

**SAN LUIS OBISPO COUNCIL OF GOVERNMENTS**

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STAFF REPORT

<b>MEETING DATE:</b>	<b>April 8, 2009</b>
<b>SUBJECT:</b>	<b>Revised Contract with Cannon Associates for Byway Capital Grant Implementation and Administration</b>

**SUMMARY**

SLOCOG Overall Work Program for Fiscal Year 2008/2009 budgeted \$30,000 for engineering consulting services. SLOCOG National Scenic Byways Project requires engineering services for implementation of two Scenic Byway Grants.

For services up to \$100,000 SLOCOG maintains a list of qualified selected to provide services to SLOCOG for project administration services of two grants.

Contract was approved on February 4, 2009, for the 08/09 fiscal year and incorrectly for the 09/10 fiscal year as well. A yes vote corrects this contract to include only services in the 08/09 fiscal year eliminating the language under the heading, Payment of Services, "not to exceed five thousand dollars (\$5,000) in FY 2009/10".

**RECOMMENDATION**

**Staff**     Approve and sign revised contract for professional services with Cannon Associates for Byway Capital Grant Implementation

**DISCUSSION**

SLOCOG received two grants in the 2006 National Scenic Byway Grant cycle:

- For the design and construction of 27 Interpretive Signs to be placed at intervals along the route
- For design and construction of Gateway Signage in the communities of San Luis Obispo, Morro Bay, Cambria, and San Simeon

Cannon Associates will assist with the tasks associated with these projects and will perform services not limited to the following: prepare Preliminary Environmental Study and Field Review forms, obtain CEQA and NEPA documents, prepare Right of Way Certificate forms, achieve FHWA compliance, prepare and submit environmental and engineering documents and Request for Authorizations to Begin Construction documents.

**BACKGROUND**

The Scenic Byway Corridor Enhancement Plan (CEP) update was adopted in June 2007 by the SLOCOG Board. The CEP identified the short and mid-term projects that the Scenic Byway Committee wants to see implemented in a timely manner. This submittal is consistent with those recommendations. The Corridor Plan is a required document for eligibility under the National Scenic Byways Program.

The highway (Highland Dr. in SLO to Northern County Line) was accepted into the Program as an "All-American Road" in August 2003. The SLOCOG Board first approved the CEP in February 2002.

**Financial implications:**

A total of \$30,000 is included in the FY 2008/09 budget under the PCT 8600 work task for engineering services. SLOCOG staff will use \$15,000 of that funding available in FY 08/09 for services to be performed by Cannon & Associates.

## Attachment A

### Contract Between

### SLOCOG and Cannon Associates for

### National Scenic Byway Projects: Funding Support Services

THIS CONTRACT is made and entered on this 8<sup>th</sup> day of April, 2009, by and between the SAN LUIS OBISPO COUNCIL OF GOVERNMENTS, hereinafter referred to as SLOCOG, and CANNON ASSOCIATES, hereinafter referred to as the CONSULTANT.

#### WITNESSETH

**WHEREAS**, SLOCOG received two National Scenic Byway Grants in 2006 for the construction and placement of 27 interpretive signs and for construction of gateway signage in the communities of San Luis Obispo, Morro Bay, Cambria, and San Simeon; and

**WHEREAS**, these funds require compliance with specific guidelines outlined in Caltrans Local Assistance Procedures Manual and Local Assistance Program Guidelines; and

**WHEREAS**, SLOCOG does not currently have staff to administer the project; and

**WHEREAS**, SLOCOG requires an independent consultant to provide assistance with the National Scenic Byway Program implementation; and

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

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

#### **I. SCOPE OF WORK:**

The CONSULTANT agrees to carry out the following project implementation tasks necessary for compliance with Caltrans Local Assistance Program Guidelines, including the following activities/services outlined in project proposal (Attachment B):

- Background development: Review all history of the grant application and funding, coordinate with SLOCOG and Caltrans to develop implementation plan.
- Preliminary Engineering phase: Prepare required forms and documents for State and Federal compliance; assist with assembly of bid packages for services.
- Bidding phase: review bids for compliance, prepare award package for Caltrans.
- Construction phase: Prepare procedures and forms booklet for Resident Engineer, provide consultation for SLOCOG and Contractor.
- Submittal to Caltrans: Prepare the Project Completion Package and submit to Caltrans.

#### **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 will begin FY 2008/09, and continue into FY 09/10 as necessary (unless otherwise mutually agreed to by the parties). CONSULTANT shall submit an updated 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 in the Scope of Work for this Contract, the CONSULTANT shall be compensated a total fee not to exceed fifteen thousand dollars (\$15,000) in FY 2008/09.

The CONSULTANT shall submit invoices for time and materials costs of work completed related directly to the specific work orders in a timely manner. Invoices may be submitted not more frequently than once a month along with a progress report submitted by the CONSULTANT to SLOCOG. The progress report 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 AGREEMENT 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 files (including electronic files), and other records relating to the project included in this AGREEMENT, and may review services at appropriate stages during the performance of the Scope of Work.

### **V. NUMBER OF DOCUMENTS:**

The CONSULTANT shall provide SLOCOG with originals of all deliverables (in hard copy and 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 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 AGREEMENT 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 AGREEMENT 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 AGREEMENT, 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 AGREEMENT. Any breach or violation of this warranty (by the CONSULTANT), shall grant SLOCOG the right to annul this AGREEMENT without liability, or in its discretion to deduct from the agreement 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:**

By giving a written notice, SLOCOG or the CONSULTANT reserves the right to terminate this AGREEMENT or to suspend or abandon all or a portion of the project and all work connected therewith.

If all or a portion of the work covered by this AGREEMENT is suspended or abandoned, SLOCOG shall pay the CONSULTANT only for services rendered or expenses incurred under this AGREEMENT up to the time of receipt of written notice of termination, suspension or abandonment.

The payment shall be based insofar as possible on the amounts established in this AGREEMENT, or in a case where the AGREEMENT cannot be applied, the payment shall be based upon a reasonable estimate (as mutually agreed) of the percentage of work actually completed.

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 AGREEMENT or by law to be served on or given to either party hereto, by the other party hereto shall be in writing (or by Email 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:

Attn: Geiska Baker Velasquez  
San Luis Obispo Council of Governments  
1150 Osos St Suite 202  
San Luis Obispo, CA 93401  
Phone: (805) 788-2104  
Fax: (805) 781-5703

Attn: Kathy Pence  
Cannon  
1050 Southwood Drive  
San Luis Obispo, CA 93401  
Phone: (805) 544-7404  
Fax: (805) 544-3863

**XII. INDEMNITY AND INSURANCE:**

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

The 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 AGREEMENT, except for claims or losses due to the negligence, willful acts or breach of this AGREEMENT 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 AGREEMENT, a policy of liability insurance issued by an insurance company acceptable to SLOCOG and an admitted California surety or insurance company.

This policy shall name 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 AGREEMENT.

**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 "Acord 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 AGREEMENT a policy of professional liability insurance, issued by an insurance company acceptable to SLOCOG.

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

**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 AGREEMENT.

**XIV. SUBLETTING AND PERSONNEL ASSIGNMENTS:**

The CONSULTANT acknowledges and agrees that the subletting or transfer of any portion of the services covered by this AGREEMENT, 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 AGREEMENT 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. NONDISCRIMINATION:**

The CONSULTANT 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 SLOCOG deems appropriate.

**XVII. 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.

**XVIII. SUCCESSOR AND ASSIGNS:**

This AGREEMENT 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 AGREEMENT effective on the first aforementioned day and year.

**SAN LUIS OBISPO COUNCIL  
OF GOVERNMENTS**

**Cannon**

By: \_\_\_\_\_  
John P. Shoals, President  
San Luis Obispo Council of Governments

By: \_\_\_\_\_  
Name, Title

ATTEST:

\_\_\_\_\_  
Ronald De Carli  
Executive Director  
San Luis Obispo Council of Governments

APPROVED AS TO FORM:

\_\_\_\_\_  
Rita L. Neal  
SLOCOG Legal Counsel