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TRANSPORTATION  
COMMISSION

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November 5, 2015

**REQUEST FOR QUALIFICATIONS (RFQ)  
ABAG AND MTC MERGER STUDY AND  
MERGER IMPLEMENTATION PLAN**

NOTICE IS HEREBY GIVEN that Metropolitan Transportation Commission (MTC) invites your firm to submit a Statement of Qualification (SOQ) for the ABAG and MTC Merger Study and Merger Implementation Plan project.

The RFQ 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 RFQ. Responses should be submitted in accordance with the instructions set forth in the RFQ.

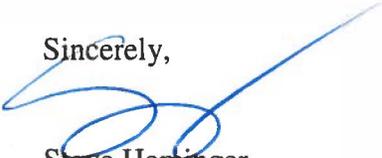
Interested firms must submit an original and ten (10) copies, as well as one electronic PDF version, of their SOQ by **4:00 p.m. on Friday, November 20, 2015**, in accordance with the instructions contained in the RFQ. Other key RFQ Dates are listed in Section V, Consultant Selection Timetable of the RFQ.

*MTC Point of Contact*

Michael Brinton, Contracts Specialist  
Joseph P. Bort MetroCenter  
101 Eighth Street  
Oakland, CA 94607-4700  
Tel: 510/ 817-5727  
E-mail: [mbrinton@mtc.ca.gov](mailto:mbrinton@mtc.ca.gov)

Thank you for your interest.

Sincerely,

  
Steve Heminger  
Executive Director

SH: MB

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*Dave Cortese, Chair*  
Santa Clara County

*Jake Mackenzie, Vice Chair*  
Sonoma County and Cities

*Alicia C. Aguirre*  
Cities of Santa Clara County

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U.S. Department of Housing  
and Urban Development

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Cities of Santa Clara County

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Association of Bay Area Governments

*Bijan Sartipi*  
California State  
Transportation Agency

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*Steve Heminger*  
Executive Director

*Alix Bockelman*  
Deputy Executive Director, Policy

*Andrew B. Frenier*  
Deputy Executive Director, Operations

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## I. MTC AND PROJECT DESCRIPTION

### A. Description of MTC and ABAG

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 (the “Bay Area” or the “region”).

ABAG was formed in 1961 and serves as the Council of Governments for the region.

### B. Project Background and Description

There have been a series of staff and Chair reports and board presentations and discussions before both MTC and ABAG related to the relationship of MTC and ABAG with respect to planning responsibilities and interagency funding agreements. The reports and related correspondence can be found on each agency’s website, and generally include the period from July 2015 through October 2015. On October 28<sup>th</sup>, the MTC Commission and ABAG Administrative Committee approved resolutions calling for a merger implementation plan (MIP). Specifically, MTC’s Resolution 4210 includes the provision below:

11. MTC and ABAG shall expedite the retention of a mutually acceptable consultant to conduct a jointly funded merger study and a merger implementation plan of MTC and ABAG to be completed by June 1, 2016. The study shall examine the policy, management, financial and legal issues associated with further integration, up to and including institutional merger between MTC and ABAG and shall set forth the specific plans benchmarks, and milestones for implementation. This plan shall be referred to as the proposed ABAG/MTC Merger Implementation Plan (MIP). The study and plan shall be governed by the joint MTC Planning and ABAG Administrative committees and be informed by the full participation of designated ABAG and MTC representatives through public meetings governed by the Brown Act.

For more background, refer to each agency website ([www.mtc.ca.gov](http://www.mtc.ca.gov)) and ([www.abag.ca.gov](http://www.abag.ca.gov)) and the following links for:

- MTC Resolution No. 4210  
(<https://mtc.legistar.com/LegislationDetail.aspx?ID=2501410&GUID=8AF1BF0C-5FBF-4A1D-B286-77B5445FA89A&Options=&Search=>)
- ABAG Administrative Committee Resolution No. 12-15  
([http://abag.ca.gov/media/2015\\_merger/ABAG\\_Resolution\\_12-15.pdf](http://abag.ca.gov/media/2015_merger/ABAG_Resolution_12-15.pdf))

As required by such resolutions, the firm selected to enter into a contract (“Consultant”) under this RFQ will perform a merger study and recommend a MIP. The study shall examine the policy, management, financial and legal issues associated with further integration of ABAG and MTC, up to and including institutional merger between MTC and ABAG. The MIP shall be comprised of the specific plans, benchmarks and milestones for implementation of any further

integration up to and including institutional merger of MTC and ABAG. The study and MIP shall be governed by the joint MTC Planning and ABAG Administrative committees and be informed by the full participation of designated ABAG and MTC representatives through public meetings governed by the Brown Act. See Section III, Scope of Work, Period of Performance and Budget, and *Appendix A, Preliminary Scope of Work*.

## II. MINIMUM QUALIFICATIONS

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

- The Proposer’s Project Manager has a minimum of five (5) years’ experience within the last ten (10) years managing public or private sector merger studies and/or similar work for public sector transportation and/or planning agencies; and
- Each key personnel has a minimum of three (3) years’ experience working on public or private sector merger studies and/or similar work for public sector transportation and/or planning agencies.

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

### *A. Scope of Work*

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

### *B. Period of Performance*

MTC expects the work to commence on or about January 1, 2016, and to be completed no later than June 30, 2016.

### *C. Budget*

MTC has budgeted approximately two hundred seventy five thousand dollars (\$275,000) for this effort. Additional funding may be available for additional as needed task order work subject to MTC budget approval.

## IV. REQUESTS FOR CLARIFICATION OR EXCEPTIONS

Any addenda to the RFQ will be posted on MTC’s website. All Proposers are responsible for checking the website for any addenda to the RFQ.

Any requests for clarification of or exceptions to RFQ requirements must be received by MTC no later than 4 p.m. on Thursday, November 12, 2015, to guarantee a response or consideration. MTC reserves the right to reject any SOQ that contains unauthorized conditions or exceptions.

## V. CONSULTANT SELECTION TIMETABLE

4 p.m., on Thursday, November 12, 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 RFQ provisions
<b>4 p.m., Friday, November 20, 2015*</b>	<b>Closing date/time for receipt of SOQs</b>
Week of November 30, 2015*	Interviews (if held)
December 16, 2015*	ABAG Administrative Committee and MTC Commission Approval

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

## VI. SUBMITTAL OF SOQ

1. Interested Proposers must submit an original and ten (10) copies, as well as one electronic PDF version, of their SOQs by **4 p.m. on Friday, November 20, 2015. Submission of an electronic copy of the SOQ without hard copies will not satisfy the submission requirement. No SOQs submitted solely by email and no faxed SOQs will be considered.**
2. SOQs are to be addressed as follows:

ABAG/MTC MIP RFP  
Attention: Michael Brinton  
101 8th Street, 3rd Floor Receptionist  
Oakland, CA 94607
3. Proposer's name and return address must also appear on the envelope.
4. SOQs 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 SOQ 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 SOQs, 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 3<sup>rd</sup> floor at the receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of SOQs.
6. Proposer agrees and acknowledges all RFQ specifications, terms and conditions and indicates ability to perform by submission of a SOQ.

7. A signed SOQ submitted to MTC in response to this RFQ shall constitute a binding offer from Proposer to contract with MTC according to the terms of the SOQ for a period of ninety (90) days after the SOQs are due to MTC.
8. A SOQ may be withdrawn at any time before the date and time when SOQs are due by submitting a written request for its withdrawal to the MTC Point of Contact.
9. This RFQ does not commit MTC to award a contract or to pay any costs incurred by any Proposer in the preparation of a SOQ in response to this RFQ.
10. Only one SOQ 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 SOQs submitted, waive minor irregularities, request additional information, 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 RFQ.
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 RFQ, MTC reserves the right to reject the SOQ 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.

## **VII. FORM OF SOQ**

SOQs must be signed in ink and include a statement that the person or persons signing the SOQ is/are authorized to authorize and submit the SOQ 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.

SOQ 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 SOQ, as determined in MTC's sole discretion.

Each SOQ must include the following:

### A. Transmittal Letter

SOQs 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, as further described in Section IX, General Conditions, Item F, Conflict of Interest, 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 RFQ and any Addendum to the RFQ. Indicate that the SOQ is a firm offer to enter into a contract to perform work related to this RFQ for a period of 90 days from the due date for SOQs.

#### B. Title Page

SOQs must include a title page that includes the RFQ 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

SOQs 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, and identify any specific considerations. It should include, but not be limited to, the following:

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

#### E. Qualifications and References

1. Describe proposed team's qualifications specific to the requirements set forth in Section II, Minimum Qualifications. Identify the personnel, including subcontractors' personnel, whose expertise or experience addresses each of the specified minimum qualifications. Proposers are welcome to identify and provide examples of any other qualifications they feel are critical to the successful completion of the Preliminary 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.

3. Provide a succinct description (one page maximum) of any previous projects performed by key personnel, whether at the Proposer or another firm, similar to the Preliminary 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 his or her telephone number.
4. 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 SOQ evaluation, upon request. The samples will be considered in evaluating firm and staff expertise and experience, and written presentation effectiveness.
5. Provide a list of references (including references for subcontractors) and their contact information.
6. Provide a summary of all contracts your firm (including subcontractors) has held with MTC, ABAG, any of ABAG's affiliated entities such as the Financing Authority for Nonprofits, MTC SAFE, BATA, BAIFA or BAHA in the past three (3) years, including a brief description of the scope of work, the contract amount, and date of execution.

#### F. Cost Proposal

Proposer's cost proposal shall consist of the following:

1. Provide a description of the Proposer's and any subcontractors' hourly rates, by key personnel. Hourly rates shall be fully loaded and include all direct and indirect costs. A fully loaded hourly rate means an hourly rate that includes all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, and ordinary materials and supplies. A breakdown of each cost element of each hourly rate shall be provided. Rates indicated shall be firm for the duration of the contract term.
2. Provide a task budget that presents a breakdown of hours and expenses by task as stated in the Preliminary Scope of Work. The task budget 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.
3. Provide information (date and outcome) on the Proposer's most recent pre-award audit, if applicable.

#### G. California Levine Act Statement

Submit a signed Levine Act statement for each of MTC and ABAG (*Appendix C-1* and *Appendix C-2*).

#### H. 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 RFQ for how to request exceptions to the minimum insurance requirements.)

#### I. 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>.

### VIII. SOQ EVALUATION

#### *A. Verification of Minimum Qualifications*

The MTC Point of Contact will review SOQs to ensure that each SOQ meets the Minimum Qualifications set out in Section II, Minimum Qualifications of this RFQ. Proposers failing to meet the Minimum Qualifications will not be considered.

#### *B. Review for General Responsiveness*

The MTC Point of Contact, in consultation with the MTC's Office of General Counsel, will conduct an initial review of the SOQs for general responsiveness and inclusion of the items requested in Section VII, Form of SOQ. Proposers failing to meet the Minimum Qualifications listed in this RFQ will not be considered responsive. Also, any SOQ that does not include enough information to permit the evaluators to rate the SOQ in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. A SOQ that fails to include one or more items requested in Section VII, Form of SOQ, 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 SOQs will then be evaluated by an evaluation panel comprised of MTC and ABAG representatives. The evaluation of the SOQs shall be within the sole judgment and discretion of the evaluation panel.

All contact during the evaluation phase shall be through the MTC Point of Contact 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 SOQs shall be evaluated on the basis of the following evaluation factors, with their relative importance indicated by percentages:

1. Individual and team experience (60%):  
Proposer and project manager qualifications, past performance, experience and references. Commitment to quality, client satisfaction and cooperative working relationships including but not limited to:
  - Project manager experience as it relates to the Preliminary Scope of Work;
  - Project team experience as it relates to the Preliminary Scope of Work;
  - Past performance and references, including but not limited to:
    - Prior engagements of similar scope and complexity to the Preliminary Scope of Work;
    - Work with public agency governing boards and in response to strategic direction from more than one agency/project manager; and
    - Demonstrated timely completion of prior work within budget.
2. Written communication skills based on proposal, and presentation and facilitation skills based on prior performance. (20%).
3. Cost effectiveness, including reasonableness of hourly rates and reasonableness and appropriateness of preliminary budget (20%).

During the evaluation, all potential conflicts of interest with respect to MTC and ABAG (see Section VII, Form of SOQ, Subarticle A, and Section IX, General Conditions, Subarticle F) will be considered. MTC may request additional information from any Proposer that appears to have a conflict of interest, including its plan to mitigate any such conflict. MTC will not award a contract to a Proposer with an actual or apparent conflict of interest that cannot be adequately mitigated, in MTC's sole discretion.

#### ***D. Proposer Interviews***

Following the initial evaluation of SOQs, the evaluation panel may elect to recommend a Consultant with or without interviews or may develop a short list of firms to be considered for selection. Oral interviews will be held with short-listed firms. If a short list is developed, firms that were not selected for the short list will be notified; however, the evaluation record shall remain confidential until the ABAG Administrative Committee acts to concur in the award and the MTC Commission authorizes award.

MTC reserves the right to not convene interviews and to make an award on the basis of written SOQs, alone. SOQs should be submitted on the most favorable terms. References may be contacted at any point in the evaluation process. Further, MTC reserves the right to accept or reject any and all SOQs submitted, to waive minor irregularities in SOQs, and to request additional information from one or more of the Proposers. Any award made will be made to the

firms whose SOQs are the most advantageous to MTC, based on the evaluation criteria listed above.

***E. Recommendation for Contract Award***

The panel will recommend the selected Consultant to the MTC and ABAG Executive Directors, based on evaluation of the written SOQ and oral interviews (if held). The MTC and ABAG Executive Directors will review the recommendation, the ABAG Executive Director will forward the recommendation to the ABAG Administrative Committee for concurrence, and the MTC Executive Director will forward the recommendation to the MTC Commission to authorize award.

**IX. GENERAL CONDITIONS**

***A. Award***

Any award made will be to the Proposer whose SOQ is most advantageous to MTC and ABAG 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 RFQ, MTC reserves the right to reject the SOQ of the selected firm and enter into a contract with the next highest scoring firm.

***B. Contract Arrangements***

The 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 RFQ must be brought to MTC's attention no later than the deadline for protesting RFQ provisions or compliance with all material insurance requirements will be assumed.

All work will be assigned pursuant to task orders, which will include a specific scope of work based on the preliminary work scope and tasks identified in *Appendix A, Preliminary Scope of*

Work. Payment for work performed under task orders may be deliverables-based or time and materials, as specified in signed task orders. A sample task order form is attached hereto as part of *Appendix D, MTC Standard Consultant Agreement, Attachment A-2, Task Order Form*.

### ***C. Selection Disputes***

A Proposer may object to a provision of the RFQ 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 RFQ or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the MTC Point of Contact 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 SOQs are due, for objections to RFQ 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 Commission 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 Commission 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 Commission, 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 Commission decision will be the final agency decision.

Authorization to award an agreement to a particular Proposer 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 Commission decision.

### ***D. Public Records***

This RFQ and any material submitted in response to this RFQ 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 SOQs will be made available by MTC and/or ABAG for inspection consistent with their policies regarding Public Records Act requests.

If the Proposer believes any SOQ 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 and ABAG 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 RFQ, as confidential and shall include the following notice at the front of its SOQ:

“The data on the following pages of this SOQ submitted under Section VII of the RFQ 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 and ABAG only, but understands that exemption from disclosure will be limited by MTC's and ABAG's respective obligations under the California Public Records Act. If an agreement is awarded to the Proposer submitting this SOQ, MTC and ABAG 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 SOQ confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the Proposer may not designate any required SOQ forms or the cost proposal as confidential. Consequently, any language purporting to render any SOQ 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 SOQ requests that MTC and/or ABAG withhold such data from disclosure and MTC or ABAG or both, as applicable, 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 ABAG and hold each of them 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 SOQ, and does not request that MTC and ABAG withhold information marked as confidential and requested under the California Public Records Act, neither MTC nor ABAG shall have any 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, ABAG or their respective board members, 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 SOQ without written consent may be considered a material breach of contract.

***F. Conflicts Of Interest***

By submitting a SOQ, the Proposer represents and warrants that no MTC commissioner, ABAG general assembly or board member, or officer, employee, or agent of MTC or ABAG is in any manner interested directly or indirectly in the SOQ 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 RFQ 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 actual bias or the potential for bias, because of other activities, relationships or contracts of the Proposer or Proposer team members, and if so, whether any potential bias can be mitigated acceptably. 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 or ABAG 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, ABAG or both; 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. For example, in the context of this RFQ, a Proposer shall be deemed to have a conflict of interest if any Proposer employee or team member has a financial or professional interest that could be affected, directly or indirectly, by the outcome of the merger study or the implementation of the MIP.

Proposer shall not engage the services of any subcontractor or independent contractor on any work related to this RFQ 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 RFQ.

***G. Personally Identifiable Information***

Proposer agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment F, Special Conditions Relating to Personally Identifiable Information of Appendix D, MTC Standard Consultant Contract.

***H. 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., 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, PRELIMINARY SCOPE OF WORK**

The successful Proposer's preliminary scope of work is listed below. All required services 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, Appendix D, MTC Standard Consultant Contract, attached hereto and incorporated herein by this reference.

As required by MTC resolution No. 4210 and ABAG Administrative Committee Resolution No. 12-15, the Consultant shall perform a merger study and recommend a MIP. The study shall examine the policy, management, financial and legal issues associated with further integration of ABAG and MTC, up to and including institutional merger between MTC and ABAG. The MIP shall be comprised of the specific plans, benchmarks, and milestones for implementation of any further integration, up to and including institutional merger of MTC and ABAG. The study and MIP shall be governed by the joint MTC Planning and ABAG Administrative committees and be informed by the full participation of designated ABAG and MTC representatives through public meetings governed by the Brown Act.

Any interviews as part of a task will be solely for the purpose of gathering information and shall not be used to transmit views between or among MTC or ABAG board or committee members.

The detailed and final work plan will be developed in consultation with the joint MTC Planning and ABAG Administrative committees. **The tasks below are examples of tasks and the type of work that may be involved in the effort:**

### **Task 1. Develop Work Plan and Schedule**

This task could involve a kick-off meeting with the joint MTC Planning and ABAG Administrative committees and interviews with the committee members, other Board and Commission members and staff. The task could include interviews to discuss the vision for the region, outcomes desired from an MTC/ABAG integration or merger, and concerns related to the further integration or merger of the two agencies. The final work plan should incorporate input received from the joint MTC and ABAG Administrative committees during the kick-off meeting and/or interviews, and clarify project goals and objectives, describe project management, identify milestones, budget, and schedule, and create oversight procedures. Consultant could submit the final work plan for approval by the joint MTC Planning and ABAG Administrative Committees

## **Task 2. Review Past Efforts to Integrate or Merge MTC and ABAG and Current Need for Integrated Regional Planning**

This task could involve a literature review about past efforts to integrate or merge MTC and ABAG. Further, the task could include stakeholder interviews and focus groups with local elected officials and staffs working in the fields of land use, transportation, environment, economy, and equity about the most significant issues facing the Bay Area in the regional planning arena, and how ABAG and MTC currently support these issue areas and recommended areas for improvement. The purpose of this task is to ensure that the remaining consultant work is focused on integration or merger efforts that address regional transportation and land use planning issues and takes into account successful regional integration and merger models in California and elsewhere.

## **Task 3: Financial Review and Capital Assets**

This task could include an analysis of the financial status and capacity of each agency, including interviews with MTC/ABAG Finance/Treasury/Debt staff as appropriate. Among the types of financial analysis to be considered are the cost of employees including salaries, benefits, overhead as well as long term liabilities including pension and other post-employment unfunded liabilities.

## **Task 4: Organization and Human Resource/Labor Review**

This task could include an analysis and summary of the current organizational structures, staffing plans, position classifications, salary and benefits, employee labor representation and other related topics of each organization and identify key areas to be considered should functional consolidation or institutional merger be pursued. This task could also include confidential interviews with employees to better understand their skills/interests/ideas of how they might fit into a merged planning department or agency. This task could include alternative organizational structures.

## **Task 5: Mission/Authority**

This task could consider the mission and authority as well as duties/functions of national peer MPOs and COGs – that appear to have the same complexity as the Bay Area – to provide context to the current mission and authority of MTC and ABAG and whether a further integrated or merged agency should have modifications to the mission and authority.

## **Task 6. Structure and Governance**

This task could include a review of information provided to the Consultant regarding the current form of governance of each agency, including relevant statutory, legal and fiduciary responsibilities and requirements, as well as other regional governance models, based on an evaluation of other regional agency governance structures in California and nationally for MPOs and COGs, or other agencies responsible for similar work. Consultant could then facilitate a discussion of the joint MTC Planning and ABAG Administrative Committees to seek feedback and to narrow the governance models under consideration.

**Task 7: Merger Implementation Plan**

Based on the tasks above, recommend specific plans, benchmarks, and milestones for implementation that will inform the Boards of MTC and ABAG in their consideration of a more integrated or fully merged agency.

**APPENDIX B**

**RESERVED**

**APPENDIX C-1, CALIFORNIA LEVINE ACT STATEMENT FOR MTC**

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:

Dave Cortese, Chair  
Jake Mackenzie, Vice Chair  
Alicia C. Aguirre  
Tom Azumbrado  
Jason Baker  
Tom Bates  
David Campos

Dorene M. Giacomini  
Federal D. Glover  
Scott Haggerty  
Anne W. Halsted  
Steve Kinsey  
Sam Liccardo  
Mark Luce

Julie Pierce  
Bijan Sartipi  
Libby Schaaf  
James P. Spering  
Adrienne J. Tissier  
Scott Wiener  
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 C-2, CALIFORNIA LEVINE ACT STATEMENT FOR ABAG**

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.

The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract.

Current members of the Administrative Committee of the Association of Bay Area Governments are:

- |  |  |
|--|--|
| Councilmember Julie Pierce, City of Clayton              | Supervisor David Rabbitt, County of Sonoma |
| Supervisor Mark Luce, County of Napa                     | Mayor Pro Tem Pat Eklund, City of Novato   |
| Supervisor Jim P. Spering, County of Solano              | Mayor Bill Harrison, City of Fremont       |
| Supervisor Scott Haggerty, County of Alameda             |  |
| Supervisor Eric Mar, City and County of San Francisco    |  |
| Supervisor Dave Cortese, County of Santa Clara           |  |
| Councilmember Pradeep Gupta, City of South San Francisco |  |
| Supervisor Dave Pine, County of San Mateo                |  |

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 member(s) of the Administrative Committee in the 12 months preceding the date of the issuance of this request for proposal?

YES       NO

If yes, please identify the Administrative Committee Member(s):

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 Administrative Committee Member(s) in the three months following the award of the contract?

YES       NO

If yes, please identify the Administrative Committee Member(s):

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contact Information

## APPENDIX D, MTC STANDARD CONSULTANT CONTRACT

### PROFESSIONAL SERVICES AGREEMENT

Between **METROPOLITAN TRANSPORTATION COMMISSION**

And **INSERT NAME OF CONSULTANT**

For ABAG AND MTC MERGER STUDY AND  
MERGER IMPLEMENTATION PLAN

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 **PICK ONE OF THE FOLLOWING:** partnership, \_\_\_\_\_[state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the State of \_\_\_\_\_.

### RECITALS

WHEREAS, MTC intends to perform a merger study and prepare a merger implementation plan in connection with a potential merger of the Association of Bay Area Governments (ABAG) and MTC (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, Preliminary 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 Alix Bockelman, (herein called “MTC Staff Project Manager”) and Brad Paul (herein called “ABAG Staff Project Manager”). The MTC Staff Project Manager, in consultation with the ABAG Staff 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 Staff Project Manager, and ABAG's Executive Director or designated representative may substitute a new ABAG Staff Project Manager, by written notice to CONSULTANT.

CONSULTANT's point of contact and the individual authorized to communicate with MTC and ABAG 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 after consultation with ABAG,.

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.

#### 1.1 PROGRESS REPORTS

CONSULTANT shall provide MTC and ABAG with monthly progress reports according to the schedule and form approved by the MTC Staff Project Manager.

#### 1.2 SUBMISSION OF CONTRACT DOCUMENTS

To the extent requested by the MTC Staff 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 Staff Project Manager or his or her designee via 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 January 1, 2016, and shall be completed no later than June 30, 2016, 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.

### 3. COMPENSATION AND METHOD OF PAYMENT

Subject to duly executed amendments, MTC will pay CONSULTANT for its services as per duly executed Task Orders, 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](mailto: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 Staff Project Manager or a designated representative, in consultation with the ABAG Staff 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 Staff Project Manager in consultation with the ABAG Staff Project Manager. 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, in consultation with ABAG, 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 MTC Executive Director or a designated representative and CONSULTANT and concurred in by the ABAG Executive Director or a designated representative and specifically identified as amendments to the Agreement. Neither the MTC Staff Project Manager nor the ABAG Staff Project Manager is a designated representative, for purposes of approving or concurring in 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. CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed 2%, plus reasonable termination costs, not to exceed the amount payable for such deliverables. 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 2%, 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: 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 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 policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A- or better with a Financial Size Category of 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 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/ABAG Data”) made available to CONSULTANT by MTC and/or ABAG for use by CONSULTANT in the performance of its services under this Agreement shall remain the property of MTC and/or ABAG and shall be returned to MTC and/or ABAG at the completion or termination of this Agreement. No license to such MTC/ABAG Data, outside of the Scope of Work of the Project, is conferred or implied by CONSULTANT’s use or possession of such MTC/ABAG Data. Any updates, revisions, additions or enhancements to such MTC/ABAG Data made by

CONSULTANT in the context of the Project shall be the property of MTC and ABAG 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, ABAG or both 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 or ABAG, on the one hand, and CONSULTANT, on the other hand, Confidential Information shall remain the sole and exclusive property of the agency that provided such Confidential Information, 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 ABAG or the contractors, vendors or licensors of either of them; 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 the agency providing such Confidential Information, whether MTC or ABAG. 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 the agency providing such Confidential Information, whether MTC or ABAG, at any time and for any reason, CONSULTANT shall destroy or return to the agency providing such Confidential

Information, at such agency'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 the party providing such Confidential Information.

## 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 and ABAG by CONSULTANT or its subconsultants pursuant to this Agreement shall be and are the property of MTC and ABAG. MTC and ABAG 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 and ABAG. CONSULTANT hereby assigns to MTC and ABAG 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 and ABAG 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 ABAG, 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 the MTCStaff 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 Staff 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 Staff Project Manager and ABAG Staff 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, ABAG and MTC's or ABAG'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, ABAG or any of MTC's or ABAG'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: Alix Bockelman Metropolitan Transportation Commission 101 - 8th Street Oakland, CA 94607-4700 Email: abockelman@mtc.ca.gov Fax: (510)817-5848
To ABAG	Attention: Brad Paul Association of Bay Area Governments 101 - 8th Street Oakland, CA 94607-4700 Email: bradp@abag.ca.gov
To CONSULTANT:	Attention: <b>Insert Name of Appropriate Person</b> <b>Consultant's name</b> <b>Consultant's address</b> <b>Consultant's address</b> <b>Email: X</b>

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, ABAG or both. 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 or ABAG, 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 and ABAG 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 ABAG (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 or ABAG or both; 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. For purposes of this Agreement, CONSULTANT shall be deemed to have a conflict of interest if any of its employees or any Key Personnel has a financial or professional interest that could be affected, directly or indirectly, by CONSULTANT's recommendations or findings made in performing this 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 and ABAG 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 or ABAG becomes aware of an organizational conflict of interest in connection with CONSULTANT's performance of the work hereunder, MTC and ABAG shall similarly notify CONSULTANT. In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by MTC or ABAG, MTC and ABAG will consider the conflict presented and any alternatives proposed and meet with CONSULTANT to determine an appropriate course of action. MTC's determination, in consultation with ABAG, 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, ABAG or both 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 or ABAG, 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 [or ABAG] 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 ABAG, 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.

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 Staff 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 Staff 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 Staff Project Manager's determination.

If the MTC Staff 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

---

CONCURRED WITH BY:

ASSOCIATION OF BAY AREA  
GOVERNMENTS

---

Ezra Rapport, Executive Director

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**ATTACHMENT A**  
**Preliminary Scope Of Work**

[To Come]

## **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 Staff Project Manager (“MTC PM”) and ABAG Staff Project Manager (“ABAG PM”) jointly prepare a draft Task Order for MTC to issue to CONSULTANT. The MTC PM and ABAG PM may solicit feedback from CONSULTANT to facilitate drafting the Task Order. The MTC PM will seek concurrence from the ABAG PM before presenting the final draft Task Order to CONSULTANT.

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 and ABAG PM review 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 and ABAG PM may solicit early feedback from the MTC Executive Director and ABAG Executive Director at this time, if necessary. Any changes to the draft Task Order deemed appropriate by MTC in consultation with ABAG 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 Executive Director and ABAG Executive Director, for review and approval. The MTC Executive Director signs both copies of a Final Task Order to signify approval and the ABAG Executive Director signs both copies of a Final Task Order to signify concurrence 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 the MTC Executive Director and CONSULTANT and written concurrence by the ABAG Executive

Director. Revisions to Task Orders shall require written approval by both the MTC Executive Director and CONSULTANT and written concurrence by the ABAG Executive Director.

Step 8 – The MTC PM and ABAG PM are responsible for overseeing the successful conclusion of the Task Order, and the MTC PM 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 and ABAG PM jointly determine 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 PM 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 Staff Project Manager):	
4. Description of work:	<i>Summarize key task expectations. For more information, see attached <u>Task Order Budget and Schedule and Detailed Description of Work (attached).</u></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

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

\*Due upon satisfactory completion as determined by the MTC Staff Project Manager and ABAG Staff 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
<b>Total:</b>					<b>\$5.00</b>

<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

\_\_\_\_\_  
Steve Heminger, Executive Director

Date: \_\_\_\_\_

\_\_\_\_\_  
Insert name and title of authorized individual

Date: \_\_\_\_\_

Concurrence by:

ASSOCIATION OF BAY AREA  
GOVERNMENTS

\_\_\_\_\_  
Ezra Rapport, Executive Director

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**

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

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**

A. Compensation. 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 premises and operations, and products and completed 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, a products/completed operations aggregate liability limit 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.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

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 for ongoing and completed operations. Such insurance shall be primary and non-contributory, 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. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.

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- or better with a Financial Size Category of 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. NOT USED

## 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.

- Association of Bay Area Governments (ABAG)

## 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, ABAG or CONSULTANT that identifies or describes a person or can be directly linked to a specific individual. Examples of potential PII include name, address, phone or fax number, signature, or date of birth. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

#### 1. Right to Audit

CONSULTANT shall permit MTC, ABAG and their 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 and ABAG. 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.

CONSULTANT is prohibited from storing PII on portable media including, but not limited to, laptops, thumbdrives, disks and so forth.

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 this 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 Staff 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, MTC and ABAG 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 and ABAG against any loss, cost, damage or liability by reason of CONSULTANT’s violation of this provision.

### 4. Subconsultants

MTC’s and ABAG’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 or ABAG may make to promote the safeguarding or confidentiality of all its resources.

If requested by MTC or ABAG, 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 and ABAG 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

The ABAG contact for such notification is as follows:

[To Come]

**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 Best’s Rating of A- or better with a Financial Size Category of VIII or better.

<p>Yes (√)</p>	<p><b>Please certify by checking the box below that required coverages will be provided within ten (10) business days of MTC’s notice to firm that it wishes to contract with the firm.</b></p>
<p>—</p>	<p><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 &amp; 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.</p>
<p>—</p>	<p><u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed 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, a products/completed operations aggregate liability limit of not less than \$2,000,000 and Personal &amp; 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.</p> <p>Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.</p> <p>MTC and ABAG and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT’s operations.</p>
<p>—</p>	<p><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.</p>
<p>—</p>	<p><u>Umbrella Insurance</u> in the amount of \$1,000,000 providing excess limits over Employer’s Liability, Automobile Liability, and Commercial General Liability</p>

	<p>Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.</p>
<p>—</p>	<p><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. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.</p> <p>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 &amp; Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.</p>
<p>—</p>	<p><u>Property Insurance.</u> 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.</p>
<p>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.</p> <p>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.</p> <p>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.</p> <p>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:</p> <ol style="list-style-type: none"> <li>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;</li> <li>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</li> <li>3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy</li> </ol>	

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) business 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.**