



## Community Development

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919 Palm Street, San Luis Obispo, CA 93401-3218  
805.781.7170  
[slocity.org](http://slocity.org)

### **Notice Requesting Proposals for the Preparation of a Project Environmental Impact Report (EIR) for the Avila Ranch Project Specification No. 91355**

The City of San Luis Obispo is requesting proposals to prepare a Project Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA) for the Avila Ranch Project. All proposals must be received by the Finance Department at 919 Palm Street, San Luis Obispo, CA 93401 by **3:00 P.M. on Friday April 17, 2015**.

Proposals received after said time will not be considered. To guard against premature opening, each qualifications package must be submitted to the Finance Department in a sealed envelope plainly marked with the request title, specification number, Consultant name, and time and date of the proposal opening. Proposals must be submitted using the forms provided in the specification package.

#### Obtaining a Specification Package

Download from the City's Web site [www.slocity.org](http://www.slocity.org) - Bids & Proposals link

#### Questions

Contact Contract Planner, Gary Kaiser at (805) 547-0900 or [gkaiser@rinconconsultants.com](mailto:gkaiser@rinconconsultants.com) or Deputy Director, Doug Davidson at (805) 781-7177 or [ddavidson@slocity.org](mailto:ddavidson@slocity.org) with any questions regarding this Request for Proposals.

#### Disadvantaged Business Participation

DBE and other small businesses as defined in Title 49 CFR 26, are encouraged to participate in the performance of agreements financed in whole or in part with federal funds.

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Section A

**DESCRIPTION OF WORK**

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The City is requesting proposals from consultants to prepare an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA) for the Avila Ranch project. Based on the recent Land Use and Circulation Element (LUCE) update, the Avila Ranch project would include a mix of residential types and small node (approximately 1.0 acres) of neighborhood commercial/office uses on a 150-acre property located at the northeast corner of Buckley Road and Vachell Lane in the City of San Luis Obispo. In addition, the EIR consultant may be asked to expand the EIR analysis to address an option for business park development on the easterly 25-30 acres of the site. Whereas other EIR project alternatives will be discussed with a lesser specificity than the proposed project, the business park option would be analyzed with the same degree of specificity as the proposed project.

**Background**

Site Overview

The 150-acre project site is located within the City of San Luis Obispo, as are lands to the north of the project site. Lands to the west and east of the project site are not within the City Limits but they are within the City’s Sphere of Influence and may eventually be annexed into the City Limits. Lands to the south of the project site are outside the City Limits and outside the City’s Sphere of Influence. The project site is bound to the south by Buckley Road and also has direct frontage on Vachell Lane. In addition, the project site has indirect access to Vachell Lane from Venture Drive.

Currently, the Avila Ranch property is within the boundaries of the Airport Area Plan. Hence the proposed Avila Ranch Specific Plan is also a proposed amendment to, or “detachment” from, the Airport Area Plan. Under the Airport Area Plan, the subject site is designated for Business Park development. In addition, the southerly and easterly portions of the site are beyond the Urban Reserve Line (URL). These areas, totaling approximately 27 acres, must remain in open space. Although the site is currently in agricultural use, it has been designated for urban development since adoption of the Airport Area Plan on August 23, 2005. However, and as discussed in the Airport Area Plan and more recent Land Use and Circulation Element (LUCE) Update, the site is also within the Airport Influence Area. This means that the Avila Ranch Specific Plan is subject to the policies and programs in Chapter 8 of the LUCE and that it must be referred to the Airport Land Use Commission (ALUC) for a determination of consistency with the Airport Land Use Plan (ALUP).



Existing General Plan Designation

The LUCE Update identifies the Avila Ranch property as a Special Focus Area and one that requires the adoption of a Specific Plan prior to any development. Whereas the preceding Airport Area Plan designated Avila Ranch for Business Park Development, the LUCE Update designates the site for

*“primarily a residential neighborhood development with supporting neighborhood commercial, park, recreation facilities, and open space/resource protection. Within the project, emphasis should be on providing a complete range of housing types and afford abilities.”*

More specifically, the LUCE requires that the Avila Ranch Specific Plan include the following elements:

- a. *Provision of a variety of housing types and affordability levels.*
- b. *Modification of the Airport Area Specific Plan to either exclude this area or designate it as a special planning area within the Airport Area Specific Plan.*
- c. *Provision of buffers along Buckley Road and along eastern edge of property from adjacent agricultural uses.*
- d. *Provision of open space buffers along northern and western boundaries to separate this development from adjacent service and manufacturing uses.*
- e. *Provision of open space buffers and protections for creek and wildlife corridor that runs through property.*
- f. *Safety and noise parameters described in this General Plan and the purposes of the State Aeronautics Act; or other applicable regulations relative to the San Luis Obispo Regional Airport.*
- g. *Participation in enhancement to Buckley Road and enhancement of connection of Buckley Road to South Higuera Street.*
- h. *Appropriate internal and external pedestrian, bicycle, and transit connections to the City’s circulation network.*
- i. *Implementation of the City’s Bicycle Transportation Plan including connections to the Bob Jones Trail.*
- j. *Water and wastewater infrastructure needs as detailed in the City’s Water and Wastewater Master Plans. This may include funding and/or construction of a wastewater lift station.*
- k. *Fire protection and impacts to emergency response times.*
- l. *Architectural design that relates to the pastoral character of the area and preserves view of agrarian landscapes.*
- m. *Provision of a neighborhood park.*

In addition, at least 50%<sup>1</sup> of the property to remain in Agriculture or Open Space, and the Specific Plan must provide for between 500 and 700 residential units and between 15,000 and 25,000 square feet of neighborhood commercial space, unless such densities are infeasible based on physical or environmental constraints.

The LUCE Update will also require the construction of substantial public infrastructure improvements as part of the development of the property, including an extension of Buckley Road to South Higuera Street. Other substantial improvements, or major contributions towards other substantial improvements, will also be required, such as: construction of new local and collector roads; improvements to existing roads and intersections, a new sewer lift station, a new fire station; new bike lanes; and various other substantial improvements as will be determined during project review.

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<sup>1</sup> Up to 1/3 of the open space may be provided off-site or through in-lieu fees consistent with the Airport Area Specific Plan. Required Open Space may be reduced up to 30% of the site proportionally to the amount of affordable housing provided on-site in a ratio consistent with the Regional Housing Needs Allocation beyond inclusionary housing requirements.

Proposed Project Overview and General Plan Basis (2014 LUCE Update):

The project is a proposed new Specific Plan and the revision of an existing Area Plan, and related actions that would allow for the development of the Avila Ranch property as identified in the City's General Plan. While the intent is for the project to be consistent with the development parameters described in LUCE update, the Specific Plan has not yet been fully developed, and the project has not been designed. Guidance for the project is found in Chapter 8, Section 8.3.2.6 of the LUCE Update, as partially quoted from above.

Among the key issues are:

- The potential loss of agricultural lands, and how much should be preserved onsite
- Land use compatibility with onsite and adjacent agricultural uses
- Concerns about the mix of residential and commercial development density
- Flood hazards
- Creek protection and enhancement
- Grading and alterations to the natural terrain
- The need for affordable housing
- Compatibility with the Airport Land Use Plan
- Traffic, and the timing of required road improvements
- Water supply and infrastructure
- Wastewater service and infrastructure
- The site's visual prominence from Buckley Road
- Policy consistency

The applicant presented a preliminary version of the Specific Plan concepts to staff for pre-application review and received a letter advising the applicant of potential policy issues (see attached). The applicant is in the process of using this input to prepare a draft Specific Plan and related entitlements, although these documents have not yet been submitted to the City. These entitlements would include some combination of the following:

- General Plan Amendment and Rezone (being programmatically evaluated in the LUCE EIR)
- Specific Plan
- Memorandum of Understanding (outlining a framework for process, fees, and a methodology for determining fair share and timing for improvements)
- Development Agreement
- Development Plan/Tentative Tract Map(s)

Relationship of the Proposed Project EIR to the LUCE Final EIR

The City envisions CEQA compliance for the Avila Ranch Project to be a Project EIR that tiers from the Final Program EIR prepared for the LUCE Update. It is acknowledged that the LUCE EIR did not include site-specific analyses for Avila Ranch site, but it did identify a series of programmatic (i.e., cumulative) impacts and provide mitigation measures to adequately address those impacts. Some of these mitigation measures now apply Citywide, and some are now applicable specifically to the Avila Ranch site. The successful consultant must be prepared to critically evaluate the LUCE EIR, and determine the extent to which it can be used as the basis for tiering.

In your proposal, please discuss examples of projects where your firm's key personnel have applied this type of expertise, and how General Plan mitigation measures relate to the project. The City is seeking clear and concise writing, and a simplified organizational framework for the analysis, not repetition and confusion. Please provide examples in your key personnel's experience where creative and clear-headed thinking along these lines has come into play. In addition, please discuss your firm's experience and expertise in the issue areas that are unique to this project and that will generate the most interest and controversy in this particular case. It is essential, for example, that your firm (or team) has specific experience in airport land use compatibility planning.

The LUCE EIR examined the following issues at a programmatic level:

- Aesthetics
- Agricultural Resources
- Air Quality
- Airport Compatibility
- Biological Resources
- Cultural Resources
- Geology and Soils
- Global Climate Change
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use
- Noise
- Population and Housing
- Public Services
- Recreation
- Traffic and Circulation
- Utilities and Service Systems

The LUCE Final EIR was certified on September 16, 2014, when a portion of the LUCE was adopted, and again when the remaining portions of the LUCE update was adopted. A copy of the Final EIR may be found at the City's website at:

<http://www.slo2035.com/library/documents-reports/46-final-program-eir.html>

It should not be assumed that all issues that need to be examined in the Avila Ranch Project EIR were identified in the LUCE EIR. Conversely, it should also not be assumed that all issues examined in the LUCE EIR would need to be examined in the Project EIR. The City welcomes creative input from consultants regarding which issues (in your firm's opinion) will require special focus, and ways to streamline the CEQA process to the extent possible through the Avila Ranch Project EIR. The City also welcomes recommendations regarding the mechanics of how the appropriate portions of the LUCE Final EIR will be cross-referenced and applied in the Avila Ranch Project EIR, drawing on your firm's experience in preparing Project EIRs that tier from Program EIRs for General Plans.

### Considerations in Presenting Consultant Experience and Personnel

A consultant's proposal should focus on the relevant experience of personnel currently at the firm, and not the historical experience of the firm. It is the City's expectation that personnel identified in a consultant's proposal will play a major role in the execution of the assignment if the firm is selected. The proposal should include an appropriate range of senior and junior level staff that realistically reflects the team that would likely work on the assignment. A proposal that lists only the firm's most senior level staff, including those unlikely to work on the project, for the purpose of inflating possible qualifications may therefore be deemed non-responsive.

The proposal can present information about relevant experience and key personnel in a variety of ways. A recommended approach is to provide a matrix listing key personnel, their potential roles in preparing the EIR, and a rough estimate of their relative percentage of labor hours needed to complete the assignment. For larger firms, please be realistic about the percentage of the total effort assigned to company principals or high-level senior staff. For smaller firms, please demonstrate how your firm has adequate qualified staff to complete an assignment of this magnitude. The City seeks honest, transparent, and realistic responses to this RFP relative to a company's qualifications and its ability to complete the assignment.

A proposal can, but is not required to, include other firms that would be subconsultants and part of the team if selected for the assignment. If your proposal does not address one or another specific type of expertise that may be required to prepare the EIR (e.g., noise, air quality, traffic, cultural resources, biology), please describe how you would intend to address these issues if selected.

### Project Management Approach

Please identify your firm's proposed Project Manager, and how your firm would address key project management tasks, including those related to cost control, delegation of tasks, quality control, and technical review. Provide examples, if applicable, of how your firm ensures that projects are completed on time and within budget. Explain how your firm envisions interacting with City staff and the applicant team throughout the EIR process, in a manner that is collaborative but ensures an independent analysis of the issues. Describe how you intend to manage a process that is cost-effective, timely, efficient, inclusive of public input, and ultimately produces an EIR that is easily understandable to the public and decision makers. The City values creativity, clear thinking, and exceptional writing skills in evaluating your approach to project management, and the EIR process in general.

Please describe your selected Project Manager's specific experience with similar assignments, and how the issues described above were addressed. Where past projects presented challenges, please describe how your Project Manager was able to successfully address them, and how these lessons might be applied to the Avila Ranch project.

The selected consultant's Project Manager will be expected to be the City's primary point of contact, and must understand the overall contract agreement and can manage paperwork associated with it.

**GENERAL TERMS AND CONDITIONS**

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**PROPOSAL REQUIREMENTS**

1. **Requirement to Meet All Provisions.** Each individual or firm submitting a proposal (Consultant) shall meet all of the terms, and conditions of the proposal specifications package. By virtue of its proposal submittal, the Consultant acknowledges agreement with and acceptance of all provisions of the proposal specifications.
2. **Proposal Submittal.** Each proposal must be submitted on the form(s) provided in the specifications and accompanied by any other required submittals or supplemental materials. Proposal documents shall be enclosed in an envelope that shall be sealed and addressed to the Finance Department, City of San Luis Obispo, 919 Palm Street, San Luis Obispo, CA, 93401. Each proposal submittal shall include one electronic copy of the proposal, submitted in *Adobe Acrobat* format on CD or flash drive. In order to guard against premature opening, the proposal should be clearly labeled with the proposal title, specification number, name of Consultant, and date and time of proposal opening. No FAX submittals will be accepted.
3. **Insurance Certificate.** Each proposal must include a certificate of insurance showing:
  - a. The insurance carrier and its A.M. Best rating.
  - b. Scope of coverage and limits.
  - c. Deductibles and self-insured retention.

The purpose of this submittal is to generally assess the adequacy of the Consultant's insurance coverage during proposal evaluation; as discussed under paragraph 12 below, endorsements are not required until contract award. The City's insurance requirements are detailed in Section F.

4. **Submittal of References.** Each proposer shall submit a statement of qualifications and references on the form provided in the specifications package.
5. **Statement of Contract Disqualifications.** Each proposer shall submit a statement regarding any past government disqualifications on the form provided in the specifications package.
6. **Proposal Withdrawal and Opening.** A Consultant may withdraw its proposal, without prejudice prior to the time specified for the proposal opening, by submitting a written request to the City for its withdrawal, in which event the proposal will be returned to the Consultant unopened. No proposal received after the time specified or at any place other than that stated in the "Notice Requesting Proposals" will be considered. All qualification proposals will be opened and declared publicly. Consultants or their representatives are invited to be present at the opening of the proposals.
7. **Submittal of One Proposal Only.** No individual or business entity of any kind shall be allowed to make or file, or to be interested in more than one proposal, except an alternative proposal when specifically requested; however, an individual or business entity that has submitted a sub-proposal to a Consultant submitting a proposal, or who has quoted prices on materials to



such Consultant, is not thereby disqualified from submitting a sub-proposal or from quoting prices to other Consultants submitting qualification proposals.

8. **Communications.** All timely requests for information submitted in writing will receive a written response from the City. Telephone communications with City staff are not encouraged, but will be permitted. However, any such oral communication shall not be binding on the City.
9. **Alternative Proposals.** When specifically requested, the proposer may submit an alternative qualification proposal (or proposals) that it believes will also meet the City's project objectives but in a different way. In this case, the proposer must provide an analysis of the advantages and disadvantages of each of the alternatives, and discuss under what circumstances the City would prefer one alternative to the other(s). If an alternative proposal is submitted, the maximum length of the proposal may be expanded proportionately by the number of alternatives submitted.

#### **CONTRACT AWARD AND EXECUTION**

10. **Proposal Retention and Award.** The City reserves the right to retain all proposals for a period of 60 days for examination and comparison. The City also reserves the right to waive non-substantial irregularities in any proposal, to reject any or all proposals, to reject or delete one part of a proposal and accept the other, except to the extent that proposals are qualified by specific limitations. See the "Special Terms and Conditions" in Section C of these specifications for proposal evaluation and contract award criteria. The City may choose to interview any number of qualified consultants as the basis for making a final selection.
11. **Competency and Responsibility of Consultant.** The City reserves full discretion to determine the competence and responsibility, professionally and/or financially, of Consultants. Consultants will provide, in a timely manner, all information that the City deems necessary to make such a decision.
12. **Contract Requirement.** The Consultant to whom award is made (Consultant) shall execute a written contract with the City within ten (10) calendar days after notice of the award has been sent by mail to it at the address given in its proposal. The contract shall be made in the form adopted by the City and incorporated in these specifications.
13. **Insurance Requirements.** The Consultant shall provide proof of insurance in the form, coverages and amounts specified in Section F of these specifications within 10 (ten) calendar days after notice of contract award as a precondition to contract execution.
14. **Business License & Tax.** The Consultant must have a valid City of San Luis Obispo business license and tax certificate before execution of the contract. Additional information regarding the City's business license and tax program may be obtained by calling (805) 781-7134.
15. **Failure to Accept Contract.** The following will occur if the Consultant to whom the award is made (Consultant) fails to enter into the contract: the award will be annulled and an award may be made to the next highest ranked Consultant with whom a responsible compensation is negotiated, who shall fulfill every stipulation as if it were the party to whom the first award was made.

**PROPOSAL CONTENT AND SELECTION PROCESS**

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**PROPOSAL CONTENT**

▪ **Submittal Forms**

- Acknowledgement
- Certificate of Insurance
- References
- Statement of Past Disqualifications

▪ **Qualifications**

- Experience of your firm in performing CEQA and Planning work for government clients and facilities, any other qualifications or specialties which you make your firm well-suited in assisting the City for this assignment.
- Experience of the staff to be assigned to this work in performing similar services.
- Redundancy in the company of staff experienced in this type of work.
- Resumes of the individuals who would be assigned to this work.
- Proximity and staffing levels of the nearest company office.
- Statement and explanation of any instances where your firm has been removed from a project or disqualified from proposing on a project
- Standard hourly billing rates for consultant and sub-consultant staff
- Detailed list of services available directly from your firm.

▪ **Work Program**

- A detailed work program and project schedule is required as part of the proposal. The City welcomes creative ideas that might be useful in the approach to this assignment, which should be based on your key personnel's past experience.
- The following technical studies will be provided for peer review by the EIR consultant, except that the traffic study will be peer reviewed by City staff:
  - ✓ Biological Resource Assessment, with initial review the US Army Corps of Engineers
  - ✓ Noise Study
  - ✓ Traffic Study
  - ✓ Phase I Cultural Resources Assessment
  - ✓ Updated Water and Sewer Master Plan
  - ✓ Airport Land Use Compatibility Report
  - ✓ Hydrology Study
- In addition, it is anticipated that the EIR will require focused analysis in the areas of: Aesthetics; Agricultural Resources; Air Quality; Greenhouse Gas Emissions; Land Use; and Population and Housing. To a large extent, however, cumulative impacts were addressed in the LUCE EIR.

- **Proposal Length and Copies**

- Your firm’s proposal should be the minimum length to provide the required information. Charts and other short form approaches to conveying information are encouraged.
- 3 copies of the proposal must be submitted.
- 1 pdf format electronic copy must be submitted on flash drive.

**PROPOSAL EVALUATION AND CONSULTANT SELECTION**

Your proposal will be evaluated by a review committee, and the successful consultant will be selected as follows:

- **Written Proposal Review/Finalist Candidate Selection**

Evaluation of the proposals will be based on the following:

1. Understanding of the work involved in completing Project EIRs under CEQA for Specific Plans and other long-range plans, and how these can most effectively be tiered from Program EIRs on General Plans
2. The qualifications and experience of your firm’s Project Manager, and your firm’s proposed approach to Project Management
3. Demonstrated competence, professional qualifications of proposed staff within the firm assigned to this project
4. Recent experience in successfully performing similar services
5. Ability to work collaboratively with City staff, the project applicant team, and the general public within the legal requirements of the CEQA process
6. Demonstrated ability to think clearly and creativity, and to provide succinct analysis that is well-organized and exceptionally well-written in plain language

Proposals will be reviewed by a selection committee and ranked in accordance with the above criteria. The City may choose to conduct consultant interviews to better evaluate the competing proposals, but may choose a consultant without an interview if one proposal stands out clearly from the others. The City may work with the selected consultant to refine the detailed work scope and cost for the purpose of entering into a contract. If an acceptable work scope and cost cannot be achieved, and a contract successfully negotiated, the City will work with the second-ranked consultant to develop an acceptable work scope and cost proposal that leads to a signed contract.

- **Proposal Review and Consultant Selection Schedule**

The following is an outline of the anticipated schedule for proposal review and consultant selection:

Issue RFP	March 20, 2015
Receive Proposals	April 17, 2015
Complete proposal evaluation	April 24, 2015
Consultant Selection	April 27, 2015

Section D  
**FORM OF AGREEMENT**

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**AGREEMENT**

THIS AGREEMENT is made and entered into in the City of San Luis Obispo on [day, date, year] by and between the CITY OF SAN LUIS OBISPO, a municipal corporation, hereinafter referred to as City, and [CONSULTANT'S NAME IN CAPITAL LETTERS], hereinafter referred to as Consultant.

**WITNESSETH**

WHEREAS, on [date], requested qualifications for X per Specification No. X.

WHEREAS, pursuant to said request, Consultant submitted a proposal that was accepted by City for said services.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

- 1. Term.** The term of this Agreement shall be from the date this Agreement is made and entered, as first written above, until acceptance or completion of said services.
- 2. Start and Completion of Work.** Individual projects shall be completed in accordance with approved project schedules.
- 3. Contract Term.** The services identified in this specification will be contracted for by the City based on a mutually agreed scope of work, cost and schedule to be negotiated between the City and EIR consultant following consultant selection.
- 4. Contract Modification.** The scope, cost, and schedule of the agreed-upon contract may not be change except either by City approval of a prior written request by the consultant to respond to changing project conditions outside the consultant's control, or as otherwise directed by the City.
- 5. Work Delays.** Should the Consultant be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of the City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at the City's sole option, be extended for such periods as may be agreed upon by the City and the Consultant. In the event that there is insufficient time to grant such extensions prior to the completion date of the contract, the City may, at the time of acceptance of the work, waive liquidated damages that may have accrued for failure to complete on time, due to any of the above, after hearing evidence as to the reasons for such delay, and making a finding as to the causes of same.
- 6. Termination.** If, during the term of the contract, the City determines that the Consultant is not faithfully abiding by any term or condition contained herein, the City may notify the Consultant

in writing of such defect or failure to perform. This notice must give the Consultant a 10 (ten) calendar day notice of time thereafter in which to perform said work or cure the deficiency.

If the Consultant has not performed the work or cured the deficiency within the ten days specified in the notice, such shall constitute a breach of the contract and the City may terminate the contract immediately by written notice to the Consultant to said effect. Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under the contract except, however, any and all obligations of the Consultant's surety shall remain in full force and effect, and shall not be extinguished, reduced, or in any manner waived by the termination thereof.

In said event, the Consultant shall be entitled to the reasonable value of its services performed from the beginning date in which the breach occurs up to the day it received the City's Notice of Termination, minus any offset from such payment representing the City's damages from such breach. "Reasonable value" includes fees or charges for goods or services as of the last milestone or task satisfactorily delivered or completed by the Consultant as may be set forth in the Agreement payment schedule; compensation for any other work, services or goods performed or provided by the Consultant shall be based solely on the City's assessment of the value of the work-in-progress in completing the overall work scope.

The City reserves the right to delay any such payment until completion or confirmed abandonment of the project, as may be determined in the City's sole discretion, so as to permit a full and complete accounting of costs. In no event, however, shall the Consultant be entitled to receive in excess of the compensation quoted in its proposal.

If, at any time during the term of the contract, the City determines that the project is not feasible due to funding shortages or unforeseen circumstances, the City reserves the right to terminate the contract. Consultant will be paid compensation due and payable to the date of termination.

- 7. Ability to Perform.** The Consultant warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all applicable federal, state, county, city, and special district laws, ordinances, and regulations.
- 8. Sub-contract Provisions.** No portion of the work pertinent to this contract shall be subcontracted without written authorization by the City, except that which is expressly identified in the Consultant's proposal. Any substitution of sub-consultants must be approved in writing by the City. For any sub-contract for services in excess of \$25,000, the subcontract shall contain all provisions of this agreement.
- 9. Contract Assignment.** The Consultant shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City.
- 10. Inspection.** The Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of the Consultant are being performed in accordance with the requirements and intentions of this contract. All work done and all materials furnished, if any,

shall be subject to the City's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill its contract requirements.

11. **Record Retention and Audit.** For the purpose of determining compliance with various laws and regulations as well as performance of the contract, the Consultant and sub-consultants shall maintain all books, documents, papers, accounting records and other evidence pertaining to the performance of the contract, including but not limited to the cost of administering the contract. Materials shall be made available at their respective offices at all reasonable times during the contract period and for four years from the date of final payment under the contract. Authorized representatives of the City shall have the option of inspecting and/or auditing all records. For Federally funded projects, access to records shall also include authorized representatives of the State and Federal government. Copies shall be furnished if requested.
12. **Conflict of Interest.** The Consultant shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this contract, or any ensuing City construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project which will follow.

The Consultant covenants that it presently has no interest, and shall not acquire any interest—direct, indirect or otherwise—that would conflict in any manner or degree with the performance of the work hereunder. The Consultant further covenants that, in the performance of this work, no sub-consultant or person having such an interest shall be employed. The Consultant certifies that no one who has or will have any financial interest in performing this work is an officer or employee of the City. It is hereby expressly agreed that, in the performance of the work hereunder, the Consultant shall at all times be deemed an independent Consultant and not an agent or employee of the City.

13. **Rebates, Kickbacks or Other Unlawful Consideration.** The Consultant warrants that this contract was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any City employee. For breach or violation of the warranty, the City shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.
14. **Covenant Against Contingent Fees.** The Consultant warrants by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Consultant for the purpose of securing business. For breach or violation of this warranty, the City has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

- 15. Compliance with Laws and Wage Rates.** The Consultant shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City of San Luis Obispo ordinances, regulations and adopted codes during its performance of the work. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction, including but not limited to, inspection and land surveying work.
- 16. Payment of Taxes.** The contract prices shall include full compensation for all taxes that the Consultant is required to pay.
- 17. Permits, Licenses and Filing Fees.** The Consultant shall procure all permits and licenses, pay all charges and fees, and file all notices as they pertain to the completion of the Consultant's work. The City will pay all application fees for permits required for the completion of the project including building and regulatory permit application fees. Consultant will provide a 10 day notice for the City to issue a check.
- 18. Safety Provisions.** The Consultant shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.
- 19. Public and Employee Safety.** Whenever the Consultant's operations create a condition hazardous to the public or City employees, it shall, at its expense and without cost to the City, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.
- 20. Preservation of City Property.** The Consultant shall provide and install suitable safeguards, approved by the City, to protect City property from injury or damage. If City property is injured or damaged resulting from the Consultant's operations, it shall be replaced or restored at the Consultant's expense. The facilities shall be replaced or restored to a condition as good as when the Consultant began work.
- 21. Immigration Act of 1986.** The Consultant warrants on behalf of itself and all sub-consultants engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.
- 22. Consultant Non-Discrimination.** In the award of subcontracts or in performance of this work, the Consultant agrees that it will not engage in, nor permit such sub-consultants as it may employ, to engage in discrimination in employment of persons on any basis prohibited by State or Federal law.
- 23. Accuracy of Specifications.** The specifications for this project are believed by the City to be accurate and to contain no affirmative misrepresentation or any concealment of fact. Consultants are cautioned to undertake an independent analysis of any test results in the specifications, as City does not guaranty the accuracy of its interpretation of test results contained in the specifications package. In preparing its proposal, the Consultant and all sub-consultants named in its proposal shall bear sole responsibility for proposal preparation errors

resulting from any misstatements or omissions in the specifications that could easily have been ascertained by examining either the project site or accurate test data in the City's possession. Although the effect of ambiguities or defects in the specifications will be as determined by law, any patent ambiguity or defect shall give rise to a duty of Consultant to inquire prior to proposal submittal. Failure to so inquire shall cause any such ambiguity or defect to be construed against the Consultant. An ambiguity or defect shall be considered patent if it is of such a nature that the Consultant, assuming reasonable skill, ability and diligence on its part, knew or should have known of the existence of the ambiguity or defect. Furthermore, failure of the Consultant or sub-consultants to notify City in writing of specification defects or ambiguities prior to proposal submittal shall waive any right to assert said defects or ambiguities subsequent to submittal of the proposal.

To the extent that these specifications constitute performance specifications, the City shall not be liable for costs incurred by the successful Consultant to achieve the project's objective or standard beyond the amounts provided therefor in the proposal.

In the event that, after awarding the contract, any dispute arises as a result of any actual or alleged ambiguity or defect in the specifications, or any other matter whatsoever, Consultant shall immediately notify the City in writing, and the Consultant and all sub-consultants shall continue to perform, irrespective of whether or not the ambiguity or defect is major, material, minor or trivial, and irrespective of whether or not a change order, time extension, or additional compensation has been granted by City. Failure to provide the hereinbefore described written notice within one (1) working day of Consultant's becoming aware of the facts giving rise to the dispute shall constitute a waiver of the right to assert the causative role of the defect or ambiguity in the plans or specifications concerning the dispute.

- 24. Indemnification for Professional Liability.** To the fullest extent permitted by law, the Consultant shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and cost which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.
- 25. Non-Exclusive Contract.** The City reserves the right to contract for the services listed in this proposal from other consultants during the contract term.
- 26. Standards.** Documents shall conform to City Standards and City furnished templates shall be used.
- 27. Consultant Endorsement.** Technical reports, plans and specifications shall be stamped and signed by the Consultant where required.
- 28. Required Deliverable Products and Revisions.** The Consultant will be required to provide documents addressing all elements of the EIR work scope, as mutually agreed upon under a contract to be negotiated between the Consultant and City following consultant selection.
- 29. Ownership of Materials.** Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this contract will automatically be vested in the city and no further agreement will be necessary to transfer



ownership to the City. The Consultant shall furnish the City all necessary copies of data needed to complete the review and approval process.

The Consultant is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the City of the machine-readable information and data provided by the Consultant under this agreement. Further, the Consultant is not liable for claims, liabilities, or losses arising out of, or connected with any use by City of the project documentation on other projects, except such use as may be authorized in writing by the Consultant.

- 30. Release of Reports and Information.** Any reports, information, data, or other material given to, prepared by or assembled by the Consultant as part of the work or services under these specifications shall be the property of City and shall not be made available to any individual or organization by the Consultant without the prior written approval of the City.

The Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the City and receipt of the City's written permission.

- 31. Copies of Reports and Information.** If the City requests additional copies of reports, drawings, specifications, or any other material in addition to what the Consultant is required to furnish in limited quantities as part of the work or services under these specifications, the Consultant shall provide such additional copies as are requested, and City shall compensate the Consultant for the costs of duplicating of such copies at the Consultant's direct expense.

- 32. Attendance at Meetings And Hearings.** Consultant shall attend as many "working" meetings with staff as necessary to accomplish the work scope tasks. Consultant shall attend workshops with the public, and City commission, committee or Council meetings as identified in the approved work scope.

- 33. Permit and Filing Fees.** The Consultant shall procure all permits, and licenses, pay all charges and fees and file all notices necessary as they pertain to the completion of the Consultant's work. The City will pay all application fees for permits required for the completion of the project work. The City requires a 10-day notice to issue a check.

- 34. Project Proposal Submittal.** Upon City request, the Consultant shall submit a proposed work scope, compensation and schedule within 10 working days. The cost proposal shall include all costs including miscellaneous direct cost items.

- 35. Consultant Invoices.** The Consultant shall deliver a monthly invoice to the City, itemized by project work phase or, in the case of on-call contracts, by project title. Invoice must include a breakdown of hours billed and miscellaneous charges and any sub-consultant invoices, similarly broken down, as supporting detail.

- 36. Payment.** For providing services as specified in this Agreement, City will pay and Consultant shall receive therefore compensation in a total sum not to exceed the agreed upon project fee. Should the Consultant's work products contain errors or deficiencies, the Consultant shall be required to correct them at no increase in cost to the City.

The Consultant shall be reimbursed for hours worked at agreed-upon hourly rates. Hourly rates include direct salary costs, employee benefits, overhead and fee. In addition, the Consultant shall be reimbursed for direct costs other than salary and vehicle cost that have been identified and are attached to this agreement. The Consultant's personnel shall be reimbursed for per diem expenses at a rate not to exceed that currently authorized for State employees under State Department of Personnel Administration rules.

**37. Payment Terms.** The City's payment terms are 30 days from the receipt and approval of an original invoice and acceptance by the City of the materials, supplies, equipment or services provided by the Consultant (Net 30).

**38. Resolution of Disputes.** Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the City's Project Manager and the City Director of Public Works, who may consider written or verbal information submitted by the Consultant. Not later than thirty days after completion of all deliverables necessary to complete the plans, specifications and estimate, the Consultant may request review by the City Council of unresolved claims or disputes, other than audit, in accordance with Chapter 1.20 Appeals Procedure of the Municipal Code.

Any dispute concerning a question of fact arising under an audit of this contract that is not disposed of by agreement, shall be reviewed by the City's Chief Fiscal Officer. Not later than 30 days after issuance of the final audit report, the Consultant may request a review by the City's Chief Fiscal Officer of unresolved audit issues. The request for review must be submitted in writing.

Neither the pendency of a dispute, nor its consideration by the City will excuse the consultant from full and timely performance in accordance with the terms of this contract.

**39. Agreement Parties.**

<b>City:</b>	Derek Johnson	<b>Consultant:</b>
	City of San Luis Obispo	
	919 Palm Street	
	San Luis Obispo, CA 93401	

All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered or certified mail addressed as shown above.

**40. Incorporation by Reference.** The City Request for Proposal Specification # 91343 and Consultant's proposal are hereby incorporated in and made a part of this Agreement.

**41. Amendments.** Any amendment, modification or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the Finance Director.

**42. Working Out of Scope.** If, at any time during the project, the consultant is directed to do work by persons other than the City Project Manager and the Consultant believes that the work is outside of the scope of the original contract, the Consultant shall inform the Project Manager immediately. If the Project Manager and Consultant both agree that the work is outside of the

project scope and is necessary to the successful completion of the project, then a fee will be established for such work based on Consultant's hourly billing rates or a lump sum price agreed upon between the City and the Consultant. Any extra work performed by Consultant without prior written approval from the City Project Manager shall be at Consultant's own expense.

**43. Complete Agreement.** This written agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral agreement, understanding or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding or representation be binding upon the parties hereto. For and in consideration of the payments and agreements hereinbefore mentioned to be made and performed by City, Consultant agrees with City to do everything required by this Agreement, the said specification and incorporated documents.

**44. Authority to Execute Agreement.** Both City and Consultant do covenant that each individual executing this agreement on behalf of each party is a person duly authorized and empowered to execute Agreements for such party.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

CITY OF SAN LUIS OBISPO:

CONSULTANT:

\_\_\_\_\_  
Katie Lichtig, City Manager

\_\_\_\_\_  
By:

APPROVED AS TO FORM:

\_\_\_\_\_  
Christine Dietrick, City Attorney

Section E  
**PROPOSAL SUBMITTAL FORMS**

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**ACKNOWLEDGEMENT**

The undersigned declares that she or he:

- Has carefully examined the Proposal Specification
- Is thoroughly familiar with its content
- Is authorized to represent the proposing firm; and
- Agrees to perform the work as set forth in the specification and this proposal.

Firm Name and Address:		
Contact Name:		
Email:	Fax:	Phone:

Signature of Authorized Representative:	Date:
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**INSURANCE CERTIFICATE**

\_\_\_\_\_ Insurance Company's A.M. Best Rating

Certificate of insurance attached

**STATEMENT OF PAST CONTRACT DISQUALIFICATIONS**

The Consultant shall state whether it or any of its officers or employees who have a proprietary interest in it, has ever been disqualified, removed, or otherwise prevented from violation of law, a safety regulation, or for any other reason, including but not limited to financial difficulties, project delays, or disputes regarding work or product quality, and if so to explain the circumstances.

Do you have any disqualification as described in the above paragraph to declare?  Yes  No

If yes, explain the circumstances.

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Executed on \_\_\_\_\_ at \_\_\_\_\_ under penalty of perjury of the laws of the State of California, that the foregoing is true and correct.

\_\_\_\_\_  
Signature of Authorized Consultant Representative

**REFERENCES**

Number of years engaged in providing the services included within the scope of the specifications under the present business name: \_\_\_\_\_

Describe fully the last three contracts performed by your firm that demonstrate your ability to provide the services included with the scope of the specifications. Attach additional pages if required. The City reserves the right to contact each of the references listed for additional information regarding your firm's qualifications.

**Reference No. 1**

Customer Name	
Contact Individual	
Telephone & Email	
Street Address	
City, State, Zip Code	
Date of Services	
Contract Amount	
Description of Services	
Project Outcome	

**Reference No. 2**

Customer Name	
Contact Individual	
Telephone & Email	
Street Address	
City, State, Zip Code	
Date of Services	
Contract Amount	
Description of Services	
Project Outcome	

**Reference No. 3**

Customer Name	
Contact Individual	
Telephone & Email	
Street Address	
City, State, Zip Code	
Date of Services	
Contract Amount	
Description of Services	
Project Outcome	

Section F

**INSURANCE REQUIREMENTS: Consultant Services**

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The Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, employees or sub-consultants.

**Minimum Scope of Insurance.** Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 20 10 Prior to 1993 or CG 20 10 07 04 with CG 20 37 10 01 or the exact equivalent as determined by the City).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions Liability insurance as appropriate to the consultant's profession.

**Minimum Limits of Insurance.** Consultant shall maintain limits no less than:

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

**Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**Other Insurance Provisions.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, official, employees, agents or volunteers.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. The Consultant agrees to notify the City in the event that the policy is suspended, voided or reduced in coverage or limits. A minimum of 30 days prior written notice by certified mail, return receipt requested, will be provided.

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

**Verification of Coverage.** Consultant shall furnish the City with a certificate of insurance showing maintenance of the required insurance coverage. Original endorsements effecting general liability and automobile liability coverage required by this clause must also be provided. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences.