

**PROFESSIONAL SERVICES AGREEMENT**

**between**

**STANISLAUS REGIONAL TRANSIT AUTHORITY (StanRTA),**

**and**

THIS AGREEMENT is made and entered into as of \_\_\_\_\_, 202\_\_ by and between the Stanislaus Regional Transit Authority, a joint powers authority established under California Government Code section 6500 et seq., hereinafter referred to as “StanRTA” and \_\_\_\_\_, hereinafter referred to as “CONSULTANT”.

**WITNESSETH**

WHEREAS, StanRTA desires to retain and utilize the services of CONSULTANT to provide professional services; and

WHEREAS, CONSULTANT is uniquely trained, experienced, competent and qualified to perform such professional services required by this AGREEMENT.

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

**AGREEMENT**

**1.0. SCOPE OF SERVICES**

1.1. The work to be performed by CONSULTANT is specified in Exhibit “A,” “Scope of Services” and the approved CONSULTANT’s Cost Proposal dated \_\_\_\_\_, specified in Exhibit “B,” “Cost Proposal” both of which are attached hereto and incorporated by reference.

1.2. Services and work provided by the CONSULTANT at StanRTA’s request under this AGREEMENT shall be performed in a timely manner and shall be consistent with all requirements and standards established by applicable Federal, State, and local laws, ordinances, regulations, and resolutions.

1.3. CONSULTANT must be expressly authorized to perform any of the required services under this AGREEMENT by the Chief Executive Officer of StanRTA or a designated representative, who shall administer this AGREEMENT. CONSULTANT shall report progress of work on a monthly basis or as determined by the Chief Executive Officer or a designated representative.

**2.0. TERM**

2.1. CONSULTANT's services herein under shall commence upon StanRTA's written authorization to proceed and shall be completed according to a mutually agreed-upon schedule for services and work as identified in Exhibit "A" unless terminated or extended as hereinafter provided.

### 3.0. TERMINATION

3.1. StanRTA may terminate this AGREEMENT, in whole or in part, at any time prior to completion by CONSULTANT of the work specified in Exhibit "A", upon five (5) calendar days written notice to CONSULTANT. Upon receipt of written notice of such termination, CONSULTANT shall promptly cease all services on this project, unless the written notice of termination provides otherwise.

3.2. This AGREEMENT shall terminate automatically upon CONSULTANT's bankruptcy, insolvency or death.

3.3. All supporting studies, data, reports, plans, correspondence and other written, printed or tabulated material pertaining in any way to work performed, accumulated or generated by CONSULTANT pursuant to this AGREEMENT, whether finished or not, shall become the property of StanRTA and shall be delivered within ten (10) days of receipt of notice of termination by StanRTA.

3.4. After all documents are received from CONSULTANT, StanRTA shall pay CONSULTANT the sum due for work performed in accordance with Section 3.6.

3.5. CONSULTANT may terminate this AGREEMENT if StanRTA fails to make any undisputed payment to CONSULTANT when due in accordance with this AGREEMENT and such failure remains uncured for thirty (30) days after written notice to StanRTA of such default and of Consultant's intent to terminate.

3.6. If this AGREEMENT is terminated by either party, StanRTA shall pay CONSULTANT the sum due for work performed as of the date notice of termination is received for which payment has not been made. In no event shall this sum exceed the total compensation to be paid CONSULTANT as set forth in Section 4.3. Such payment shall be CONSULTANT's sole and exclusive compensation and StanRTA shall have no further liability or obligation to CONSULTANT for any other compensation, including without limitation, anticipated profit, prospective losses or consequential damages of any kind.

### 4.0. COMPENSATION AND METHOD OF PAYMENT

4.1. CONSULTANT shall perform all work described in Exhibit "A" of this AGREEMENT and receive compensation on a time and materials basis for all work performed in accordance with Exhibit "A" of this AGREEMENT. StanRTA shall pay CONSULTANT on the basis of the progress as reported by authorized activities and hours expended.

4.2. The CONSULTANT will be reimbursed for hours worked at the hourly rate specified in the approved Cost Proposal.

4.3. Subject only to duly executed change orders, it is expressly understood and agreed that in no event will the total compensation to be paid CONSULTANT under this AGREEMENT exceed the sum of \_\_\_\_\_AND 00/100 (\$AMOUNT).

4.4. StanRTA shall make payment monthly to CONSULTANT within thirty (30) calendar days of receipt of an acceptable invoice. Payment shall be based on the hours reported by the CONSULTANT. All invoices shall not be more often than monthly and shall be made in writing and delivered, mailed, or **emailed** to StanRTA as follows:

Stanislaus Regional Transit Authority  
1010 10<sup>th</sup> Street  
Modesto, CA 95354  
Attention: Accounts Payable  
**Email:**

4.5. Except as expressly provided in this AGREEMENT, CONSULTANT shall not be entitled to nor receive from StanRTA any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this AGREEMENT. Specifically, CONSULTANT shall not be entitled by virtue of this AGREEMENT to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

4.6. CONSULTANT shall be reimbursed for travel, lodging, meals, and incidentals where travel is authorized and required by StanRTA for the performance of CONSULTANT's services. Receipts for travel expenses will be required at time of invoicing; and all charges must be exclusively for services performed for this AGREEMENT and a hard copy audit trail available upon request.

4.7. Unless otherwise provided in Exhibit "A", CONSULTANT shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for CONSULTANT to provide the services identified in Exhibit "A" of this AGREEMENT. StanRTA is not obligated to reimburse or pay CONSULTANT for any expense or cost incurred by CONSULTANT in procuring or maintaining such items. Responsibility for the costs and expenses incurred by CONSULTANT in providing and maintaining such items is the sole responsibility and obligation of CONSULTANT.

4.8. StanRTA will not withhold any Federal or State income taxes or Social Security tax from any payments made by StanRTA to CONSULTANT pursuant to this AGREEMENT. StanRTA has no responsibility or liability for payment of CONSULTANT'S taxes or assessments.

4.9. All Subcontracts in excess of \$25,000 shall contain the provisions contained in this Section 4.

#### 5.0. CHANGES AND EXTRA SERVICES

5.1. StanRTA and CONSULTANT may mutually agree to changes in the services to be performed by CONSULTANT. All such changes shall be incorporated in written change orders which shall specify the changes ordered and the adjustment of compensation and completion time required thereof. All change orders shall be executed by the Chief Executive Officer of StanRTA or a designated representative, and CONSULTANT.

5.2. Any services added to the scope of this AGREEMENT by a change order shall be executed under all applicable conditions of this AGREEMENT. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed change order.

## 6.0. INSURANCE

6.1. CONSULTANT shall, at its own expense, procure and maintain in effect at all times during this AGREEMENT, insurance coverage provided by a California admitted insurer licensed to transact business in California, as least as broad as hereinafter provided, including insurance coverage against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services set forth in Exhibit "A" of this AGREEMENT by the CONSULTANT or CONSULTANT's agents, representatives, employees, or subcontractors as follows:

### A. General Liability.

Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than ONE MILLION DOLLARS (\$1,000,000). If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act by CONSULTANT under this AGREEMENT or the general aggregate limit shall be twice the required occurrence limit.

### B. Automobile Liability Insurance.

If the CONSULTANT or the CONSULTANT's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this AGREEMENT, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury damage with limits of no less than ONE MILLION DOLLARS (\$1,000,000) per incident or occurrence, and providing property damage liability of no less than TWO HUNDRED FIFTY THOUSAND DOLLARS \$250,000 per incident or occurrence.

### C. Workers' Compensation Insurance.

Workers' Compensation Insurance as required by the California Labor Code. In signing this AGREEMENT, the CONSULTANT certifies under section 1861 of the California Labor Code that CONSULTANT is aware

of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and that the CONSULTANT will comply with such provisions before commencing the performance of the work of this contract, as necessary.

- D. Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000.00).

6.2. Deductibles, Self-Insured Retentions, Named Insured. Any deductibles, self-insured retentions, or name insureds must be declared in writing and approved by StanRTA.

6.3. Waiver of Subrogation, Additional Insured. The insurance policies are to contain, or be endorsed to contain, the following provisions:

- A. General Liability and Automobile Liability Coverages.

Endorsement providing that the CONSULTANT'S insurance shall waive all rights of subrogation against StanRTA's insurers and StanRTA; or the CONSULTANT'S insurance shall list StanRTA as additional insureds under the insurance policy.

- B. Worker's Compensation Coverages.

Endorsements providing that the CONSULTANT'S insurance shall waive all rights of subrogation against StanRTA's insurers and StanRTA.

6.4. Other Insurance provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

- A. General Liability and Automobile Liability Coverages.

Endorsements providing that such insurance is the primary insurance and no insurance of StanRTA will be called upon to contribute to a loss.

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.

- B. All Coverage.

Each insurance policy required by this paragraph shall not be altered, suspended, voided, or canceled by either party, or reduced in coverage or

in limits except after thirty (30) calendar days' prior written notice by certified mail, return receipt requested, has been given to StanRTA.

Any failure of CONSULTANT to comply with reporting provisions of the policies shall not affect coverage provided to StanRTA or StanRTA's board members, officers, employees, or volunteers.

6.5. Verification of Coverage. Prior to performing any term or condition of the AGREEMENT, CONSULTANT shall furnish StanRTA with evidence of insurance effecting coverage required by this section.

6.6. Subcontractors. All insurance coverage for subcontractors shall be subject to all of the insurance and indemnity requirements stated herein.

#### 7.0. STATUS OF CONSULTANT

7.1. All acts of the CONSULTANT, its agents, officers, employees, and all others acting on behalf of the CONSULTANT relating to the performance of this AGREEMENT, shall be performed as independent contractors and not as agents, officers, or employees of StanRTA. CONSULTANT has full control over the employment, direction, compensation and discharge of all persons employed by CONSULTANT who are assisting in performance of services under this AGREEMENT. CONSULTANT shall be responsible for its own acts and those of its agents and employees during the term of this AGREEMENT. CONSULTANT, by virtue of this AGREEMENT, has no authority to bind or incur any obligation on behalf of StanRTA. Except as expressly provided in Exhibit "A", CONSULTANT has no authority or responsibility to exercise any rights or power vested in StanRTA. No agent, officer, or employee of StanRTA is to be considered an employee of the CONSULTANT. It is understood by both CONSULTANT and StanRTA that this AGREEMENT shall not, under any circumstances, be construed or considered to create an employer-employee relationship or a joint venture.

7.2. If in the performance of this AGREEMENT, CONSULTANT employs any third persons, such persons shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law, shall be determined by the CONSULTANT.

7.3. It is understood and agreed that as an independent contractor and not an employee of StanRTA, neither the CONSULTANT nor CONSULTANT's assigned personnel shall have any entitlement as a StanRTA employee, right to act on behalf of StanRTA in any capacity whatsoever as an agent, or to bind StanRTA to any obligation whatsoever.

7.4. It is further understood and agreed that CONSULTANT must issue W-2 forms or the forms as required by law for income and employment tax purposes for all of CONSULTANT's assigned personnel under terms and conditions of the AGREEMENT.

7.5. As an independent contractor, CONSULTANT hereby indemnifies and holds StanRTA harmless from any and all claims that may be made against StanRTA based upon any contention by any third party that employer-employee relationship exists by reason of this

AGREEMENT except where StanRTA controls, directs, supervises or trains CONSULTANT's employees.

7.6. A material covenant of this AGREEMENT is that CONSULTANT shall assign the individuals designated below to perform the functions designated so long as they continue in the employ of CONSULTANT. The designated individual(s) shall, so long as their performance continues to be acceptable to StanRTA, remain in charge of the work and services as identified in Exhibit "A" from beginning through completion.

A. Project Manager: \_\_\_\_\_

#### 8.0. DEFENSE AND INDEMNIFICATION

8.1. CONSULTANT, its agents, officers, and employees shall defend, indemnify, and hold harmless StanRTA, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with the performance of this AGREEMENT, including the negligent or wrongful acts in the performance of this AGREEMENT, by CONSULTANT or CONSULTANT's agents, officers, employees and subcontractors, or any of them. CONSULTANT's obligation to defend, indemnify, and hold StanRTA, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property including the loss of use. CONSULTANT's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs which is caused in whole or in part by any negligent or wrongful act or omission of the CONSULTANT, its agents, employees, or any one directly or indirectly employed by any of them.

8.2. CONSULTANT's obligation to defend, indemnify, and hold StanRTA, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirements in this AGREEMENT for CONSULTANT to procure and maintain a policy of insurance.

8.3. To the extent permitted by law, StanRTA shall indemnify, hold harmless and defend CONSULTANT and its officers, employees, agents, representatives or subcontractors from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of or resulting from any negligence or wrongful acts of StanRTA and its officers, or employees in the performance of this AGREEMENT.

8.4. Notwithstanding any other provision of this AGREEMENT, the total aggregate liability of CONSULTANT arising out of the breach of this AGREEMENT shall not exceed the CONSULTANT'S contract value paid under this AGREEMENT. CONSULTANT and StanRTA shall not be liable to each other for indirect or consequential damages, including loss of use, revenue or profit, if such damages are asserted on the basis of breach of contract. The waiver of liability shall not apply to such damages as may be incurred and claimed by StanRTA.

## 9.0. REQUIRED LICENSES, CERTIFICATES, AND PERMITS

9.1. Any licenses, certificates, or permits required by the Federal, State, County, or local governments for CONSULTANT to provide the services and work described in Exhibit “A” must be procured by CONSULTANT and valid at the time CONSULTANT enters into this AGREEMENT. Further, during the term of this AGREEMENT, CONSULTANT must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver’s licenses, professional licenses or certificates, and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to StanRTA.

## 10.0. StanRTA PROPERTY

10.1. All data, reports, surveys, studies, drawings, and other documents and materials made available to CONSULTANT by StanRTA for use by CONSULTANT in the performance of its services under this AGREEMENT shall be made available for information only and shall be returned to StanRTA at the completion or termination of this AGREEMENT, if so requested by StanRTA.

10.2. CONSULTANT shall be entitled to reasonably rely upon the accuracy and completeness of StanRTA and others records and information provided to CONSULTANT. CONSULTANT shall not be held responsible for reasonable reliance on documentation/data, and reports provided by StanRTA or others where defects or deficiencies are later found in such work. CONSULTANT will not bear any responsibility or liability for such defects or deficiencies or for the failure to so detect. The CONSULTANT shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with any future project since these efforts are solely StanRTA’s and others responsibility.

10.3. All drawings, designs, specifications, manuals, reports, studies, surveys, models, and any other documents, materials, data, and products prepared by CONSULTANT in connection with the services under this AGREEMENT shall be the property of StanRTA and copies shall be delivered to StanRTA upon completion of the work, upon request by StanRTA, or upon termination of this AGREEMENT. CONSULTANT shall be responsible for the preservation of any and all such documents, materials, data, and products prior to transmittal to StanRTA; and CONSULTANT shall replace any such documents, materials, data and products as are lost, destroyed, or damaged while in its possession without additional cost to StanRTA. CONSULTANT shall not sell any of the above documents and products prepared by CONSULTANT under this AGREEMENT to any other party without the express written consent of StanRTA. Any third party use of documents and materials prepared by CONSULTANT or the CONSULTANT’s subcontractors in execution of this AGREEMENT should reference CONSULTANT as the preparer of that document or material. At the termination of the AGREEMENT, CONSULTANT will convey possession and title to all such properties to StanRTA.

## 11.0. COPYRIGHTS



11.1. CONSULTANT shall be free to copyright material developed under this AGREEMENT with the provision that StanRTA and the funding agencies reserve a royalty-free non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, the material for government or public purposes. StanRTA and the funding sources shall be credited on all materials developed under this AGREEMENT.

## 12.0. SUBCONTRACTS

12.1. CONSULTANT shall not subcontract all or any portion of its services under this AGREEMENT without the prior written approval of the Chief Executive Officer of StanRTA, and any attempt shall be void and unenforceable. In the event that CONSULTANT enters into one or more subcontracts pursuant to this article, it is understood and agreed that the participating subcontractors shall be solely and directly responsible to CONSULTANT and StanRTA shall have no obligation to them.

12.2. CONSULTANT shall include all provisions of this AGREEMENT, modified only to show the particular contractual relationship, in all its subcontracts connected with carrying out its AGREEMENT, except contracts for standard commercial supplies of raw materials. No subcontract shall include a cost plus a percentage of cost method of payment.

## 13.0. ASSIGNMENT OF AGREEMENT

13.1. CONSULTANT shall not assign or subcontract this AGREEMENT, or any part thereof without prior express written consent of StanRTA, and any attempt shall be void and unenforceable. Further, CONSULTANT shall not assign any monies due or to become due under this AGREEMENT without the prior written consent of StanRTA.

## 14.0. EQUAL EMPLOYMENT OPPORTUNITY

14.1. In connection with the performance of services provided for under this AGREEMENT, it is agreed that CONSULTANT, its agents, officers, and employees shall not, on the basis of race, color, religion, sex (including pregnancy, childbirth, or related medical conditions), national origin, ancestry, age, physical or mental disability, legally-protected medical condition, family care status, veteran status, marital status, sexual orientation, or any other basis protected by state or federal laws, unlawfully discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

14.2. CONSULTANT and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900, et seq.) and the applicable regulations promulgated thereunder in the California Code of Regulations.

14.3. In the event of CONSULTANT's noncompliance with the nondiscrimination clause of this AGREEMENT or with any such rules, regulations or orders, this AGREEMENT may be cancelled, terminated or suspended in whole or in part and CONSULTANT may be declared ineligible for further StanRTA contracts.

14.4. CONSULTANT shall comply with all Federal, State and local laws and ordinances applicable to the work. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

14.5. If this AGREEMENT is for services which will receive financial assistance authorized under a law administered by the U.S. Department of Transportation, CONSULTANT shall comply with the provisions of the U.S. Department of Transportation Standard Title VI Assurances and Non-Discrimination Provisions, DOT 1050.2A, Appendix A and E, which, if applicable, will be set forth in full as Exhibit "C" attached hereto and incorporated by reference.

15.0. DISADVANTAGED BUSINESS ENTERPRISE (D.B.E.)

15.1. Policy. It is the policy of StanRTA that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR, Part 26, shall have the maximum opportunity to participate in the performance of work under this AGREEMENT. The D.B.E. requirements of 49 CFR, Part 26, apply to this AGREEMENT. StanRTA shall not discriminate on the basis of race, color, religion, sex (including pregnancy, childbirth, or related medical conditions), national origin, ancestry, age, physical or mental disability, legally-protected medical condition, family care status, veteran status, marital status, sexual orientation, or any other basis protected by state or federal laws in the award and performance of any DOT-assisted contract or in the administration of the Disadvantaged Business Enterprise (DBE) Program or the requirements of 49 CFR part 26. StanRTA shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. StanRTA'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 a violation of this AGREEMENT. Upon notification to StanRTA 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. 3901 et seq.).

15.2. Contract Assurance. CONSULTANT shall not discriminate on the basis of race, color, religion, sex (including pregnancy, childbirth, or related medical conditions), national origin, ancestry, age, physical or mental disability, legally-protected medical condition, family care status, veteran status, marital status, sexual orientation, or any other basis protected by state or federal laws in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy, as receipt deems appropriate.

15.3. D.B.E. Obligation. CONSULTANT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR, Part 26 has the maximum opportunity as subcontractors to compete for work and perform under this AGREEMENT.

15.4. Prompt Payment of Funds. No retainage will be held by StanRTA from payments due the CONSULTANT. Any retainage held by the CONSULTANT from payments due any subcontractors shall be promptly paid in full to subcontractors for satisfactory

performance no later than ten (10) days from the receipt of each payment the CONSULTANT receives from StanRTA. Federal law (49 CFR 26.29) requires that any delay or postponement of payment beyond thirty (30) days may take place for good cause and with StanRTA's prior written approval. Any violation of this provision shall subject the CONSULTANT to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the CONSULTANT in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subcontract performance, or noncompliance by a subcontractor. This provisions applies to both DBE and non-DBE prime contractors and subcontractors.

15.5. DBE Records. The Contractor shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE Consultant's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

- A. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report - Utilization of Disadvantaged Business Enterprises (DBE)," certified correct by the CONSULTANT or the CONSULTANT's authorized representative and shall be furnished to StanRTA with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the CONSULTANT when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to StanRTA.

15.6. DBE Certification and De-Certification Status. If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the CONSULTANT in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the CONSULTANT in writing with the date of certification. Any changes should be reported to StanRTA within thirty (30) days.

15.7. Any subcontract in excess of \$25,000 entered into as a result of this AGREEMENT, shall contain all the provisions contained in this Section 15.

#### 16.0. NONDISCRIMINATION CIVIL RIGHTS ACT OF 1964

16.1. CONSULTANT shall comply with all applicable provisions of Title VI of the Civil Rights Act of 1964, as amended. Accordingly, during the performance of this AGREEMENT, the CONSULTANT shall comply with the provisions contained in 49 CFR 21 through Appendix C, 23 CFR 710.405(b) and 28 CFR 50.3, which are made a part of this AGREEMENT.

## 17.0. PROHIBITED INTEREST

17.1. No member, officer, or employee of StanRTA, during his/her tenure or for one year prior to or thereafter shall have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof. No member of or delegate to the Congress of the United States or the Legislature of the State of California shall be admitted to have any share or part of this AGREEMENT or to any benefit arising therefrom. The date of determination shall be the date of AGREEMENT execution.

## 18.0. CONFLICTS

18.1. CONSULTANT hereby certifies that it presently has no interest and shall not acquire any financial or business interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT no person having any such interest shall be employed by CONSULTANT.

18.2. CONSULTANT further certifies that it has made a complete disclosure to StanRTA of all the facts bearing upon any possible financial, business, or other interest, direct or indirect, which it believes any member of StanRTA, other officer, agent or employee of StanRTA presently has, or will have in this AGREEMENT, in the performance thereof, in any portion of the profits thereunder, or in any ensuing StanRTA construction project. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by StanRTA.

18.3. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Section 18.

## 19.0. COVENANT AGAINST CONTINGENCY FEES

19.1. The CONSULTANT warrants that it has not employed nor retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this AGREEMENT, and it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this AGREEMENT. For breach or violation of this warranty, StanRTA shall have the right to terminate this AGREEMENT without liability, or at 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.

## 20.0. STATEMENT OF COMPLIANCE

20.1. The CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

## 21.0. DEBARMENT AND SUSPENSION CERTIFICATION

21.1. The CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to StanRTA.

21.2. Exceptions will not necessarily result in denial of award of the agreement, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

## 22.0. LAWS AND REGULATIONS

22.1. CONSULTANT shall comply with any and all laws, statutes, ordinances, rules, regulations, and procedural requirements of the Federal, State or local government, and any agency of such government, including, but not limited to StanRTA, the Federal Highway Administration, Caltrans, and the Office of Management and Budget (OMB) which relate to or in any manner affect the performance of this AGREEMENT. Those laws, statutes, ordinances, rules, regulations and procedural requirements which are imposed on StanRTA as a recipient of Federal or State funds are hereby imposed on CONSULTANT including, but not limited to, OMB Circular A-102 Attachment O as referenced in 23 CFR 172.7 which are herein incorporated by this reference and made a part thereof.

## 23.0. RECORDS AND AUDIT

23.1. CONSULTANT shall retain and maintain all writings, documents, and records prepared in connection with the performance of this AGREEMENT for a minimum of four (4) years from the termination or completion of the AGREEMENT. This includes any handwriting, typewriting, printing, photocopying, photographing, and every other means of recording upon any tangible or intangible thing, any form of communication or representation including letters, words, pictures, sounds, or symbols or any combination thereof.

23.2. Any authorized representative of StanRTA shall have reasonable access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by CONSULTANT. Further, StanRTA has the right at all reasonable times to audit, inspect, or otherwise evaluate the work performed or being performed under this AGREEMENT.

23.3. Subcontracts in excess of \$25,000 shall contain this Section 23.

#### 24.0. COST PRINCIPLES

24.1. In connection with selection of the CONSULTANT and services provided under this AGREEMENT, CONSULTANT hereby agrees that it has complied with Federal Acquisition Regulations Title 48 of the Code of Federal Regulations, Part 1-31, Subpart 31.2 (Contract with Commercial Organizations as modified by Subpart 31.102); 23 Code of Federal Regulations Part 172.7(d); 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; and, Office of Management and Budget Circular A-102 Attachment O.

#### 25.0. WAIVER OF DEFAULT

25.1. Waiver of any default by either party to this AGREEMENT shall not be deemed a waiver of any subsequent default. Waiver or breach of any provision of this AGREEMENT shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this AGREEMENT unless modified pursuant to the terms of this AGREEMENT.

#### 26.0. FORCE MAJEURE

26.1. Neither party shall be in default by reason of any failure in performance of this AGREEMENT if such failure arises out of causes beyond their control and without the fault or negligence of said party, including, without limitation, the following: (1) Acts of God; (2) war; (3) terrorism or other acts of public enemy; (3) strikes and other labor difficulties. If the performance of any obligation hereunder is prevented or delayed due to a cause in the preceding sentence, the time for performance or observance will be extended for the period that the action is delayed or prevented by the cause.

#### 27.0. RESOLUTION OF CONFLICT

27.1. All questions pertaining to the validity and interpretation of this AGREEMENT shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State. Any dispute not resolved by informal arbitration between the parties to this AGREEMENT may be adjudicated in a court of law under the laws of the State of California.

#### 28.0. SEVERABILITY

28.1. If any portion of this AGREEMENT or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any Federal, State, or local statutes, ordinances, or regulations the remaining provisions of this AGREEMENT or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this AGREEMENT are severable.

## 29.0. AMENDMENT

29.1. This AGREEMENT may be modified, amended, changed, added to, or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this AGREEMENT and attached to the original AGREEMENT to maintain continuity.

## 30.0. NOTICES

30.1. Except for invoices submitted by CONSULTANT pursuant to this AGREEMENT, any notice, communication, amendments, additions, or deletions to this AGREEMENT including change of address of either party during the term of this AGREEMENT which CONSULTANT or StanRTA shall be required or may desire to make, shall be in writing and may be personally served, mailed by prepaid, certified or registered mail or overnight courier, or transmitted by facsimile or electronic mail transmission, to the respective parties as follows:

### To StanRTA:

Stanislaus Regional Transit Authority  
1010 10<sup>th</sup> Street  
Modesto, CA 95354

### **FAX:**

Email: pmcguire@stanrta.org  
Attention: Phil McGuire, Chief Executive Officer

### To CONSULTANT:

Attention:

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) business day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is faxed or sent electronically, provided that the sender has received a confirmation of such fax or electronic transmission.

## 31.0. ENTIRE AGREEMENT

31.1. This AGREEMENT contains the entire AGREEMENT of the parties and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated unless the same is in writing executed by the parties hereto. CONSULTANT and StanRTA represent that, in

entering this AGREEMENT, they have not relied on any previous representations, inducements, or understandings of any kind or nature.

32.0. BENEFIT OF AGREEMENT

32.1. This AGREEMENT shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.

33.0. COUNTERPARTS AND ELECTRONIC SIGNATURES

33.1. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

33.2. Each party agrees that this AGREEMENT and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this AGREEMENT or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

IN WITNESS WHEREOF, this AGREEMENT has been executed by the parties hereto and shall become effective when executed by both parties.

**Stanislaus Regional Transit Authority,  
a Joint Powers Agency**

\_\_\_\_\_

\_\_\_\_\_  
Philip McGuire  
Its Chief Executive Officer

\_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**EXHIBIT A**  
**SCOPE OF SERVICES**

**EXHIBIT B  
COST PROPOSAL**

**EXHIBIT C**  
**DOT STANDARD TITLE VI ASSURANCES AND**  
**NON-DISCRIMINATION PROVISIONS**