



METROPOLITAN
TRANSPORTATION
COMMISSION

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Amy Rein Worth, Chair
Cities of Contra Costa County

Dave Cortese, Vice Chair
Santa Clara County

Alicia C. Aguirre
Cities of San Mateo County

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

Tom Bates
Cities of Alameda County

David Campos
City and County of San Francisco

Bill Dodd
Napa County and Cities

Dorene M. Giacomini
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
Association of Bay Area Governments

Jake Mackenzie
Sonoma County and Cities

Joe Pirzynski
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Jean Quan
Oakland Mayor's Appointee

Bijan Sartipi
State Business, Transportation
and Housing Agency

James P. Spering
Solano County and Cities

Adrienne J. Tissier
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Scott Wiener
San Francisco Mayor's Appointee

Steve Heminger
Executive Director

Ann Flemer
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

May 7, 2013

REQUEST FOR QUALIFICATIONS On-Call Video Services and 2014 Transportation Awards

The Metropolitan Transportation Commission (MTC) invites your firm to submit a Statement of Qualifications (SOQ) in response to this Request for Qualifications (RFQ) for on-call video services. Through this RFQ, MTC will select one or more eligible consultants ("Consultant Bench") with which MTC may contract to provide these services on an as-needed or on-call basis beginning July 1, 2013, and ending June 30, 2014, with three (3) option years at MTC's sole discretion.

This letter, together with its appendices, comprises the RFQ for the above-described projects. SOQs should be submitted in accordance with the instructions stated in this RFQ.

I. Statement of Qualifications Due Date

Interested firms must submit one (1) original, four (4) hard copies, and one (1) electronic copy in PDF format, of their SOQ along with one (1) set of work samples by 4 p.m., Tuesday, May 28, 2013. ***SOQs received after that date and time will not be considered.*** Submission of an electronic copy only will not satisfy submission requirements. SOQs submitted before the deadline shall be considered firm offers to provide the services described in this RFQ for a period of one hundred eighty (180) days from the date of submittal.

II. MTC Point of Contact

SOQs and all inquiries relating to this RFQ should be submitted to address shown below. For telephone inquiries, call (510) 817-5952. E-mail inquiries may be directed to: [<tlee@mtc.ca.gov>](mailto:tlee@mtc.ca.gov).

Terry Lee, Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

III. Notice of Addenda and Pre-Submittal Questions and Exceptions

Any addenda released for this RFQ and responses to questions will be published on MTC's website, <http://procurements.mtc.ca.gov/>. Respondents are responsible for checking MTC's website for any addenda and responses to questions released.

Requests for clarification or exceptions to RFQ provisions must be received by MTC no later than 4 p.m., Monday, May 13, 2013, to guarantee response or consideration.

IV. Background

This RFQ is intended to choose a firm and/or establish a list of qualified firms to serve as consultant(s) to assist with on-call video services for web casting, videotaping, editing, production of multi-lingual videos, video news releases and fully packaged videos of varying lengths, including video clips of honorees for MTC's 2014 Excellence in Motion Transportation Awards. The projects may be for MTC, or its subagencies, the Service Authority for Freeways and Expressways (SAFE), the Bay Area Toll Authority (BATA) and the Bay Area Headquarters Agency (BAHA).

V. Desired Consultant Qualifications

Preference will be given to consultants that possess the following professional qualifications:

- Experience producing fully packaged videos including conceptualizing, scripting and editing;
- Experience videotaping multi-hour or day-long meetings and/or events and editing raw footage into various length;.
- Experience producing video news releases from existing and/or new video tape;
- Experience web casting multi-hour or day long meetings and/or events;
- Ability to videotape using high-definition digital equipment, if needed;
- Experience selecting and directing professional talent, including acting talent;
- Experience with sound engineering and lighting;
- Experience with scoring music;
- Experience with time lapse video techniques;
- Experience producing video content in English, Spanish and/or Chinese; and
- Access to high-speed Internet with the ability to easily send and receive files electronically.

VI. Minimum Qualifications

To be eligible for SOQ evaluation, a firm must demonstrate that it meets the following Minimum Qualifications (MQs):

The Consultant or Consultant team has a Project Manager with at least five (5) years' experience on projects that are substantially similar to the tasks listed in *Appendix A, Preliminary Scope of Work*, for which the firm is asking to be considered.

Firms that do not meet MQs will not be evaluated.

VII. Scope of Work, Schedule, and Budget

A summary of anticipated work tasks under this RFQ is provided in *Appendix A, Preliminary Scope of Work*, which includes tasks that illustrate the type of assistance that may be requested of one or more selected consultants.

When a task arises, MTC reserves the right to select one consultant from the Consultant Bench, or to ask one or more of the consultants in the Consultant Bench for an estimate of hours and cost for that project, and to select the consultant best suited in terms of cost, availability and past

experience. MTC reserves the right to assign all tasks to one consultant, to assign multiple tasks to one consultant, to assign portions of a given task to two or more consultants, and to refrain from assigning any or all of these tasks. Selection to be on the Consultant Bench does not guarantee that a contract will be awarded. MTC reserves the right to award contracts based on the experience of the Bench consultants and the needs of particular projects. Once a consultant is chosen to perform work on a project, the consultant will be required to execute a contract, a sample of which is provided at Appendix F.

Selected consultants will be required to have phone contact and face-to-face meetings with the MTC Project Manager and other staff at the MTC office located at 101 - 8th Street, Oakland, CA 94607, or at an alternate location convenient for the MTC Project Manager and/or other public information officers and key staff.

Any of the tasks could be assigned at any point during the period covered by this RFQ. A contract could be written at the outset of the period covered by this RFQ, or as tasks arise.

The term of any contracts resulting from this RFQ could commence on or about July 1, 2013, and extend through June 30, 2014, or at any time during that period, with MTC's sole option to renew contracts for three (3) additional consecutive fiscal years.

The total budget by fiscal year will be established in each annual agency budget. Overall funding for any contract will depend on the final agreed-upon scope of work and may be subject to approval of MTC's Administration Committee.

VIII. Notice of Addenda and Pre-Submittal Questions and Exceptions

Any requests for clarification, or questions regarding RFQ requirements, or requests for clarifications or exceptions to RFQ provisions must be received by MTC no later than 4 p.m., Thursday, May 2, 2013, to guarantee response or consideration.

Any addenda released for this RFQ and responses to questions will be published on MTC's website, <http://procurements.mtc.ca.gov/>. Respondents are responsible for checking MTC's website for any addenda and responses to questions released.

IX. Form of Statement of Qualifications

Sections that should be included in each SOQ are described below. Proposers are encouraged to print double-sided copies to save paper.

1. Transmittal Letter: Include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm. The transmittal letter should include the name, telephone number and email of a contact. The letter should indicate those tasks described in *Appendix A, Preliminary Scope of Work*, for which the firm wishes to be considered.
2. Statement of Interest: Completed Statement of Interest, *Appendix B*, showing more specifically areas of expertise for which your firm would like to be considered.

3. Statement of Qualifications: A statement of qualifications should be provided as part of the transmittal letter or on a separate page. The statement of qualifications should include a brief history of the firm and a description of the qualifications and relevant experience of the firm and team members, including any subcontractors, relative to those tasks described in *Appendix A, Preliminary Scope of Work*, for which the firm wishes to be considered. Indicate whether the firm has worked in the governmental arena previously, primary clients and the audiences served. Affirmatively address all of the MQs at Section VI. Minimum Qualifications, on page 2 of this RFQ. Also address “Desired Consultant Qualifications” at Section V, page 2 of this RFQ. Provide a list of the videography equipment utilized by the firm.
4. Resumes: Professional qualifications of proposed personnel that includes a description of relevant experience, proposed role, length of work experience, and areas of expertise.
5. Rates and Personnel: A completed *Appendix C, Price Proposal Form*, showing the design firm’s fully loaded hourly rates for services, other related charges and expenses in the form included as *Appendix C* signed by an official authorized to solicit business and enter into contracts for the firm.
6. References: Three or more references (name, title, organization, telephone numbers, E-mail address) able to attest to the firm’s experience in performing work substantially similar to the services covered by this RFQ (Use *Appendix D* or provide your own list with all required information).
7. Samples: Provide at least three samples of videos, etc. produced by the firm (clearly marked to enable MTC to return them). Firms may provide the URL to a video that is available online. Only one copy of each sample is required, and the samples will be returned after SOQ evaluation, upon request.
8. Subcontractor Information Form: Submit a completed Subcontractor Information Form (*Appendix E*).
9. Insurance Provisions Document: Submit a signed *Appendix F-1, Insurance Provisions Document*.
10. California Levine Act: Submit a signed California Levine Act statement (*Appendix G*).

XII. Evaluation of Statement of Qualifications

The Project Manager, in consultation with the Office of General Counsel, will review SOQs to ensure that each SOQ meets the MQs set out in Section VI above. Firms failing to meet the MQs in the areas for which they have submitted SOQs will not be considered.

The Project Manager, in consultation with the MTC Office of General Counsel, will then conduct an initial review of the SOQs for general responsiveness. 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. An SOQ that fails to include one or more items requested above in Section XII. Form of Statement of Qualification may still be considered complete and generally responsive, if in MTC’s discretion, evaluation in every criterion is possible.

Respondents that meet the MQs will then be evaluated based on the following evaluation criteria. The factors are equal in terms of importance:

1. The firm’s experience in and/or conformance with the items listed in Section V. Desired Consultant Qualifications, *above*;
2. Quality and creativity of submitted video samples;
3. Expertise of the personnel assigned to the project;
4. Experience with up-to-date equipment; and
5. Competitiveness of hourly rates and other costs.

Following the initial evaluation, the selection panel may recommend hiring a firm and/or establishing a list of qualified firms for projects, or may first interview a “short list” of Respondents. At MTC’s discretion, references may be contacted for “short listed” firms.

Following interviews of the short-listed firms (if held), the evaluation panel will conduct the final evaluation, based on the written SOQs and oral interviews.

The selection panel will then recommend hiring a firm and/or establishing a list of up to five on-call and as-needed firms to MTC’s Executive Director.

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 the Respondents. MTC reserves the right not to convene oral interviews and to make an award on the basis of initial SOQs. Any award or recommendation made will be made regarding the firm or firms whose SOQ(s) is/are the most advantageous to MTC, based on the evaluation criteria listed above.

XIII. Consultant Selection Timetable*

| | |
|--|--|
| 4:00 p.m., Monday, May 13, 2013 | Closing date/time for receipt of requests for clarification/exceptions |
| No later than three (3) working days prior to the date SOQs are due. | Deadline for protesting RFQ provisions |
| 4:00 p.m., Tuesday, May 28, 2013 | Closing date/time for receipt of SOQs |
| Week of June 10, 2013 | Interviews (if held) |
| Week of June 24, 2013 | Recommendation to Executive Director |
| June 30, 2013 | Contract Execution |

***In some cases, dates are approximate, and MTC reserves the right to change the Selection Timetable**

XIV. Selection Disputes

A Respondent may object to a provision of this RFQ on the grounds that it is unduly restrictive, arbitrary or biased, or to the selection of a particular Consultant on the grounds that MTC

procedures, the provisions of this RFQ 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 three (3) working days prior to the date SOQs are due, for objections to RFQ provisions; or
2. No later than three (3) working days after the date the firm/team is notified that it did not meet the minimum qualifications or was found to be non-responsive; or
3. No later than three (3) working days after the date the firm is notified that it was not selected, for objections to consultant selection.

Protests must clearly and specifically describe the basis for the protest in sufficient detail for the MTC review officer to recommend a resolution. The evaluation record shall remain confidential until the MTC Executive Director authorizes award.

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 the protesting Proposer wish to appeal the decision of the MTC Section Director it may file a written appeal with the MTC Executive Director no less than three (3) working days after receipt of the written response from the Section Director. The Executive Director's decision will be the final agency decision.

Authorization to award a contract to a particular Consultant 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 by the Executive Director, should the MTC Section Director's resolution of the initial protest be appealed.

XV. General Conditions

MTC will not reimburse any firm for costs related to preparing and submitting an SOQ.

All materials submitted by Respondents are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt.

SOQs will remain confidential until the MTC Executive Director has authorized award. Other than proprietary information or other information exempt from disclosure by law, the content of the SOQ submitted to MTC will be made available for inspection consistent with its policy regarding Public Records Act requests.

If a respondent believes any communication contains trade secrets or other proprietary information that the Respondent believes would cause substantial injury to the Respondent's competitive position if disclosed, the Respondent shall require that MTC withhold from disclosure such proprietary materials by marking each page containing propriety information as confidential and shall include the following notice at the front of its SOQ:

“The data on the following pages of this SOQ, marked along the right margin with a vertical line, contain technical or financial information which are trade secrets and/or which, if disclosed, would cause substantial injury to the Respondent's competitive position. The Respondent 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 a contract is awarded to the Respondent submitting this SOQ, 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 SOQ confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the Respondent may not designate any required SOQ Forms or the price proposal as confidential.**

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

If the Respondent does not request that MTC withhold information marked as confidential, or fails to follow the procedures for designating information confidential described herein, and requested under the California Public Records Act, MTC shall have no obligation to withhold the information from disclosure, and the Respondent 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.

MTC's standard consultant agreement is enclosed for your reference as *Appendix F, MTC's Standard Consultant Agreement*. 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 listed above. If no such change is requested, the Consultant will be deemed to accept MTC's standard contract provisions, unless such language is protested in accordance with the procedures listed above.

If a consultant is assigned a project, upon being assigned, consultant will be required to execute a contract with MTC.

The selected consultant will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix F-1, Insurance Requirements*. Consultant agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix F-1, Insurance Requirements*, within ten (10) days of MTC's notice to firm that it is a successful Respondent. Requests to change MTC's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions listed above. MTC will review the requests and issue an addendum if material changes requested by a prospective Respondent are acceptable. Objections to MTC determinations on requests to change insurance requirements must be brought to MTC's attention no later than the date for protesting RFQ provisions above. If such objections are not

brought to MTC's attention consistent with the protest provisions of this RFQ, compliance with all material insurance requirements will be assumed.

XVI. Organization 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 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. 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 Consultant, and if so, whether any potential bias can be mitigated acceptably by MTC and the Consultant.

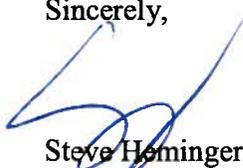
Consultant shall not engage the services of any subcontractor or independent contractor on any work related to this Agreement if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related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

XVII. Authority to Commit MTC

Based on the recommendation of the selection panel, the MTC Project Manager will recommend one or more Consultants to the Executive Director, who will commit MTC to the expenditure of funds in connection with this RFQ.

Thank you for your participation.

Sincerely,



Steve Heminger
Executive Director

SH: tgl

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APPENDIX A PRELIMINARY SCOPE OF WORK

Working with the MTC Project Manager, the Consultant(s) may be called upon for a range of tasks, such as:

Video Production

1. Conceptualize, write, shoot and edit fully packaged videos of varying lengths;
2. Videotaping multi-hour or day long meetings and/or events;
3. Editing raw footage into various lengths to be used for video news releases or other television or Web programming;
4. Producing video news releases from existing and/or original footage;
5. Video production in English, Spanish and/or Chinese;
6. Production of up to thirteen (13) presentation clips highlighting the people, programs and organizations to be honored at the 2014 MTC “Excellence in Motion” awards program in October 2014; including travel to the nine counties in the San Francisco Bay Area to interview award winners; writing a script for each video clip; editing videotaped interviews, b-roll and still photographs into video clips no longer than two to three minutes each; attendance at the awards ceremony to coordinate screening the clips; possible assistance with equipment to screen clips.

Web Casting/Social Media

7. Web casting multi-hour or day long meetings and/or events;
8. Creating and adapting videos for social media sites such as YouTube.

Other Related Services

9. Writing video and/or film scripts;
10. Hiring professional actors, as needed;
11. Providing sound engineering, as needed;
12. Providing scoring (music) as needed;
13. Providing lighting as needed;
14. Providing time lapse services as needed;
15. Other tasks involving MTC, its subagencies and its partners may arise that are not specified here.

These services are on an on-call basis and the services MTC Project Manager will request services as needed. There is no set schedule or budget for these services. Prospective Consultants need to be flexible and available on short notice to be considered as potential candidates. The MTC Project Manager will provide as much advance notice as possible. Some tasks may have up to a month advance notice; other news breaking items may have a few hours advance notice. At a minimum, Consultants(s) need to respond to a request for services within 24-hours.

**APPENDIX B
 STATEMENT OF INTEREST**

| | |
|-------------------|--|
| Firm name: | |
| Principal(s): | |
| Address: | |
| Web site address: | |
| Contact: | |
| Office phone: | |
| Cell phone: | |
| Fax: | |
| E-mail: | |

Check either yes or no for each statement.

Yes No

| Does your firm have an interest and experience in providing services in the following areas? | | |
|---|--|--|
| Producing fully packaged videos of various lengths (conceptualize, script, edit) | | |
| Videotaping various meetings and/or events | | |
| Editing raw footage into video news releases, television or web programming | | |
| Producing video content in English, Spanish and/or Chinese | | |
| Web casting various meetings and/or events | | |
| Creating and adapting videos for social media sites | | |
| Writing video and/or film scripts | | |
| Recruiting and working with professional talent | | |
| Providing sound, music and lighting for video or web programming | | |
| Providing time lapse services | | |
| Other (specify) | | |

The firm listed above has an interest in and can offer the following *other* services:

| | |
|--|--|
| Name & Title of Authorizing Official | |
| By signing below you acknowledge and agree to provide the required services, and comply with all the terms and conditions (including all applicable insurance requirements) listed in this RFQ. | |
| Authorized Signature | |
| Date | |

**APPENDIX C
 PRICE PROPOSAL FORM***

(Form provided for convenience; for additional detail, substitution with other format permitted.)

| Type of Service | Cost |
|--|-------------|
| Videographer for one day (single camera) | \$ |
| Videographer for one-half day (single camera) | \$ |
| Director/Producer for one day | \$ |
| Director/Producer for one-half day | \$ |
| Editing services for one day | \$ |
| Editing services for one-half day | \$ |
| Film crew (at least 2 cameras) to video and record interviews (one day) | \$ |
| Film crew (at least 2 cameras) to video and record interviews (half day) | \$ |
| Web casting of one-day meeting | \$ |
| Web casting of one-half day meeting | \$ |
| Time lapse services (one day) | \$ |
| Time lapse services (half day) | \$ |
| Sound, music and lighting mixing (one day) | \$ |
| Sound, music and lighting mixing (half day) | \$ |
| Recruit professional talent (one day) | \$ |
| Recruit professional talent (half day) | \$ |
| Other costs not covered above, per hour or otherwise | |

Fill in for all types of services your firm provides. Respondent shall provide fully loaded hourly rates including all applicable surcharges such as taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance. The rates provided will be assumed for the entire duration of the contract, including option years, unless otherwise indicated by Respondent.

| | | |
|-----------------------------------|--|-------|
| Proposing Firm | | |
| Name /Title: Authorizing Official | | |
| Authorized Signature | | Date: |

**APPENDIX D
 REFERENCES**

Consultant: _____
 Representative Name & Title: _____
 Phone Number: _____

Please provide a minimum of three (3) separate references of contracts that the Consultant has completed.

References must not be relatives of the Consultant's representative or owners. The references given must be for clients from the last five years.

The following information is required for each reference given (additional sheets may be used if necessary):

| | |
|---|--|
| | |
| Name & title of key contact | |
| Address | |
| Phone number(s) | |
| Email address | |
| Specific projects your firm delivered for this firm and dates | |

| | |
|--|--|
| | |
|--|--|

**APPENDIX E
 SUBCONTRACTOR INFORMATION FORM**

| | |
|----------------------------|-----------------------------|
| Name of Respondent: | Project Description: |
| Address: | Project Manager: |
| Address: | |
| Email: | Fax: |

| Firms Contacted as Potential Subcontractors (Include firms that initiated contact) (Name/Address/Contact/Phone) | Description of Firm's area of specialty. | Indicate if Firm initiated contact. |
|--|--|-------------------------------------|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |

(Attach extra sheets as needed)

I certify that the information included on this Form is complete and true.

Name: _____ **Title:** _____
Signature: _____ **Date:** _____

**APPENDIX F – SAMPLE
STANDARD CONSULTANT AGREEMENT**

Amy Rein Worth, Chair
Cities of Contra Costa County

Dave Cortese, Vice Chair
Santa Clara County

Alicia C. Aguirre
Cities of San Mateo County

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

Tom Bates
Cities of Alameda County

David Campos
City and County of San Francisco

Bill Dodd
Napa County and Cities

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
Association of Bay Area Governments

Jake Mackenzie
Sonoma County and Cities

Joe Pirzynski
Cities of Santa Clara County

Jean Quan
Oakland Mayor's Appointee

Bijan Sartipi
State Business, Transportation
and Housing Agency

James P. Spering
Solano County and Cities

Adrienne J. Tissier
San Mateo County

Scott Wiener
San Francisco Mayor's Appointee

Steve Heminger
Executive Director

Ann Flemer
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

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** 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 **insert name of MTC Project Manager** 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 must be made 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. If applicable, Consultant's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment D.

4. The term of the Agreement shall begin on the Effective Date and conclude on **insert date, 201_**, unless MTC terminates this agreement earlier as provided below.
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, or faxed to such party at their respective addresses as follows:

To MTC:

Attention: **Insert Name of Project Manager**
Metropolitan Transportation Commission
101 - 8th Street
Oakland, CA 94607-4700
Email: X
Fax: X

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

7. In performing services under the Agreement, Consultant will be acting as an independent contractor and not as an agent or employee of MTC. Consultant will have no authority to contract in the name of MTC, and Consultant will be responsible for its own acts and those of its agents and employees.
8. Consultant agrees to obtain and maintain at its own expense for the duration of the Agreement the types of insurance listed in Attachment C, Insurance Requirements, Part 1, against claims, damages or losses due to injuries to persons or damage to property or other losses arising in connection with the performance of the Agreement, placed with insurers with a Best's rating of A-VIII or better.
9. CONSULTANT shall indemnify and hold harmless MTC, the Additional Insureds listed in Attachment C, Insurance Requirements, Part 2, and [its/their](#) commissioners, directors, officers, agents, and employees or any of them ("the MTC Indemnitees") from any and all claims, demands, suits, or other legal proceedings actions ("the Claims") arising out of: (a) any injury or death to persons or property or pecuniary, financial or economic losses caused by any breach of the Agreement by Consultant or by any negligent act or omission or willful misconduct of the Consultant or its officers, employees, subconsultants or agents or any of them, under or in connection with this Agreement; or (b) based on an 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 agrees at its own cost, expense and risk to defend any and all such Claims against the MTC Indemnitees, and to pay and satisfy any resulting judgments, plus attorneys' fees and costs. This indemnification shall survive the 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

Accepted and Agreed to this _____ day
of [Month 201_](#).

[insert name and, if known, title](#)

ATTACHMENT A

SCOPE OF WORK AND SCHEDULE

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:

Task 1:

Deliverable:

Task 2:

Etc.

ATTACHMENT B

PROJECT PAYMENT SCHEDULE

CHOOSE 1 OF THE 2 OPTIONS BELOW. TASK ORDER CONTRACTS AND COST PLUS FIXED FEE CONTRACT MUST USE CON LONG

USE FOR FIRM FIXED PRICE PAYMENT BASED ON RECEIPT OF DELIVERABLES OR ACHIEVEMENT OF PROJECT MILESTONES

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:

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

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.

USE FOR LABOR – HOUR / TIME AND MATERIAL BASED CONTRACTS

Consultant shall be compensated for its services based on the hourly rates for the key personnel set forth below, which include all labor, supervision, 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 this Agreement, unless new rates are incorporated via an amendment executed as per Section 20 of this Agreement. .

| | <u>Name</u> | <u>Rate/hour</u> | <u>Task Description</u> |
|----|-------------|------------------|-------------------------|
| 1. | | \$xx | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |

| | | | |
|----|--|--|--|
| 7. | | | |
|----|--|--|--|

USE WHERE EXPENSES ARE PROVIDED FOR

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 CONSULTANT in accordance with 48 Code of Federal Regulations Part 31 or Office of Management and Budget Circular A-122, as applicable.

CONSULTANT shall submit invoices for services rendered on a monthly basis, identifying the work for which payment is requested; the hours worked; any authorized expenses, together with receipts for such expenses; the amount requested; and the cumulative amount billed and paid under this Agreement.

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 operations of CONSULTANT and CONSULTANT's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than

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

MTC and those entities listed in Part 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.

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.

Such policy shall contain a Waiver of Subrogation in favor of MTC.

MTC (and those entities listed in Part 2 of this Attachment , 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-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 __ of this Agreement.

Part 2

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

**INSERT NAMES OF ANY AGENCIES THAT SHOULD BE INCLUDED AS
ADDITIONAL INSURED OR INDEMNITEES.**

**APPENDIX F-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 this Agreement, placed with insurers with a Best’s rating of A-VIII or better.

| | |
|---------|--|
| Yes (√) | Please certify by checking the boxes at left that required coverages will be provided within ten (10) days of MTC’s notice to firm that it is the successful Respondent. |
| ___ | <u>Workers' Compensation Insurance</u> in the amount required by the applicable laws, and Employer’s Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence, 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 endorsement in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as Consultant is a sole proprietor with no employees. |
| ___ | <u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of Consultant and Consultant’s officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Expense for Indemnitee’s defense costs shall be outside of policy limits and such policy shall be issued on a Duty to Defend Primary Occurrence Form. MTC, MTC SAFE, BATA, BAHA and their directors, commissioners, officers, representatives, agents and employees are to be named as additional insureds. Such insurance as afforded by this endorsement shall be primary as respects any claims, losses or liability arising directly or indirectly from Consultant’s operations. |
| ___ | <u>Business Automobile Insurance</u> for all automobiles owned, used or maintained by Consultant and Consultant’s officers, agents and employees, including but not limited to owned, leased, non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence. |
| ___ | <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. |
| ___ | <u>Errors and Omissions Professional Liability Insurance</u> (if applicable) in an amount no less than \$1,000,000. If such policy is written on a “Claims-Made” (rather than an “occurrence”) basis, Consultant agrees to maintain continuous coverage in effect from the date of the commencement of services to at least three (3) years |

| | |
|--------------|--|
| | <p>beyond the termination or completion of services or until expiration of any applicable statute of limitations, whichever is longer. The policy shall provide coverage for all work performed by the 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 the Consultant and any subcontractor/consultant shall relieve the Consultant of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by the Consultant and any subcontractor/consultant working on behalf of the Consultant on the project.</p> |
| <p>_____</p> | <p><u>Property Insurance</u> 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), debris removal, and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" ("All Risk") 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. If such insurance coverage has a deductible, the Consultant shall also be liable for the deductible.</p> |

Deductibles: Any deductibles or self-insurance retentions over \$100,000 are subject to the approval of MTC.

Notice of Termination: 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 Consultant's contract.

Additional Provisions: Each policy or policies of insurance described in Commercial General Liability Insurance, above shall contain the following provisions:

- Inclusion of MTC, MTC SAFE, BATA BAHA, its commissioners, officers, representatives, agents and employees, as additional insured's with respect to work or operations in connection with this Agreement.
- Endorsement providing that such insurance is primary insurance and no insurance of MTC will be called on to contribute to a loss.

Certificates of Insurance: Promptly on execution of this Agreement and prior to commencement of any work hereunder, Contractor 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. Contractor agrees, upon written request by MTC, to furnish copies of such policies or endorsements required under the Agreement prior to the Effective Date of the Agreement.

Disclaimer: The foregoing requirements as to the types of limits of insurance coverage to be maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant hereto, including, but not limited to, liability assumed pursuant to *Appendix F*, Indemnification.

By signing below, you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within ten (10) days of MTC's notice to firm that it is the successful Respondent.

| | |
|-------------------------------|--|
| 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 the closing date for requesting clarifications or exceptions to RFQ provisions. If such objections are not brought to MTC's attention consistent with the protest provisions of this RFQ, compliance with the insurance requirements will be assumed.

**APPENDIX G
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 | Joe Pirzynski |
| Tom Azumbrado | Scott Haggerty | Jean Quan |
| Tom Bates | Anne W. Halsted | Bijan Sartipi |
| David Campos | Steve Kinsey | James P. Spering |
| Dave Cortese | Sam Liccardo | Adrienne J. Tissier |
| Bill Dodd | 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)