

# SAN LUIS OBISPO COUNCIL OF GOVERNMENTS

## STAFF REPORT

<b>MEETING DATE:</b>	<b>June 6, 2007</b>
<b>SUBJECT:</b>	<b>Regional Road System Deficiency Analysis and Nexus Study</b>

### SUMMARY

This staff report presents the Board with the draft contract and work scope for the development of the Regional Road System Deficiency Analysis and Nexus Study. This project will analyze and evaluate anticipated development activities in the region and their effect on the performance of the regional roadway system. The project will also identify reasonable relationships between new land development projects in the region and any proposed development impact fees that will be used to improve regional transportation facilities. These tasks are necessary components to assess a Regional Traffic Impact Fee program.

The adopted FY 07/08 Overall Work Program (OWP) set aside \$135,000 for this effort, and an additional \$10,000 is to be carried over from FY 06/07. The total estimated cost of this project is within budget at \$133,000. The draft work scope and the draft consultant contract are included as Attachment A and B, respectively. The final contract is being negotiated. The Steering Committee recommended increasing the number of consultant-led meetings and locally developing preliminary project lists and cost estimates.

### RECOMMENDATIONS

- Staff:**
- a) Conditionally approve contract with MuniFinancial.
  - b) Authorize Staff to negotiate final scope of work and contract.
  - c) Authorize the Board President to sign the final contract.
  - d) Authorize the Executive Director to approve additional consultant meetings at the cost level identified if deemed necessary.

**TTAC/CTAC:** Support Staff Recommendation

### DISCUSSION

Four firms responded to the SLOCOG approved Request for Proposals issued in March. A Steering Committee - consisting of staff from Arroyo Grande, Paso Robles, San Luis Obispo City and County, Caltrans and SLOCOG - reviewed proposals, conducted interviews, and will be a critical factor for the development of this project. After interviewing three firms on May 16<sup>th</sup>, Steering Committee members selected MuniFinancial as the prime consultant for the completion of this project. MuniFinancial has been involved with 15 of the 24 attempted Regional Traffic Impact Fee Studies in California.

The Deficiency Analysis will analyze and evaluate anticipated development activities in the region and their effects on the performance of the regional roadway system (includes Freeways, Interchanges, Highways, Routes of Regional Significance). The result of this phase will be a report with the summary of improvements recommended to mitigate the projected deficiencies directly related to new developments and associated cost estimates.

<b>Estimated Schedule</b>	
	<u>Cost \$133,000</u>
June '07	Board Meeting to Award Contract
June '07	Commence Work
July '07	Task 1
Aug. '07	Task 2
Sept. '07	Task 3
Oct. '07	Task 4
Nov. '07	Task 5
Dec. '07	Board Meeting to review Def. An.
Dec. '07	Task 6
Jan. '08	Public Draft Reg'l Traffic Imp. Fee prog.
Feb. '08	Board Mtg to review draft program
April '08	Board Meeting to accept Final Report

The Nexus Study will identify any 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. This study will 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. This is a necessary component to assess a Regional Traffic Impact Fee program. The result of this task will be a report detailing the components of a Regional Traffic Impact Fee program.

With the completion of the Nexus Study, a Capital Improvement Program and ordinance may be considered at the SLOCOG Board to adopt a Regional Traffic Impact Fee program. Adopted programs in other regions provide benefits in terms of permit streamlining, leveraging other funding sources, and they act as a proactive approach to collect a fair proportion of improvement costs.

The FY 2006/07 Overall Work Program identified two consultant-led studies – The Transportation Deficiency Analysis and the Transportation Nexus Study. These studies are inter-related to each other and to the Regional Traffic Model. All three components are necessary to assess a Regional Impact Fee program. It was necessary to carry both studies forward into the FY 2007/08 as these two studies could not commence until the Regional Traffic Model was completed. With the adoption of the Regional Traffic Model, and the incorporation of approved employment growth rate, this effort may now commence.

The studies will be performed under the guidance of SLOCOG staff and a Steering Committee with staff representation from Arroyo Grande, Paso Robles, San Luis Obispo City and County, and Caltrans. All reports and plans produced during these studies will be reviewed by, and discussed with, the Steering Committee and key milestones and information will be presented for review by TTAC and the Board.

The draft contract is attached as APPENDIX A. The attached draft scope of work (EXHIBIT 1) describes the Consultant’s tasks and responsibilities for developing the Regional Deficiency Analysis and Nexus Study.

If deemed necessary by the Executive Director, additional consultant meetings may be requested beyond the contracted 6 meetings. Within the Contract, Section III, identifies additional consultant meetings requested to be held during FY 07/08 may occur for a cost of: \$2500 per meeting day.

This staff report was prepared by James Worthley

## **Exhibit 1**

### **DRAFT SCOPE OF WORK**

The following Scope of Work outlines the tasks that will need to be completed for development of the San Luis Obispo County Regional Deficiency Analysis and Nexus Study.

#### **PHASE 1: DEFICIENCY/SELECT LINK ANALYSIS**

##### ***Task 1: Initial Document Request***

The CONSULTANT will obtain and review the following relevant documentation required to complete this phase.

- Initial list of all improvements to be included in the proposed fee program from SLOCOG Staff
- Complete list of transportation improvements that are fully funded, but not yet constructed.
- Available geometric design and cost information for the projects to be included in the fee program (e.g., PSRs, roadway-specific plans, etc.) from SLOCOG, the Cities, the County, and Caltrans.
- Direction confirming the geographic boundaries of the area encompassed by the fee program (assumed to be the entire region with up to five subareas).
- Information from all jurisdictions describing current transportation operations for purposes of identifying existing deficiencies.

##### ***Task 2: Establish Evaluation Criteria***

The CONSULTANT, under the guidance of the PDT, shall develop evaluation criteria to gauge the performance of the network. The CONSULTANT will establish operating standards for the regional transportation facilities and the criteria for identifying deficiencies. The CONSULTANT will determine deficient operations based on daily and /or peak hour volume thresholds or some combination of measures that also accounts for diversion to local roadways. The CONSULTANT will prepare a technical memorandum summarizing the development of evaluation criteria.

One meeting to initiate the project, discuss data needs, and begin discussion of applicable policy issues.

**DELIVERABLE 1: Draft final report chapter describing proposed performance measures, deficiency standards, and evaluation criteria.**

##### ***Task 3: 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.

Using various sources cited in Task 1 and the performance standards developed in Task 2, the CONSULTANT will prepare a list of all existing deficiencies on the regional transportation network. Deficiencies will be identified for all Freeways, Highways, Interchanges and ramps, as well as the SLOCOG-approved Routes of Regional Significance and their intersections. Existing deficiencies will be compared to data from the 2004 base year SLOCOG model to ensure consistency with the evaluation of future system segments.

Future deficiencies will be identified using SLOCOG model data, which includes daily and peak hour volume forecasts for 2015 and 2030. Future deficiencies will be identified based on the criteria established in Task 2 for year 2030 conditions. The findings of this task will be summarized in a technical memorandum and circulated to the PDT for review and approval.

One meeting to initiate Task 3 to introduce the fee study process and receive feedback will be held.

**DELIVERABLE 2: Draft final report chapter summarizing estimates of existing and future congestion.**

**Task 4 Identify Improvements to Mitigate Future Traffic Congestion**

Based on the results of Task 3, the CONSULTANT will identify improvements to mitigate the impact of future growth. Improvements may include capacity enhancements, traffic control modifications, new roadways, or other means of expediting vehicle movement. New facilities and services for bicycling, transit, and park and ride will also be included in the future improvement list.

The CONSULTANT will prepare conceptual cost estimates for up to 10 (ten) projects for inclusion in the fee program. The cost estimates will follow Caltrans guideline for PSRs. Most improvements (pavement, structure, right-of-way) will be estimated based on square footage unit prices while others such as drainage and traffic control will be based on a percentage of the total improvement costs. The deliverable for the task will include cost estimate summary by project in Caltrans PSR format and line items for each component of the improvement. Backup calculations will be attached in the appendix.

The CONSULTANT will submit a draft list of improvements to the PDT, and a final list will be prepared based on review and comments.

**DELIVERABLE 3: Draft final report chapter and appendix describing improvements and cost estimates.**

**Task 5: Draft Final Deficiency Report**

The CONSULTANT will summarize the results of all preceding tasks in a draft Deficiency Report including all appropriate text, tables and graphics. The CONSULTANT will incorporate the use of GIS graphics to the maximum extent possible. The CONSULTANT will incorporate comments on the draft document into a draft final Deficiency Report. The final Deficiency Report will be suitable for inclusion with the final regional impact fee document.

The CONSULTANT will present the Deficiency Analysis Report at a SLOCOG Board meeting.

**DELIVERABLE 4: Draft Final Deficiency Report**

**PHASE 2: NEXUS STUDY**

**Task 6: 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.

The SLOCOG planning area (i.e., the county) will be divided into up to five (5) fee zones. The boundaries for these zones may match the planning areas used to validate the SLOCOG regional traffic model; however, the PDT and SLOCOG may choose to adjust the boundaries prior to initiating this task. The CONSULTANT will develop an initial nexus analysis to calculate different fee contributions from each zone. The CONSULTANT will aggregate, if SLOCOG so desires, some of the original zones into larger zones. However, the associated analysis to re-define the originally accepted zone structure is outside this scope of work.

Once the **nexus assumptions have been approved by SLOCOG**, the CONSULTANT will execute the **2030** model to determine the contribution of daily traffic generated by new development on each of the transportation improvements to be included in the fee program. The CONSULTANT will consider a range of nexus approaches including “but for” and “fair share.” If necessary, The CONSULTANT will address the allocation of costs for improvements that result in improved levels of service compared to existing conditions.

The CONSULTANT’s next step is to determine the number of dwelling unit equivalents (DUEs) encompassed by new development. The CONSULTANT will work with SLOCOG staff and the PDT to identify appropriate assumptions to be incorporated in this step such as the relative relationship of trip generation between the different land use types, the percentage of internal and pass-by trips to be applied to commercial development, and the average trip length. Integrating trip length may also be appropriate. Using these assumptions, The CONSULTANT will compute the number of DUEs by land use category. No new land use categories are assumed to be developed for this fee study. The CONSULTANT will identify the total cost to be funded by new development and will then spread over the quantity of DUEs to determine the fee for each land use category.

Information on other sources of funds for transportation improvements will be assembled and will be used to calculate the net funding required from the fee program. This data will include existing exactions imposed through financing districts, development agreements, etc. The CONSULTANT will examine up to three different fee scenarios (for example, reducing non-residential fees by different percentages) to determine the financial effects on the program.

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 will test the market feasibility implications on development projections and provide recommendations as to whether the new fees could discourage certain types of development, such as various land uses (commercial, industrial, and residential [densities, types, and affordability]).

The CONSULTANT will perform several iterations to consider changes to assumptions described above and/or financing strategies for the transportation improvements. For each iteration, the CONSULTANT will modify the technical memorandum submitted under Task 6 to explain the changes in assumptions and results.

### ***DELIVERABLE 5: Draft Final Report chapter for Nexus and Burden Analysis***

#### ***Task 7: Regional Traffic Impact Fee Program***

The CONSULTANT will prepare a Regional Traffic Impact Fee Program Report establishing 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 document all of the information contained in the prior deliverables, plus additional information needed to accompany and justify the findings, and contain a summary of the procedures followed throughout the study.

The report will note all state and federal legislation requirements for developer fees and how the proposed program satisfies these requirements. It will also address existing development impact fee structures and reconcile local fees with the findings for a Regional fee program. The report will 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. The CONSULTANT will collect one (1) round of comments on the administrative draft. The CONSULTANT will then prepare a public draft for presentation to interested parties, the public, and the SLOCOG Board. The CONSULTANT will prepare a final report if necessary based on one (1) round comments received on the public draft

report. The CONSULTANT will submit up to 10 bound copies of each report as requested by SLOCOG, will provide SLOCOG with electronic copies in MS Word, and will post the report on the CONSULTANT's website for access via the Internet. The CONSULTANT will prepare a draft ordinance, a draft Capital Improvement Plan, and any other required materials for the purposes of final approval, adoption, and instatement of a Regional Traffic Impact Fee program.

The CONSULTANT will hold one meeting to review the administrative draft. The CONSULTANT will present the Deficiency Analysis Report at a Public Hearing/SLOCOG meeting for adoption.

***DELIVERABLE 6: Administrative draft report. Public draft report. Final Report: Draft Regional Traffic Impact Fee Program Report. Draft Model Ordinance for local agency adoptions and Capital Improvement Program for the Regional Traffic Impact Fee program.***

## **MEETINGS**

The CONSULTANT will attend up to six (6) meetings. Five meetings are outlined in the above Scope of Work: one (1) project kick-off meeting; one (1) meeting to initiate Task 3; (1) meeting to present the Deficiency Analysis Report; one (1) meeting to present the Regional Traffic Impact Fee Program Report; and one (1) attendance at a Public Hearing. One (1) additional meeting will be scheduled if necessary. Additional meetings (above the budgeted 6) requested and approved by the Executive Director of SLOCOG during FY 07/08 will incur a cost of \$2500 per meeting day. This includes materials preparation and travel expenses incurred for an in-person meeting. Phone conference calls are not considered meetings for the purposes of this scope. The CONSULTANT project manager will attend all meetings and will work with SLOCOG Staff to set up meetings and to keep the project on schedule.

## **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.

**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. All work will be completed prior to the end of Fiscal Year 07/08. The following is an estimated schedule for meetings and deliverables. Exhibit 2 displays a tentative timetable for completion of tasks and key meeting dates. The finalized dates for deliverables and meetings will be determined by the CONSULTANT in conjunction with SLOCOG staff during the delivery of the project based upon the most up to date information and requirement needs.

<b>Estimated Schedule</b>	
<u>Cost \$133,000</u>	
June '07	Board Meeting to Award Contract
June '07	Commence Work
July '07	Task 1
Aug. '07	Task 2
Sept. '07	Task 3
Oct. '07	Task 4
Nov. '07	Task 5
Dec. '07	Board Meeting to review Def. An.
Dec. '07	Task 6
Jan. '08	Public Draft Reg'l Traffic Imp. Fee prog.
Feb. '08	Board Mtg to review draft program
April '08	Board Meeting to accept Final Report

**FEE FOR SERVICES**

The CONSULTANT will complete the Scope of Work described above for a **not-to-exceed fee of \$133,000**. This fee includes direct expenses incurred during the course of work, including travel expenses and materials. Additional services and/or meetings may be authorized by SLOCOG and will be billed at the CONSULTANT's then-hourly rates for time and materials. The CONSULTANT's hourly rates are presented below. The CONSULTANT will invoice SLOCOG no more than monthly based on percent completion by task. Invoices will include a description of services as well as a summary of costs to date by task.

<b>MuniFinancial Hourly Rate Schedule</b>	
<b>Title</b>	<b>Hourly Rate</b>
Division Manager	\$200
Principal Consultant	190
Senior Project Manager	155
Project Manager	135
Senior Project Analyst	120
Senior Analyst	110
Analyst	90
Analyst Assistant	75
Property Owner Services Rep.	50
Support Staff	45

Six (6) meetings exist within this scope of services. Each additional meeting requested and approved by the Executive Director of SLOCOG during FY 07/08 will incur a cost of \$2500 per meeting day. This includes materials preparation and travel expenses incurred for an in-person meeting.

## EXHIBIT 2

The following identifies a tentative timetable for completion of tasks and key meeting dates. The finalized dates for deliverables and meetings will be determined by the CONSULTANT in conjunction with SLOCOG staff during the delivery of the project based upon the most up to date information and requirement needs.

June 6, 2007	<b>Contract awarded</b>
	<b>Task 1: Initial Document Request</b>
July 2, 2007	Locals deadline for submitting Information Requested
	<b>Task 2: Establish Evaluation Criteria</b>
June 25, 2007	Meeting to begin the project, discuss data needs, and identify policy issues
Aug 3, 2007	Draft chapter describing proposed perf. measures, standards, and eval. criteria
	<b>Task 3: Identify Present and Future Congestion Levels</b>
Aug. 14, 2007	Meeting to initiate task and to introduce the fee study process
Sept. 15, 2007	Draft chapter to estimate existing and future congestion
	<b>Task 4: Identify Improvements to Mitigate Future Traffic Congestion levels.</b>
Oct. 12, 2007	Draft List of Improvements submitted to PDT
Oct. 31, 2007	Draft chapter and appendix describing improvements & costs estimates
	<b>Task 5: Draft Final Deficiency Report</b>
Nov. 2, 2007	Draft Final Deficiency Report for inclusion in agenda mailings.
Dec. 5, 2007	Present Deficiency Analysis Report at SLOCOG Dec. 5, 2007 meeting
	<b>Task 6: Nexus Study &amp; Burden Analysis</b>
Nov 2, 2007	Prior to beginning phase, review of sub region boundaries with PDT
Dec. 7, 2007	Draft chapter for Nexus and Burden Analysis Released
	<b>Task 7: Regional Traffic Impact Fee Program</b>
Dec. 14, 2007	Administrative Draft Released
Jan. 7, 2008	Meeting to review Administrative Draft
Jan. 14, 2008	Public draft Report Released
Feb. 6, 2008	Present Public draft Report at SLOCOG Feb. 6, 2008 meeting
Mar. 7, 2008	Final Report Released
Apr. 2, 2008	Final Report submitted for adoption at SLOCOG April 2, 2008 meeting
Apr. 18, 2008	Draft sample Ordinance / CIP for use with City Councils and BOS

**APPENDIX A**  
**CONTRACT**  
**BETWEEN**  
**SLOCOG AND MUNIFINANCIAL FOR THE**  
**REGIONAL DEFICIENCY ANALYSIS AND NEXUS STUDY**

THIS CONTRACT is made and entered on this 6th day of June, 2007, by and between the SAN LUIS OBISPO COUNCIL OF GOVERNMENTS, hereinafter referred to as SLOCOG, and MuniFinancial, 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 (Exhibit 1) 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 June 15<sup>th</sup>, 2008. The 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 \$133,000** in FY 2006/07 and FY 2007/08.

The CONSULTANT shall submit invoices in a timely manner and expenses must be based on work completed. Itemized billing will 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.

Six (6) meetings exist within the contract. Each additional meeting requested and approved by the Executive Director of SLOCOG during FY 07/08 will incur a cost of \$2500 per meeting day. This includes materials preparation and travel expenses incurred for an in-person meeting.

#### **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 EXHIBIT 1, 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

**MuniFinancial**

Robert Spencer, Principal Consultant  
1700 Broadway, Sixth Floor  
Oakland, CA 94616  
Phone (510) 832-0899, Fax: (510) 832-0898

### **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:**

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**

**MuniFinancial**

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