.

DELIVERABLE 4: Draft Final Deficiency Report

NEXUS STUDY

Task 2.1 NEXUS Study and Burden Analysis

The CONSULTANT will proceed with the allocation of estimated costs, including:

1. Separating the cost of remedying existing deficiencies from the cost of constructing transportation improvements determined to be necessary due to future development.
2. Crediting new development for dedications, exactions, special assessments, user fees, or other in-lieu payments toward its share of new capacity;
3. Identifying the share of costs and benefits attributable to through traffic, and
4. Distributing the net costs for the projects among different types of development (i.e., residential, retail, office, and industrial) and by agreed upon sub-area.

Based on these cost allocations and the congestion level identified in Task 1, the CONSULTANT will develop a preliminary fee calculation for each land use type and zone of benefit (sub-area). Specifically, the total improvement costs allocated to each zone of benefit (sub-area) will be divided by the expected growth in each land use category.

The CONSULTANT will provide estimated impact fees by area for each land use type for review by the PDT. The CONSULTANT will perform a review of the preliminary fee schedule to assess the potential burdens imposed upon residential and commercial development in each area.

The CONSULTANT should test the market feasibility implications on development projects (e.g., residential, retail, office and industrial) and provide recommendations as to whether the new fees could discourage certain types of development with a focus upon housing types, densities, and affordability.

The CONSULTANT will evaluate the total estimated fee burden on new development, by jurisdiction, relative to likely future development values.

DELIVERABLE 5: Technical memorandum NEXUS and Burden Analysis

Task 2.2 Regional Traffic Impact Fee Program

The CONSULTANT will prepare a recommended Regional Traffic Impact Fee Program Report that documents the assumptions and methodology. It also establishes the required nexus for creating the fee. This report shall include copies of all data, models, and other materials used in the analysis.

The report will cover all of the information contained in the previous deliverables, plus other additional information needed to accompany and justify the findings. The report will summarize the procedures used in the process.

The report shall also note all of the state legislative requirements for developer fees and how the proposed program satisfies these requirements.

The report shall address existing development impact fee structures with the assistance of the PDT and reconcile local fees with the findings for a Regional fee program.

The report shall describe procedures for collecting, administering and expending fee revenues, as well as the procedure(s) to perform fee structure updates.

The CONSULTANT will prepare an Administrative Draft Final Report for PDT and Board review before preparing and presenting the Draft Final Report for the SLOCOG Board approval.

DELIVERABLE 6: Final Report: Draft Regional Traffic Impact Fee Program Report.

OTHER TASKS :

The work scope outlined above identifies those elements that must be addressed at this time. This outline is not intended to be exhaustive, nor does it necessarily include every work element that may be required to successfully satisfy the project objective.

Any additional tasks or modifications that the proposer may recommend or deem appropriate or necessary should be identified separately and described in their submittals.

IV. INFORMATION TO BE PROVIDED BY SLOCOG STAFF

The CONSULTANT shall provide the necessary resources and services to execute the work scope described above, and in coordination with the selected CONSULTANT, SLOCOG and its partner agencies will provide the following data:

1. Modeling- SLOCOG will provide the adopted (Feb. 2007) 2004, 2015, and 2030 assigned traffic model networks in TRANSCAD format. Land use and development assumptions were approved by the SLOCOG Board for the future (2015 and 2030) model years.
2. Future Plans- SLOCOG will provide available Project Study Reports (PSR), Project Reports, and other existing studies or plans pertaining to future roadway improvements (i.e., Regional Transportation Plan (RTP)).
3. Information- SLOCOG will review (with the PDT) the GIS Layer identifying corridors of focus (Freeways, Highways, Interchanges, as well as the SLOCOG-approved Routes of Regional Significance and their intersections) to identify features to be removed from the analysis process. SLOCOG will then provide the modified GIS layer.
4. Additionally, SLOCOG Staff will allot sufficient Staff time to: Coordinate communications, and correspondence between participating agencies; Provide timely comments and responses to draft documents; Coordinate meetings with the PDT; and other support services as deemed appropriate between the parties.
5. Lastly, SLOCOG Staff, in conjunction with the PDT, will aid the consultant if new significant assumptions are necessary to modify the Regional Traffic Model.

If the Consultant assumes that SLOCOG will provide resources other than those specifically indicated above, those assumptions should be clearly stated and highlighted in its proposal.

V. SCHEDULE

SLOCOG will award the contract for tasks to be completed to the successful CONSULTANT on [June 6, 2007](#). After a written notice-to-proceed is issued by SLOCOG, the Consultant's work shall begin within 7 days. All work shall then be completed in accordance with the schedule stipulated within the final contract.

The Notice to Proceed issued by SLOCOG will specify the work to be completed, and a schedule for work completion. The basis for payment and the limits of compensation shall be integrated within the contract. The Consultant shall not begin work nor incur any costs associated with any task identified herein without an explicit written notice to proceed.

March 14, 2007	Board Approved RFP issued and posted to website
April 4, 2007	Last date to submit written questions regarding this RFP
April 11, 2007	Proposals due
May 10, 2007	Interview top two to four firms
May 16, 2007	Consultant selection recommended to be announced
June 6, 2007	Contract awarded

VI. COMPENSATION

SLOCOG will negotiate a contract with the selected CONSULTANT based on the following assumptions and conditions:

For all services rendered as described in the Scope of the Work, including all labor, equipment, materials, and expenses, the CONSULTANT shall be compensated on a time and expenses basis by task for work completed.

SLOCOG has budgeted \$130,000 to complete the Deficiency Analysis and NEXUS Study.

VII. PROPOSAL REQUIREMENTS

Questions - Written questions regarding the project and this RFP will be accepted until 5:00 p.m., February 22, 2007. Questions may be submitted by fax or e-mail. SLOCOG will make every effort to provide written answers no later than February 23, 2007 via e-mail or fax to all questions submitted.

Submittals - Faxed copies will not be accepted. To be considered, proposals must be received no later than 5:00 p.m. on **April 11, 2007**. Interested firms are invited to submit the original and seven (7) copies of their proposals to the following address:

San Luis Obispo Council of Governments
Attn: James Worthley, Senior Planner.
1150 Osos St. Suite 202
San Luis Obispo, CA 93401

Contents of the Proposal - At a minimum, proposals should contain the information outlined herein. Additional information that the proposer deems relevant to the selection process may be included; however, concise and focused submittals are strongly encouraged. By submitting a proposal, and unless otherwise stated, it is understood that the Consultant has reviewed the relevant information, and that based on that review, the Consultant has developed an informed understanding of the projected scope of work and has satisfied itself with the applicable conditions and requirements expressed in those documents.

Firm Background - In two pages or less, provide a brief overview of the firm that will assume all contract responsibilities and identify all proposed sub-consultants.

Project Team - Provide an organization chart that identifies the individuals and sub-consultants if applicable, assigned to and responsible for the key elements of the work scope and their relationship to the other elements. Indicate the number of hours each member has been budgeted and will be assigned to the project.

Individual Qualifications and Experience - Provide resumes for each key staff member. Provide examples of recent projects - involving Local and Regional (preferred) impact fees - completed (or ongoing) by the proposed project team (staff members, sub-consultants, and public agencies); provide a brief description of the contract scope of work; state the contract amount and completion date; and include the name, title and phone number of client references.

Statement of Understanding and Scope of Work - Proposals should provide a statement of your understanding of the project by highlighting the dominant issues and outlining your approach toward addressing those issues. Any recommendations regarding improvements to the process to

more effectively meet SLOCOG's stated objectives should be emphasized in your proposal and would be a clear means of demonstrating your understanding of the project requirements.

Schedule - Proposals should present a project schedule showing milestones, deliverable dates, and the duration of each task where it is known.

Proposal format - SLOCOG prefers that all proposals be produced as double-sided copies on recycled paper.

Sufficient information should be provided to justify the proposed fee and to serve as a basis for negotiating a contract and any Supplemental Agreements that may be warranted for out of scope services. In this regard, the fee proposal should identify personnel, estimated number of hours, and rate; type of equipment, hours, and rate; and any outside costs for each identified work element including travel and consultant-associated costs for 5 meetings in San Luis Obispo.

Regardless of the proposed method of compensation, any Contract resulting from this solicitation will specify a maximum, not-to-exceed fee amount. Except in the unusual situation wherein the Consultant encounters circumstances that could not be reasonably anticipated, SLOCOG will not authorize payment beyond this amount.

In consideration of this, any assumptions and/or the need for any contingencies must be clearly spelled out in the Fee Proposal and used as a basis to compute a "not-to-exceed" figure for the project. This figure should be sufficient to provide for any reasonably anticipated circumstances that may be encountered during project execution and completion.

VIII. SELECTION CRITERIA AND PROCESS

A. Understanding of the Scope of Work to be Performed (20pts)

1. Demonstrated understanding of the project objectives.
2. Consultant's approach to accomplishing the scope of work.
3. Timetable and costs for completing the project.

B. Consultant's Methods and Procedures to be Used (45 pts)

1. Consultant's general approach to evaluate the issues.
2. Complete description of the procedures and method to be utilized.

C. Management, Personnel and Experience (25 pts)

1. Qualifications of each participant and overall qualification for the firm.
2. Experience and performance on similar projects.
3. Technical and Computer Capabilities (GIS based traffic modeling program).

D. Consultant's Consultation and Coordination with the San Luis Obispo Council of Governments and the PDT (10 pts)

1. Procedures to be used to ensure close contact between consultant and the project manager.
2. Demonstrated experience in working with local government.

TOTAL POSSIBLE SCORE: 100 pts

Right to reject all proposals - SLOCOG reserves the right to reject any and all proposals, and to re-issue the RFP.

IX. INDEMNIFICATION

SLOCOG requires the successful bidder to indemnify the San Luis Obispo Council of Governments according to a set of provisions that will become contractual obligations. The Consultant shall defend, indemnify and save harmless the San Luis Obispo Council of Governments and the State of California, their respective officers, agents and employees, from any and all claims, demands, damages, costs, expenses, judgments or liability arising out of this Contract or attempted performance of the provisions hereof.

Coverage shall be predicated upon theories of violation of statute, ordinance, or regulation, professional malpractice, negligence, or recklessness including negligent or reckless operation of motor vehicles or other equipment, furnishing of defective or dangerous products or completed operations, premises liability arising from trespass or inverse condemnation, violation of civil rights and also including any adverse determination made by the Internal Revenue Service or the State Franchise Tax Board.

With respect to Consultant's independent contractor status this provision establishes liability for failure to make social security and income tax withholding payments, failure to comply with workers' compensation laws, or any act or omission to act, whether or not it be willful, intentional or actively or passively negligent on the part of Consultant or his agents, employees or other independent Consultants directly responsible to Consultant.

In addition, the foregoing shall apply to any wrongful acts or any active or passively negligent acts or omissions to act, committed jointly or concurrently by the Consultant or the Consultant's agents, employees or other independent Contractors and the San Luis Obispo Council of Governments its agents, employees or independent Contractors.

Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demand, damages, costs, expenses or judgments resulting solely from the conduct of the San Luis Obispo Council of Governments.

X. INSURANCE

The San Luis Obispo Council of Governments will require the successful bidder to provide insurance which meets certain provisions, which will become contractual obligations. The Consultant shall not perform any work under the Contract until it has obtained insurance complying with the provisions of this section, delivered a copy of each insurance policy to the San Luis Obispo Council of Governments, and obtained San Luis Obispo Council of Governments approval of all such policies. Said policies shall be issued by companies authorized to do business in California. Consultant shall maintain said insurance in force at all times. The following types of coverage with the described features shall be provided:

- A. Professional Liability Insurance. Contractor shall maintain professional liability "errors and omissions" insurance with limits of liability of not less than \$100,000 per occurrence to cover all services rendered by Contractor pursuant to this contract.
- B. Comprehensive Liability Insurance and Automobile Insurance. Consultant shall maintain comprehensive general and automobile liability insurance, which shall cover claims arising from bodily and personal injury, including death resulting from such actions, and damage to

property, resulting from any act or occurrence arising out of Consultant's operations in the performance of the contract, including, without limitation, acts involving automobiles.

The policies shall provide not less than \$1,000,000.00 single limit coverage applying to bodily and personal injury, including death resulting from resulting from such actions, and property damage. The following endorsements must be attached to the policy:

1. If the policy covers on an "accident" basis, it must be changed to an "occurrence" basis.
2. The Comprehensive Liability Insurance policy must cover personal injury as well as bodily injury.
3. The Comprehensive Liability Insurance policy must have blanket coverage of contractually assumed liability, subject to the limitations of the policy.
4. The policy must have a "Cross Liability" ("Severability of Interests") endorsement such that each insured is covered as if separate policies had been issued to each insured.
5. The San Luis Obispo Council of Governments and the State of California, their officers, employees and agents shall be named as additional insureds under the Comprehensive Liability Insurance policy, and the policy shall provide that the insurance will operate as primary insurance and that no other insurance effected by the County will be called upon to contribute to a loss hereunder.

C. Workers' Compensation Coverage.

In accordance with the provisions of 3700 et seq., of the Labor Code, Consultant is required to be insured against liability for workers compensation or to undertake self-insurance. Consultant agrees to comply with such provisions before commencing performance of the work covered by this Contract.

D. Certification of Coverage.

Prior to commencing work under the contract, Consultant shall furnish the San Luis Obispo Council of Governments with the following for each insurance policy required to be maintained by this contract:

1. A copy of the entire policy and not just the "face sheet" or proof of coverage (except that no copy of Consultant's workers' compensation policy need be provided).
2. A certificate of insurance including certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the San Luis Obispo Council of Governments.

E. Effect of Failure or Refusal.

If Consultant fails or refuses to procure or maintain the insurance required by this contract, or fails or refuses to furnish the San Luis Obispo Council of Governments with the certifications required by subparagraph (B4) above, the San Luis Obispo Council of Governments shall have the right, at its option, to forthwith terminate the Contract for cause.

CONTRACT

BETWEEN SLOCOG AND _____ FOR THE

REGIONAL DEFICIENCY ANALYSIS AND NEXUS STUDY OF THE SAN LUIS OBISPO REGION

THIS CONTRACT is made and entered on this _____ day of _____, 2007, by and between the SAN LUIS OBISPO COUNCIL OF GOVERNMENTS, hereinafter referred to as SLOCOG, and _____, hereinafter referred to as CONSULTANT.

WITNESSETH

WHEREAS, SLOCOG requires an independent consultant to provide the technical services necessary to develop a Regional Transportation Deficiency Analysis and NEXUS study; and

WHEREAS, the CONSULTANT is duly licensed as a registered professional in the State of California, and is qualified and has the experience to provide such technical services; and

WHEREAS, SLOCOG does not currently have employees adequately trained in performing such work.

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

I. SCOPE OF WORK:

The CONSULTANT agrees to carry out the tasks identified in the Scope of Work (APPENDIX A) for the project.

II. TIME OF PERFORMANCE:

Upon receipt of a written authorization from SLOCOG, the CONSULTANT shall proceed immediately and complete the performance of its obligations under the Scope-of-Work within the time allowed, unless an extension of time is granted in writing by SLOCOG. Said extension, if any, shall be granted only for good cause as determined at the sole discretion of SLOCOG. SLOCOG shall not unreasonably withhold the granting of extension for any delay that is beyond the control of the CONSULTANT.

Contract time for project will be within FY 2006/07 and 2007/08, for project completion by _____. CONSULTANT shall submit a work schedule prior to initiation of work.

SLOCOG observes the following holidays: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, day after Thanksgiving, and Christmas Day. SLOCOG holidays and weekends shall not be counted as working days.

III. PAYMENT FOR SERVICES:

For the services described, the CONSULTANT shall be compensated for a total fee not to exceed \$_____ in FY 2006/07 and FY 2007/08

The CONSULTANT shall submit invoices on a timely manner and expenses must be based on work completed. Itemized billing may be submitted not more frequently than once a month along with a progress report submitted by the CONSULTANT to SLOCOG.

Progress reports shall describe the work performed, personnel involved, and accomplishments made during the billing period, plus any problems anticipated in performing said work in the future. The CONSULTANT shall be paid within thirty (30) days following SLOCOG's receipt and approval

of said invoices. Ten percent (10%) of each payment will be withheld by SLOCOG until completion of all work.

The CONSULTANT shall maintain accounting records and any other evidences pertaining to the cost incurred on the project and shall make the records available to SLOCOG or their duly authorized representatives during the CONTRACT period and for a period of four (4) years from the date of final payment.

IV. INSPECTION OF SERVICES:

Duly authorized representatives of SLOCOG shall have a right of access to the CONSULTANT's plans, files (including electronic files), and other records relating to the project included in this CONTRACT, and may review services at appropriate stages during the performance of this CONTRACT.

V. NUMBER OF DOCUMENTS:

The CONSULTANT shall provide SLOCOG with originals of all deliverables (in hard copy and original electronic form), and copies of all field notes, sampling and testing data, engineering reports, and other work products associated with the completion of work as described in APPENDIX A, the "Scope of Work" Section.

VI. OWNERSHIP OF DOCUMENTS:

All field notes, tracings, plans, specifications, maps, correspondence, sampling information, analytical laboratory data, reports, and other documentation prepared or obtained by the CONSULTANT under the terms of this CONTRACT shall be the sole property of SLOCOG, without restriction or limitation on their use. Nothing contained within this provision is intended to limit CONSULTANT'S rights, ownership, and the use of CONSULTANT'S designs, data, evaluations and instruments of service in accordance with usual custom and practice in connection with the provision of professional services.

If any of these field notes, tracings, plans, specifications, maps, correspondence and other documentation prepared under the terms of this CONTRACT are used for any future work other than that specified herein, and if such documents are used without the CONSULTANT'S written acknowledgment, the CONSULTANT shall be relieved of any liability caused by the use of same.

VII. COVENANT AGAINST CONTINGENT FEES:

The CONSULTANT warrants that he/she has not employed or retained any company or person other than a bona fide employee, to solicit or secure this CONTRACT, and that he/she has not paid or agreed to pay any company or person other than an authorized employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this CONTRACT.

Any breach or violation of this warranty (by the CONSULTANT), shall grant SLOCOG the right to annul this CONTRACT without liability, or in its discretion to deduct from the CONTRACT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

VIII. STANDARD OF CARE

All documents and products shall be in conformity with applicable State and Federal regulations and shall be consistent with established standards for professional services.

IX. CHANGES IN SERVICES:

No substantial change shall be made in the character or extent of the services to be performed by the CONSULTANT, except by Supplemental Agreement in writing and in advance of changes in services between SLOCOG and the CONSULTANT. The Supplemental Agreement shall set forth the proposed changes of services, adjustment of time, and adjustment of the cost to be paid by SLOCOG to the CONSULTANT, if any.

X. TERMINATION OR ABANDONMENT:

1. By giving a written notice, SLOCOG or the CONSULTANT reserves the right to terminate this CONTRACT or to suspend or abandon all or a portion of the project and all work connected therewith.
2. If all or a portion of the work covered by this CONTRACT is suspended or abandoned, SLOCOG shall pay the CONSULTANT only for services rendered or expenses incurred under this CONTRACT up to the time of receipt of written notice of termination, suspension or abandonment.
3. The payment shall be based insofar as possible on the amounts established in this CONTRACT, or in a case where the CONTRACT cannot be applied, the payment shall be based upon a reasonable estimate (as mutually agreed) of the percentage of work actually completed.
4. If the project is suspended for more than ninety (90) days for reasons beyond the CONSULTANT'S control, compensation may be adjusted appropriately for added costs that the CONSULTANT may incur.

XI. NOTICES:

Any and all notices or other communications required or permitted by this CONTRACT or by law to be served on or given to either party hereto, by the other party hereto shall be in writing (or by e-mail as appropriate and agreed to by both parties) and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid addressed to:

San Luis Obispo Council of Governments
Attn: James Worthley, Senior Planner.
1150 Osos St. Suite 202
San Luis Obispo, CA 93401
Phone: (805) 788-2002, Fax: (805) 781-5703

XII. INDEMNITY AND INSURANCE:

CONSULTANT acknowledges and agrees that he/she is an independent contractor in the performance of this CONTRACT and is not and shall not be an employee of SLOCOG.

CONSULTANT agrees to defend, indemnify and render SLOCOG their respective Officers, Agents and Employees harmless from any and all claims or losses for damage from death and/or injury to persons or physical damage of properties resulting from any negligent act, error or omission made by the CONSULTANT or his/her employees in the performance of the services under this CONTRACT, except for claims or losses due to the negligence, willful acts or breach of this CONTRACT by SLOCOG, their respective Officers, Agents or Employees.

The CONSULTANT, at his/her own cost and expense, shall procure and maintain during the performance of this CONTRACT, a policy of liability insurance issued by an insurance company acceptable to SLOCOG and an admitted California surety or insurance company, and naming SLOCOG and their respective Officers, Agents, Subcontractors and Employees as additional insured in amounts not less than the following:

A. Professional Liability Insurance.

CONSULTANT shall maintain professional liability "errors and omissions" insurance with limits of liability of not less than \$100,000 per occurrence to cover all services rendered by CONSULTANT pursuant to this contract.

B. Comprehensive Liability Insurance and Automobile Insurance.

CONSULTANT shall maintain comprehensive general and automobile liability insurance, which shall cover claims arising from bodily and personal injury, including death resulting there from, and damage to property, resulting from any act or occurrence arising out of CONSULTANT'S operations in the performance of the contract, including without limitation, acts involving automobiles.

The policies shall provide not less than \$1,000,000.00 single limit coverage applying to bodily and personal injury, including death resulting there from, and property damage.

The following endorsements must be attached to the policy:

1. If the policy covers on an "accident" basis, it must be changed to an "occurrence" basis.
2. The Comprehensive Liability Insurance policy must cover personal injury as well as bodily injury.
3. The Comprehensive Liability Insurance policy must have blanket coverage of contractually assumed liability, subject to the limitations of the policy.
4. The policy must have a "Cross Liability" ("Severability of Interests") endorsement such that each insured is covered as if separate policies had been issued to each insured.
5. The San Luis Obispo Council of Governments, their officers, employees and agents shall be named as additional insured's under the Comprehensive Liability Insurance policy; and the policy shall provide that the insurance will operate as primary insurance and that no other insurance effected by SLOCOG will be called upon to contribute to a loss hereunder.

C. Workers' Compensation Coverage.

In accordance with the provisions of Section 3700 et seq., of the California Labor Code, the CONSULTANT is required to be insured against liability for workers' compensation or to undertake self-insurance. CONSULTANT agrees to comply with such provisions before commencing performance of the work covered by this CONTRACT.

D. Certification of Coverage.

Prior to commencing work under the contract, the CONSULTANT shall furnish SLOCOG for each required insurance policy the following:

1. A copy of the Accord 25-S Form with CG 2010 Endorsement as proof of insurance coverage.
2. A certificate of insurance including certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without a thirty-day prior written notice to SLOCOG.

The CONSULTANT, at his/her own cost and expense, shall procure and maintain during the performance of this CONTRACT a policy of professional liability insurance, issued by an insurance company acceptable to SLOCOG.

Before the CONSULTANT commence work under this CONTRACT and before any subcontractor commence work under any subcontract executed pursuant to this CONTRACT, the CONSULTANT shall deposit or cause such subcontractor to deposit with SLOCOG a certificate evidencing each policy of insurance required by this CONTRACT.

XIII. GENERAL COMPLIANCE WITH LAWS AND ATTORNEY'S FEES:

The CONSULTANT shall take reasonable care to comply with all Federal, State and local laws and ordinances applicable to the performance of the work covered by this CONTRACT.

XIV. SUBLETTING AND PERSONNEL ASSIGNMENTS:

The CONSULTANT acknowledges and agrees that the subletting or transfer of any portion of the services covered by this CONTRACT, except as otherwise provided herein, shall be prohibited.

XV. PROFESSIONAL'S CERTIFICATION:

The assigned professional shall be required to certify all reports and other documents furnished to SLOCOG under this CONTRACT to the extent required by the Professional Engineer's Act and the Land Surveyor's Act of the State of California, and the usual custom and practice for similar services.

XVI. 1964 NONDISCRIMINATION CIVIL RIGHTS ACT:

During the performance of the work covered by this CONTRACT, the CONSULTANT shall comply with applicable provisions of the Civil Rights Act of 1964.

XVII. FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the

matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

XVIII. CONTRACT ASSURANCE

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.

XIX. PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS

A prime contractor or subcontractor shall pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30-days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

XX. PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS

SLOCOG shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by SLOCOG of the contract work and pay retainage to the prime contractor based on these acceptances as outlined in Section III. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30-days after receiving payment for work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

XXI. GOVERNMENT CODE SECTION 7550:

The CONSULTANT acknowledges his/her obligation with respect to the required notice under Government Code Section 7550 on any documents or written reports prepared.

XXII. SUCCESSOR AND ASSIGNS:

This CONTRACT shall be binding upon the heirs, successors, executors, administrators and assignees of the respective parties hereto.

IN WITNESS WHEREOF, SLOCOG and CONSULTANT have executed this CONTRACT effective on the first aforementioned day and year.

**SAN LUIS OBISPO COUNCIL
OF GOVERNMENTS**

[Selected Consultant]

By: _____
Jim Patterson, President
San Luis Obispo Council of Governments

By: _____
Name, Title

ATTEST:

Ronald DeCarli
Executive Director
San Luis Obispo Council of Governments

APPROVED AS TO FORM:

Wyatt, Cash
SLOCOG Legal Counsel