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TRANSPORTATION
COMMISSION

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September 4, 2015

REQUEST FOR PROPOSAL (RFP)

TRANSIT PERFORMANCE MONITORING PROGRAM

NOTICE IS HEREBY GIVEN that the Metropolitan Transportation Commission (MTC) invites your firm to submit a proposal for the Transit Performance Monitoring Program.

The Request for Proposal (RFP) documents for this project are available for download on the MTC website at <http://procurements.mtc.ca.gov/>. Proposers are responsible for checking the website for any Addenda to this RFP. Responses should be submitted in accordance with the instructions set forth in the RFP.

Interested firms must submit an original and four (4) copies, as well as one electronic PDF version of their proposal by **4:00 p.m., Thursday, October 8, 2015**, in accordance with the instructions contained in the RFP. Other key RFP Dates are listed in Section V, Consultant Selection Timetable of the RFP.

MTC Point of Contact
Christina Hohorst, Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
Tel: 510/ 817-5869
E-mail: chohorst@mtc.ca.gov

Thank you for your interest.

Sincerely,
DocuSigned by:
Steve Heminger
Steve Heminger
Executive Director

SH: CH

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Attachments

Dave Cortese, Chair
Santa Clara County

Jake Mackenzie, Vice Chair
Sonoma County and Cities

Alicia C. Aguirre
Cities of San Mateo County

Tom Azumbrado
U.S. Department of Housing
and Urban Development

Jason Baker
Cities of Santa Clara County

Tom Bates
Cities of Alameda County

David Campos
City and County of San Francisco

Dorene M. Giacopini
U.S. Department of Transportation

Federal D. Glover
Contra Costa County

Scott Haggerty
Alameda County

Anne W. Halsted
San Francisco Bay Conservation
and Development Commission

Steve Kinsey
Marin County and Cities

Sam Liccardo
San Jose Mayor's Appointee

Mark Luce
Napa County and Cities

Julie Pierce
Association of Bay Area Governments

Bijan Sartipi
California State
Transportation Agency

Libby Schaaf
Oakland Mayor's Appointee

James P. Spering
Solano County and Cities

Adrienne J. Tissier
San Mateo County

Scott Wiener
San Francisco Mayor's Appointee

Amy Rein Worth
Cities of Contra Costa County

Steve Heminger
Executive Director

Alix Bockelman
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

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I. MTC AND PROJECT DESCRIPTION

A. *Description of MTC*

MTC was created by the state Legislature in 1970 (California Government Code § 66500 *et seq.*) to serve as the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area.

B. *Transportation Development Act (TDA) Performance Audits*

California Public Utilities Code Section 99246 requires that transportation planning agencies, such as MTC, designate independent entities to conduct performance audits of their activities and of the activities of each transit operator to whom they allocate funds under Article 4 of the Transportation Development Act (TDA). The purpose of the audits is to systematically evaluate the efficiency, effectiveness, and economy of the operation of the entity being audited. These audits are required triennially and are to be submitted to the State of California.

The performance audits will determine if the audited agency has:

- Complied with pertinent laws and regulations;
- Established goals and objectives for its activities and programs;
- Developed standards to measure agency performance;
- Achieved desired program results; and
- Conducted its activities and utilized its resources in an efficient and economical manner.

MTC and the transit operators are audited in a three-year “round”: over the three year term of the proposed contract, the performance of MTC and all of the transit operators receiving TDA assistance from MTC will be audited by the selected Consultant or team.

C. *Regional Measure 2 (RM2)*

On March 2, 2004, voters passed RM2, raising the toll for all vehicles on the seven State-owned toll bridges in the San Francisco Bay Area, with auto tolls increasing by \$1.00. This extra dollar is to fund various congestion-reducing transportation projects within the region making improvements to travel in the toll bridge corridors. MTC administers the implementation of RM2. The Bay Area Toll Authority (BATA) funds the RM2 projects and is responsible for transferring bridge toll funds to MTC for allocation by the MTC Commission. MTC has developed policies and procedures for the administration of the RM2 projects, adopted as MTC Resolution 3636, Revised. Project sponsors and/or implementing agencies are the responsible agencies for making operating decisions on the individual RM2 operating projects.

D. *Transit Sustainability Project Performance Assessment*

In January 2010, the Commission created the Select Committee on Transit Sustainability to guide the Transit Sustainability Project (TSP) with the goal of addressing transit capital and operating shortfalls identified in the Regional Transportation Plan, adopted in April 2009 (Transportation 2035 - MTC Resolution No. 3893), to address immediate transit operators’

service reductions and budget shortfalls, to improve transit performance for the customer, and to attract more customers to the transit system. A Project Steering Committee was formed, made up of transit agency, government, labor, business, environmental and equity representatives to provide executive-level input into the project along with input from the MTC Policy Advisory Committee, interested parties, and the public.

The TSP focused on three project elements: financial, service performance and institutional frameworks. On May 23, 2012, the Commission approved recommendations in MTC Resolution No. 4060 that are based on project findings related to the financial, service performance, and institutional framework of the Bay Area transit system. The policies adopted require MTC to conduct periodic reviews of progress toward the performance targets and policy recommendation implementation.

E. Other Performance Review Professional Services

The Consultant may be asked to provide the following types of services, including but not limited to: peer group performance and/or cost comparison; best practice review and synthesis for transit efficiency; independent assessment of cost reform options and review of current standards, goals, and objectives; recommendations pertaining to region-wide performance metrics; or recommendations on specific projects or progress in implementing Productivity Improvement Program Projects consistent with MTC policy.

II. PROPOSER MINIMUM QUALIFICATIONS

Proposals must demonstrate that the firm or team submitting the proposal (“Proposer”) meets the following Minimum Qualifications to be eligible for consideration for this project.

- Proposal must demonstrate that the Proposer and its subconsultants have successfully completed at least three (3) projects within the seven (7) years prior to the date of this RFP substantially similar to one or more tasks requested by MTC in Task 4 of the scope of work.
- Key staff submitted for Task 4 must have held a similar role in at least two (2) projects within five (5) years from the date of this RFP.

III. SCOPE OF WORK, PERIOD OF PERFORMANCE, AND BUDGET

A. Scope of Work

The scope of work for Tasks 1-3 of the project is provided in *Appendix A, Scope of Work*. The firm selected to enter into a contract (“Consultant”) will be expected to perform all work and analysis necessary to complete the scope of work.

Work for Task 4, Other Performance Review Professional Services, will be assigned pursuant to MTC-initiated task orders. Payment for work performed under task orders may be deliverables-based or time and materials, as determined by the MTC Project Manager. A sample task order form is attached hereto as Attachment A-2, Task Order Form to *Appendix D, MTC Standard Consultant Contract*.

B. Period of Performance

MTC expects the work to commence on or about December 2015, and to be completed no later than December 2018. At MTC's sole option, the contract may be extended for one (1) additional year for work contemplated by *Appendix A, Scope of Work*.

C. Budget

MTC has budgeted approximately five hundred twenty thousand dollars (\$520,000) for this effort. Additional funding may be available in future fiscal years subject to the approval of future MTC budgets. Funding for each year is contingent on MTC's annual budgets for the duration of the program. The total budget for all tasks in year one is \$215,000. The budget per year and per task is as follows:

- For the TDA performance audit work, the estimated budget for each of the three years of the proposed contract is \$85,000 in year one, \$63,000 in year two, and \$87,000 in year three, for a total of \$235,000;
- For the RM2 Operating Program performance review work, the estimated budget for each of the three years is \$65,000 for a total of \$195,000;
- For the TSP Performance Review work, the estimated budget for each of the two years is \$25,000 for a total of \$50,000.
- For the Other Performance Review Professional Services task, the total estimated budget is up to \$40,000. Sub-tasks under this task shall be separately negotiated and specified in the individual task orders.

IV. CONFLICT OF INTEREST POLICY – TDA AUDITS

A conflict of interest in the performance audits contract may exist if, at the date of issuance of this RFP, the proposer has a current or pending contract or subcontract with the entity to be audited or its governing body. **If a Consultant has an existing or pending contract with MTC (not including MTC's current transit performance monitoring program contract), it cannot be considered as a prime contractor for this audit contract.**

The governing bodies of the entities to be audited are: the Boards of Directors of the Santa Clara Valley Transportation Authority ("VTA"), the Alameda-Contra Costa Transit District ("AC Transit"), the San Mateo County Transit District ("SamTrans"), the Bay Area Rapid Transit District ("BART"), the Golden Gate Bridge, Highway and Transportation District ("Golden Gate Transit"), the Central Contra Costa Transit Authority ("County Connection"), the Western Contra Costa Transit Authority ("WestCAT"), the Eastern Contra Costa Transit Authority ("Tri Delta Transit"), the Livermore/Amador Valley Transit Authority ("LAVTA"), the Napa County Transportation Planning Agency ("The Vine"), Solano County Transit ("Soltrans"); the San Francisco Municipal Transportation Agency Board of Directors in the case of the San Francisco Municipal Railway ("Muni"), the Sonoma County Board of Supervisors in the case of Sonoma County Transit; the city councils of the cities of Petaluma (for "Petaluma Transit"), Santa Rosa (for "City Bus"), Union City (for "Union City Transit"), Fairfield (for "Fairfield And Suisun Transit"), Dixon (for "Readi-Ride"), Rio Vista (for "Delta Breeze"), and Vacaville (for "City Coach"), and the Commission of the Metropolitan Transportation Commission (not including the current Transit Performance Monitoring contract).

If a Consultant wishes to submit a proposal but has a pending or current contract or subcontract with one or more of the operators to be audited, the Consultant must fully delegate the individual audit(s) to a subcontractor(s) who does not have a conflict of interest with the entity being audited. In the event that this is done, the Consultant shall have no review authority over the subject matter of the audit.

The proposer awarded the performance audit contract by MTC may bid on other MTC contracts during the three-year term of the contract. However, the performance audit contract would be taken into consideration during the evaluation to determine the potential for an actual or apparent conflict of interest between the performance audit contract and the new project the Consultant proposes to perform. Thus, obtaining the performance audit contract may adversely affect a firm's competitive standing in future Consultant selections.

V. PROPOSERS' CONFERENCE AND REQUESTS FOR CLARIFICATION OR EXCEPTIONS

A Proposers' Conference will be held at **10:00 a.m. on Friday, September 18, 2015** at the Joseph P. Bort MetroCenter Building, 101 8th Street, Oakland, in the Fishbowl Conference Room, 3rd Floor.

Any addenda will be posted on MTC's website. All Proposers are responsible for checking the website for any addenda to the bid documents.

Any requests for clarification of or exceptions to RFP requirements must be received by MTC no later than **4:00 p.m. on Thursday, September 24, 2015**, to guarantee a response or consideration. MTC reserves the right to reject any proposal that contains unauthorized conditions or exceptions.

VI. CONSULTANT SELECTION TIMETABLE

10:00 a.m., on Friday, September 18, 2015	Proposers' Conference, at 101 8 th Street, Oakland, CA 94607, Fishbowl Conference Room, 3 rd Floor
4:00 p.m., on Thursday, September 24, 2015	Closing date/time for receipt of requests for modifications/exceptions
No later than three (3) business days prior to the date proposals are due.	Deadline for protesting RFP provisions
4:00 p.m., on Thursday, October 8, 2015*	Closing date/time for receipt of proposals
Week of October 12, 2015*	Interviews/Discussions (if held)
Monday, October 19, 2015*	Date for receipt of Best and Final Offers (if required)
November 4, 2015*	MTC Administration Committee Approval

**Interview, award and approval dates are approximate and are subject to change before or after the closing date of the RFP.*

VII. SUBMITTAL OF PROPOSALS

1. Interested firms must submit an original and four (4) copies, as well as one electronic PDF version, of their proposal by **4:00 p.m. on Thursday, October 8, 2015. Submission of an electronic copy of the proposal without hard copies will not satisfy the submission requirement. No proposals submitted solely by email and no faxed proposals will be considered.**

2. Proposals are to be addressed as follows:

Transit Performance Monitoring Project
Attention: Christina Hohorst, Project Manager
101 8th Street, 3rd Floor Receptionist
Oakland, CA 94607

3. Proposer's name and return address must also appear on the envelope.

4. Proposals will be received only at the address shown above and **no later than the date and time indicated**. MTC is not responsible for deliveries delayed for any reason. Any proposals received after said date and time or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened.

5. All proposals, whether delivered by an employee of the Proposer, U.S. Postal Service, courier or package delivery service, must be received and time stamped at the stated address **prior to or no later than the time designated**. The timestamp located on the 3rd floor at the receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of proposals

6. Proposer agrees and acknowledges all RFP specifications, terms and conditions and indicates ability to perform by submission of a proposal.

7. A signed proposal submitted to MTC in response to this RFP shall constitute a binding offer from Proposer to contract with MTC according to the terms of the proposal for a period of ninety (90) days after the proposals are due to MTC.

8. A proposal may be withdrawn at any time before the date and time when proposals are due by submitting a written request for its withdrawal to the MTC Project Manager.

9. This RFP does not commit MTC to award a contract or to pay any costs incurred by any Proposer in the preparation of a proposal in response to this RFP.

10. Only one proposal will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.

11. MTC reserves the right to accept or reject all proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all Proposers.
12. MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFP.
13. If the selected Proposer fails to enter into a contract with MTC in a timely manner as determined by MTC, in accordance with the terms and conditions of this RFP, MTC reserves the right to reject the proposal and enter into a contract with the next highest scoring Proposer.
14. Online Vendor Registration is required to be eligible for contract award. Proposers should visit <http://procurements.mtc.ca.gov/Vendors/vendor-information.html> to register in the MTC Vendor Database.

VIII. FORM OF PROPOSAL

Proposals must be signed in ink and include a statement that the person or persons signing the proposal is/are authorized to authorize and submit the proposal on behalf of the Proposer. Page limits, where specified, are for single-sided print. Proposers are encouraged to print double-sided copies to save paper.

Proposal content and completeness are most important. Clarity is essential and will be considered in assessing the Proposer's capabilities.

Proposers must provide the information listed below. Any material deviation from these requirements may be cause for rejection of the proposal, as determined in MTC's sole discretion.

Each proposal must include the following:

A. Transmittal Letter

Proposals must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and containing the name and telephone number of a contact person, if different from the signatory. Indicate whether there are any conflicts of interest, actual or apparent, that would limit the Proposer's ability to provide the requested services and describe the plan for mitigating such conflicts. Acknowledge the receipt of this RFP and any Addendum to the RFP. Indicate that the proposal is a firm offer to enter into a contract to perform work related to this RFP for a period of ninety (90) days from the due date for proposals.

B. Title Page

Proposals must include a title page that includes the RFP subject, the name of the Proposer's firm, local address, telephone number, name of contact person, contact person's email address, and the date.

C. Table of Contents

Proposals must include a table of contents that includes a clear identification of the material by section and page number.

D. Overview and Summary

This section should clearly convey the Proposer's understanding of the nature of the work and the general approach to be taken. In addition to demonstrating understanding of the role and function of a transit operator, the proposal should demonstrate sufficient understanding of the role and function of a regional transportation planning agency and metropolitan planning organization and provide on the proposed audit team individuals who are knowledgeable of and have experience in auditing the performance of this type of organization. It should include, but not be limited to, the following:

1. A discussion of the project's purpose;
2. A summary of proposed approach; and
3. The assumptions made in selecting the approach.

E. Detailed Work Plan for Tasks 1, 2 and 3

This section should present a work plan for the tasks described in *Appendix A, Scope of Work*. The proposed work plan should:

1. Discuss how the Proposer will conduct Tasks 1, 2 and 3, identify deliverables, and propose a preliminary schedule. The description of the proposed approach to performing the project should discuss the tasks in sufficient detail to demonstrate a clear understanding of the project and component tasks. The proposal may include additional tasks or sub-tasks the Proposer believes necessary to accomplish the project goals. The schedule should show the expected sequence of tasks, subtasks, and important milestones. Note: The selected Proposer, in consultation with the MTC Project Manager, will develop a final work plan and schedule.
2. Provide a detailed staffing plan for each task and subtask. Provide an organizational chart that shows roles and responsibilities of key personnel and reporting structure, including reporting and communication relationships between MTC, Proposer staff, and subcontractors, if any.
3. Describe approach to managing resources and maintaining quality results. Include a description of the role of any subcontractors, their specific responsibilities, and how their work will be supervised to maintain quality results. Describe response mechanisms for dealing with problems and MTC concerns.
4. Identify and explain any problem areas and/or potential obstacles (such as maintaining schedule, budget overruns, feasibility, etc.) to successful completion of the Scope of Work, attached as *Appendix A*. Discuss methods, formal and informal, that you will use to track and resolve these problems/obstacles during the project.

F. Qualifications and References

1. Identify the personnel, including subcontractors' personnel, whose expertise or experience addresses each of the specified needs. Proposers are welcome to identify and provide examples of any other qualifications they feel are critical to the successful completion of the Scope of Work attached as *Appendix A*.
2. Identify key personnel (including subcontractor personnel) and briefly discuss individual qualifications to perform each task. Each key personnel resume should not exceed two pages. Include resumes for key subcontractor personnel, as well.
3. Provide a succinct description (one page maximum) of any previous projects similar to the Scope of Work attached as *Appendix A*, indicating the project title, duration, budget, sponsoring agency and sponsor project manager, and roles played by individuals proposed for this project. Include the name of the agency for whom the work was performed, year performed, name of the contact person and their telephone number.
4. List any contracts with MTC or any of the audited transit operators entered into by the Proposer or any of its subcontractors in the past three years, including a brief description of the scope of work, the contract amount, date of execution, and the agency.
5. The proposal shall list any current or pending contracts or subcontracts the proposer or subconsultants have with MTC, an audited transit operator, or the governing board of such operator, as of the date of this RFP. MTC will review this information for potential conflicts of interest (See Section IV, Conflict of Interest Policy, for a description of the prohibited interests).
6. Provide at least one sample of a written technical report or memo and two samples of material developed for a similar study effort. The samples must have been prepared by key members of the Proposer's team and should identify the authors. Only one copy of each sample is required, and the samples will be returned after proposal evaluation, upon request. The samples will be considered in evaluating firm and staff expertise and experience, and written presentation effectiveness.
7. Provide a list of references (including references for subcontractors) and their contact information.
8. Provide a summary of all contracts your firm (including subcontractors) has held with MTC, MTC SAFE, BATA, BAIFA or BAHA in the past three years, including a brief description of the scope of work, the contract amount, and date of execution.

G. Cost Proposal

Based on the tasks and staffing plan described in response to E.1 and E.2, listed above, provide a breakdown of the expected expenditures of funds for Tasks 1, 2 and 3 in each task contained in *Appendix A*, Scope of Work. The budget should include, but is not limited to, a task budget and a line item budget with billing rates for each task.

1. The task budget should present a breakdown of hours and expenses by task and deliverable in each task of the project. It should identify or refer to key personnel or job descriptions in relation to each task to provide a full explanation of the resources committed to the project.
2. A line item budget should be submitted for each task of the project. The line item budget should present a breakdown of costs by cost categories for Tasks 1, 2 and 3, including billing rates for key personnel and job classifications. The line item budget should be set forth on the Cost and Price Analysis Form attached as *Appendix B* to this RFP. A line item budget should also be submitted for proposed sub-consultants with contracts estimated to exceed \$25,000. *Appendix B* is available in electronic spreadsheet format upon request. The line item budget is requested for evaluation purposes only; payment shall be based on receipt of deliverables satisfactory to MTC.
3. A list of fully-loaded hourly rates for key personnel should be submitted, which may be used for payment of task orders under Task 4. Indicate rates over the three (3) year period of the contract.
4. Please include information (date and outcome) on the Proposer's most recent pre-award audit, if applicable.

H. California Levine Act Statement

Submit a signed Levine Act statement (*Appendix C*).

I. Insurance Provisions

Submit a signed acknowledgement that the Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix D-1, Insurance Requirements*, within ten (10) days of MTC's notice to firm that it is the successful Proposer.

(See Section IX.B of the RFP for how to request exceptions to the minimum insurance requirements.)

J. Taxpayer Identification Number and Certification

Submit a W-9, Request for Taxpayer Identification Number and Certification (containing original signature) available at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

IX. PROPOSAL EVALUATION

A. Verification of Minimum Qualifications

The MTC Project Manager will review proposals to ensure that each proposal meets the Minimum Qualifications set out in Section II, Proposer Minimum Qualifications of this RFP. Proposers failing to meet the Minimum Qualifications will not be considered.

B. Review for General Responsiveness

The MTC Project Manager, in consultation with the MTC's Office of General Counsel, will conduct an initial review of the proposals for general responsiveness and inclusion of the items requested in Section VIII, Form of Proposal. Any proposal that does not include enough information to permit the evaluators to rate the proposal in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. A proposal that fails to include one or more items requested in Section VIII, Form of Proposal may be considered responsive, if evaluation in every criterion is possible. MTC reserves the right to request additional information from responsive Proposers prior to evaluation.

C. Evaluation Panel and Evaluation Criteria

Responsive proposals will be evaluated by an evaluation panel of MTC staff and representatives from the transit operators to be audited. The evaluation of the proposals shall be within the sole judgment and discretion of the evaluation panel.

All contact during the evaluation phase shall be through the MTC Project Manager only. Proposers shall neither contact nor lobby any evaluation panel members during the evaluation process. Any attempt by Proposer to contact and/or influence members of the evaluation panel may result in disqualification of Proposer.

Responsive proposals shall be evaluated on the basis of the following evaluation factors, with their relative importance indicated by percentages:

1. Technical Evaluation (60%)
2. Project Team/Firm Evaluation (20%)
3. Cost Effectiveness (10%)
4. Writing Ability (10%)

D. Proposer Discussions

Following the initial evaluation, the evaluation panel may elect to recommend award to a particular Proposer (with or without interviews), or to enter into discussions with a "short list" of

Proposers, consisting of those Proposers reasonably likely, in the opinion of the panel, to be awarded the contract.

The purpose of discussions with a Proposer on the “short list” will be to identify to that Proposer’s specific deficiencies and weaknesses in its proposal and to provide the Proposer with the opportunity to consider possible approaches to alleviating or eliminating them. These deficiencies or weaknesses may include such things as technical issues, management approach, cost, or team composition. Discussions may take place through written correspondence and/or during face-to-face interviews. The Proposer’s project manager, as well as other key personnel identified by the evaluation panel, will be expected to participate in any discussions. A Proposer on the “short list” invited to participate in discussions will be expected to provide a presentation limited to 20 minutes consisting of an overview of its approach to the Project.

E. Request for Best and Final Offer

Following discussions, if held, Proposers on the “short list” will be given the opportunity to revise their written proposals to address the concerns raised during discussions through issuance by MTC of a Request for Best and Final Offer (BAFO). Following receipt of the BAFOs, the evaluation panel will evaluate the BAFOs against the evaluation criteria.

MTC reserves the right not to convene oral interviews or discussions, and to make an award on the basis of initial proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint. References may be contacted at any point in the evaluation process.

The panel will recommend a Proposer to the MTC Executive Director, based on their evaluation of the written proposals or BAFOs and oral interviews or discussions (if held). The Executive Director will review the recommendation and, if he agrees, he will approve the award or forward the recommendation to the MTC Administration Committee for approval (if required).

X. GENERAL CONDITIONS

A. Award

Any award made will be to the Proposer whose proposal is most advantageous to MTC based on the evaluation criteria defined in Section VIII. If the selected firm fails to enter into a contract with MTC in a timely manner as determined by MTC, in accordance with the terms and conditions of this RFP, MTC reserves the right to reject the proposal of the selected firm and enter into a contract with the next highest scoring firm. This RFP does not commit MTC to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFP.

B. Contract Arrangements

MTC Standard Consultant Contract is attached as *Appendix D*. If a Proposer wishes to propose a change to any standard MTC contract provision, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of requests for clarifications/exceptions. If no such change is requested, the Proposer will be deemed to accept

MTC's standard contract provisions, unless such language is protested in accordance with Section C below.

The selected Consultant will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1, Insurance Requirements*. Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements in *Appendix D-1*, within ten (10) days of MTC's notice that it is the successful Proposer. Requests to change MTC's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions. MTC will review the requests and issue an addendum if material changes requested by a prospective Proposer are acceptable. Objections to MTC determinations on requests to change insurance requirements pursuant to the protest provisions of this RFP must be brought to MTC's attention no later than the deadline for protesting RFP provisions or compliance with all material insurance requirements will be assumed.

The contract resulting from this RFP for Tasks 1, 2 and 3 will be lump sum (firm fixed price) with payment based on MTC's receiving of satisfactory deliverables. For Task 4, all work will be assigned pursuant to MTC-initiated task orders, which will include a specific scope of work based on the tasks identified in *Appendix A, Scope of Work*. Payment for work performed under task orders may be deliverables-based or time and materials, as determined by the MTC Project Manager. A sample task order form is attached hereto as Attachment A-2, Task Order Form to *Appendix D, MTC Standard Consultant Agreement*.

C. Selection Disputes

A Proposer may object to a provision of the RFP on the grounds that it is arbitrary, biased, or unduly restrictive, or to the selection of a particular Proposer on the grounds that MTC procedures, the provisions of the RFP or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

1. No later than 4:00 p.m. on the third business day prior to the date proposals are due, for objections to RFP provisions; or
2. No later than 4:00 p.m. on the third business day after the date the firm is notified that it did not meet the minimum qualifications or was found to be non-responsive; or
3. No later than 4:00 p.m. on the third business day after the date on which the firm is notified that it was not selected, or the date the MTC Administration Committee authorizes award, whichever is later, for objections to Proposer selection.

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the MTC Administration Committee authorizes award.

Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the MTC review officer to recommend a resolution to the MTC Executive Director.

The MTC Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Should a Proposer wish to appeal the decision of the MTC Executive Director, it may file a written appeal with the MTC Administration Committee, no later than 4:00 p.m. on the third business day after receipt of the written response from the MTC Executive Director. The MTC Administration Committee's decision will be the final agency decision.

Authorization to award an agreement to a particular Proposer by MTC shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the MTC Executive Director or, if the decision of the MTC Executive Director is appealed, the issuance of the MTC Administration Committee's decision.

D. Public Records

This RFP and any material submitted in response to this RFP are subject to public inspection under the California Public Records Act (Government Code §6250 *et seq.*), unless exempt by law. Other than proprietary information or other information exempt from disclosure by law, the content of proposals submitted to MTC will be made available for inspection consistent with its policy regarding Public Records Act requests.

If the Proposer believes any proposal content contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer may request that MTC withhold from disclosure such proprietary materials by marking each page containing proprietary information, including financial information, if any, required to be submitted under Section VII of this RFP, as confidential and shall include the following notice at the front of its proposal:

“The data on the following pages of this proposal, including financial information submitted under Section VII of the RFP marked along the right margin with a vertical line, contain technical or financial information that constitute trade secrets and/or that, if disclosed, would cause substantial injury to the Proposer's competitive position. The Proposer requests that such data be used for review by MTC only, but understands that exemption from disclosure will be limited by MTC's obligations under the California Public Records Act. If an agreement is awarded to the Proposer submitting this proposal, MTC shall have the right to use or disclose the data, unless otherwise provided by law. [List pages].”

Failure to include this notice with relevant page numbers shall render any “confidential/proprietary” markings inadequate. Individual pages shall accordingly not be treated confidentially. **Any language purporting to render the entire proposal confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the Proposer may not designate any required proposal forms or the cost proposal as confidential. Consequently, any language purporting to render any proposal forms or the cost proposal as confidential or proprietary will be regarded as ineffective and will be disregarded.**

In the event properly marked data is requested pursuant to the California Public Records Act, the Proposer will be advised of the request. If the proposal requests that MTC withhold such data

from disclosure and MTC complies with the Proposer's request, the Proposer shall assume all responsibility for any challenges resulting from the non-disclosure; indemnify and defend MTC and hold it harmless from and against all claims, legal proceedings, and resulting damages and costs (including but not limited to attorneys' fees that may be awarded to the party requesting such Proposer information); and pay any and all costs and expenses relating to the withholding of the Proposer information.

If the Proposer does not mark each page containing proprietary information as confidential, does not include the statement described above at the front of its proposal, and does not request that MTC withhold information marked as confidential and requested under the California Public Records Act, MTC shall have no obligation to withhold the information from disclosure, and the Proposer shall not have a right to make a claim or maintain any legal action against MTC or its commissioners, officers, employees or agents in connection with such disclosure.

E. Key Personnel

Key Proposer personnel assigned to the project are expected to remain on the project. Any change in key personnel on the proposed project team is subject to prior written approval of MTC. Removal of any key personnel identified in the proposal without written consent of the MTC Project Manager may be considered a material breach of contract.

F. Conflicts Of Interest

By submitting a proposal, the Proposer represents and warrants that no commissioner, officer or employee of MTC is in any manner interested directly or indirectly in the proposal or in the contract that may be made under it or in any profits expected to arise therefrom, as set forth in California Government Code Section 1090.

The Proposer further warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code Sections 1090 *et seq.* or 87100 *et seq.* during the performance of services under any contract resulting from this RFP and that it will not knowingly employ any person having such an interest. Violation of this provision may result in the contract being deemed void and unenforceable.

Whenever MTC is awarding a contract that involves the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts of the Proposer, and if so, whether any potential bias can be mitigated acceptably by MTC and the Proposer. After award, the winning Proposer shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under the agreement resulting from this and other MTC solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other project.

Proposer shall not engage the services of any subcontractor or independent contractor on any work related to this RFP if the subcontractor or independent contractor, or any employee of the

subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this RFP.

G. Personally Identifiable Information

Not Used.

H. Pre-Award Audit

Not Used.

I. Web-Based Communication

Proposer agrees to submit all communication and required documentation, including but not limited to invoices, requests for contract modifications, etc. to the MTC Project Manager or his/her designee via a web-based system designated by MTC to which MTC will provide system access.

J. Payment, Sub-Contractor and Prevailing Wage Information

Proposer agrees to submit payment, sub-contractor utilization and if applicable certified payroll information for contracts with prevailing wage requirements via a web-based system designated by MTC to which MTC will provide system access.

APPENDIX A, SCOPE OF WORK**I. GENERAL**

The services to be performed by the selected Consultant (herein referred to as “Consultant”) consist of the following four projects:

1. TDA Triennial audits of MTC and transit operators;
2. RM2 Operating Program Performance Review;
3. Transit Sustainability Project Performance Assessment; and
4. Other performance review professional services (as needed, indicated by task order).

For this effort, the Consultant will report to the MTC Project Manager, who may establish one or more direct contacts with the project management staff in MTC’s Programming and Allocations Section.

A Description of MTC is attached as *Appendix A-1*, Special Considerations for Audits of Small Operators, is attached as *Appendix A-2*, and a Sample RM2 Operating Project Review Report is attached as *Appendix A-3*.

A. *Implementation Schedule for TDA Triennial Audits*

The contract resulting from this RFP for the Triennial Audits under Task 1 will cover audits for a three fiscal-year (FY) period. The audit of MTC will occur with the first of three groups audited. The audits of the transit operators are divided into three groups, with the audits for each conducted as follows:

Group 1: Year One Audits

Covering Audit Period FYs 2012-13, 2013-14, and 2014-15

Audited Entities:

MTC, San Francisco Municipal Transportation Agency (“Muni”); Santa Clara Valley Transportation Authority (“VTA”); Livermore Amador Valley Transit Authority (“LAVTA”); City of Union City (“Union City Transit”); City of Fairfield (“Fairfield And Suisun Transit”).

Completion Date: June 2016

Group 2: Year Two Audits

Covering Audit Period FYs 2013-14, 2014-15, and 2015-16

Audited Entities:

Alameda Contra Costa Transit Authority (“AC Transit”) and “East Bay Paratransit;” San Francisco Bay Area Rapid Transit District (“BART”); Central Contra Costa Transit Authority (“County Connection”); County of Sonoma (“Sonoma County Transit”); City of Santa Rosa (“City Bus”); and City of Petaluma (“Petaluma Transit”).

Completion Date: June 2017

Group 3: Year Three Audits

Covering Audit Period FYs 2014-15, 2015-16 and 2016-17

Audited Entities:

Golden Gate Bridge, Highway and Transportation District (“Golden Gate Transit”); San Mateo County Transit District (“SamTrans”); Solano County Transit (“Soltrans”); Eastern Contra Costa Transit Authority (“Tri Delta Transit”); Western Contra Costa Transit Authority (“WestCAT”); Napa County Transportation Planning Agency (“the Vine”); City of Vacaville (“City Coach”); City of Dixon (“Readi-Ride”); and City of Rio Vista (“Delta Breeze”).
Completion Date: June 2018

B. Implementation Schedule for the RM2 Operating Program Performance Review

The contract resulting from this RFP will cover RM2 Operating performance reviews for the previous fiscal-year (FY) period for three (3) fiscal years: FY 2015-16, 2016-17 and 2017-18. The scope of work under Task 2 describes a series of tasks related to development and implementation of the MTC RM2 Operating Program Performance Review. The services to be performed by Consultant shall consist of services requested by the Project Manager or a designated representative.

C. Implementation Schedule for the Transit Sustainability Project Performance Assessment

The contract resulting from this RFP will cover Transit Sustainability Project Performance Assessments for the previous fiscal-year (FY) period for two (2) fiscal years in total: FY 2015-16 and 2016-17. The scope of work under Task 3 describes a series of tasks related to the assessment of the operators’ progress meeting performance measures as required per MTC’s Transit Sustainability Program Resolution 4060. The services to be performed by Consultant shall consist of services requested by the Project Manager or a designated representative.

D. Implementation Schedule for Other Performance Review Professional Services

The contract resulting from this RFP will cover other performance review professional services for three (3) fiscal years in total: FY 2015-16, 2016-17 and 2017-18. For this part of the work scope, the consultant may be asked to provide the following types of services, including but not limited to: peer group performance and/or cost comparison; best practice review and synthesis for transit efficiency; independent assessment of cost reform options and review of current standards, goals, and objectives; recommendations pertaining to region-wide performance metrics; or recommendations on specific projects or progress in implementing Productivity Improvement Program Projects consistent with MTC policy. Sub-tasks under this task shall be separately negotiated and specified in the individual task orders.

E. Project Deliverables

All references to written deliverables in this scope of work include one draft and one final version unless otherwise specified. All draft deliverables will be reviewed and commented on by MTC with comments to be integrated into the final deliverable. A minimum of two (2) weeks is necessary to review any draft written deliverable prior to finalization. Final deliverables shall be completed three (3) working days after Consultant’s receipt of final MTC comments, unless otherwise noted. In addition to hard copies, and electronic versions of each draft and final deliverable shall be transmitted to the MTC Project Manager.

II. SCOPE OF WORK

TASK 1: TDA TRIENNIAL AUDIT OF MTC AND OF THE TRANSIT OPERATORS

A. *General*

California Public Utilities Code Section 99246 requires that transportation planning agencies, such as MTC, designate independent entities to conduct performance audits of their activities and of the activities of each transit operator to whom they allocate funds under Article 4 of the Transportation Development Act (TDA). The purpose of the audits is to systematically evaluate the efficiency, effectiveness, and economy of the operation of the entity being audited. These audits are required triennially and are to be submitted to the State of California. The performance audits will determine if the audited agency has complied with pertinent laws and regulations. Chapter VI of the Supplement, "Final Audit Report Format," provides details regarding the report preparation for transit operator performance audits, and should serve as the guide for the final MTC performance audit report.

The scope of work consists of:

1. A pre-audit consultation, audit survey and detailed audit of MTC, as outlined in Tasks 1.1, 1.2 and 1.3.
2. A pre-audit consultation and Compliance Audit for all TDA eligible transit operators as outlined in Tasks 1.3 and 1.4.

The Compliance Audit is based on an analysis of the five required TDA performance indicators and the operator's compliance with various requirements of TDA law. Upon completion of the fiscal year groups of audits, the MTC Project Manager and the management of the audited operators will evaluate the Consultant activities in order to determine if any revisions should be made to the scope of work for the next fiscal year group of audits. A notice to proceed with the next fiscal year group of audits will be issued by the MTC Project Manager upon completion of the evaluation.

B. *Background for the TDA Triennial Audit of MTC*

An overview of MTC's organization, functions and responsibilities is included in this RFP as *Appendix A-1, Description of MTC*. Also included in *Appendix A-1* is a list of documentation to be reviewed and external entities to be contacted in the course of conducting the audit. An overview of the organization can be found in the Statistical Summary of Bay Area Transit Operators: Fiscal Years 2009-10 Through 2013-14, which can be located online at http://files.mtc.ca.gov/pdf/StatSumm_2014.pdf.

C. *Background for the TDA Triennial Audit of the Transit Operators*

The compliance audits of transit operators in the MTC region shall consist of a systematic review to determine the extent to which operators of public transit systems have complied with pertinent laws and regulations.

D. References and Available Resources

Reference may be found at the MTC-ABAG Library or online at the web address where listed:

- Copies of the prior TDA Triennial Performance Audit reports for MTC and for all of the transit operators in the MTC region subject to the audit can be found as reference materials in the MTC/ABAG library.
- The Statistical Summary of Bay Area Transit Operators: Fiscal Years 2009-10 Through 2013-14 provides a detailed profile of the Bay Area transit operators that will be the subjects of the audit. The document can be found at http://files.mtc.ca.gov/pdf/StatSumm_2014.pdf.
- MTC Resolution 3636, Revised, Attachment A approves the policies and procedures for the Regional Measure 2 Operating Program. Resolution 3636, Revised can be found at http://www.mtc.ca.gov/funding/RM2/downloads/P_and_P_Changes_for_PAC_final3.pdf
- MTC Resolution 4060 approves performance measures and targets and recommendations of the Transit Sustainability Project completed in May of 2012. Resolution 4060 can be found at http://www.mtc.ca.gov/planning/tsp/RES-4060_approved.pdf.

Task 1.1 Audit Survey of MTC

The Consultant shall perform an Audit Survey, which is intended to provide the Consultant with a thorough overview of MTC's goals and objectives, functions, programs, activities, and management control systems. During the survey, the Consultant should identify potential issues for further evaluation during the detailed audit.

There are eight major activities that should be completed by the Consultant during the Audit Survey:

- 1) Conduct preliminary activities;
- 2) Collect documentation;
- 3) Contact external entities;
- 4) Review documentation;
- 5) Meet with MTC's Executive Director, Executive Management and staff;
- 6) Determine audit focus;
- 7) Develop scope of work and tailor audit procedures; and
- 8) Define audit requirements and schedule.

Appendix A-1, Description of MTC, of this RFP includes a list of the documentation that the Consultant should collect and the external entities that the Consultant should contact as part of the Audit Survey.

The Consultant shall prepare a written report documenting its findings from the Audit Survey. Based on the findings and guidance contained in Chapter VI of the Supplement, "Final Audit Report Format," a scope of work and audit plan will be finalized for Task 1.2 - Detailed Audit of MTC.

Task 1.1 Deliverables: Scope of Work and Audit Plan
Completion Date: January 2016

Task 1.2 Detailed Audit of MTC

The Consultant shall accomplish the performance audit of MTC. In analyzing MTC’s past activities, the Consultant should examine four separate but related areas of agency performance:

- Compliance: Did MTC accomplish the tasks it is required to accomplish? Did MTC accomplish those tasks it committed itself to accomplish? A list of statutes MTC is required to comply with is presented in Figure 1.
- Work Performance: How well did MTC perform these tasks? Were MTC's products effective in achieving their purpose and did they represent an efficient use of resources?
- Management Performance: Did MTC’s Commission and management develop an effective and efficient management plan? Were available resources effectively organized and allocated to best achieve MTC's goals and objectives?
- Regional Impact: To what extent has MTC had an impact on the development and performance of the regional transportation system?

Figure 1 Performance Audit Compliance Checklist for Regional Transportation Planning Entities
PUC 99231; all transportation operators and city or county governments which have responsibility for serving a given area, in total, claim no more than those Local Transportation Fund monies apportioned to that area.
PUC 99233 and 99234; the RTPE has adopted rules and regulations delineating procedures for the submission of claims for facilities provided for the exclusive use of pedestrians and bicycles.
PUC 99238 and 99238.5; the RTPE has established a social services transportation advisory council. The RTPE must ensure that there is a citizen participation process that includes at least an annual public hearing.
<p>PUC 99244; the RTPE has annually identified, analyzed and recommended potential productivity improvements which could lower operating cost of those operators, which operate at least 50 percent of their vehicle service miles within the RTPE’s jurisdiction. Recommendations include, but are not being limited to, those made in the performance audit.</p> <ul style="list-style-type: none"> • A committee for the purpose of providing advice on productivity improvements may be formed. • The operator has made a reasonable effort to implement improvements recommended by the RTPE, as determined by the RTPE, or else the operator has not received an allocation that exceeds its prior year allocation.
PUC 99245; the RTPE has ensured that all claimants to whom it allocated TDA funds submit to it and to the state controller an annual certified fiscal and compliance audit within 180 days after the end of the fiscal year.
PUC 99246 and 99248; the RTPE has designated an independent entity to conduct a performance audit of operators and itself (for the current and previous triennia). For operators, the audit was made and calculated the required performance indicators, and the audit report was transmitted to the entity that allocates the operator’s TDA money, and to the RTPE within 12 months after the end of the triennium. If an operator’s audit was not transmitted by the start of the second fiscal year following the last fiscal year of the triennium, TDA funds were not allocated to that operator for that or subsequent fiscal years until the audit was transmitted.

<p>PUC 99246 (c); the RTPE has submitted a copy of its performance audit to the Director of the California Department of Transportation. In addition, the RTPE has certified in writing to the Director that the performance audits of operators located in the area under its jurisdiction have been completed.</p>
<p>PUC 99246 (d); the performance audit of the operator providing public transportation services shall include a verification of the operator's cost per passenger, operating cost per vehicle service hour, passenger per vehicle service mile, and vehicle service hours per employee, as defined in Section 99247. The performance audit shall include consideration of the needs and types of passengers being served and the employment of part-time drivers and the contracting with common carriers of persons operating under a franchise or license to provide services during peak hours, as defined in subdivision (a) of section 99260.2.</p>
<p>PUC 99270.1 and 99270.2; the RTPE has established rules and regulations regarding revenue ratios for transportation operators providing services in urbanized and newly urbanized areas.</p>
<p>PUC 99275.5; the RTPE has adopted criteria, rules, and regulations for the evaluation of claims filed under Article 4.5 of the TDA and the determination of the cost effectiveness of the proposed community transit services.</p>
<p>PUC 99310.5 and 99313.3 and Proposition 116: state transit assistance funds received by the RTPE allocated only for transportation planning and mass transportation purposes?</p>
<p>PUC 99314.3: the amount received pursuant to the Public Utilities Code, Section 99314.3; by each RTPE for state transit assistance is allocated to the operators in the area of its jurisdiction as allocated by the State Controller's Office.</p>
<p>PUC 99401.5; if TDA funds are allocated to purposes not directly related to public or specialized transportation services or facilities for exclusive use of pedestrian and bicycles, the transit-planning agency has annually:</p> <ul style="list-style-type: none"> • Consulted with the Social Services Transportation Advisory Council (SSTAC) established pursuant to Public Utilities Code Section 99238; • Identified transit needs, including: <ul style="list-style-type: none"> ○ Groups who are transit-dependent or transit-disadvantaged; ○ Adequacy of existing transit services to meet the needs of groups identified; and ○ Analysis of potential alternatives to provide transportation services. • Adopted or re-affirmed definition of "unmet transit needs" and "reasonable to meet". • Identified the unmet transit needs or there are no unmet transit needs, or there are unmet transit needs that are reasonable to meet. <p>If a finding is adopted that there are unmet transit needs, these needs must have been funded before an allocation was made for streets and roads. (Because the determination of unmet transit needs is an important responsibility for most RTPE's in the State, the performance auditor should consider reviewing the process used by the RTPE to determine unmet transit needs, as well as the outcome of the process) must have been funded before an allocation was made for streets and roads. (Because the determination of unmet transit needs is an important responsibility for most RTPE's in the State, the performance auditor should consider reviewing the process used by the RTPE to determine unmet transit needs, as well as the outcome of the process).</p>
<p>CCR Section: 6662; the RTPE has caused an audit of its account and records to be performed for each fiscal year by the county auditor or a certified public accountant. The RTPE must transmit the audit report to the state controller within 12 months of the end of each fiscal year in accordance with the Basic Audit Program and Report Guidelines for the California Special Districts prescribed by the State Controller. The audit shall include a determination of compliance with the TDA and accompanying rules and regulations. Financial statements may not commingle the state transit assistance fund, the local transportation fund, or other</p>

revenues or funds of any city, county or other agency. The RTPE must maintain fiscal and accounting records and supporting paper's for at least four years following fiscal year close.

The audit should present a reasonable picture of how MTC is performing in all four areas. However, depending on findings made during the Audit Survey, the Detailed Audit may focus on certain areas more than others. Such decisions should be discussed thoroughly with the MTC Project Manager and MTC Executive Management prior to finalizing the scope of work and audit plan for the Detailed Audit.

A balanced perspective should be maintained throughout the audit process, wherein agency achievements as well as potential areas for improvement are highlighted.

The Consultant shall prepare draft and final performance audit reports. The Consultant shall make an oral presentation of its findings to MTC Staff.

Task 1.2.a. Deliverables: Draft Performance Audit Report.

Completion Date: April/May 2016

Task 1.2.b Deliverables: Final Performance Audit Report; written materials for presentation; and any and all working papers which supply data, analyses, or other relevant information supporting the conclusions and recommendations made in the draft and final reports.

Completion Date: June 2016

Task 1.3 Pre-Audit MTC and Transit Operator Consultation

At the beginning of each audit cycle, MTC will notify in writing each of the operators to be audited during the fiscal year. Prior to the beginning of each audit, the Consultant is required to schedule and conduct an audit entrance conference with MTC and the operator's management to discuss the scope of work and the schedule for the audit; and to identify any particular areas of concern that should be addressed. The entrance conference is to be held at the operator's offices. A final work plan should be developed based on comments received at the entrance conference. The MTC Project Manager must approve the audit work plan prior to the commencement of the audit.

Task 1.3 Deliverable: Audit Work Plan

Completion Date: January 2016

Task 1.4 and 1.5 TDA Compliance Audit and Review of Operator Functions – All Operators

Compliance Audit - Verify Performance Indicators

The compliance portion of the audit serves to verify the following five performance indicators, as required under Public Utilities Code (PUC) Section 99246(d) and defined in PUC Section 99247 of the TDA:

1. Operating Costs Per Passenger;
2. Operating Cost Per Vehicle Service Hour;
3. Passengers Per Vehicle Service Mile;
4. Passengers Per Vehicle Service Hour; and
5. Vehicle Service Hours Per Employee.

The Consultant is required to: (a) review and assess the operator's methods for collecting and reporting input variable data (i.e., validity, reliability); (b) calculate the five TDA-mandated performance indicators using verified input variable data; and (c) analyze performance indicators with the intent of identifying potential issues or concerns that may need further examination during the high-level functional review. (Note: PUC Section 99246(d) requires a three year trend; however, MTC requires that the trend depict the three FY's of the audit period and the preceding three FY's using data from the prior triennial performance audit of the operator. The trend analysis applies to fixed route and demand responsive services, whether directly operated or operated under contract.) In addition to this data, MTC requires the Consultant to track the annual change in component costs (labor, services, fuel, etc.) for the last six (6) years. This data is requested to better understand the cost drivers of each operator's total annual expenditures.

Base data for computing the performance indicators should be derived from the National Transit Database reports for the operators that are federal grantees; for other operators the Consultant should use "prior year actual" data from the MTC TDA-STA claim application submitted annually by the operator.

The Consultant is required to verify that that the operator's financial and service records are kept in accordance with the Uniform System of Accounts, and to review and assess the operator's compliance with each of the requirements listed in Figure 1 below.

The product of the Compliance Audit is a Preliminary Report on the trends in the five TDA performance indicators, and the results of the Consultant's review and assessment of the operator's compliance with the requirements listed in Figure 2. The Consultant is required to transmit one electronic copy and bound copies of the Compliance Audit Preliminary Report to the operator's management (number of copies to be agreed upon by the Consultant and the operator's management) and to the MTC Project Manager (one electronic report and one copy). The Preliminary Report should include:

- Appropriate graphic depictions of the six-year trends in the performance indicators and in the input variables (e.g., line graphs for performance indicator trends; tables for input variables). The trend analysis must reflect cost components adjusted for inflation, and also reflect cost components not adjusted for inflation, using the Bay Area Consumer Price Index for each of the six years of the trend. The intent is to identify where inflation has had an impact on performance trends;
- Appropriate graphic depictions of the annual change in component costs (labor, services, fuel, etc.) for the last six years. This data is requested to better understand the cost drivers of each operator's total annual expenditures.
- The Consultant's commentary and conclusions pertaining the trend analysis;
- The Consultant's commentary and conclusions pertaining to the operator's data collection and reporting procedures, including any of the operator's accounting policies

and practices which could materially affect the reliability of the data (e.g., capitalization of certain operating expenses);

- The Consultant’s commentary and conclusions pertaining the operator’s use of the Uniform System of Accounts; and
- The Consultant’s commentary and conclusions pertaining to the operator’s compliance with each of the requirements listed in Figure 1.

Figure 2 Performance Audit Compliance Checklist for Transit Operators
PUC 99251; the California Highway Patrol (CHP) has, within the 13 months prior to each TDA claim submitted by an operator, certified the operator's compliance with Vehicle Code Section 1808.1 (pull notice program) following a CHP inspection of the operator's terminal.
PUC 99264; the operator does not routinely staff public transportation vehicles designed to be operated by one person with two or more persons.
PUC 99314.5(e)(1)(2); if the operator receives STA funds, the operator is not precluded by contract from employing part-time drivers or from contracting with common carriers of persons operating under a franchise or license.
PUC 99155; for any operator who received TDA Article 4 funds, if the operator offers reduced fares to senior citizens and disabled persons, applicant will honor the federal Medicare identification card, the California Department of Motor Vehicles disability ID card, the Regional Transit Connection Discount Card, or any other current identification card issued by another transit operator that is valid for the type of transportation service or discount requested; and if the operator offers reduced fares to senior citizens, it also offers the same reduced fare to disabled patrons.
99155.1(a)(1)(2); the operator coordinates with county welfare departments in order to ensure that transportation moneys available for purposes of assisting recipients of aid are expended efficiently for the benefit of that population; if a recipient of CalWORKs program funds by the county, the operator shall give priority to the enhancement of public transportation services for welfare-to-work purposes and to the enhancement of transportation alternatives, such as, but not limited to, subsidies or vouchers, van pools, and contract paratransit operations, in order to promote welfare-to-work purposes.
PUC 29142.4, Govt. Code 66516, MTC Res. Nos. 2310, 2927, 3866; the operator has current SB 602 joint fare revenue sharing agreements in place with transit operators in the MTC region with which its service connects, and has submitted copies of agreements to MTC.*
PUC 99246 (d); the operator has an established process in place for evaluating the needs and types of the passengers being served and the employment of part-time drivers and the contracting with common carriers of persons operating under a franchise or license to provide services during peak hours, as defined in subdivision (a) of Section 99260.2(a). (Consultant should provide a brief description of the process and tools an operator uses to assess passenger needs, how often the service is evaluated and the procedures by which the operator reviews the results and responds.)

* Each operator shall demonstrate compliance by providing the current SB 602 joint revenue sharing agreement to the auditor, and the auditor shall provide one copy of each agreement to the MTC Project Manager.

Review of Operator Functions

The consultant will review each operator function, consistent with the "Performance Audit Guidebook for Transit Operators and Regional Transportation Planning Entities." The functional review is expected to include interviews with the operator's management and staff as well as with selected MTC staff. Concerns over inefficient or ineffective operator performance may be raised by:

- Operator and MTC interviews concerning operator functions;
- Documents, such as productivity committee reports, user surveys, or short range transit plans;
- Review and analysis of TDA-required performance indicators;
- Follow up of prior performance audits; and
- Review of operator compliance with statutory and regulatory requirements.

Such concerns of inefficient or ineffective performance should lead to further investigation, which should include the verification and calculation of additional performance. If warranted, in-depth investigation of performance concerns may be authorized by the Project Manager and performed under Task 4 of the Scope of Work.

As part of the Audit, the Consultant is required to review and assess the operator's response to recommendations from its most recent TDA Triennial Performance Audit report.

Any recommendation from the prior audit which was not fully acted on by the operator is not to automatically be carried over by the Consultant as a recommendation in the audit performed under this RFP. Instead, the reason for a recommendation not being fully acted on by the operator must be ascertained, and the recommendation reconsidered by the Consultant based on the results of the audit conducted under this RFP, taking into account current circumstances and conditions. Specifically, the Consultant's interviews of the operator's management and key staff must address this review and assessment.

Upon completion of the Audit, the Consultant will prepare a Draft Audit Report that presents the combined reviews, assessments, conclusions, commentary and recommendations from the audit. The Draft Audit Report will serve as the basis for an audit exit conference. The Consultant is required to schedule and conduct the exit conference with the operator's management and the MTC Project Manager to discuss the conclusions and recommendations contained in the Draft Audit Report. The exit conference is to be held at the operator's offices. The Consultant is required to transmit one electronic and bound copies of the Draft Audit Report to the operator's management (number of copies to be agreed upon by the Auditor and the operator's management) and to the MTC Project Manager (number of copies to be agreed upon by the Auditor and the MTC Project Manager).

The Consultant is required to consider comments received from the operator's management and/or the MTC Project Manager prior to issuing the Final Audit Report. Upon request by the operator or the MTC Project Manager, the Consultant is required to make an in-person presentation of the Final Audit Report to the operator's policy board.

The Audit Report must be formatted so that it presents a logical flow of information. The report format shall include:

1. Cover and Title Page

The cover and title page must identify the report as: “[Draft or Final] Audit Report of the Triennial Performance Audit of [OPERATOR’S OFFICIAL NAME],” and include the three fiscal years which are covered by the audit, the name of the auditing firm, the statement “Prepared for the Metropolitan Transportation Commission,” and the month and year of publication.

2. Executive Summary

An Executive Summary of the compliance audit, functional audit, and audit results shall precede the formal report itself. This summary should extract the findings and recommendations of the audit and present them in such a way that their relative importance is clear. The findings and recommendations should cross-reference page numbers in the main report to enable a reader to easily locate additional information about items discussed in the summary.

3. Introduction

The main body of the report should start with an introduction, briefly stating the purpose of the audit and the content of the report. The introduction should include:

- A basic description of the operator and its services following the sample format in Figure 3, “Sample Format for the Description of a Transit Operator,” shown below;
- A brief description of the performance audit process, citing the legal requirements for conducting the audit; and
- A brief discussion of the structure and content of the report, including the topics covered in the Compliance Audit.

4. Results of the Compliance Audit

This section of the report should present the final TDA performance indicator analysis: both the graphic formats and the related narrative evaluation. This section should also include a narrative evaluation of the operator’s compliance with the TDA requirements, and with any other requirements specified in the audit scope of work, including conclusions, commentary and recommendations. Any recommendations must be well-substantiated by the content of this section. The report should include a statement that relative to system compliance testing, a finding must be reported regardless of materiality.

5. Results of the Functional Audit

This section of the report should present the operator’s status in achieving its performance measures and standards, and the related narrative evaluation, including conclusions, commentary and recommendations. This section should present the assessment of the operator’s progress in implementing prior audit recommendations: in graphic format (if appropriate) and in narrative form, including conclusions, commentary and recommendations. Any recommendations must be well-substantiated by the content of this section.

6. Conclusions and Recommendations

This section of the report should detail the final recommendations of the performance audit. For each recommendation, reference should be made to the conclusions and commentary

presented in the Compliance Audit section of the report, which forms the basis for and substantiates the recommendation. Key issues that may merit more in-depth assessment should also be identified.

The Audit Report should be written so that in final form it will be easily understood by a variety of readers, including operator policy boards and management, and the general public who wish to understand the operator's primary operational issues generally review the audit report. It is important that the performance audit report is written in such a way that persons who may not have firsthand knowledge of the subject matter can understand the technical subjects addressed.

Figure 3
Sample Format for the Description of a Transit Operator

Soltrans

Location	1850 Broadway Street, Vallejo, CA 95489
Establishment	Solano County Transit (SolTrans) is a Joint Powers Authority that provides public transportation to the southern Solano County cities of Vallejo and Benicia. SolTrans was created by a joint powers agreement approved in the fall of 2010 by the City of Benicia, the City of Vallejo, and the Solano Transportation Authority to build a unified public transit system in southern Solano County. On Friday, July 1, 2011, SolTrans officially took over the public transit programs from the cities of Vallejo and Benicia.
Board	SolTrans has a six member Board of Directors with four City Council members from Benicia and Vallejo and two members from regional planning agencies boards of directors, the Metropolitan Transportation Commission (MTC), and the Solano Transportation Authority (STA). The Board has two alternate members.
Facilities	The SolTrans administration, operations and maintenance facility is located on Broadway in Vallejo and is the central base of operations for services. It houses both agency staff and contractor employees. SolTrans services are centered around three transit centers in Vallejo: the Vallejo Transit Center, the Sereno Transit Center and the Park and Ride Center at Curtola Parkway and Lemon Street.
Service Data	SolTrans provides local and express bus service to the Solano County cities of Vallejo, Benicia and Fairfield, with express bus service connecting to the Contra Costa County communities of El Cerrito, Pleasant Hill and Walnut Creek with regional connections to BART. SolTrans contracts with MV Transportation, Inc., to operate and maintain its fixed-route and paratransit services. Seven local fixed routes serve Vallejo, four limited service routes operate during school in-service dates within Vallejo and Benicia, and five intercity routes connect to surrounding areas. General transit within Benicia is provided through a SolTrans branded dial-a-ride service. In addition to fixed route service, SolTrans provides ADA complementary paratransit bus

service, and administers local and intercity Taxi Scrip Programs. Solano County's Intercity Taxi Scrip Program provides direct service between cities in Solano County for ambulatory ADA Paratransit qualified individuals. The Taxi Scrip service is not included in this performance audit.

SolTrans operates seven local fixed-routes with a span of service Monday through Friday from 5:30 a.m. to 8:50 p.m., Saturdays 6:30 a.m. to 7:50 p.m. and two routes on Sunday 8:30 a.m. to 7:50 p.m. Frequencies on most routes are variable and trips are often widely spaced, but headways generally run between 45 and 60 minutes. Inter-city service runs weekdays from approximately 4:15 a.m. to 11:30 p.m., Saturdays 6:00 a.m. to 11:30 p.m. and one route on Sunday from 8:00 a.m. to 8 p.m. SolTrans' current fixed-route fleet consists of 40 revenue vehicles, including diesel and diesel-electric hybrid 40-foot and 45-foot transit coaches.

The base local fare is \$1.75, while the express fares are based on a two-zone system (\$1.75 or \$5.00). Discounted fares of \$0.85 are offered to senior patrons, disabled patrons, and Medicare cardholders. Daily and monthly passes and discounted 10-ride tickets are also available.

Complimentary ADA paratransit service is provided by SolTrans Paratransit seven days a week during the same hours as the fixed route service. The fare is \$3.00 per trip within Vallejo and \$5.50 for multi-zone trips.

SolTrans Dial-a-Ride is general public demand response service available in the City of Benicia only. Dial-a Ride replaced the Benicia fixed-route service. This service is open to the public with no application necessary for use. Reservations are required and are scheduled on a first come first served basis. Dial-A-Ride also serves ADA eligible residents within Benicia City limits. ADA eligible riders requiring a trip to Vallejo are placed on traditional paratransit. Dial-a Ride operates weekdays from 5:50 a.m. to 8:20 p.m. and Saturday 7:00 a.m. to 7:00 p.m. Fare is \$2.00, with a local day pass available for \$4.00. A 10-Ride pass and Regional Day Pass are also available.

Recent Changes

SolTrans completed a system restructuring/reduction in 2012. Aspects of the restructuring included:

- Elimination of Routes 21 and 22 and replacing them with Dial-a Ride service in the City of Benicia.
- Reducing the span of service on weekdays on all local routes.
- Reducing evening Saturday service hours.
- Eliminating Sunday service on Routes 5, 7, 80 and 85.
- Cutting the length of several local routes and service frequency on Route 85.

Planned Changes

SolTrans' planned changes include:

- Staff proposes to add about 2,000 revenue hours each year, 4,000 hours total, on the most productive local bus routes for FY2014-15,
- Replacement of 15 over-the-road coaches within the SolTrans intercity fleet over the next ten years;
- Renovation and expansion of the existing central operations and maintenance facility on Broadway;
- Facility security and maintenance upgrades of the Curtola Park & Ride;
- Purchase and installation of a new AVL-CAD system on its fixed route fleet to track on-time performance;
- Technology enhancements including security cameras, fareboxes, Clipper fare equipment and IT system improvements;
- Expansion of the Curtola Transit Center; and
- Planning and construction of a Benicia Intermodal Center.

Staff SolTrans currently has ten in-house employees. Its contractor, MV Transportation, Inc. currently has 108 transit employees.

**Where available, an organization chart should also be attached.*

The Consultant shall prepare a summary presentation of trends and findings from the performance audit. The presentation shall be made to the MTC Programming and Allocations Committee.

Task 1.4 Deliverable: Preliminary Audit Report

Completion Date: Annually, with draft reports due to MTC in March/April of each year.

Task 1.5 Deliverable: Final Audit Report, presentation of trends and findings.

Completion Date: Annually, with reports and presentation materials due to MTC in June of each year.

TASK 2 REGIONAL MEASURE 2 (RM2) OPERATING PROGRAM PERFORMANCE REVIEW

A. Background for Regional Measure 2 Operating Program Performance Review

The Consultant or Consultant team selected as a result of this RFP shall conduct a performance review of projects funded through the Regional Measure 2 Operating Program (RM2).

MTC has developed policies and procedures for the administration of the RM2 projects, adopted as MTC Resolution 3636, Revised. Project sponsors and/or implementing agencies are the responsible agencies for making operating decisions on the individual RM2 operating projects.

MTC's key objective for a project monitoring and reporting program for the RM2 operating program is to provide MTC and project sponsors with quantifiable measures on the performance of transit projects based on mandated performance measures. Consultant shall use the products of the project monitoring and reporting program to review project performance.

Pursuant to MTC Resolution No. 3636, Revised, RM2 operating program project sponsors, transit operators, must submit Operating Assistance Proposals (OAPs). Operating program project sponsors must submit annual certifications of meeting performance objectives.

All project information required from the RM2 project sponsors to implement the program will need to be requested by the Consultant through MTC. Information made available to the Consultant may include, but is not limited to:

- Operating Assistance Proposal (OAPs)
- MTC Commission RM2 Allocation Resolutions
- Funding reimbursement data from MTC's accounting system
- Transit operator performance measure data specific to operating related allocations.
- MTC shall have access to the project data as collected, prepared, and compiled by the Consultant for this project.

All pertinent Consultant review and analysis work on the projects is to be included in the reports to MTC. The Consultant may represent progress through both textural and graphical representations with the approval of the MTC project manager. A sample of the report format is provided as *Appendix A-3*. Note that the Consultant's expertise will be primarily targeted to identifying areas of risk in the following areas:

- Significant changes to project scope, cost, and schedule;
- Progress of the service in achieving performance objectives.

The prime responsibility for developing and implementing remedies to resolve those risks resides with the project sponsor.

Task 2.1: Review and Monitoring of Transit Operations Performance Measures

The Consultant shall assist MTC staff in assembling data from the transit operator financial and performance audits as well as other appropriate sources and reviewing annual performance of transit operators receiving operating assistance. The Consultant will prepare a summary report of transit performance, with a comparison to established performance measures.

The Consultant shall review transit operator performance data. The Consultant shall summarize the performance findings annually, with special emphasis on any operators who are unable to meet performance expectations as set by MTC's RM2 policies. If corrective action plans are developed by project sponsors, the Consultant shall evaluate those plans.

Deliverable 2.1: Draft Report on Annual Transit Operator Performance on RM2 Projects
Completion Date: Annually, with draft reports due to MTC 15 working days after September 30 of each year.

Deliverable 2.2: Final Report on Annual Transit Operator Performance on RM2 Projects
Completion Date: Annually, with final reports due to MTC 25 working days after September 30 of each year.

TASK 3: TRANSIT SUSTAINABILITY PROJECT PERFORMANCE ASSESSMENT

On May 23, 2012, the MTC approved the Transit Sustainability Project (TSP) recommendations including performance measures and targets intended to improve the region's public transit financial conditions and customer service, and attract new riders to the system. Concurrently, MTC approved the Transit Performance Initiative (TPI), an investment and incentive strategy to improve public transit.

The Consultant shall assess the progress of the region's seven largest transit operators towards meeting the TSP performance measures and evaluate the appropriateness and effectiveness of the TPI distribution formula and other program elements in meeting the goals of the program.

Task 3.1: Assessment of Performance Measures

MTC Resolution No. 4060 requires that the region's seven largest operators – AC Transit, Bay Area Rapid Transit District, Caltrain, Golden Gate Bridge Highway and Transit District, San Francisco Municipal Transportation Agency, Santa Clara Valley Transportation Agency, and SamTrans—achieve a five percent reduction from the highest cost year between FY 2007-08 to FY 2010-11, by FY 2016-17 in one of the following performance measures:

- Cost per Vehicle Service Hour
- Cost per Passenger
- Cost per Passenger Miles

Each of the agencies subject to the cost reduction requirement is required to adopt a strategic plan to meet the performance target in one of these measures. In FY 2013-14, each agency was required to begin submitting performance data on all three measures and targets as part of MTC's ongoing monitoring of progress towards meeting the targets.

As part of this task, Consultant shall:

- a) Maintain Performance Database – In order to consistently track the operators' progress towards achieving their performance targets, CONSULTANT shall update and maintain MTC's database for reporting information on each operator for each measure by mode and system-wide. The Consultant shall update the following:

Input Statistics (by mode and system-wide total)

- operating costs (in actual dollars)
- operating costs (in constant dollars)
- vehicle service hours
- unlinked passenger trips
- passenger miles

Performance Measures (in constant and actual dollars, by mode and system-wide total)

- operating cost per vehicle service hour
- operating cost per passenger
- operating cost per passenger mile

Consumer Price Index (CPI)

- Bay Area CPI-W by year
- Annual change in Bay Area CPI-W
- Comparison of annual change (CPI-W versus performance measures)
- Comparison of current year (constant dollars) to baseline year

The reporting mechanism and database shall include the input statistics and performance measures by mode beginning in FY 2007-08. The dataset for input statistics shall be the National Transit Database (NTD) financial and operating statistics for each year included in the analysis.

The Consultant shall append the database for future years with both NTD and CPI data.

- a) Compare Actual Performance to Baseline – utilizing the database of statistics provided by MTC, the Consultant shall calculate performance for each measure for FYs 2015-16 and 2016-17 and compare to the baseline.
- b) Assess Performance Relative to Strategic Plans – using the Strategic Plans and Strategic Plan updates submitted by the operators in each of the analysis years (FYs 2016, and 2017), the Consultant shall assess each operator’s performance towards meeting the TSP targets and shall assess the efficacy of each operator’s plan towards the achievement of the targets and develop recommendations and suggested improvements.
- c) Deliver Draft and Final Executive Summary Reports – the Consultant shall prepare an executive summary report, including graphical comparisons of the baseline versus comparison years for use in preparing update presentations for the October MTC Committee and Commission meetings.

Deliverable 3.1.a:	Assessment of TSP Performance Measures Draft Report
Completion Date:	August of 2016 and 2017.
Deliverable 3.1.b:	Assessment of TSP Performance Measures Final Report
Completion Date:	August or September of 2016 and 2017.

TASK 4: OTHER PERFORMANCE REVIEW PROFESSIONAL SERVICES

The Consultant’s preliminary scope of work for Task 4 is listed below. All required services for Task 4 shall be authorized by Task Order, initiated and developed according to the Task Order Process described in Attachment A-1, of Appendix D, MTC Standard Consultant Contract. Task Orders shall include, at a minimum, a detailed description of the work to be performed, a completion date for performance, a maximum payment amount, payment terms (deliverables-based or time and materials) and subconsultant participation (if any), in a completed form as shown in Attachment A-2, Task Order Form, of Appendix D, MTC Standard Consultant Contract, attached hereto and incorporated herein by this reference.

MTC may request, by Task Order, additional project and program management services outside the scope of Tasks 1, 2 and 3.

The Consultant may be asked to provide the following types of services, including but not limited to: peer group performance and/or cost comparison; best practice review and synthesis for transit efficiency; independent assessment of cost reform options and review of current standards, goals, and objectives; recommendations on region-wide performance metrics; or recommendations on specific projects or progress in implementing Productivity Improvement Program Projects and recommendations adopted in the MTC Transit Sustainability Project, MTC Resolution 4060.

Payment for work performed under task orders may be deliverables-based or time and materials, as determined by the MTC Project Manager. A sample task order form is attached hereto as Attachment A-2, Task Order Form to *Appendix D, MTC Standard Consultant Agreement*.

APPENDIX A-1, DESCRIPTION OF MTC

I. Authorities and Responsibilities

MTC is the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area. Created by the state Legislature in 1970, MTC functions as both the Regional Transportation Planning Agency (RTPA) and the Metropolitan Planning Organization (MPO) for the Bay Area.

Over the years, state and federal laws have given MTC an increasingly important role in funding Bay Area transportation improvements. As the RTPA for the Bay Area, MTC is responsible for allocating and administering TDA and State Transit Assistance funds. Additionally, MTC administers certain local sales tax funds available to BART, AC Transit and Muni, and certain toll bridge funds available for transit capital purposes. In 1997, the state Legislature transferred to MTC (from Caltrans) the responsibility for administering the base \$1 toll from the Bay Area's seven state-owned toll bridges. A new entity, the Bay Area Toll Authority (BATA) was created for this purpose. BATA also oversees the Regional Measure 2 Traffic Relief Plan, which is funded by a voter-approved \$1 toll hike that went into effect on the region's state-owned toll bridges on July 1, 2004. With the passage of Assembly Bill 144 in 2005, BATA assumed responsibility for administering all toll revenue from the region's state-owned toll bridges. AB 144 also established a Toll Bridge Project Oversight Committee — consisting of BATA's executive director, the director of the state Department of Transportation, and the executive director of the California Transportation Commission — to manage the state Toll Bridge Seismic Retrofit Program, which includes construction of a new east span for the San Francisco-Oakland Bay Bridge.

To foster consensus on funding priorities, MTC created the Bay Area Partnership, a consortium made up of some three dozen transportation and environmental agencies with a stake in the region's future. With the cooperation of these partners, MTC programs state and federal funds available to the Bay Area.

With the authority over BATA has come the duty to oversee the efficiency and effectiveness of the region's transportation system. MTC monitors transit operators' budgets, conducts performance audits and adopts annual productivity/transit coordination improvement programs to ensure that the region's numerous bus, rail and ferry systems are in synch in terms of their routes, fares, transfer policies, schedules, passenger information and facilities. The region MTC serves is unique in that there are seven primary public transit systems as well as numerous other local transit operators, which together carry an average annual ridership of about 500 million. The combined annual operating budget of the transit agencies is nearly \$2 billion, placing this region among the top transit operating budgets in the nation. In addition, there are numerous specialized services for elderly and disabled travelers, some 20,000 miles of local streets and roads, 1,400 miles of highways, six public ports and three major commercial airports. The Bay Region includes nine counties and 101 cities. Over 7 million people reside within its 7,000 square miles.

To win state and federal support for regional priorities, whether in terms of funding or policy changes that may affect the Bay Area, MTC devotes considerable energy to advocacy efforts in both Sacramento and Washington.

In recent years, MTC also has added to its activities some “hands-on” projects to promote the efficient monitoring and operation of the regional transportation network. A pioneering, computer-based Pavement Management System developed by MTC staff is helping Bay Area cities and counties better maintain their local streets and roads. As the Service Authority for Freeways and Expressways (SAFE), MTC, in partnership with the CHP and California Department of Transportation (Caltrans), oversees the installation and operation of call boxes along Bay Area freeways and administers a roving tow truck service to quickly clear incidents from the region's most congested roadways. MTC also assists local jurisdictions with projects that help improve the safe and efficient operation of certain traffic signal systems and corridors.

A pioneer in new transportation technologies (referred to as intelligent transportation systems), MTC sponsors a number of high-tech programs to smooth commutes and take the kinks out of intersystem travel. The 511 Traveler Information System provides real-time traffic conditions via the phone and a companion Web site located at 511.org. The system relies on an elaborate data-gathering network that MTC and Caltrans have been installing along area freeways in recent years. The 511 Traveler Information System also serves transit riders, linking callers with the phone centers at every Bay Area transit agency and offering personalized transit trip planning via the Web. MTC has been testing a universal smart card for paying transit fares – known as Clipper® - on select transit systems and routes, and has paved the way for regionwide deployment of the smart card, beginning with AC Transit and Golden Gate Transit in 2006. And, acting in its role as BATA, MTC oversees the FasTrak® electronic toll collection system, which speeds motorists' passage across all eight bridges in the region.

II. MTC Organization

The Commission's work is guided by a policy board whose membership has risen from 19 to 21 as a result of state legislation passed in 2012 (taking effect in January 2013), with 18 of the commissioners designated as voting members. Sixteen of the voting commissioners are appointed by local elected officials in each county. The two most populous counties, Alameda and Santa Clara, each have three representatives on the Commission: the county board of supervisors selects one member; the mayors of the cities within the county collectively appoint another; and the mayors of the biggest cities in these two counties, Oakland in Alameda County and San Jose in Santa Clara County, each appoint a representative.

The City and County of San Francisco is represented by two members, one appointed by the board of supervisors and the other by the mayor. In addition, two voting members represent regional agencies — the Association of Bay Area Governments (ABAG) and the Bay Conservation and Development Commission (BCDC). The legislation specifies that the BCDC representative must be a resident of San Francisco, effectively giving San Francisco a third voice on the Commission. San Mateo County and Contra Costa County each have two representatives on the Commission, with the county's board of supervisors selecting one representative, and the mayors of the cities within that county appointing another. The four less populous northern counties of Marin, Napa, Solano and Sonoma each appoint one commissioner to represent both their board of supervisors and cities within their respective counties.

Finally, three nonvoting members represent federal and state transportation agencies and the federal housing department. Commissioners generally serve concurrent four-year terms, with a new chair elected every two years. The current term expires in February 2017.

An Executive Director is assisted by two Deputy Executive Directors. The Chair of the Commission heads the Commission and is voted upon by the Commission members. When fully staffed, MTC's professional and support staff number approximately 200 employees, assigned to various departmental sections: Office of the Chief Financial Officer, Planning, Programming and Allocations, Legislation and Public Affairs, Administrative Services, Technology Services, Operations, Electronic Payments, the Bay Area Headquarters Authority, and the Office of the General Counsel.

Much of the Commission's work is initially performed in committees designated as Standing Committees, Special Committees and Advisory Committees. Standing Committees are composed solely of Commissioners. The task of each of the seven standing Committees relates to the operations of the Commission or to its basic organizational tasks as follows:

Administration Committee - Charged with the oversight of the general operations and performance of the agency. Specific tasks include the review of the agency operating budget and approval of fund allocations for contracts not delegated to the Executive Director.

Bay Area Toll Authority Oversight Committee - Considers matters related to the Toll Bridge Accounts and the Regional Measure 1 (RM 1) Bridge Improvement Program.

Programming and Allocations Committee - Reviews all applications for state or federal funds and recommends allocation of various state and federal funds among eligible claimants and applicants within the region.

Planning Committee - Develops the region's annual transportation work program and program budget. Reviews planning issues and proposes revisions to the Regional Transportation Plan (RTP) and coordinates the RTP to other regional plans. It also recommends approval of the annual Transportation Improvement Program (TIP).

Operations Committee - Considers matters related to transportation system management and operational activities.

Legislation Committee — Develops MTC's legislative proposals, policy positions on major legislative and regulatory proposals, and represents the Commission in the legislative process and oversees the Commission's public information and citizen participation program.

Executive Committee - Acts on matters of urgency brought before it by the Chair between Commission meetings and acts on other matters assigned by the Commission or Chair.

Advisory Committees are authorized by the Commission's enabling legislation and anticipate the participation of other interested individuals and public and private groups. These committees are established to assume responsibility for developing a particular element of the

RTP, establish coordination with other regional agencies, or supervise the development of a specific task or program assigned to the Commission. Membership is not limited solely to Commissioners but depends upon the task to be performed by the Advisory Committee, and can involve the participation of private citizens or members of other public agencies. The Advisory Committees coordinate with the Commission through the Standing Committee appropriate for the type of policy being considered.

III. Documentation Review for MTC Performance Audit

The Consultant should request the documentation required for the audit of MTC, from MTC or other entities and operators. MTC management and staff will assist the Consultant in securing necessary, most current documentation, which should include:

- MTC policies, goals and objectives;
- MTC organization and staffing charts;
- Pertinent laws and regulations;
- MTC's Overall Work Program (OWP);
- Copies of management reports;
- MTC budget and annual reports;
- MTC procedural manuals;
- Previous performance audits or other reviews of the agency; and
- Key MTC products, including:
 - the Regional Transportation Plan (RTP)
 - the Transportation Improvement Program (TIP)
 - MTC Fund Application Manual
 - reports of special studies conducted within the past three years

IV. External Entities to be contacted

The Consultant should contact external entities interested in MTC and request their comments or concerns that may be addressed by the audit. Comments or requests for particular review must be provided in writing. Entities to be contacted should include, but not be limited to, the following:

Federal

- Federal Transit Administration
- Federal Highway Administration

Regional

- Association of Bay Area Governments
- Bay Conservation Development Commission
- Bay Area Air Quality Management District (BAAQMD)

State

- Caltrans (District 4 and Headquarters)
- California State Assembly (Transportation Committee)
- California State Senate (Transportation Committee)
- California Highway Patrol
- California Transportation Commission

Local

- Transit Operators
- Cities and Counties
- Paratransit Coordinating Councils
- Congestion Management Agencies
- Other members of the Bay Area Partnership

APPENDIX A-2, SPECIAL CONSIDERATIONS FOR AUDITS OF SMALL OPERATORS

Compliance audits are required of both multi-modal systems with more than 1000 vehicles and of one-vehicle, one-route operations. While the overall approach described in this supplement apply equally, in practice the focus and conduct of the audits of smaller scale systems must take into account their special needs and characteristics. Flexibility is allowed in determining the extent of the key issue analysis of the small operators. The audit process for small operators is described in detail below.

- Compliance Audit

The TDA performance measures analysis required under the compliance audit can be more challenging for small operations. The data management and reporting procedures are not sophisticated, often manual rather than computerized. The actual base data needed to construct the five TDA performance measures may not be systematically collected, may not conform to the formal TDA definitions, or in some cases, may not be available at all. Consequently, greater care must be taken to verify the validity and reliability of the data used to develop the performance measures.

However, once the Consultants are assured that the information is accurate, the performance measure analysis itself may prove more valuable for smaller scale systems. Compared to larger systems where many extraneous, intervening factors hinder the analysis, the reduced size and complexity of these operations often make it easier to identify the causes of observed trends. Therefore, if sound data are available to the Consultant, it may be useful to expand the performance indicator analysis beyond the five measures required under TDA law. The Consultant should discuss the possibility of an expanded analysis when setting the workscope with MTC.

- Conduct of the Audit

For small, municipally run systems, transit operations is often only one of many administrative responsibilities of the city or county.

Persons charged with various transit related tasks (e.g. data collection and reporting, finance, marketing) may be scattered throughout the city organization, and they are probably also responsible for many non-transit tasks. As a result, individuals dealing with transit functions may not possess extensive knowledge, and may have limited time to spend to address Consultant's questions, compared to the staffs of specific transit districts, authorities, or departments of large operations.

The Consultants should therefore take particular care to review the purpose and scope of the audit with city or county personnel, and identify the individuals within the administrative structure who are responsible for and will provide the needed information. This is especially critical in the case of contract services, where the private operator may possess data the city itself does not maintain. Consultants should also be considerate in defining terminology carefully, to assure that persons involved understand the nature of requests made of them. Early clarification should reduce unnecessary duplication of effort by both Consultants and city staff, and help to establish communication and cooperation between the two parties.

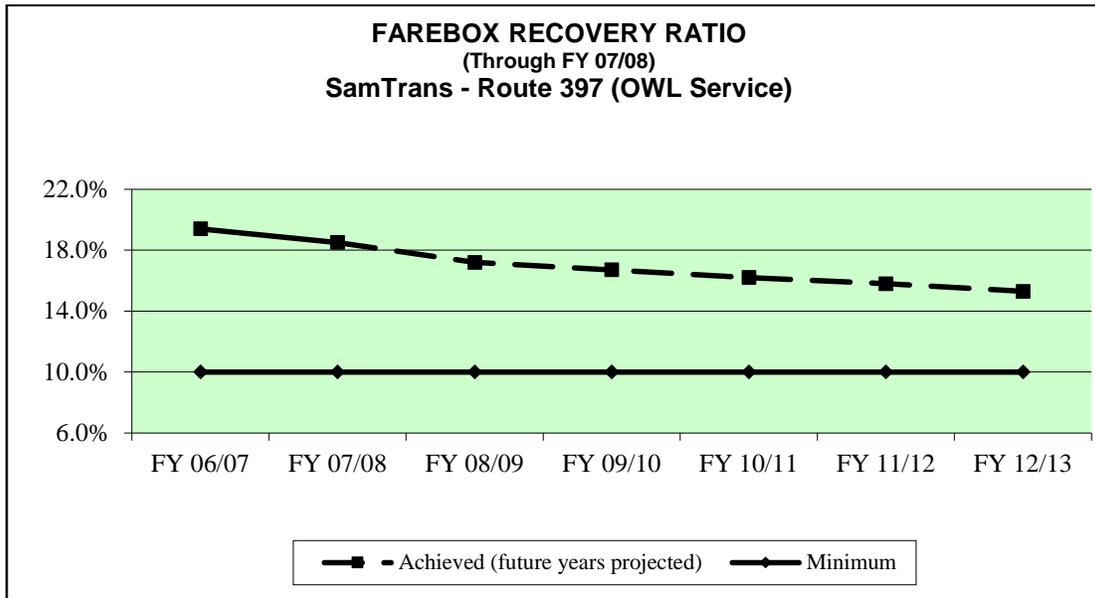
APPENDIX A-3, SAMPLE RM2 OPERATING PROJECT REVIEW REPORT

**ANNUAL MONITORING REPORT for the
BAY AREA TOLL AUTHORITY for FY 07/08**

REGIONAL MEASURE 2 OPERATING PROJECTS

**Operating Project No. 10 (SB 916)
SamTrans Route 397 (OWL Service)
Between Palo Alto and SF Transbay Terminal**

Sponsoring Agency:	San Mateo County Transit District
Contact Person:	(Ms./Mr.) Fname Lname (XXX)XXX-XXXX
Date of This Report:	November 2008
Service Started:	Ongoing
First Allocation:	FY 2005/06
Period Covered:	Fiscal Year 2007/08 (July 1, 2007 through June 30, 2008)
Performance Standard for Service	To meet or achieve by FY 07/08: a) Meet 10% minimum farebox ratio b) Maintain positive annual change in productivity
Farebox ratio achieved:	18.5% for FY 07/08, down from 19.4% in FY 06/07.
Productivity achieved:	13.2 passengers/hour for FY 07/08, up from 11.9 in FY 06/07
Project Status:	MEETS required minimum farebox ratio for FY 07/08. Projections show maintaining required ratio.



**SAMTRANS - ROUTE 397 OWL SERVICE Between
Palo Alto Caltrain Station and SF Transbay Terminal - (Legislative Project #10)**

	FY 06/07	FY 07/08	FY 08/09	FY 09/10	FY 10/11	FY 11/12	FY 12/13
	<i>Prior Year</i>	<i>Last Year</i>			<i>Future Years</i>		
	<i>audited*</i>	<i>actual**</i>	<i>projected</i>	<i>projected</i>	<i>projected</i>	<i>projected</i>	<i>projected</i>
RM 2 Funding							
Start-Up Costs (not part of Oper. Costs)	none	none	none	none	none	none	none
BUDGET							
Total Oper. Cost	\$ 659,763	\$ 738,261	\$ 744,540	\$ 766,877	\$ 789,883	\$ 813,579	\$ 837,987
Fare Revenue	\$ 127,796	\$ 136,571	\$ 128,148	\$ 128,148	\$ 128,148	\$ 128,148	\$ 128,148
Reg. Measure 2 Funding	\$ 100,000	\$ 101,500	\$ 101,500	\$ 101,500	\$ 101,500	\$ 101,500	\$ 101,500
Other Sources	\$ 431,967	\$ 500,190	\$ 514,892	\$ 537,229	\$ 560,235	\$ 583,931	\$ 608,339
Total Revenues	\$ 659,763	\$ 738,261	\$ 744,540	\$ 766,877	\$ 789,883	\$ 813,579	\$ 837,987
SERVICE PARAMETERS							
Annual Ridership	60,476	67,401	60,500	60,500	60,500	60,500	60,500
Annual Rev Vehicle Hrs (RVH)	5,082	5,095	5,082	5,082	5,082	5,082	5,082
PERFORMANCE MEASURES							
Farebox Recovery Ratio	19.4%	18.5%	17.2%	16.7%	16.2%	15.8%	15.3%
Passengers/RVH	11.90	13.23	11.90	11.90	11.90	11.90	11.90
% Change in Pass./RVH	n/a	11.2%	-10.0%	0.0%	0.0%	0.0%	0.0%

* represent audited figures as reported in FY 06/07 Annual Monitoring Report.

Projected data (FY 08/09 and out) from latest OAP application (for FY 07/08 allocation). NOTE: FY 08/09 OAP not submitted at time of reprot.

** represents figures from agency invoices submitted to MTC

Performance Standards (MTC Policy)

Farebox Recovery Ratio - Minimum of 10% (Owl Service)

Change in Pass./RVH - Maintain Positive Annual Change

PROJECT BACKGROUND

Project Description	The San Mateo County Transit District was operating <u>Route 397-Owl Service</u> for several years prior to RM2 funding. The route, originating at the Palo Alto Caltrain station, operates along the BART corridor between the San Francisco International Airport and the Transbay Terminal in downtown San Francisco. At the terminal, the service connects through timed transfers with MUNI and AC Transit's Owl service.
Project Span of Service	Provides hourly service seven days a week, with three trips northbound and four trips southbound on weekdays, Saturdays, and Sundays. This allows the route to cover the periods when BART is not operating.
Recent Changes (if any)	As of the date of this report (November 2008), no significant changes have been made to the service since the last report.
Problem Areas	NONE. Service meets required farebox ratio. Projections show that service will continue to meet ratio. Projections for ridership show no growth over the five year period.
Proposed Actions to Improve Performance	No action proposed. Will continue to monitor ridership and revenue trends. Future fare increases undefined at this time, but will impact revenue and ridership.

APPENDIX B, COST AND PRICE ANALYSIS FORM¹

COST AND PRICE ANALYSIS - RESEARCH AND DEVELOPMENT CONTRACTS				
This form is to be used in lieu of FAA Form 3515 as provided under FAPR 2-16.260-2, it will be executed and submitted with proposals in response to "Requests for Proposals", for procurement of research and development services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.			PURCHASE REQUEST NUMBER	
NAME AND ADDRESS OF OFFERER		TITLE OF PROJECT		
DETAIL DESCRIPTION		ESTIMATED HOURS	RATE/HOUR	TOTAL ESTIMATED COST (Dollars)
1. DIRECT LABOR (Specify)				
TOTAL DIRECT LABOR				
2. BURDEN (Overhead-specify) Dept. or Cost Center		Burden Rate	X BASE	BURDEN (\$)
TOTAL BURDEN				
3. DIRECT MATERIAL				
TOTAL MATERIAL				
4. SPECIAL TESTING (Including field work at Government installations)				
TOTAL SPECIAL TESTING				
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on reverse)				
6. TRAVEL (If direct charge)				
a. TRANSPORTATION				
b. PER DIEM OR SUBSISTENCE				
TOTAL TRAVEL				
7. CONSULTANTS (Identify - purpose - rate)				
TOTAL CONSULTANTS				
8. SUBCONTRACTORS (Specify in Exhibit A on reverse)				
9. OTHER DIRECT COSTS (Specify in Exhibit B on reverse - explain royalty costs, if any)				
10. TOTAL DIRECT COST AND BURDEN				
11. GENERAL AND ADMINISTRATIVE EXPENSE (Rate % of item nos.)				
12. TOTAL ESTIMATED COST				
13. FIXED FEE OR PROFIT (State basis for amount in proposal)				
14. TOTAL ESTIMATED COST AND FIXED FEE OR PROFIT				
15. OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION				
A. GOVERNMENT AUDIT PERFORMED		DATE OF AUDIT	ACCOUNTING PERIOD COVERED	

¹ This document is available as an Excel spreadsheet by email upon request to Project Manager.

B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AUDIT	C. DO YOUR CONTRACTS PROVIDE NEGOTIATED OVERHEAD RATES? () NO () YES (IF YES, NAME AGENCY NEGOTIATING RATES)
---	---

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	TOTAL INDIRECT EXPENSE POOL	BASE FOR TOTAL

16. EXHIBIT A - SUBCONTRACT COSTS (If more space needed, use blank sheets, identify item number)

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT	
		TYPE	AMOUNT
TOTAL			

17. EXHIBIT B - OTHER DIRECT COSTS (If more space needed, use blank sheets, identify item number)

TOTAL	

CERTIFICATE

The labor rates and the overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he ___has, ___has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he ___has, ___has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

For interpretation of the representation including the term "bona fide employee," see Code of Federal Regulations, Title 44, Part 150.

NO. OF CONTRACTOR EMPLOYEES: <input type="checkbox"/> 500 AND UNDER <input type="checkbox"/> OVER 500 <input type="checkbox"/> OVER 750 <input type="checkbox"/> OVER 1,000	STATE INCORPORATED IN:
---	------------------------

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF CONTRACTOR
------	--

APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

MTC’s commissioners include:

Alicia C. Aguirre	Federal D. Glover	Julie Pierce
Tom Azumbrado	Scott Haggerty	Libby Schaaf
Jason Baker	Anne W. Halsted	Bijan Sartipi
Tom Bates	Steve Kinsey	James P. Spering
David Campos	Sam Liccardo	Adrienne J. Tossier
Dave Cortese	Mark Luce	Scott Wiener
Dorene M. Giacomini	Jake Mackenzie	Amy Rein Worth

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any MTC commissioner in the 12 months preceding the date of the issuance of this request for qualifications?

YES NO

If yes, please identify the commissioner: _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any MTC commissioners in the three months following the award of the contract?

YES NO

If yes, please identify the commissioner: _____

Answering yes to either of the two questions above does not preclude MTC from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

APPENDIX D, MTC STANDARD CONSULTANT CONTRACT

PROFESSIONAL SERVICES AGREEMENT
Between METROPOLITAN TRANSPORTATION COMMISSION
And **INSERT NAME OF CONSULTANT**
For TRANSIT PERFORMANCE MONITORING PROGRAM

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made and entered into as of the **xx** day of **Month**, 20____, by and between the Metropolitan Transportation Commission (herein called “MTC”), a regional transportation planning agency established pursuant to California Government Code § 66500 and **INSERT NAME OF CONSULTANT**, (herein called “CONSULTANT”) a **partnership**, _____[state of incorporation] **corporation/ nonprofit corporation/joint venture organized under the laws of the State of _____.**

RECITALS

WHEREAS, MTC intends to complete Transportation Development Act (TDA) triennial performance audits, the Regional Measure 2 Program performance review, and other performance review professional services (herein called the “Project”); and

WHEREAS, the services required for the Project cannot be performed satisfactorily by the officers and employees of MTC; and

WHEREAS, the parties hereto now wish to enter into this Agreement pursuant to which CONSULTANT will render professional services in connection with the Project as hereinafter provided;

NOW, THEREFORE, the parties hereto agree as follows:

1. **SCOPE OF SERVICES**

CONSULTANT’s services are described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. CONSULTANT agrees to perform or secure the performance of all specified services within the maximum payment specified in Article 3, subject to the prior written approval of a work plan by **Christina Hohorst**, (herein called “MTC Project Manager”). All required services under Task 4 – Other Performance Review Professional Services shall be authorized by Task Order. All services described in a duly executed Task Order are hereby incorporated into the Agreement upon their execution. All Task Orders shall be developed according to the process established in Attachment A-1, Task Order Process, attached hereto and incorporated herein, and should include, at a minimum, a completed form as shown in Attachment A-2, Task Order Form.

In the performance of its services, CONSULTANT represents that it has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services, and CONSULTANT represents that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

The MTC Project Manager is responsible for communication with CONSULTANT and the administration of this Agreement. MTC's Executive Director or designated representative may substitute a new MTC Project Manager by written notice to CONSULTANT.

CONSULTANT's point of contact and the individual authorized to communicate to MTC on behalf of CONSULTANT is **INSERT NAME OF CONSULTANT's PROJECT MANAGER** ("CONSULTANT Project Manager"). A change in the CONSULTANT Project Manager requires MTC's prior written approval.

1.2 SUBMISSION OF CONTRACT DOCUMENTS

To the extent requested by the MTC Project Manager, CONSULTANT shall submit communications and required documentation, including but not limited to invoices, requests for contract modifications, and information on payments received and made to subconsultants, subconsultant utilization, and if applicable, certified payrolls, to the MTC PROJECT MANAGER or his or her designee via a one or more web-based systems designated by MTC to which MTC will provide CONSULTANT with system access. MTC may withhold payment of invoices pending receipt of such communications and required documentation via the applicable web-based system.

2. PERIOD OF PERFORMANCE

CONSULTANT's services hereunder shall commence on or after _____, 20____, and shall be completed no later than _____, 20____, unless extended by a duly executed amendment or earlier terminated, as hereinafter provided. CONSULTANT's services shall be performed in accordance with the schedule included in Attachment B, Project Schedule, attached hereto and incorporated herein by this reference. CONSULTANT's services shall be performed in accordance with the schedule included in each signed Task Order.

3. COMPENSATION AND METHOD OF PAYMENT

Subject to duly executed amendments, MTC will pay CONSULTANT for its services as described in Attachment A, Scope of Work, a total amount, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs,

overhead, profit, subconsultants' costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee, not to exceed [**SPELL OUT AMOUNT IN WHOLE DOLLARS (\$_____)**] ("Maximum Payment"). MTC shall make payments to CONSULTANT in accordance with the provisions described in Attachment C, Compensation and Method of Payment, attached hereto and incorporated herein by this reference.

All invoices shall be submitted electronically via email to MTC at acctpay@mtc.ca.gov or in writing to:

Attention: Accounting Section
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 - 8th Street
Oakland, CA 94607-4700

Payment shall be made by MTC within thirty (30) days of receipt of an acceptable invoice, approved by the MTC Project Manager or a designated representative.

4. KEY PERSONNEL

The key personnel to be assigned to this work by CONSULTANT and, if applicable, their hourly rates and the estimated hours to be supplied by each are set forth in Attachment D, Key Personnel Assignments, attached hereto and incorporated herein by this reference. Substitution of any of the personnel named in Attachment D or a decrease in the hours provided to the project by such personnel of more than 10% requires the prior written approval of the MTC Project Manager or a designee. CONSULTANT shall maintain records documenting compliance with this Article, and such records shall be subject to the audit requirements of Article 15. CONSULTANT agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. MTC reserves the right to direct removal of any individual, including key personnel, assigned to this work.

5. AMENDMENTS

MTC reserves the right to request changes in the services to be performed by CONSULTANT. All such changes shall be incorporated in written amendments that specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the Executive Director or a designated representative and CONSULTANT and specifically identified as amendments to the Agreement. The MTC Project Manager is not a designated representative, for purposes of approving an amendment.

6. TERMINATION

A. Termination for Convenience. MTC may terminate this Agreement for convenience, in whole or in part, at any time by written notice to CONSULTANT. Upon receipt of notice of termination, CONSULTANT shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to MTC. **FOR DELIVERABLES-BASED CONTRACTS USE THIS LANGUAGE:** CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed ___%, plus reasonable termination costs, not to exceed the amount payable for such deliverables, maximum amount payable for the terminated work. **FOR TASK ORDERS, USE THIS LANGUAGE:** For terminated deliverables-based Task Orders, CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed ___%, plus reasonable termination costs, not to exceed the amount payable for such deliverables. For terminated time-and-materials Task Orders, CONSULTANT shall be paid for hours worked, plus authorized expenses and reasonable termination costs, not to exceed the maximum amount payable under the terminated Task Order. If CONSULTANT has any property in its possession belonging to MTC, CONSULTANT will account for the same, and dispose of it in the manner MTC directs. Except as provided above, MTC shall not in any manner be liable for CONSULTANT's actual or projected lost profits had CONSULTANT completed the services required by this Agreement.

B. Termination for Default. If CONSULTANT does not deliver the work products specified in this Agreement in accordance with the delivery schedule or fails to perform in the manner called for in the Agreement, or if CONSULTANT fails to comply with any other material provision of the Agreement, MTC may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on CONSULTANT, setting forth the manner in which CONSULTANT is in default. If CONSULTANT does not cure the breach or describe to MTC's satisfaction a plan for curing the breach within the fifteen (15) day period, MTC may terminate the Agreement for default. In the event of such termination for default, CONSULTANT will be entitled to be reimbursed only for work performed in full compliance with the contract requirements as follows: **FOR DELIVERABLES-BASED CONTRACTS USE THIS LANGUAGE:** CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables. **FOR TASK ORDERS, USE THIS LANGUAGE:** For terminated deliverables-based Task Orders, CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables. For terminated time-and-materials Task Orders, CONSULTANT shall be paid for hours worked, plus authorized expenses, not to exceed the maximum payable under the terminated Task Order. Such reimbursement will be offset by any costs incurred by MTC to complete work required under the Agreement. In no event shall

MTC be required to reimburse CONSULTANT for any costs incurred for work causing or contributing to the default. If CONSULTANT has any property in its possession belonging to MTC, CONSULTANT will account for the same, and dispose of it in the manner MTC directs. MTC shall not in any manner be liable for CONSULTANT's actual or projected lost profits had CONSULTANT completed the services required by this Agreement.

C. If it is determined by MTC that CONSULTANT's failure to perform resulted from unforeseeable causes beyond the control of CONSULTANT, such as a strike, fire, flood, earthquake or other event that is not the fault of, or is beyond the control of CONSULTANT, MTC, after setting up a new delivery or performance schedule, may allow CONSULTANT to continue work, or treat the termination as a termination for convenience.

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

CONSULTANT shall, at its own expense, obtain and maintain in effect at all times for the duration of this Agreement the types of insurance and financial security listed in Attachment E, Insurance and Financial Security (Bond) Provisions, attached hereto and incorporated herein, against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement. All insurance must be placed with insurers with a Best's rating of A-VIII or better.

8. INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor and not an employee or agent of MTC and has no authority to contract or enter into any agreement in the name of MTC. CONSULTANT has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by CONSULTANT who are assisting in the performance of services under this Agreement. CONSULTANT shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. CONSULTANT shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

9. INDEMNIFICATION

To the maximum extent permitted by law, CONSULTANT shall indemnify, keep and hold harmless MTC and those entities (if any) identified as additional insureds in Attachment E, Insurance and Financial Security (Bond) Provisions, and their commissioners, directors, officers, agents, and employees ("MTC Indemnified Parties") against any and all demands, claims, suits or actions arising out of any of the following:

A. Any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be alleged to have occurred, caused by any breach of the Agreement or negligent act or omission or willful misconduct of CONSULTANT or its officers, employees,

subconsultants or agents or any of them, arising from, under or in connection with this Agreement; or

B. Any allegation that materials or services provided by CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

CONSULTANT further agrees to defend any and all such claims, actions, suits or other legal proceedings and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against any of the MTC Indemnified Parties, CONSULTANT shall, at its expense, satisfy and discharge the same.

The provisions set forth in this Article are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable. This indemnification shall survive termination or expiration of this Agreement.

10. DATA TO BE FURNISHED BY MTC

All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“MTC Data”) made available to CONSULTANT by MTC for use by CONSULTANT in the performance of its services under this Agreement shall remain the property of MTC and shall be returned to MTC at the completion or termination of this Agreement. No license to such MTC Data, outside of the Scope of Work of the Project, is conferred or implied by CONSULTANT’s use or possession of such MTC Data. Any updates, revisions, additions or enhancements to such MTC Data made by CONSULTANT in the context of the Project shall be the property of MTC and subject to the provisions of Article 11.

10.1 PERSONALLY IDENTIFIABLE INFORMATION

CONSULTANT agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment F, Special Conditions Regarding Personally Identifiable Information, attached hereto and incorporated herein by this reference.

10.2 NONDISCLOSURE OF CONFIDENTIAL INFORMATION

MTC may be required to make available to CONSULTANT certain confidential, non-public or proprietary information (“Confidential Information”) for purposes of carrying out the Project. Confidential Information may be tangible, intangible, visual, oral, written, and/or electronic information, present or future, and includes: (i) proprietary information learned

through inspection of drawings, specifications or equipment; (ii) descriptions of proprietary processes, designs, functionality or know-how; (iii) proprietary software, programming data, code or information; and (iv) other information disclosed in writing and marked as "Confidential" or with a similar notice. As between MTC and CONSULTANT, Confidential Information shall remain the sole and exclusive property of MTC, and no license or other rights to Confidential Information or any works deriving from Confidential Information is granted or implied hereby. Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of CONSULTANT; b) CONSULTANT can demonstrate to have had rightfully in its possession prior to disclosure by MTC or its contractors, vendors or licensors; c) CONSULTANT rightfully obtains from a third party who has the right to transfer or disclose it; or (d) is required to be disclosed by law or applicable legal process.

CONSULTANT agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose such Confidential Information except for the business purpose underlying this Agreement, except as authorized in writing by MTC. CONSULTANT further agrees to disclose Confidential Information only to its directors, officers, employees and consultants who need to know such information, and who have agreed to be bound by the terms and conditions of this Agreement. Promptly upon the request of MTC, at any time and for any reason, CONSULTANT shall destroy or return to MTC, at MTC's option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by MTC.

11. OWNERSHIP OF WORK PRODUCTS

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products ("Work Products") prepared or assembled and furnished to MTC by CONSULTANT or its subconsultants pursuant to this Agreement shall be and are the property of MTC. MTC shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of CONSULTANT or in the hands of any subconsultant upon completion or termination of the work shall be immediately delivered to MTC. CONSULTANT hereby assigns to MTC ownership of any and all rights, title and interest in and to such Work Products, including ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the Work Product. CONSULTANT also agrees to execute all papers necessary for MTC to perfect its ownership of the rights in the Work Product. Notwithstanding the above, "Work Products" are not intended nor shall they be construed to include CONSULTANT'S pre-existing intellectual

property secured, developed, written, or produced by CONSULTANT prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; CONSULTANT shall retain all right, title and interest in any such pre-existing intellectual property.

CONSULTANT shall be responsible for the preservation of any and all such Work Products prior to transmittal to MTC, and CONSULTANT shall replace any such Work Products as are lost, destroyed, or damaged while in its possession without additional cost to MTC.

CONSULTANT represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

12. SUBCONTRACTS

[FOR AGREEMENTS WITH SUBCONSULTANTS AT OUTSET]

A. Subconsultants approved by MTC for subcontract work under this Agreement are listed in Attachment G, Subconsultant List, attached hereto and incorporated herein by this reference. Any subconsultants must be engaged under written contract with CONSULTANT with provisions allowing CONSULTANT to comply with all requirements of this Agreement, including without limitation Article 11, OWNERSHIP OF WORK PRODUCTS. Failure of a subconsultant to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of CONSULTANT. Any substitution of subconsultants listed in Attachment G must be approved in writing by MTC's Project Manager in advance of assigning work to a substitute subconsultant.

[FOR AGREEMENTS WITH NO SUBCONSULTANTS AT OUTSET]

A. No subconsultants are currently approved by MTC for work under this Agreement. In advance of the assignment of any work to a subconsultant, such subconsultant must be approved in writing by the MTC Project Manager and engaged under written contract with CONSULTANT with provisions allowing CONSULTANT to comply with all requirements of this Agreement, including without limitation Article 11, OWNERSHIP OF WORK PRODUCTS. Failure of a subconsultant to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of CONSULTANT.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between MTC and any subconsultants, and no subcontract shall relieve CONSULTANT of his/her responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to MTC for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly

employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultants is an independent obligation from MTC's obligation to make payments to CONSULTANT.

C. Applicable provisions of this Agreement shall be included in any subcontract or subconsultant agreement in excess of \$25,000 entered into under of this Agreement.

13. ASSIGNMENT OF AGREEMENT

CONSULTANT shall not assign this Agreement, or any part hereof without prior express written consent of the MTC Project Manager or a designated representative, and any attempt thereat shall be void and unenforceable.

14. RECORDS

CONSULTANT agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. CONSULTANT further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer.

15. AUDITS

CONSULTANT shall permit MTC and MTC's authorized representatives to have access to CONSULTANT's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 14. CONSULTANT shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

CONSULTANT further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subconsultant agrees that MTC or any of MTC's duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subconsultant for the term specified above.

16. NOTICES

Except for invoices submitted by CONSULTANT pursuant to Article 3, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

To MTC:

Attention: Christina Hohorst
Metropolitan Transportation Commission
101 - 8th Street
Oakland, CA 94607-4700

Email: chohorst@mtc.ca.gov
Fax: (510) 817-5848

To CONSULTANT:

Attention: **Insert Name of Appropriate Person**
Consultant's name
Consultant's address
Consultant's address
Email: X
Fax: X

17. SOLICITATION OF CONTRACT

CONSULTANT warrants that it has not employed or 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 the Agreement. For breach or violation of this warranty, MTC shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from CONSULTANT's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

18. PROHIBITED INTERESTS

CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree or have the potential of conflicting with the performance of services required under the Agreement or the impartial rendering of assistance or advice to MTC. CONSULTANT further covenants that in the performance of the Agreement no person having any such interest shall be employed.

No member, officer, employee or agent of MTC, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, CONSULTANT further covenants that it has made a complete disclosure to MTC of all facts of which CONSULTANT is aware upon due inquiry bearing upon any possible interest, direct or indirect, that it believes any member, officer, agent or employee of MTC (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by MTC.

18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

CONSULTANT shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

CONSULTANT shall not engage the services of any subconsultant or independent contractor on any work related to this Agreement if the subconsultant or independent contractor, or any employee of the subconsultant or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONSULTANT shall immediately provide MTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, MTC becomes aware of an organizational conflict of interest in connection with CONSULTANT's performance of the work hereunder, MTC shall similarly notify CONSULTANT. In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by MTC, MTC will consider the conflict presented and any alternatives proposed and meet with CONSULTANT to determine an appropriate course of action. MTC's determination as to the manner in which to address the conflict shall be final.

Failure to comply with this section may subject CONSULTANT to damages incurred by MTC in addressing organizational conflicts that arise out of work performed by CONSULTANT, or to termination of this Agreement for breach.

19. LAWS AND REGULATIONS

CONSULTANT shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of any such government, including but not limited to MTC, that relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations and procedural requirements that are imposed on MTC as a recipient of federal or state funds are hereby in turn imposed on CONSULTANT.

20. CLAIMS OR DISPUTES

CONSULTANT shall be solely responsible for providing timely written notice to MTC of any claims for additional compensation and/or time in accordance with the provisions of the Agreement. It is MTC's intent to investigate and attempt to resolve any CONSULTANT claims before CONSULTANT has performed any disputed work. Therefore, CONSULTANT's failure to provide timely notice shall constitute a waiver of CONSULTANT's claims for additional compensation and/or time.

CONSULTANT shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by MTC, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given MTC due written notice of a potential claim. The potential claim shall set forth the reasons for which CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

Such notice shall be given to MTC prior to the time that CONSULTANT has started performance of the work giving rise to the potential claim for additional compensation.

If there is a dispute over any claim, CONSULTANT shall continue to work during the dispute resolution process in a diligent and timely manner as directed by MTC, and shall be governed by all applicable provisions of the Agreement. CONSULTANT shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached that resolves CONSULTANT's claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to CONSULTANT's claim, they may choose to pursue dispute resolution pursuant to Article 24, DISPUTE RESOLUTION, or MTC may terminate the Agreement.

21. REMEDIES FOR BREACH

In the event CONSULTANT fails to comply with the requirements of the Agreement in any way, MTC reserves the right to implement administrative remedies that may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MTC or CONSULTANT shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

22. TEMPORARY SUSPENSION OF WORK

MTC, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as MTC may deem necessary. The suspension may be due to the failure on the part of CONSULTANT to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of CONSULTANT. CONSULTANT shall comply immediately with the written order of MTC to suspend the work wholly or in part. The suspended work shall be resumed when CONSULTANT is provided with written direction from MTC to resume the work.

If the suspension is due to CONSULTANT's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of CONSULTANT, all costs shall be at CONSULTANT's expense and no schedule extensions will be provided by MTC.

In the event of a suspension of the work, CONSULTANT shall not be relieved of CONSULTANT's responsibilities under this Agreement, except the obligations to perform the work that MTC has specifically directed CONSULTANT to suspend under this section.

If the suspension is not the responsibility of CONSULTANT, suspension of all or any portion of the work under this Section may entitle CONSULTANT to compensation and/or schedule extensions subject to the Agreement requirements.

23. WARRANTY OF SERVICES

A. In the performance of its services, CONSULTANT represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services, and that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing. In addition, CONSULTANT shall provide such specific warranties as may be set forth in specific Task Orders as agreed upon by the parties.]

B. In the event that any services provided by CONSULTANT hereunder are deficient because of CONSULTANT's or a subconsultant's failure to perform said services in accordance with the warranty standards set forth above, MTC shall report such deficiencies in writing to CONSULTANT within a reasonable time. MTC thereafter shall have:

1. The right to have CONSULTANT re-perform such services at CONSULTANT's expense; or
2. The right to have such services done by others and the costs thereof charged to and collected from CONSULTANT if within 30 days after written notice to CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to MTC that it has undertaken said re-performance; or
3. The right to terminate the Agreement for default.

CONSULTANT shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions.

24. DISPUTE RESOLUTION

A. Informal Resolution of Disputes. CONSULTANT and MTC shall use good faith efforts to resolve all disputes informally at the project manager level. In the event such efforts are unsuccessful, either party may request that MTC provide a written determination as to the proposed resolution of the dispute. Within twenty-one (21) calendar days of the request, the MTC Project Manager shall provide a written determination as to the dispute, including the basis for his or her decision. Upon CONSULTANT's written acceptance of the MTC Project Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, MTC may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the MTC Project Manager's determination.

If the MTC Project Manager's determination is not accepted by CONSULTANT, the matter shall promptly be referred to senior executives of the parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty (30) calendar days of commencement of senior management negotiations, the parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies, as set forth below.

B. Controversies Subject to Alternative Dispute Resolution. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between MTC and CONSULTANT that cannot be resolved through the informal efforts described above, may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time.

C. Other Remedies. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. CONSULTANT must file a government claim pursuant to Government Code section 910 *et seq.* in order to initiate a civil action.

D. Pending Resolution. CONSULTANT shall continue to work during the dispute resolution process in a diligent and timely manner as directed by MTC, and shall be governed by all applicable provisions of the Agreement.

E. Cost of Alternative Dispute Resolution Proceedings. Each party shall bear the costs and expenses incurred by it in connection with such alternative dispute resolution

processes. The cost of any mediator or independent decision maker shall be shared equally between the parties.

F. Survival of this Article. This Article shall survive completion or termination of this Agreement, but under no circumstances shall either party call for an alternative dispute resolution of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceeding to litigate such claim or dispute under the laws of the State of California.

25. CHOICE OF LAW

All questions pertaining to the validity and interpretation of the 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.

26. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover reasonable attorneys' fees, in addition to all court costs.

27. PARTIAL INVALIDITY

If any term or condition of this Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

28. BENEFIT OF AGREEMENT

The Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.

29. NO THIRD PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties.

30. ENTIRE AGREEMENT; MODIFICATION

This Agreement, including any attachments, constitutes the complete agreement between the parties and supersedes any prior written or oral communications. CONSULTANT represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both CONSULTANT and MTC. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

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

METROPOLITAN TRANSPORTATION
COMMISSION

NAME OF CONSULTANT

Steve Heminger, Executive Director

Insert Appropriate Name, Title

J:\CONTRACT\Procurements\System Oversight & Eval\RFPs\FY 15-16\Transit Performance Monitoring\Appendix D, MTC Standard Consultant Agreement.docx

ATTACHMENT A
SCOPE OF WORK
Outline of Services

The services to be performed by CONSULTANT shall consist of services requested by the Project Manager or a designated representative including, but not limited to, the following:

- 1.
 - 2.
- ETC.

IF THERE IS ALSO A TASK ORDER ELEMENT, INCLUDE THE FOLLOWING:

MTC may request additional services on an as-needed basis. All such services shall be authorized by Task Order, initiated and developed according to the detailed task order process described in Attachment A-1, Task Order Process, attached hereto and incorporated herein by this reference. Task Orders shall include, at a minimum, a detailed description of the work to be performed, a completion date for performance, a maximum payment amount, payment terms (deliverables-based or time and materials) and subconsultant participation (if any), in a completed form as shown in Attachment A-2, Task Order Form, attached hereto and incorporated herein by this reference.

ATTACHMENT A-1
TASK ORDER PROCESS

Detailed Task Order Process:

Task Orders will be numbered sequentially. The period of performance shall be as set forth in the individual Task Order. The process for developing, signing and tracking task orders is summarized as follows:

Step 1 – The MTC Project Manager (“MTC PM”) prepares a draft Task Order to issue to CONSULTANT. The MTC PM may solicit feedback from CONSULTANT to facilitate drafting the Task Order.

Step 2* – CONSULTANT prepares a proposal in response to the draft Task Order. A draft Task Order, as included in this Agreement as Attachment A-2, Task Order Form, attached hereto and incorporated herein by this reference, shall be provided to CONSULTANT for review and comment.

Step 3* – The MTC PM reviews CONSULTANT’s proposal to determine if it meets the objectives of the draft Task Order and if CONSULTANT’s proposed costs are reasonable. The MTC PM may solicit early feedback from the MTC Programming and Allocations Section Director at this time, if necessary. Any changes to the draft Task Order deemed appropriate by MTC shall be incorporated in a draft Final Task Order.

Step 4* – The MTC PM forwards the draft Final Task Order to the MTC Contract Administrator for review and approval. Once approved, the MTC PM forwards two copies of the Task Order to the MTC Programming and Allocations Section Director, for review and approval. The MTC Programming and Allocations Section Director signs both copies of a Final Task Order to signify approval and returns them to the MTC PM.

Step 5 – The MTC PM sends both copies of the signed Final Task Order to CONSULTANT, who signs both copies and returns one to the MTC PM.

Step 6 – The MTC PM sends one copy of the fully executed Task Order to the MTC or MTC Task Lead who initiates work, and sends another copy to MTC Finance to encumber funds against the Task Order. The MTC PM keeps the original fully-executed Task Order for the official project record.

Step 7 – Any services added to the Agreement by a Task Order shall be subject to all applicable conditions of the Agreement. Revisions to Task Orders shall require written approval by both the MTC Programming and Allocations Section Director and CONSULTANT. Revisions to Task Orders shall require written approval by both the MTC Programming and Allocations Section Director and CONSULTANT.

Step 8 – The MTC PM is responsible for overseeing the successful conclusion of the Task Order, and will manage the progress of the work, track invoices against the Task Order budget, and track milestone completion against the Task Order schedule.

Step 9 – Once the MTC PM determines the Task Order is complete, the MTC PM will send written notification to CONSULTANT that the Task Order is complete and that all associated invoices are due to MTC within 30 days. Any balance of budget is made available to spend on future task orders at the MTC PM's discretion.

Step 10 – The MTC PM will annually assess the need for a Contract audit.

**The MTC Project Manager may revise the Task Order and/or CONSULTANT may be asked to revise the proposal based on feedback received during Steps 2 through 4.*

**ATTACHMENT A-2
Task Order Form**

1. Task Order No. (include FY)	
2. Title of Task:	
3. MTC Task Lead (if different from MTC Project Manager):	
4. Description of work:	<i>Summarize key task expectations. For more information, see attached <u>Task Order Budget and Schedule</u> and <u>Detailed Description of Work</u> (attached).</i>
5. Original Maximum Payment:	
6. Amended Maximum Payment:	<i>Include each amendment to maximum payment, by amendment number, for particular fiscal year.</i>
7. Completion Date:	Date Schedule attached.
8. Payment terms:	<i>Check the one that applies (see below for more information):</i> <input type="checkbox"/> Time and Materials <input type="checkbox"/> Deliverables

9. Payment Terms [*complete A for Task Orders including one or more deliverables-based payments or B for Time and Materials Task Orders.*]

A. Deliverables-based.

	<u>Deliverable</u>	<i>Total Cost*</i>
1.		\$1
2.		\$1
3.		\$1
4.		\$1
5.		\$1
6.		\$1
7.		\$1
	Total:	\$7.00

***Due upon satisfactory completion as determined by the MTC Project Manager.**

B. Time and Materials

Specify hourly rate for applicable personnel and include estimate of expenses.

	<u>Personnel/Expense</u>	<u>Duties</u>	<u>Rate</u>	<u>Est. Hours</u>	<u>Total Cost</u>
1.			\$		\$1
2.			\$		\$1
3.			\$		\$1
4.			\$		\$1
5.			\$		\$1
Total:					\$5.00

<u>Activity</u>	<u>Lead</u>	<u>Estimated Amount Budgeted</u>
		\$1
		\$1
		\$1
		\$1
		\$1
		\$1
TOTAL MAXIMUM PAYMENT		\$6.00

METROPOLITAN TRANSPORTATION
COMMISSION

CONSULTANT

Anne Richman, Programming and Allocations
Director
Date: _____

Insert name and title of authorized individual
Date: _____

Task Order Schedule

<u>Deliverable/Milestone</u>		<u>Due Date</u>
		Date

Detailed Description of Work

Task Order #: Title

1. Description of subtask 1.
Deliverable – deliverable name
2. Description of subtask 2.
Deliverable – deliverable name
3. Description of subtask 3.
Deliverable – deliverable name
4. Etc.

ATTACHMENT B
Project Schedule

<u>Task #</u>	<u>Work to be Performed/Deliverables (#)</u>	<u>Completion Date</u>

For work under Task 4, CONSULTANT's services shall be performed in accordance with the schedule included in each duly executed Task Order.

**ATTACHMENT C
Compensation and Method of Payment**

FIRM FIXED PRICE

A. Compensation. For work performed under Tasks 1, 2, and 3, CONSULTANT shall be paid, as full compensation for the satisfactory completion of the work described in Attachment A, Scope of Work, the firm fixed sum of _____ dollars (\$_____), which includes all labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, subconsultants' costs, travel, equipment, materials and supplies. Any amendments to this Agreement shall be based on the hourly rates set forth in Attachment D, Key Personnel Assignments, attached hereto and incorporated herein by this reference. In no event shall the total compensation to be paid CONSULTANT under the Agreement exceed the Maximum Payment specified in Article 3 of the Agreement.

B. Progress Payments. Payment for CONSULTANT's services shall be due in the amounts indicated below, upon acceptance by the MTC Project Manager of the following deliverables or milestones, described in detail in Attachment A, Scope of Work:

<u>Task</u>	<u>Deliverables (#)</u>	<u>Amount Due</u>
1	Do this (#1)	\$1,234
2	Do that (#2)	\$56,789
		0
	Excel is inside Word Tables. Highlight field, hit F9 or Table Formula = Format \$.	\$58,023.00
		highlight #, hit F9

C. Method of Payment. CONSULTANT shall submit an invoice identifying the project deliverable or milestone for which payment is sought no later than thirty (30) days after MTC's acceptance of such deliverable/milestone. If applicable, CONSULTANT's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment F, Special Conditions Relating to Personally Identifiable Information.

TASK ORDERS

A. Compensation. For work performed under Task 4, CONSULTANT shall be compensated for its work as specified in signed Task Orders. All Task Orders shall be developed according to the process established in Attachment A-1, Task Order Process, attached hereto and incorporated herein, and should include, at a minimum, a completed form as shown in Attachment A-2, Task Order Form.

Payment terms may be based on acceptance of agreed-upon deliverables or upon time and materials reimbursement, depending on the requirements of each Task Order. For time and materials-based payment of Task Orders, labor rates in Attachment D, Key Personnel Assignments, shall apply. The hourly rates in Attachment D include all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, equipment, materials and supplies. Said hourly rates shall remain in effect for the term of the Agreement, unless MTC's prior written authorization is obtained for any changes. In no event shall the total compensation to be paid CONSULTANT under the Agreement exceed the Maximum Payment specified in Article 3 of the Agreement.

B. Expenses. For time and materials Task Orders, MTC will reimburse CONSULTANT for all expenses deemed reasonable and necessary by MTC incurred by CONSULTANT in the performance of this Agreement. Such reimbursement shall include travel and personal expenses incurred by employees or agents of all CONSULTANTS in accordance with 48 Code of Federal Regulations Part 31 or Office of Management and Budget Circular A-122, as applicable.

C. Method of Payment. CONSULTANT shall submit invoices for services rendered no more frequently than on a monthly basis. Invoices shall identify work for which payment is requested by Task Order number (including fiscal year). All invoices will be dated, numbered in serial order, and signed by CONSULTANT. If applicable, CONSULTANT's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment F, Special Conditions Relating to Personally Identifiable Information.

For Task Orders authorizing payment on the basis of satisfactory deliverables, CONSULTANT shall specify each deliverable for which payment is requested, the amount requested, and the total amount paid to date under the Task Order.

For Task Orders authorizing time and materials payment, CONSULTANT shall submit invoices for services rendered on a monthly basis, covering fees and expenses for a single calendar month. Each invoice shall specify the work performed, hours worked, and amount due (by personnel), authorized expenses (with receipts for such expenses), the total amount claimed under the invoice and the amount paid to date under the Task Order.

ATTACHMENT D
Key Personnel Assignments

	<u>Name</u>	<u>Rate/hour</u>	<u>Est. hours</u>	<u>Task Description</u>
1.		\$xx		
2.				
3.				
4.				
5.				
6.				
7.				
8.				

* Applicable to development of payment provisions in amendments only.

ATTACHMENT E

Insurance and Financial Security (Bond) Provisions

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover CONSULTANT's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that CONSULTANT authorizes to work under this Agreement (hereinafter referred to as "Agents.") CONSULTANT shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

CONSULTANT is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, CONSULTANT shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONSULTANT's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event CONSULTANT or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that CONSULTANT's insurance be primary without right of contribution from MTC. Prior to beginning work under this contract, CONSULTANT shall provide MTC with satisfactory evidence of compliance with the insurance requirements of this section.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONSULTANT's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as CONSULTANT is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000

combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC.

MTC and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Umbrella Insurance in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim.

The policy shall provide coverage for all work performed by CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of CONSULTANT. No contract or agreement between CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.

6. Property Insurance. Property Insurance covering CONSULTANT'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

B. Acceptable Insurers. All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A-VIII or better.

C. Self-Insurance. CONSULTANT's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

D. Deductibles and Retentions. CONSULTANT shall be responsible for payment of any deductible or retention on CONSULTANT's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that MTC seeks coverage as an additional insured under any CONSULTANT insurance policy that contains a deductible or self-insured retention, CONSULTANT shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of CONSULTANT, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONSULTANT or subconsultant is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, CONSULTANT shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, CONSULTANT shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of CONSULTANT's personnel, subconsultants, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally accepted. CONSULTANT must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, CONSULTANT shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

H. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant hereto, including, but not limited to, liability assumed pursuant to Article 9 of this Agreement.

2. FINANCIAL SECURITY (BONDS)

Not Applicable.

3. ADDITIONAL INSUREDS

The following entities are to be named as Additional Insureds under applicable sections of this Attachment E and as MTC Indemnified Parties, pursuant to Article 9 of the Agreement.

- None

ATTACHMENT F

Special Conditions Relating to Personally Identifiable Information

CONSULTANT will have access to personally identifiable information (“PII”) in connection with the performance of the Agreement. PII is any information that is collected or maintained by MTC or CONSULTANT that identifies or describes a person or can be directly linked to a specific individual. Examples of PII include name, address, phone or fax number, signature, date of birth, or credit card information, bank account number, or travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

1. Right to Audit

CONSULTANT shall permit MTC and its authorized representatives to audit and inspect: (i) CONSULTANT’s facilities where PII is stored or maintained; (ii) any computerized systems used to share, disseminate or otherwise exchange PII; and (iii) CONSULTANT’s security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures. The audit and inspection rights hereunder shall be for the purpose of verifying CONSULTANT’s compliance with this Agreement, and all applicable laws.

2. General Confidentiality of Data

All PII made available to or independently obtained by CONSULTANT in connection with this Agreement shall be protected by CONSULTANT from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to MTC. This includes, but is not limited to, the secure transport, transmission and storage of PII used or acquired in the performance of this Agreement.

CONSULTANT agrees to properly secure and maintain any computer systems (hardware and software applications) or electronic media that it will use in the performance of this Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied as appropriate to secure PII that may be used, transmitted, or stored on such systems in the performance of this Agreement.

Notwithstanding anything to the contrary in Article 14. Records, of this Agreement, CONSULTANT agrees to retain PII for no longer than the completion date of the Agreement. At the conclusion of this retention period, CONSULTANT agrees to use Department of Defense

(“DoD”) approved methods to permanently remove PII from any files. Discarded PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic disk, optical disk, and memory chips (“Storage Media”). CONSULTANT agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. CONSULTANT also agrees to use DoD approved methods to sanitize any Storage Media prior to discarding or when useful life has ended, whichever comes first. At the conclusion of the performance period of this Agreement, CONSULTANT shall submit a certification to the MTC Project Manager as follows: “All PII whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in Section 2. General Confidentiality of Data of Attachment F, Special Conditions Relating to Personally Identifiable Information.” These requirements shall survive termination or expiration of this Agreement.

3. Compliance with Statutes and Regulations

CONSULTANT agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 *et.seq.*) In addition, CONSULTANT warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and MTC relating to the handling and confidentiality of PII, including the terms and conditions contained in this Attachment F, Special Conditions Relating to Personally Identifiable Information and agrees to indemnify MTC against any loss, cost, damage or liability by reason of CONSULTANT’s violation of this provision.

4. Subconsultants

MTC’s approval in writing is required prior to any disclosure by CONSULTANT of PII to a subconsultant or prior to any work being done by a subconsultant that entails receipt of PII. Once approved, CONSULTANT agrees to require such subconsultant to sign an agreement in substantially identical terms as this attachment, binding the subconsultant to comply with its provisions.

5. Consultant Guarantees

CONSULTANT shall not, except as authorized or required by its duties by law, reveal or divulge to any person or entity any PII that becomes known to it during the term of this Agreement.

CONSULTANT shall keep all PII entrusted to it completely secret and shall not use or attempt to use any such information in any manner that may injure or cause loss, either directly or indirectly, to MTC.

CONSULTANT shall comply, and shall cause its employees, representatives, agents, subconsultants and subcontractors to comply, with such directions as MTC may make to promote the safeguarding or confidentiality of all its resources.

If requested by MTC, CONSULTANT shall sign an information security and confidentiality agreement provided by MTC and attest that its employees, representatives, agents, subconsultants and subcontractors involved in the performance of this Agreement shall be bound by terms of a confidentiality agreement with CONSULTANT substantially the same in its terms.

6. Notice of Security Breach

CONSULTANT shall immediately notify MTC when it discovers that there may have been a breach in security that has or may have resulted in compromise to PII. For purposes of this section, immediately is defined as within two hours of discovery. The MTC contact for such notification is as follows:

Privacy Officer
privacyofficer@mtc.ca.gov
(510) 817-5700

ATTACHMENT G
Subconsultant List

	<u>Name/Address of Subconsultant</u>	<u>Amount of Subcontract</u>	<u>Description of Work</u>
1.			
2.			
3.			
4.			
5.			
6.			

LIST "None" ABOVE IF NO SUBCONTRACTORS ARE BEING USED

APPENDIX D-1, INSURANCE REQUIREMENTS

Minimum Insurance Coverages. Consultant shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under its Agreement with MTC, placed with insurers with a Best's rating of A-VIII or better.

Yes (√)	Please certify by checking the box below that required coverages will be provided within ten (10) days of MTC's notice to firm that it wishes to contract with the firm.
—	<u>Workers' Compensation Insurance</u> with Statutory limits, and <u>Employer's Liability Insurance</u> with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONSULTANT's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such <u>Workers Compensation & Employer's Liability</u> may be waived, if and only for as long as CONSULTANT is a sole proprietor or a corporation with stock 100% owned by officers with no employees.
—	<u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT's officers, agents, and employees and with limits of liability that shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC. MTC and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.
—	<u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability that shall not be less than \$1,000,000 combined single limit per accident.
—	<u>Umbrella Insurance</u> in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
—	<u>Errors and Omissions Professional Liability Insurance</u> for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim. The policy shall provide coverage for all work performed by CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the

responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.

Property Insurance. Property Insurance covering CONSULTANT'S own business personal property and equipment to be used in performance of its Agreement with MTC, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

Consultant's obligation to provide the insurance described herein may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that MTC seeks coverage as an additional insured under any Consultant insurance policy that contains a deductible or self-insured retention, Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Consultant, subconsultant, subcontractor, or any of their employees, officers or directors, even if Consultant or subconsultant is not a named defendant in the lawsuit.

If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Consultant shall:

1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of its Agreement with MTC or the beginning of any work under such Agreement;
2. Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Consultant's personnel, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally accepted.

Consultant must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of its Agreement with MTC.

Prior to commencement of any work hereunder, Consultant shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all

provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant hereto, including, but not limited to, liability assumed pursuant to the Indemnification section of its Agreement with MTC.

By signing below you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within ten (10) days of MTC’s notice to firm that it wishes to contract with the firm.

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

NOTE: If you were unable to check “Yes” for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to MTC’s attention no later than closing date/time for receipt of requests for modifications/exceptions. If such modifications/exceptions are not brought to MTC’s attention consistent with the provisions of this RFP, compliance with the insurance requirements will be assumed.