



**METROPOLITAN
TRANSPORTATION
COMMISSION**

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Executive Director

Alix Bockelman
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

December 9, 2015

REQUEST FOR PROPOSALS (RFP)
Newspaper Legal Notice Services

NOTICE IS HEREBY GIVEN that the Metropolitan Transportation Commission (MTC) invites your firm to submit a proposal to provide legal notice services and support to MTC and its affiliate agencies on an as-needed basis.

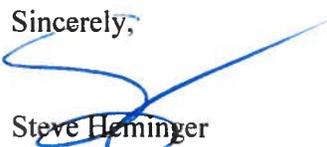
The Request for Proposal (RFP) documents for this project are available for download on the MTC website at <http://procurements.mtc.ca.gov/>. Proposers are responsible for checking the website for any Addenda to this RFP. Responses should be submitted in accordance with the instructions set forth in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

Interested firms must submit an original and two (2) copies, as well as one electronic PDF version, of their proposal by **4 p.m. on Friday, January 8, 2016**, in accordance with the instructions contained in the RFP. Other key RFP Dates are listed in Section IV, Consultant Selection Timetable of the RFP.

MTC Point of Contact
Pamela Grove, Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
Tel: 510/ 817-5706
E-mail: pgrove@mtc.ca.gov

Thank you for your interest.

Sincerely,


Steve Heminger
Executive Director

SH:PG

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I. MTC AND PROJECT DESCRIPTION

A. Description of MTC

MTC was created by the state Legislature in 1970 (California Government Code § 66500 *et seq.*) to serve as the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area. MTC also serves as the Regional Transportation Planning Agency (RTPA) for the nine-county San Francisco Bay Area, including the counties of Marin, Sonoma, Napa and Solano in the north; Alameda, Contra Costa and San Francisco in the central Bay Area; and San Mateo and Santa Clara in the south.

B. Project Description

As public agencies, MTC and its affiliate agencies (MTC Service Authority for Freeways and Expressways, Bay Area Toll Authority, Bay Area Infrastructure Financing Authority, and Bay Area Headquarters Authority) post legal notices for public hearings in local newspapers. The agencies also posts notices for RFPs, Requests for Quotations, Invitations for Bid, general announcements, etc., on an intermittent basis.

To facilitate the placement of legal notices and other announcements that may arise, MTC seeks to contract with one primary service provider that can assist in the preparation of these notices and coordinate their timely placement in multiple publications as appropriate. Sources must specifically include those publications that ensure MTC's maximum exposure to diverse communities in the region served by MTC.

II. PROPOSER MINIMUM QUALIFICATIONS

Proposals must demonstrate that the firm or team submitting the proposal ("Proposer") has a minimum of three (3) years' experience publishing notifications in major newspapers in the San Francisco Bay Area.

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

A. Scope of Work

The scope of work for the project is provided in *Appendix A, Scope of Work*. The firm selected to enter into a contract 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 February 1, 2016, and to be completed no later than June 30, 2019. At MTC's sole option, the contract may be extended for two (2) additional years for work contemplated by *Appendix A, Scope of Work*.

C. Budget

MTC has budgeted up to fifty thousand dollars (\$50,000) in Fiscal Year 2015-16 for this effort. Additional funding may be available in future fiscal years subject to approval of future MTC budgets.

IV. CONSULTANT SELECTION TIMETABLE

4 p.m., on Thursday, December 17, 2015	Closing date/time for receipt of requests for modifications/exceptions
No later than three (3) business days prior to the date proposals are due.	Deadline for protesting RFP provisions
4 p.m., Friday, January 8, 2016*	Closing date/time for receipt of proposals
Week of January 11, 2016*	Interviews/Discussions (if held)
Week of January 18, 2016*	MTC Executive Director Approval

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

V. SUBMITTAL OF PROPOSALS

1. Interested firms must submit an original and two (2) copies, as well as one electronic PDF version, of their proposal by **4 p.m. on Friday, January 8, 2016. Submission of an electronic copy of the proposal without hard copies will not satisfy the submission requirement. No proposals submitted solely by email and no faxed proposals will be considered.**
2. Proposals are to be addressed as follows:

Newspaper Legal Notice Services RFP
Attention: Pam Grove
Metropolitan Transportation Commission
101 8th Street, 3rd Floor Receptionist
Oakland, CA 94607
3. Proposer's name and return address must also appear on the envelope.
4. Proposals will be received only at the address shown above and **no later than the date and time indicated.** MTC is not responsible for deliveries delayed for any reason. Any proposals received after said date and time or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened.
5. All proposals, whether delivered by an employee of the Proposer, U.S. Postal Service, courier or package delivery service, must be received and time stamped at the stated address **prior to or no later than the time designated.** The timestamp located on the 3rd floor at the receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of proposals

6. Proposer agrees and acknowledges all RFP specifications, terms and conditions and indicates ability to perform by submission of a proposal.
7. A signed proposal submitted to MTC in response to this RFP shall constitute a binding offer from Proposer to contract with MTC according to the terms of the proposal for a period of 90 days after the proposals are due to MTC.
8. A proposal may be withdrawn at any time before the date and time when proposals are due by submitting a written request for its withdrawal to the MTC Project Manager.
9. This RFP does not commit MTC to award a contract or to pay any costs incurred by any Proposer in the preparation of a proposal in response to this RFP.
10. Only one proposal will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.
11. MTC reserves the right to accept or reject all proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all Proposers.
12. MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFP.
13. If the selected Proposer fails to enter into a contract with MTC in a timely manner as determined by MTC, in accordance with the terms and conditions of this RFP, MTC reserves the right to reject the proposal and enter into a contract with the next highest scoring Proposer.
14. Online Vendor Registration is required to be eligible for contract award. Proposers should visit <http://procurements.mtc.ca.gov/Vendors/vendor-information.html> to register in the MTC Vendor Database.

VI. FORM OF PROPOSAL

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

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

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

Each proposal must include the following:

- A. Transmittal Letter

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

B. Title Page

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

C. Table of Contents

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

D. Work Plan

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

1. Provide a general summary of the proposed approach for completing the work;
2. Provide processing timeframes and deadlines, from initial order to publication for each publication Proposer will work with; and
3. Explain method MTC will use for submitting the text for legal notices to the Proposer, and the method the Proposer will use for submitting proofs to MTC for review and approval prior to publication (i.e. submittal and proof sent by email, or fax).

E. Qualifications and References

1. Describe proposed team's qualifications specific to the requirements set forth in Section II, Proposer Minimum Qualifications. Identify the personnel, including subcontractors' personnel, whose expertise or experience addresses each of the specified needs. Proposers are welcome to identify and provide examples of any other qualifications they feel are critical to the successful completion of the Scope of Work attached as *Appendix A*.
2. Identify key personnel (including subcontractor personnel) and briefly discuss individual qualifications to perform each task. Each key personnel resume should not exceed two pages.

3. Three (3) client references: Include company name, point of contact, telephone, e-mail, and fax number for three projects similar to work described in this RFP.
4. Provide a summary of all contracts your firm (including subcontractors) has held with MTC, the MTC Service Authority for Freeways and Expressways, the Bay Area Toll Authority, the Bay Area Infrastructure Financing Authority or the Bay Area Headquarters Authority in the past three years, including a brief description of the scope of work, the contract amount, and date of execution.

F. Cost Proposal

Provide a detailed fee schedule for each publication provided in Appendix A, Scope of Work. Fee schedule should include any/all services necessary in the placement of classified advertisements and legal notices. Fee schedule provided should also include all applicable surcharges such as taxes, insurance, rush fees and fringe benefits as well as indirect costs, overhead and profit allowance, commission, materials and supplies. Separate actual advertisement cost from other fees (i.e., Proposer's mark-up) and specify:

- Whether Proposer fees are expressed as a percentage of the advertising bill or as a flat rate per advertisement;
- If cost is based on column inches or number of lines;
- The fees for artwork, design layout, and creative writing; and
- Describe billing process (i.e., separate invoices for the same ad in multiple newspapers; or consolidated invoices), and how often MTC will be billed after each posting.

G. California Levine Act Statement

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

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 VIII.B of the RFP 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>.

VII. PROPOSAL EVALUATION

A. Verification of Minimum Qualifications

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

B. Review for General Responsiveness

The MTC Project Manager, in consultation with the MTC's Office of General Counsel, will conduct an initial review of the proposals for general responsiveness and inclusion of the items requested in Section VI, Form of Proposal. Proposers failing to meet the Minimum Qualifications listed in this RFP or to satisfy the federal Disadvantaged Business Enterprise (DBE) requirements (if applicable), will not be considered responsive. Also, any proposal that does not include enough information to permit the evaluators to rate the proposal in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. A proposal that fails to include one or more items requested in Section VI, Form of Proposal may be considered responsive, if evaluation in every criterion is possible. MTC reserves the right to request additional information from responsive Proposers prior to evaluation.

C. Evaluation Panel and Evaluation Criteria

Responsive proposals will then be evaluated by an evaluation panel of MTC staff. The evaluation of the proposals shall be within the sole judgment and discretion of the evaluation panel.

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

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

1. Suitability of proposed approach, including methods of interaction between MTC and Proposer for submission of legal notice text and advertisement proofs (30%);
2. Individual project staff and firm expertise and experience (30%);
3. Competitive fee structure (20%); and
4. Speed and efficiency in placement of notices and advertisements, as detailed in the response (20%).

D. Proposer Discussions

Following the initial evaluation, the evaluation panel may elect to recommend award to a particular Proposer (with or without interviews), or to enter into discussions with a “short list” of Proposers, consisting of those Proposers reasonably likely, in the opinion of the panel, to be awarded the contract.

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

E. Request for Best and Final Offer

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

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

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

VIII. GENERAL CONDITIONS

A. Award

Any award made will be to the Proposer whose proposal is most advantageous to MTC based on the evaluation criteria defined in Section VII. If the selected firm fails to enter into a contract with MTC in a timely manner as determined by MTC, in accordance with the terms and conditions of this RFP, MTC reserves the right to reject the proposal of the selected firm and enter into a contract with the next highest scoring firm.

B. Contract Arrangements

MTC Standard Consultant Contract is attached as *Appendix D*. If a Proposer wishes to propose a change to any standard MTC contract provision, the provision and the proposed alternative

language must be submitted prior to the closing date for receipt of requests for clarifications/exceptions. If no such change is requested, the Proposer will be deemed to accept MTC's standard contract provisions, unless such language is protested in accordance with Section C below.

The selected Proposer 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) business days of MTC's notice that it is the successful Proposer. Requests to change MTC's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions. MTC will review the requests and issue an addendum if material changes requested by a prospective Proposer are acceptable. Objections to MTC determinations on requests to change insurance requirements pursuant to the protest provisions of this RFP must be brought to MTC's attention no later than the deadline for protesting RFP provisions or compliance with all material insurance requirements will be assumed.

The contract resulting from this RFP firm fixed price, with payment based on MTC's receiving of satisfactory deliverables.

C. Selection Disputes

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

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

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the MTC Executive Director 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 Section Director.

The MTC Section Director responsible for the procurement 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 Section Director, it may file a written appeal with the MTC Executive Director, no later than 4:00 p.m. on the third business day after receipt of the written response

from the Section Director. The MTC Executive Director's decision will be the final agency decision.

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

D. Public Records

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

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

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

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

In the event properly marked data is requested pursuant to the California Public Records Act, the Proposer will be advised of the request. If the proposal requests that MTC withhold such data from disclosure and MTC complies with the Proposer's request, the Proposer shall assume all responsibility for any challenges resulting from the non-disclosure; indemnify and defend MTC and hold it harmless from and against all claims, legal proceedings, and resulting damages and costs (including but not limited to attorneys' fees that may be awarded to the party requesting

such Proposer information); and pay any and all costs and expenses relating to the withholding of the Proposer information.

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

E. Key Personnel

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

F. Conflicts of Interest

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

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

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

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

G. NOT USED

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. to the MTC Project Manager or his/her designee via a web-based system designated by MTC to which MTC will provide system access.

J. Payment, Sub-Contractor and Prevailing Wage Information

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

APPENDIX A, SCOPE OF WORK

The Metropolitan Transportation Commission (MTC) requires a contractor to provide the coordination and placement of legal notices in newspapers on behalf of MTC and its affiliate agencies. The following scope of work describes the tasks the contractor may be asked to complete.

A. Publication

- 1. Coordinate with and possibly recommend the most appropriate publication, and manage the placement of legal notices in designated newspapers and trade journals with circulations in the nine-county San Francisco Bay Area. Publications may include, but are not limited to:

California Voice	Oakland Tribune
Contra Costa Times	San Francisco Examiner
El Mensajero (Spanish)	San Jose Mercury News
Fairfield Daily Republic	San Mateo Times
Marin Independent Journal	Santa Rosa Press Democrat
Napa Valley Register	Sing Tao Daily (Chinese)

- 2. Assist in the development of advertisements by providing creative writing, formatting and layout, including graphics, as needed. Assist in the final editing by proofreading and providing an overall review of submitted copy.
- 3. Respond to requests from MTC within two (2) business hours.
- 4. Only post legal notices following Project Manager (or designee) approval.
- 5. Only post newspaper advertisements following Project Manager (or designee) approval of final proof.
- 6. Place classified advertisements and legal notices for publication on dates specified by MTC or on earliest possible date(s), as specified by Project Manager.

B. Deliverables

- 1. Provide either an email confirmation of receipt (for legal notices) or an email proof (for advertisements) to MTC’s Project Manager (or designee) prior to placement in newspaper or other publication.
- 2. Provide for MTC’s records a tear sheet of each posted advertisement or legal notice within two (2) weeks of each publication.
- 3. Provide for MTC’s records a signed proof of publication for each published legal notice within two (2) weeks of each publication.
- 4. Provide ongoing training and support for any tools or software needed to place legal notices or classified advertisements.

APPENDIX B, Not Used

APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT

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

MTC’s commissioners include:

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

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

YES NO
If yes, please identify the commissioner: _____

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

YES NO
If yes, please identify the commissioner: _____

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

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

APPENDIX D, MTC STANDARD CONSULTANT CONTRACT



METROPOLITAN
TRANSPORTATION
COMMISSION

Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
TEL 510.817.5700
TTY/TDD 510.817.5769
FAX 510.817.5848
E-MAIL info@mtc.ca.gov
WEB www.mtc.ca.gov

Dave Cortese, Chair
Santa Clara County

Alicia C. Aguirre
Cities of San Mateo County

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

Jason Baker
Cities of Santa Clara County

Tom Bates
Cities of Alameda County

David Campos
City and County of San Francisco

Dorene M. Giacopini
U.S. Department of Transportation

Federal D. Glover
Contra Costa County

Scott Haggerty
Alameda County

Anne W. Halsted
San Francisco Bay Conservation
and Development Commission

Steve Kinsey
Marin County and Cities

Sam Liccardo
San Jose Mayor's Appointee

Mark Luce
Napa County and Cities

Jake Mackenzie
Sonoma County and Cities

Julie Pierce
Association of Bay Area Governments

Bijan Sartipi
California State
Transportation Agency

Libby Schaaf
Oakland Mayor's Appointee

James P. Spering
Solano County and Cities

Adrienne J. Tissier
San Mateo County

Scott Wiener
San Francisco Mayor's Appointee

Amy Rein Worth
Cities of Contra Costa County

Steve Heminger
Executive Director

Alix Bockelman
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

Date, 201_

Name
Address
City, State, Zip Code + Four

RE: Professional Services Agreement

Dear insert name:

This letter, effective as of _____, 201_ ("Effective Date") is the agreement between insert name of firm ("Consultant") and the Metropolitan Transportation Commission ("MTC") for the performance of professional services in connection with insert brief description of project ("the Agreement").

1. It is agreed that Consultant will perform all the services specified in Attachment A, Scope of Work, according to the schedule in Attachment B, Project Payment Schedule, both attached hereto and incorporated herein by this reference.
2. Work will be performed under the direction of Pam Grove or a designated representative (herein "Project Manager") who will approve a work plan prior to your beginning work.
3. Consultant will be compensated for its services in accordance with Attachment B, Project Payment Schedule, attached hereto and incorporated herein by this reference. The maximum amount payable to Consultant, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subcontractors costs (including mark-up), travel, equipment, materials and supplies, and expenses shall not exceed [spell out amount in whole dollars (\$_____)] ("Maximum Payment"). MTC shall make payments to CONSULTANT in accordance with the provisions described in Attachment B.

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

Attention: MTC Accounting Section
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 Project Manager or a designated representative.

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

4. The term of the Agreement shall begin on the Effective Date and conclude on June 30, 2019 unless MTC terminates this agreement earlier as provided below. At MTC's sole option, the contract may be extended for two (2) additional years for work contemplated by Appendix A, Scope of Work.

5. MTC may terminate the Agreement without cause upon three (3) days' prior written notice. If MTC terminates the Agreement without cause, Consultant will be entitled to payment for costs incurred for incomplete work up to the time of termination, plus reasonable termination costs, not to exceed the maximum amount payable under the Agreement for the incomplete work. If Consultant fails to perform as specified in the Agreement, MTC may terminate the Agreement for cause by advance 10-day written notice, providing Consultant with the opportunity to cure the default or present an acceptable plan for cure within the 10-day period. At the end of the 10-day period, if the default has not been cured or an acceptable plan of cure presented, MTC may issue a notice of termination for default, effective immediately, and Consultant will be entitled only to costs incurred for acceptable work performed in accordance with the Agreement, not to exceed the maximum amount payable under the Agreement for such work.

6. Except for invoices submitted by Consultant, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed,

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. Not Used

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

12. MTC may be required to make available to Consultant certain confidential, non-public or proprietary information (“Confidential Information”) for purposes of carrying out the Project. Confidential Information may be tangible, intangible, visual, oral, written, and/or electronic information, present or future, and includes: (i) proprietary information learned through inspection of drawings, specifications or equipment; (ii) descriptions of proprietary processes, designs, functionality or know-how; (iii) proprietary software, programming data, code or information; and (iv) other information disclosed in writing and marked as “Confidential” or with a similar notice. As between MTC and Consultant, Confidential Information shall remain the sole and exclusive property of MTC, and no license or other rights to Confidential Information or any works deriving from Confidential Information is granted or implied hereby. Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of Consultant; b) Consultant can demonstrate to have had rightfully in its possession prior to disclosure by MTC or its contractors, vendors or licensors; c) Consultant rightfully obtains from a third party who has the right to transfer or disclose it; or (d) is required to be disclosed by law or applicable legal process. Consultant agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose such Confidential Information except for the business purpose underlying this Agreement, except as authorized in writing by MTC. Consultant further agrees to disclose Confidential Information only to its

directors, officers, employees and consultants who need to know such information, and who have agreed to be bound by the terms and conditions of this Agreement. Promptly upon the request of MTC, at any time and for any reason, Consultant shall destroy or return to MTC, at MTC's option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by MTC.

13. All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products ("Work Products") prepared or assembled and furnished to MTC by Consultant or its subconsultants pursuant to the Agreement shall be and are the property of MTC. MTC shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the Consultant or in the hands of any subconsultant upon completion or termination of the work shall be immediately delivered to MTC. Consultant hereby assigns to MTC ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the Work Product. Consultant also agrees to execute all papers necessary for MTC to perfect its ownership of the entire copyright in the Work Product. Consultant shall be responsible for the preservation of any and all such Work Products prior to transmittal to MTC, and shall replace any such Work Products as are lost, destroyed, or damaged while in its possession without additional cost to MTC. Notwithstanding the above, Work Products are not intended 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.

14. Consultant agrees to retain all documents, working papers, records, accounts and other materials relating to its performance under the Agreement for four years following the fiscal year of the last expenditure under the Agreement or until completion of any litigation, claim or audit, whichever is longer, and MTC may inspect and audit such records during that period of time.

15. No member, officer, employee or agent of MTC, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, Consultant further covenants that it has made a complete disclosure to MTC of all facts of which it is aware upon due inquiry bearing upon any possible interest, direct or indirect, which it believes any member, officer, agent or employee of MTC (or an immediate

family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by MTC.

16. Consultant shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement. Consultant shall not engage the services of any subconsultant or independent contractor on any work related to this Agreement if the subconsultant or independent contractor, or any employee of the subconsultant or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement. If at any time during the term of this Agreement, Consultant becomes aware of an organizational conflict of interest in connection with the work performed hereunder, Consultant shall immediately provide MTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest. Consultant's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, MTC becomes aware of an organizational conflict of interest in connection with Consultant's performance of the work hereunder, MTC shall similarly notify Consultant. In the event a conflict is presented, whether disclosed by Consultant or discovered by MTC, MTC will consider the conflict presented and any alternatives proposed and meet with Consultant to determine an appropriate course of action. MTC's determination as to the manner in which to address the conflict shall be final.

17. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between MTC and Consultant that cannot be resolved through the informal, good faith efforts of the parties 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. 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. The prevailing party in any dispute shall be entitled to payment of

its attorneys' fees and costs. This section shall survive the termination or expiration of the Agreement.

18. All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of California applicable to agreements made and to be performed within the State.

19. Consultant will not assign or subcontract any part of the Agreement without the prior written consent of MTC, and any attempt to do so will be void and unenforceable.

20. This Agreement constitutes the complete agreement between the parties and supersedes any prior written or oral communications. Any amendment of the Agreement must be in writing, specifically identified as an amendment to the Agreement, and signed by both Consultant and the Executive Director of MTC, or his designated representative. The Project Manager is not a designated representative, for purposes of approving an amendment.

If you agree, please sign both copies of this letter in the space provided below and return one to us. The other copy is for your files.

Very truly yours,

Steve Heminger
Executive Director

SH: MB/PG
J:\CONTRACT\Procurements\Operations & Support Svcs\RFPs\FY 15-16\Legal Notice RFP\2015 Legal Notice Con Short draft.docx

Accepted and Agreed to this _____ day
of Month, 201_.

insert name and, if known, title

ATTACHMENT A

SCOPE OF WORK

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

ATTACHMENT B

PROJECT PAYMENT SCHEDULE

Payment for CONSULTANT's services shall be due in the firm fixed amounts indicated below, upon acceptance by Project Manager of the following deliverables or milestones, described in detail in Attachment A:

Task	<u>Deliverables (#)/ Milestones</u>	<u>Due Date:</u>	<u>Amount Due</u>
1	_____ (#1)		\$0.00
2	_____ (#2)		\$0.00
			0
	Excel is inside Word Tables. Highlight field, hit F9 or Table Formula = Format \$.		\$0.00 highlight #, hit F9

CONSULTANT shall submit an invoice identifying the project deliverable or milestone for which payment is sought no later than thirty (30) days after MTC's acceptance of such deliverable/milestone.

ATTACHMENT C
INSURANCE PROVISIONS

PART 1

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 & Employers 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.

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

6. Property Insurance. Property Insurance covering CONSULTANT'S own business personal property and equipment to be used in performance of this Agreement AND materials or property to be purchased and/or installed on behalf of MTC (if any). 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.

MTC (and those entities listed in Part 2 of this Attachment C, if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.

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, 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 Section 9 of this Agreement.

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>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.</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 & 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 & 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 its 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 Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.</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.</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 & 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><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>

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

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

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

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

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

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

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

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

By signing below you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within ten (10) 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.