



City of Ceres • City of Hughson • City of Modesto • City of Newman • City of Oakdale • City of Patterson
City of Riverbank • City of Turlock • City of Waterford • County of Stanislaus

REQUEST FOR PROPOSAL

StanCOG Transportation Model Update

SUSPENDED UNTIL FURTHER NOTICE

PROPOSALS MUST BE RECEIVED

ON OR BEFORE

4:00 P.M. October 8, 2009

**SEND PROPOSALS TO THE ATTENTION OF:
VINCE HARRIS, EXECUTIVE DIRECTOR
STANISLAUS COUNCIL OF GOVERNMENTS
1111 "I" Street, Suite 308
MODESTO, CALIFORNIA 95354**

REQUEST FOR PROPOSALS (RFP)

StanCOG Transportation Model Update

I) INTRODUCTION

The Stanislaus Council of Governments (StanCOG) is soliciting proposals for transportation consulting firms to enhance the application of our travel demand model program.

The Proposal shall also meet all the requirements as listed in the "Scope of Services" section below. This Request for Proposal (RFP) describes the project, the required scope of services, the consultant selection process, and the minimum information that must be included in the submitted proposals.

II) AGENCY BACKGROUND

StanCOG is the regional transportation planning agency and metropolitan planning organization for Stanislaus County and the cities of Ceres, Hughson, Modesto, Newman, Oakdale, Patterson, Riverbank, Turlock and Waterford. The agency was created in 1971 as a department of Stanislaus County and became autonomous in 2001. StanCOG is governed by a Policy Board comprised of elected representatives from the County and each incorporated city. Monthly board meetings provide the public forum and decision point for significant regional issues such as transportation, housing, and air quality. The Policy Board adopts plans, allocates transportation funds, establishes policies, and develops programs to address these regional issues.

Day to day, the agency manages the process of taking transportation projects from the planning phase through actual construction. StanCOG provides technical assistance to members, facilitates funding, and works with various community groups to identify transportation needs and solutions.

The agency assigns and distributes federal and state funds earmarked for specific transportation projects that improve maintenance, safety, relieves traffic congestion, and promotes economic development in Stanislaus County.

III) PROJECT DESCRIPTION

A. Project Background

StanCOG's Transportation Modeling program supports key planning activities in the region including the Air Quality Conformity Analysis, the Regional Transportation Plan update, the Congestion Management Program and the San Joaquin Valley Regional Blueprint. StanCOG's Transportation Modeling program also supports regional transportation planning studies, general plans, land use studies and traffic impact studies.

Transportation, land use and air quality are intrinsically linked. The purpose of StanCOG's model program is to maintain state of the art tools to measure such relationships addressed by the California Clean Air Act, the Federal Clean Air Amendments and SAFETEA-LU. StanCOG coordinates its technical program with al federal, state and local partners, the Central Valley COGS and the San Joaquin Valley Air Pollution Control District. Travel forecasts generated by StanCOG's model provide guidance and communication tools to decision makers' about the impact of their decisions regarding congestion, air quality and land use. Geographic Information Systems (GIS) is integrated with the modeling program for the purpose of describing and communicating transportation and land use information.

StanCOG maintains a regional model that contains a detailed road and highway network for Stanislaus County, its cities and its communities. StanCOG has maintained a regional model for the benefit of its partners since 1985 through regular updates of the land use database, travel assumptions and validation processes. In 1993 and 2000, Stan COG staff rebuilt the major components of the model. Today, a new model is under construction that will use new modeling software (CUBE 5.2) and integrate GIS fully with the transportation modeling program. Previous updates used MINUTP and TP+/Voyager software respectively.

The StanCOG model program has provided critical information to general plan and specific plan updates; it has been used frequently in corridor and traffic studies. It has provided essential information to the Regional Transportation Plans through the 1990's until 2007 when the last RTP was performed. The model program has provided key information for the accompanying Environmental impact report (EIR) and Air Quality Conformity Analyses. The StanCOG model program was fundamental in the development of level of service standards in the Congestion Management Program (CMP) and also instrumental in the identification of deficient roads and highways also in the (CMP).

The StanCOG model program use land use and demographic information collected in the decennial census; the data are applied to StanCOG's land use database files for use in the model program. Geographically referenced job data are collected from the Employment Development Department. Demographic forecast assumptions were prepared by demographers from the Association of Bay Area Governments (ABAG).

B. Project Objectives

The StanCOG modeling program will update key components of its modeling program for planning studies, Regional Transportation Plans, the Congestion Management Plan and Air Quality Analyses. A detailed road and highway network will be developed along with increased numbers of traffic analysis zones. Updated demographic data will accompany these details and result in land use planning tools and be made available to local jurisdictions to account for jobs and housing. Traffic assignment components will be developed to account for AM and PM traffic. Validation work and calibration checks will be made to enhance the modeling capability. Origin-destination data and traffic counts will be collected as part of the validation efforts. A mode share component will be added to the model to account for person trips by mode and mode shift. Model scripts will be prepared to assess the affect of land use density on transportation and green house gasses in response to State legislation. Technical Improvements in the model program along with integrated GIS tools will provide a robust cadre of travel and land use tools to assess externalities and support local, federal and state decision makers.

Schedule

StanCOG expects the successful firm to deliver the study in an expeditious period of time. Demonstration of a realistic schedule to achieve the completion of the project will be a consideration in awarding of the contract. All model products will be due December 31, 2010. Select model deliverables will have alternative schedules. Key dates will be provided after consultant selection.

C. Scope of Services

The Stanislaus Council of Governments (StanCOG) is soliciting proposals for transportation consulting firms to enhance the application of our travel demand model program. Specifically to:

1. Analyze the rates of auto and non-auto trips and collect information about traveler mode choice in the region; based on these data the consultant is requested to develop a mode choice component in the model program.
2. Analyze and prepare demographic information including auto ownership by jurisdiction and update trip generation rates for use in the model program; develop future scenarios consistent with Air Quality conformity milestone years.
3. Collect gateway information about through trips and trips with an origin or a destination outside the county including classification counts for use in the model program.
4. Design and collect data on alternative modes of transportation to assess mode share and mode choice policies including HOV, express transit, park and ride, pedestrian and bicycle and other transportation demand management practices relative to Single Occupant Vehicles (SOV). Construct modeling tools to analyze policies about HOV lanes and multiple passenger car assignments for use in the model program.
5. Collect student and University demographic data; develop school and university trip purposes for use in the model program.
6. Ensure that validation and calibration standards are maintained in the model program relative to the Caltrans Household survey and other survey sources.
7. Prepare written documentation on the model program and its source data.
8. Update model tools to estimate travel information to meet requirements in SB375 and AB32.
9. Assist staff with technical support for the Congestion Management Plan and the Regional Transportation plan.

D. Project Budget & Schedule

The total estimated budget range for consultant services is \$150,000.

E. Payment

The selected consultant will be paid by monthly invoices.

IV) PROPOSAL REQUIREMENTS

A. General

The submittal should be concise, well organized and demonstrate the Consultant's qualifications and experience applicable to the project. The submittal shall be limited to 30 one-sided pages (8.5 inches x 11 inches), inclusive of resumes, graphics, forms, pictures, photographs, dividers, front and back covers, cover letter, etc., but not of letters of commitment from subcontractors or DBE documentation. Letters of commitment will be under separate cover if requested by StanCOG. Type size and margins for text pages should be in keeping with accepted standard formats for desktop publishing and processing and should result in no more than five hundred (500) words per page.

B. Contents

Proposals submitted in response to this RFP shall be in the following order and must include at a minimum:

1. **Cover Letter**
Include a letter describing the firm's interest in providing the scope of services for the project. The person authorized by the firm to negotiate a contract with StanCOG shall sign the cover letter. Include the name, phone number, fax number and e-mail address of a contact person for the proposal process.
2. **Consultant Background/Financial Status**
 - a. Provide the legal name and address of the Consultant's company as well as the address of the office where the project manager will reside and where a majority of the work will be performed.
 - b. Indicate number of years in business as an environmental and engineering firm
 - c. Provide a brief history of the firm, including ownership structure and key personnel
 - d. Provide a Statement of Income and Retained Earnings, last five (5) years
 - e. Indicate changes in financial position, last five (5) years
 - f. Provide Balance sheet, last five (5) years
 - g. Provide latest Interim Balance sheet and Income Statement
 - h. List bonding and insurance companies.
3. **Experience and Technical Competence**
Describe the Consultant's experience in completing similar consulting efforts. List three (3) successfully completed projects of a similar nature. For each completed project provide the name of the client and project manager the consultant performed the work for, including telephone numbers, type of work performed, and dollar value of the contracts.
4. **Knowledge and Understanding of Local Environment and Relevant Laws**
Describe the Consultant's experience working in the local environment and proposed local presence for interfacing with StanCOG staff. The environment includes, but is not limited to: cities, county, transit operators, Caltrans and other local agencies' regulations and policies. Describe Consultant's experience with and knowledge of relevant State and Federal laws.

5. Project Organization and Key Personnel
 - a. Provide a statement of project understanding.
 - b. Describe project organization, including identification and responsibilities of key personnel.
 - c. Provide an organizational chart showing the relationship among key personnel, firm members and the agencies involved in the project.
 - d. Provide resumes of key personnel and the subcontractors proposed for the project.
 - e. Describe similar projects the team has completed.
 - f. Describe the role of the project manager and key staff in these similar projects.
 - g. Provide three (3) references for the project manager and key team members from their work on similar projects. Provide client's name and telephone numbers.
 - h. Indicate the workload of the project manager and key team members and their capacity to complete the scope of services.
 - i. Provide a brief description of the project management system that will be used to track project tasks, deliverables and expenditures.
 - j. Provide a project schedule to complete the scope of services.

6. Cost Estimates to perform the Scope of Work
Provide an estimate of the total direct and indirect costs to complete all tasks identified in the scope of work. A detailed cost breakdown shall be provided identifying:
 - a. the number of staff hours and hourly rates for each professional and administrative staff person who will be committed to this project, including fringe and overhead costs;
 - b. An estimate of all other direct costs, such as materials and reproduction costs; and
 - c. An estimate of sub-consultant services if needed.

V) SUBMITTAL REQUIREMENTS

Please submit five (5) copies of your written proposals, in a sealed package to:

The Stanislaus Council of Governments
Vincent J. Harris, Executive Director
1111 I Street, Suite 308
Modesto, CA 95354

Proposals submitted by facsimile or e-mail are not acceptable and will not be considered. Submittals must be received by October 8, 2009 This is a firm deadline. Proposals received after this time will be returned unopened to the respective firm and will not be considered for the evaluation. Postmarks will not be accepted. Please indicate name of consultant, project title, and package number (e.g., 1 of 2) on all packages.

Failure to comply with the requirements of the RFP may result in disqualification. StanCOG is not responsible for finding, correcting, or seeking clarification regarding ambiguities or errors in submittals. If a submittal is found to contain ambiguities or errors, it may receive a lower score during the evaluation process. Errors and ambiguities in submittals, including cost estimate to perform the work, will be interpreted in favor of StanCOG.

VI) PRE-SUBMITTAL ACTIVITIES

A. Questions Concerning Request for Proposals

All questions regarding the RFP must be received in writing via mail, facsimile, e-mail or hand delivery no later than 4:00 p.m. on October 1, 2009 and addressed to:

Jim Schoeffling, Associate Planner
Stanislaus Council of Governments
1111 I Street, Suite 308
Modesto, CA 95354
E-mail: jschoeffling@stancog.org

B. Pre-proposal Conference (Optional)

As a prospective firm, you may be invited to attend a pre-proposal conference (optional) to be held at 1:00 p.m. on September 23, 2009 at the StanCOG office located at 1111 I Street, Suite 308 Modesto, CA 95354

VII) PROPOSAL EVALUATION CRITERIA

Proposals will be evaluated based upon the following criteria and point system as assigned below. Oral interviews may be held if determined necessary. StanCOG reserves the right to add the consultants' interview scores into the evaluation criteria or to select consultants based solely upon their written proposals or oral interview.

A. Staff Qualifications and Project Experience [65 Points]

Points will be awarded on the experience of the consultants in performing similar work with public, government, private, not-for-profit, and other agencies. Project staff qualifications include a combination of experience, education and background in environmental planning, engineering, transportation and related infrastructure planning and finance, intergovernmental and community group coordination work. Specific considerations will be given to:

1. Understanding of the work to be performed.
2. Quality of the firm's response to the Request for Proposal including adherence to format, completeness, and extent of documentation;
3. The quality, experience, and availability of the proposed manager and staff for the project;
4. The qualifications, experience, ability, capacity, and skill of the firm to complete the project in the time specified, without delay;
5. The list of services to be provided, including the approach to project delivery;
6. Use of innovative and advanced techniques for this project or those used in previous projects;
7. The character, integrity, reputation, judgment, experience, and efficiency of the firm;
8. Demonstration of successful, on-time performance of similar projects;
9. The financial capacity of the firm to complete the project within the time specified;
10. The proposed cost to complete the project;
11. Other factor(s) deemed to be in the best interest of StanCOG.

Each member of the Evaluation Committee shall rate the firms separately. The scores of each of the Committee members shall then be aggregated to provide a total score for each of the firms.

B. Understanding of StanCOG and the need for quality transportation modeling tools[25 Points]

Qualified consultants must demonstrate an understanding of StanCOG's jurisdictions with respect to the basis and requirements of modeling tools as it relates to the historical, current and future regional transportation priorities associated with transportation planning and the institutional context therein.

C. Cost or Best Value [10 Points]

Proposals will be evaluated for the best services at the predetermined budget of \$150,000 and with the least amount of risk.

VIII) SOQ EVALUATION STEPS AND CONTRACTING PROCESS

The Evaluation Committee will consist of staff from StanCOG and representatives from its member agencies as determined necessary.

It is anticipated that the Evaluation Committee will take the following steps in evaluating proposals; however, a strict observance to the Evaluation Steps is not required. The following describes each evaluation step:

- Step 1 Review and Evaluate all proposals
- Step 2 Top 3 to 5 proposals/firms are short-listed
- Step 3 Proposals are ranked (interview conducted if needed)
- Step 4 Recommendation of Award to the Executive Director

The Evaluation Committee shall be responsible for performing the evaluation of each proposal, including an evaluation of the proposed costs to perform the work.

The Executive Director will review the recommendation from the Evaluation Committee and initiate contract negotiations with the highest ranked firm. If negotiations with the highest ranked firm are unsuccessful, negotiations will be repeated until an acceptable contract is negotiated and brought before the StanCOG Policy Board for approval.

IX) SELECTION AND HIRING SCHEDULE

The consultant selection and hiring process will be conducted on the following schedule:

September, 10, 2009	Request for Proposals (RFP) Issued
September, 23, 2009	Pre submittal Conference – 1:00 PM (Optional)
October 1, 2009	Last Day to Submit Questions Regarding RFP
October 8, 2009	Deadline for Submitting Proposals 4:00 PM
October 16, 2009	Proposal Screening / Consultant Interviews (Optional)
October 19, 2009	Consultant Contract Negotiations
November 12, 2009	Notice To Proceed

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X) ADDITIONAL REQUIREMENTS, POLICIES, TERMS AND CONDITIONS

A. StanCOG Affirmative Action Policy

StanCOG does not discriminate on the basis of race, religion, sex, sexual orientation, national origin, marital status, age, physical handicap, or ownership by women or minorities.

B. Disadvantaged Business Enterprise Goal (To be included only for federal aid contracts**)**

This proposal must comply with the Disadvantaged Business Enterprise ("DBE") program pursuant to the provisions of 49 CFR, Part 26. The FFY 2009/2010 DBE goal and methodology provides for a _____ percent race-conscious goal and a _____ percent race-neutral goal for an overall _____ percent program goal.

DBE information is set forth in Attachment "B," attached hereto and incorporated by reference. The successful proposer must complete, execute, and return to StanCOG the "StanCOG Proposer DBE Information" form attached hereto as Attachment "C," and incorporated by reference.

B. Cost of Preparation of Proposals and Contract

StanCOG shall not pay costs incurred in the proposal preparation, printing, and demonstration process or contract negotiation. All such costs shall be borne by the firm.

C. Rights of Pertinent Materials

All responses, inquiries, and correspondence relating to the Request for Proposal and all reports, charts, coverage maps, displays, exhibits, and other documentation produced by the firm are submitted as part of the proposal shall become the property of StanCOG after the proposal submission deadline.

Material that is confidential or proprietary should be marked "Confidential" or "Proprietary." After the contract is awarded to the successful firm, all submitted material becomes public information unless marked "Confidential" or Proprietary."

D. Modification to Scope of Work

The Scope of Work may be amended to meet available funding or to best meet the needs of StanCOG. In the event that any additional services are required as identified herein, StanCOG reserves the right to add such services by amending the awarded Contract.

E. Right to Reject Proposal

StanCOG reserves the right to reject any and all proposals or any part of any proposals, to waive minor defects or technicalities, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed as StanCOG may deem necessary.

F. Exceptions

The submission of a proposal shall be considered an agreement to all the terms, conditions, and specifications provided herein and in the various proposal documents, unless specifically noted otherwise in the proposal.

G. Declaration Under Penalty of Perjury

Forms are on the next two pages.

DECLARATION UNDER PENALTY OF PERJURY

PLEASE READ CAREFULLY BEFORE SIGNING

(TEXT)

To be signed by authorized corporate office, partner or individual submitting the proposal.

EXAMPLE

If the firm is:

1. An individual doing business
Under own name name only
2. An individual using a firm name John Doe, an individual doing business as
XXX Company
3. A partnership John Doe and Richard Roe, partners
Doing business as XXX Company, By John
Doe, partner
4. A corporation XXX Company, by John Doe, Secretary
(or other title)

Type or Print Name & Title

Signature

Address (if different than above business address)

DECLARATION UNDER PENALTY OF PERJURY

PLEASE READ CAREFULLY BEFORE SIGNING

To be signed by authorized corporate officer or partner or individual submitting the proposal

To the Stanislaus Council of Governments:

The undersigned, as firm, certifies under the penalty of perjury that the only persons or parties interested in this proposal is made without collusion with any other person, firm, or corporation; that in submitting this proposal the undersigned has examined the "Proposal Requirements"; that the undersigned proposes and agrees if this proposal is accepted, the undersigned will execute and fully perform the contract for which proposals are called; and that the undersigned will perform all the work and/or furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements as therein set forth.

Type or Printed Name & Title

Signature

Address

ATTACHMENT A

Sample Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT
between
STANISLAUS COUNCIL OF GOVERNMENTS (StanCOG),
and

THIS AGREEMENT is made and entered into as of _____, 2009 by and between the Stanislaus Council of Governments, a joint powers authority established under California Government Code section 6500 et seq., hereinafter referred to as "StanCOG," (formerly Stanislaus Area Association of Governments or SAAG) and _____, hereinafter referred to as "CONSULTANT".

WITNESSETH

WHEREAS, StanCOG desires to provide professional support services to local agencies delivering transportation projects with State and Federal funds and StanCOG desires to retain and employ the services of CONSULTANT to provide those 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 StanCOG'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 Executive Director of StanCOG or a designated representative, who shall administer this AGREEMENT. CONSULTANT shall report progress of work on a monthly basis or as determined by the Executive Director or a designated representative.

2.0. TERM

2.1. CONSULTANT's services herein under shall commence upon StanCOG'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. StanCOG 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 otherwise directed by StanCOG in writing.

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 StanCOG and shall be delivered within ten (10) days of receipt of notice of termination by StanCOG.

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

3.5. CONSULTANT may terminate this AGREEMENT if StanCOG 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 StanCOG of such default and of Consultant's intent to terminate.

3.6. If this AGREEMENT is terminated by either party, StanCOG 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 _____ 00/100 (\$AMOUNT). Such payment shall be CONSULTANT's sole and exclusive compensation and StanCOG shall have no further liability or obligation to CONSULTANT for any other compensation, including with out 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. StanCOG 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 _____ 00/100 (\$AMOUNT).

4.4. StanCOG 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 faxed to StanCOG as follows:

Stanislaus Council of Governments
900 "H" Street, Suite "D"
Modesto, CA 95354
FAX (209) 558-7833
Attention: Accounts Payable

4.5. Except as expressly provided in this AGREEMENT, CONSULTANT shall not be entitled to nor receive from StanCOG 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 StanCOG for the performance of CONSULTANT's services. Receipts for travel expenses will not be required at time of invoicing; however, 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. StanCOG 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. StanCOG will not withhold any Federal or State income taxes or Social Security tax from any payments made by StanCOG to CONSULTANT pursuant to this AGREEMENT. StanCOG 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 above provisions.

5.0. CHANGES AND EXTRA SERVICES

5.1. StanCOG 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 Executive Director of StanCOG 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 that ONE MILLION DOLLARS (\$1,000,000) per incident or occurrence, and providing property damage liability of no less that 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 workmens' 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.

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

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

A. General Liability and Automobile Liability Coverages.

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

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

(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.

B. All Coverage.

(1). 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 StanCOG.

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

6.5. 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 StanCOG. 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 StanCOG. Except as expressly provided in Exhibit "A", CONSULTANT has no authority or responsibility to exercise any rights or power vested in StanCOG. No agent, officer, or employee of StanCOG is to be considered an employee of the CONSULTANT. It is understood by both CONSULTANT and StanCOG that this AGREEMENT shall not, under any circumstances, be construed or considered to create an employer-employee relationship or a joint venture.

7.2. CONSULTANT, its agents, officers, and employees are and at all times during the term of this AGREEMENT, shall represent and conduct themselves as independent contractors and not as employees of StanCOG.

7.3. 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.

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

7.5. 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.

7.6. As an independent contractor, CONSULTANT hereby indemnifies and holds StanCOG harmless from any and all claims that may be made against StanCOG based upon any contention by any third party that employer-employee relationship exists by reason of this AGREEMENT except where StanCOG controls, directs, supervises or trains CONSULTANT's employees.

7.7. 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 individuals shall, so long as their performance continues to be acceptable to StanCOG, remain in charge of the work and services as identified in Exhibit "A" from beginning through completion.

- A. Project Manager: _____
- B. Environmental Manager: _____

8.0. DEFENSE AND INDEMNIFICATION

8.1. CONSULTANT, its agents, officers, and employees shall defend, indemnify, and hold harmless StanCOG, 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 StanCOG, 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 StanCOG, 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, StanCOG 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 StanCOG 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 StanCOG 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 StanCOG.

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 StanCOG.

10.0. StanCOG PROPERTY

10.1. All data, reports, surveys, studies, drawings, and other documents and materials made available to CONSULTANT by StanCOG 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 StanCOG at the completion or termination of this AGREEMENT, if so requested by StanCOG.

10.2. CONSULTANT shall be entitled to reasonable rely upon the accuracy and completeness of StanCOG and others records and information provided to CONSULTANT. CONSULTANT shall not be held responsible for reasonable reliance on documentation/data, and reports provided by StanCOG 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 StanCOG'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 StanCOG and copies shall be delivered to StanCOG upon completion of the work, upon request by StanCOG, 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 StanCOG; 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 StanCOG. 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 StanCOG. 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 StanCOG.

11.0. COPYRIGHTS

11.1. CONSULTANT shall be free to copyright material developed under this AGREEMENT with the provision that StanCOG 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. StanCOG and the funding sources shall be credited on all materials developed under this contract.

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 Executive Director of StanCOG,

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 StanCOG 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 StanCOG, 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 StanCOG.

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 StanCOG 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. CONSULTANT shall comply with the provisions of Form FHWA 1273 "Required Contract Provisions for Federal-Aid Construction Contracts" which is set forth in full as Exhibit "C" attached hereto and incorporated by reference. **[**Required for all federal-aid highway construction contracts and subcontracts at any tier of \$10,000 or more**].**

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

15.1. Policy. It is the policy of StanCOG 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. StanCOG 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. StanCOG shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. StanCOG'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 StanCOG 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 contract. 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 StanCOG 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 StanCOG. 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 StanCOG'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 StanCOG 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 StanCOG.

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 StanCOG 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 and 23 CFR 710.405(b), which is made a part of this AGREEMENT.

17.0. PROHIBITED INTEREST

17.1. No member, officer, or employee of StanCOG, 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.

17.2. CONSULTANT warrants that it has not employed nor retained any company or persons, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this AGREEMENT, and that it has not paid or agreed to pay any company or person other

than bona fide employees working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, StanCOG shall have the right to terminate this AGREEMENT without liability.

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

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, StanCOG 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 StanCOG.

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 StanCOG, 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 StanCOG 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 thing, any form of communication or representation including letters, words, pictures, sounds, or symbols or any combination thereof.

23.2. Any authorized representative of StanCOG 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, StanCOG 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); 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 contract 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 StanCOG shall be required or may desire to make, shall be in writing and may be personally served, faxed, or sent by prepaid first class mail to the respective parties as follows:

To StanCOG:

Stanislaus Council of Governments
900 "H" Street, Suite D
Modesto, CA 95354
FAX: (209) 558-7833
Attention: _____

To CONSULTANT:

Attention: _____

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 StanCOG 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.

IN WITNESS WHEREOF, this AGREEMENT has been executed by the parties hereto as of the day and year written above.

**Stanislaus Council of Governments,
a joint powers agency**

Vince J. Harris
Its Executive Director

Its _____

Date

Date

EXHIBIT A
SCOPE OF SERVICES

**EXHIBIT B
COST PROPOSAL**

EXHIBIT C
FORM FHWA 1273 PROVISIONS

ATTACHMENT B

Disadvantaged Business Enterprise information

Stanislaus Council of Governments

NOTICE TO PROPOSERS DISADVANTAGED BUSINESS ENTERPRISE INFORMATION

1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term "bidder" also means "proposer" or "offerer."
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The bidder/proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Bidders/Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

A "Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information" form will be included in the Agreement documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

Notice to Proposers
Disadvantaged Business Enterprise Information

4. DBE PARTICIPATION GENERAL INFORMATION

It is the bidder's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- D. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- E. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- F. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
Bidder/Proposer may call (916) 440-0539 for web or download assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.
 - Click on the link in the left menu titled Find a Certified Firm
 - Click on Query Form link, located in the first sentence
 - Click on Certified DBE's (UCP) located on the first line in the center of the page
 - Click on Click To Access DBE Query Form
 - Searches can be performed by one or more criteria

Notice to Proposers
Disadvantaged Business Enterprise Information

- Follow instructions on the screen
 - "Start Search," "Requery," "Civil Rights Home," and "Caltrans Home" links are located at the bottom of the query form
- C. How to Obtain a List of Certified DBEs without Internet Access
DBE Directory: If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

6. WHEN REPORTING DBE PARTICIPATION, MATERIAL OR SUPPLIES PURCHASED FROM DBES MAY COUNT AS FOLLOWS:

- A. If the materials or supplies are obtained from a DBE manufacturer, one hundred percent of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies toward DBE participation. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by -Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

Notice to Proposers
Disadvantaged Business Enterprise Information

7. WHEN REPORTING DBE PARTICIPATION, PARTICIPATION OF DBE TRUCKING COMPANIES MAY COUNT AS FOLLOWS:

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.
- B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.
- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
- D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
- E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

ATTACHMENT C

StanCOG Proposer DBE Information

EXHIBIT C
FORM FHWA 1273 PROVISIONS

FHWA-1273 Electronic version - March 10, 1994

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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B Selection of Labor: During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (29 CFR 35, 29 CFR 1630 and 41 CFR 80) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 29 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

ATTACHMENTS

A. Employment Preference for Appalachian Contracts (Included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
- Section IV, paragraphs 1, 2, 3, 4, and 7;
- Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.