



METROPOLITAN
TRANSPORTATION
COMMISSION

Joseph P. Bort MetroCenter
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May 7, 2013

**REQUEST FOR QUALIFICATIONS
for
Employee Benefits Management**

Dear Firm:

The Metropolitan Transportation Commission (“MTC”) invites your firm to submit a Statement of Qualifications (SOQ) to provide services related to the management of MTC employee benefits policies. This Request for Qualifications (RFQ) is intended to result in the selection of an insurance broker to manage MTC’s existing benefit policies, including dental, vision, short and long-term disability, term life and accidental death, voluntary life, worker’s compensation, and travel, beginning July 1, 2013 and continuing through June 30, 2015. The contract may be renewed for an additional two-year period. Based on prior agreements for these services, MTC expects full compensation for the management of its employee benefits policies to be paid to the selected firm by the third parties providing the policies.

This letter and its enclosures comprise the formal RFQ for the above-described project. Responses to this RFQ should be submitted in accordance with the instructions set forth herein.

I. Statement of Qualifications Due Date

Interested firms must submit an original and five (5) copies of their SOQ by 4:00 p.m., Tuesday, May 28, 2013. *Statements of Qualifications received after that date and time will not be considered.*

II. MTC Point of Contact

SOQ and all inquiries relating to this RFQ shall be submitted to the Project Manager at the address shown below. For telephone inquiries call (510) 817-5742; the fax number is (510) 817-5848. E-mail inquiries may be addressed to PJohnson@mtc.ca.gov

Paula Johnson, Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 8th Street,
Oakland, CA 94607-4700

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. Spring
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

III. Notice of Addenda and Pre-Submittal Requests for Clarifications 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

MTC is the regional transportation planning agency for the nine-county San Francisco Bay Area. MTC has 190 authorized employees, including 31 management personnel. The benefits packages for the managers and employee staff differ slightly, each determined by a Memorandum of Understanding (MOU) negotiated by the employee representatives, approximately every 3-5 years. Both current MOUs expire June 30, 2014. The current benefits for regular employees are dental with Delta Dental, life and disability with Mutual of Omaha, vision with Vision Service Plan (VSP), employee assistance program with Claremont, flexible spending accounts with HealthComp, and transit subsidy with Clipper Direct and WageWorks (see *Appendix A*). MTC is in the California Public Employees Retirement System (CalPERS), and contracts with PERS for its retirement and medical benefits; thus, these benefits are not included in this RFQ.

V. Minimum Qualifications

To be eligible to be selected for this contract, a firm must have a minimum of ten (10) years of current experience in the management of employee benefit policies including dental, vision, long-term disability, life, worker's compensation, and travel.

VI. Work Scope, Compensation, Schedule

The selected firm will assume management of all existing benefit policies. Prior to each policy's expiration date, the successful company will be asked to analyze the current policy and associated costs and see if equivalent or better coverage is possible with alternate companies. Under the current agreement with our employees, MTC must maintain at least the current levels of service. The selected firm will also provide consultation on the costs of any changes to the benefit plans proposed by employees during MOU negotiations, if applicable, during the life of the benefits management contract.

The selected firm must provide dedicated personnel to work with MTC's HR Analyst/Benefits Programs and Human Resources Manager. It is expected that this or these individual(s) will do at least the following:

- Know the benefits types and lines well enough to provide MTC Human Resources subject matter expertise and employer benefits program management best practices consultation;
- Have direct, positive relationships with most of the policy providers; know how they are structured, how to resolve issues and concerns both for the MTC and for its employees having claims difficulties;
- Provide training sessions to MTC Human Resources personnel and to MTC staff regarding benefits management and benefits types; and
- Provide regulatory and industry change information to MTC on a timely basis; assist with the implementation of required regulatory changes.

All compensation to the firm must be structured to come directly from the providers. MTC will not directly pay for any work required in this scope.

The term of any contracts resulting from this RFQ would commence on or about July 1, 2013, and extend through June 30, 2016, with MTC's sole option to renew the contracts for one additional two (2) year term.

VII. Form of Statement of Qualification

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

1. A transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm, or the consortium, and include the name and telephone number of a contact person, if different from the signatory;
2. A detailed statement of the qualifications and relevant experience of the firm and its dedicated project personnel, including a brief firm history; the number of current regular professional employees; and resumes of those individuals who will be assigned to work on the resulting contract. This section must show that the firm meets the minimum qualifications described above;
3. A description of any similar work (minimum of 3 projects or contracts) performed for government agencies or other work related in size and subject matter, including the name of the client and a contact person (with telephone number) (up to two (2) pages);
4. A confirmation that compensation to the firm will be included in the premium payments, or in some other form so that compensation comes directly from the providers, rather than from MTC; include commission percentage, or describe other payment structure, if other than commission.
5. The names and a description of current clients and a brief discussion of any potential organization or personal conflicts of interest that could arise;
6. A signed California Levine Act Statement (*Appendix B*); and
7. A completed, signed *Appendix C-1, Insurance Requirements* document.

VIII. Proposal Evaluation Factors

The SOQs will be reviewed by an evaluation team consisting of staff from MTC based on the following criteria, all relatively equal in importance:

- Firm's experience with similar projects (including references);
- Skills, experience and background of key personnel assigned to this contract, and of management/executive team members;
- Firm's proven and current capability to perform the required services as described in the work scope in a timely manner;
- Firm's proven ability to secure coverage with all major state and national insurance providers; and

The evaluation team may interview one or more firms prior to selection or may recommend a firm without interviews. References may be considered in the panel's evaluation. The panel will recommend

a firm to the MTC Executive Director, who is authorized to select the firm that will carry out this contract.

MTC reserves the right to select a firm based solely on written qualifications, and not convene oral interviews. Further, MTC reserves the right to accept or reject any and all SOQs submitted, to waive minor irregularities in SOQs, and to request additional information from the firms submitting SOQs. Any award(s) made will be to firm(s) whose qualifications are most advantageous to MTC, based on the evaluation criteria outlined above.

IX. Consultant Selection Timetable*

4:00 p.m., Monday, May 13, 2013	Closing date and time for receipt of requests for exceptions to, or modifications of, RFQ requirements
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 and time for receipt of Statements of Qualifications at MTC
Week of June 10, 2013	Interviews, if held
Week of June 17, 2013	Recommendation to Executive Director
Week of June 24, 2013 (approximate)	Execution of Contract

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

X. 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 (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.

XI. 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 information in its SOQ 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 mark 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 to the extent it is incorporated into the contract, unless otherwise provided by law. [List pages]”

Failure to include this notice with relevant page numbers shall render any individual “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 and given the opportunity to provide to MTC a detailed statement indicating the reasons it believe the information should be withheld from disclosure. If MTC complies with the Respondent's request, the Respondent shall assume all responsibility for any challenges resulting from the non-disclosure; indemnify and defend 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 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.

A sample of MTC's standard consultant agreement is enclosed for your reference as *Appendix C, 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.

The selected consultant will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix C-1, Insurance Requirements*. Consultant agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix C-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.

MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFQ.

XII. Organizational Conflicts of Interest

Firms 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.

XIII. Authority to Commit MTC

Based on the recommendation of the selection panel, the Executive Director of MTC will commit to the negotiation of a contract with the top ranked firm and to the expenditure of funds in connection with this RFQ.

We appreciate your interest in this RFQ and look forward to receiving your Statements of Qualifications.

Sincerely,



Ann Flemer

Deputy Executive Director, Operations

AF: PJ

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APPENDIX A
CURRENT EMPLOYEE BENEFITS

*All benefits are “employee” only, unless otherwise noted.

Coverage	Carrier	Policy Number	Renewal	Annual Premium
Business Travel Accident	Hartford	EBT107119	January 1, 2014	\$4,485
Employee Assistance Program	Claremont	MTC	January 1, 2014	\$6,474
Dental (Employee/Dependent)	Delta Dental	15786	January 1, 2014	\$209,330
Term Life/AD&D	Mutual of Omaha	G000AKVL	January 1, 2015	\$35,550
Voluntary Term Life/AD&D	Mutual of Omaha	G000AKVL	January 1, 2015	\$39,924
Short-Term Disability	Mutual of Omaha	G000AKVL	January 1, 2015	\$41,000
Long-Term Disability	Mutual of Omaha	G000AKVL	January 1, 2015	\$41,980
Vision (Employee/Dependent)	Vision Service Plan (VSP)	237041	January 1, 2015	\$37,350
Workers' Compensation	Travelers Casualty & Surety	11oD8977UB	January 1, 2014	\$222,697
Flexible Spending Accounts	HealthComp	94-1749911	January 1, 2014	\$7,015
Transit Subsidy	Clipper Direct	N/A	January 1, 2014	\$2,304
Transit Subsidy	WageWorks	973	January 1, 2014	\$5,027
Auxiliary (potential)	AFLAC	(Potential)		

**APPENDIX B
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)

APPENDIX C
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. 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
Cities of Santa Clara County

Jean Quan
Oakland Mayor's Appointee

Bijan Sartipi
State Business, Transportation
and Housing Agency

James P. Spring
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

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 Employee Benefits Management (“the Agreement”).

1. It is agreed that Consultant will perform all the services specified in Attachment A, Scope of Work.
2. Work will be performed under the direction of Paula Johnson or a designated representative (herein "Project Manager") who will approve a work plan prior to your beginning work.
3. The parties agree that full compensation to Consultant for the satisfactory completion of all services contracted for under this Agreement will be paid to Consultant by the third party providers of MTC’s benefit policies.
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. The Agreement may be extended for up to an additional two-year period, through June 30, 201x, subject to the parties’ agreement on terms, unless either Consultant or MTC terminates the Agreement earlier, as provided below.
5. Either Consultant or MTC may terminate this agreement without cause upon 60 days’ prior written notice.

10. Consultant agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment D, Special Conditions Regarding Personally Identifiable Information, attached hereto and incorporated herein by this reference.
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: AUTHOR/PROJECT MANAGER'S INITIALS

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Accepted and Agreed to this _____ day
of Month *or* _____, 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:

1. Manage the existing benefits policies as Broker of Record. MTC has 190 regular full-time employees (“Regular” employees), including 31 management employees whose benefits package differs slightly somewhat from the other employees. The current benefits for Regular employees are shown in Attachment A-1. The benefit packages for the managers and the employee staff are each determined by a Memorandum of Understanding (MOU) negotiated by the employee representatives every 3-5 years. The current MOUs expire June 30, 2014.
2. Upon request, Consultant will analyze the current policies and associated costs to determine if equivalent or better coverage is possible with the same or alternative companies. Under MTC’s current MOUs with its employee groups, MTC must maintain at least the current level of coverage.
3. Consultant will provide on-going consultation services, including but not limited to the costs of any changes to benefit plans in effect during the life of the contract, including but not limited to the costs of any benefit plan changes resulting from MTC’s meet-and-confer process with its employee groups.

**ATTACHMENT A-1
EMPLOYEE BENEFITS**

Coverage	Carrier	Policy Number	Renewal
Business Travel Accident	Hartford	EBT107119	January 1, 2014
Employee Assistance Program	Claremont	MTC	January 1, 2014
Dental (Employee/Dependent)	Delta Dental	15786	January 1, 2014
Term Life/AD&D	Mutual of Omaha	G000AKVL	January 1, 2015
Voluntary Term Life/AD&D	Mutual of Omaha	G000AKVL	January 1, 2015
Short-Term Disability	Mutual of Omaha	G000AKVL	January 1, 2015
Long-Term Disability	Mutual of Omaha	G000AKVL	January 1, 2015
Vision (Employee/Dependent)	Vision Service Plan (VSP)	237041	January 1, 2015
Workers' Compensation	Travelers Casualty & Surety	11oD8977UB	January 1, 2014
Flexible Spending Accounts	HealthComp	94-1749911	January 1, 2014
Transit Subsidy	Clipper Direct	N/A	January 1, 2014
Transit Subsidy	WageWorks	973	January 1, 2014

ATTACHMENT B
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. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.

The policy shall provide coverage for all work performed by CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of 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 9 of this Agreement.

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.

None

ATTACHMENT D
Special Conditions Relating to Personally Identifiable Information

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

1. Right to Audit

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

2. General Confidentiality of Data

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

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

Notwithstanding anything to the contrary in Article 14, Records, of this Agreement, CONSULTANT agrees to retain PII for no longer than twelve (12) months for the duration of the terms of the Agreement, or the contract completion date, whichever comes first. At the conclusion of this retention period, CONSULTANT agrees to use Department of Defense (“DOD”) approved methods to wipe any sanitize any electronic media containing PII, including but not limited to magnetic disks, optical disks, magnetic tape and memory. Hard drives and computers shall be reformatted and reimaged in an equivalently secure fashion. CONSULTANT agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. At the conclusion of the performance period of this Agreement, CONSULTANT shall submit a certification to the MTC Project Manager as follows: “All PII whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in Section 2. General Confidentiality of Data of the Attachment D, Special Conditions Relating to Personally Identifiable Information.”

3. Compliance with Statutes and Regulations

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

4. Subconsultants

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

5. Consultant Guarantees

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

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

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

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

6. Notice of Security Breach

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

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

**APPENDIX C-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 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.
	<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.

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, 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 C*, 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.