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May 16, 2013

Addendum No. 1
to
Request for Qualifications dated May 3, 2013,
for Program for Arterial System Synchronization (PASS)

Dear Consultant:

This letter is Addendum No. 1 to the Program for Arterial System Synchronization (PASS) Request for Qualifications (RFQ) dated May 3, 2013. Where text is revised, deleted text is shown in strike-through format; added text is *italicized*. The RFQ is revised as follows:

Addendum Item	Reference	Change
1	RFQ, Appendix C, <u>MTC Standard Consultant Agreement</u> , Page 24	<p>Article 9, Indemnification</p> <p>CONSULTANT agrees to indemnify and hold harmless MTC and those entities (if any) identified as additional insureds in Attachment E, <u>Insurance and Financial Security (Bond) Provisions</u>, and their commissioners, directors, officers, agents, and employees (collectively "MTC Indemnified Parties") from and against any and all claims, demands, actions, causes of action, damages, liability, obligation, costs and expenses (including attorneys' fees and costs) of any kind whatsoever, including (without limitation) those for personal injuries (including, but not limited to death, bodily injuries, emotional or mental distresses and losses of consortium), property damages or pecuniary, financial or economic losses of any kind whatsoever (collectively "Claims and Losses") if the Claims and Losses are caused by <i>the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of services</i> CONSULTANT's breach of obligations under this Agreement, willful misconduct, or negligent services performed under this Agreement. It is understood and agreed that Consultant has no obligation to indemnify and hold the MTC Indemnified Parties harmless if the Claims and Losses are caused by the sole active negligence of the MTC Indemnified Parties.</p>

Addendum Item	Reference	Change
1, Cont.		<p>CONSULTANT further agrees to immediately defend the MTC Indemnified Parties with respect to any Claims and Losses if such Claims and Losses are alleged to arise out of or relate to any allegations of <i>negligence, recklessness, or willful misconduct of CONSULTANT in the performance of services</i> CONSULTANT's breach of obligations under this Agreement, willful misconduct, or negligent services performed under this Agreement. As part of this defense obligation, CONSULTANT agrees to either retain counsel to defend the MTC Indemnified Parties or pay charges of the MTC Indemnified Parties' attorneys with regard to the Claims and Losses. CONSULTANT's duty to defend shall apply and be enforced even if it is alleged that the acts, omissions or failures to act of parties other than CONSULTANT, including the MTC Indemnified Parties, caused or contributed to the Claims and Losses; <i>however, CONSULTANT's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for the MTC Indemnified Parties shall be reimbursed by MTC except to the extent such defense costs arise, under principles of comparative fault, from CONSULTANT's negligence, reckless, or willful misconduct.</i></p> <p>The provisions set forth in this Section are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable. This indemnification shall survive termination or expiration of this Agreement.</p>
2	RFQ, Appendix C, <u>MTC Standard Consultant Agreement</u> , Attachment E, Insurance and Financial Security (Bond) Provisions, Page 43	<p>Article 1, Subarticle A:</p> <p><u>Minimum Coverages.</u> 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.</p>

		<p>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.</p> <p>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.</p>
3	RFQ, Appendix C, <u>MTC Standard Consultant Agreement</u> , Attachment E, Insurance and Financial Security (Bond) Provisions, Page 43	<p>Article 1, Subarticle A.5:</p> <p><u>Errors and Omissions Professional Liability Insurance</u> for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim.</p> <p>The policy shall provide coverage for <i>professional services</i> all work performed by CONSULTANT and any <i>professional services</i> work performed or conducted by any subcontractor <i>individual sub-consultant</i> working for or performing <i>professional services</i> on behalf of the CONSULTANT. No contract or agreement between CONSULTANT and any subcontractor <i>individual sub-consultant</i> shall relieve CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for <i>professional services</i> all work performed by CONSULTANT and any subcontractor <i>individual sub-consultant</i> working on behalf of CONSULTANT on the project. <i>CONSULTANT shall ensure that any subcontractors performing professional services shall be required to provide their own Errors and Omissions Professional Liability Insurance at the limits set forth herein.</i></p>
4	RFQ, Appendix C-1, <u>Insurance Requirements</u> , Page 77	Appendix C-1, <u>Insurance Requirements</u> is deleted in its entirety and replaced with the attached.

The remaining provisions of the Request for Qualifications, dated May 3, 2013, remain unchanged. In the event of a conflict between this addendum and the previous version(s), this addendum shall take precedence.

Any questions concerning this addendum to the RFQ should be directed to Vamsi Tabjulu, Project Manager, at (510) 817-5936 or vtabjulu@mtc.ca.gov.

Sincerely,



Steve Heminger
Executive Director

SH: VT

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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 box below that required coverages will be provided within ten (10) days of MTC's notice to firm that it wishes to contract with the firm.
___	<u>Workers' Compensation Insurance</u> with Statutory limits, and 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.
___	<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. Such policy shall contain a Waiver of Subrogation in favor of MTC. MTC, California Department of Transportation (Caltrans), Federal Highway Administration (FHWA), all Client Jurisdictions 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.
___	<u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.
___	<u>Errors and Omissions Professional Liability Insurance</u> for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim. The policy shall provide coverage for professional services performed by CONSULTANT and any professional services performed or conducted by any individual sub-consultant working for or performing professional services on behalf of the CONSULTANT. No contract or agreement between CONSULTANT and any individual sub-consultant shall relieve CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for professional services performed by CONSULTANT and any individual sub-consultant working on behalf of CONSULTANT on the project. CONSULTANT shall ensure that any subcontractors performing professional services shall be required to provide their own Errors and Omissions Professional Liability Insurance at the limits set forth herein.

—	<p>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.</p>
—	<p>Property Insurance covering CONSULTANT'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.</p>
<p>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.</p> <p>In the event that MTC seeks coverage as an additional insured under any CONSULTANT insurance policy that contains a deductible or self-insured retention, CONSULTANT shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of CONSULTANT, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONSULTANT or subconsultant is not a named defendant in the lawsuit.</p> <p>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:</p> <ol style="list-style-type: none"> (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. <p>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.</p> <p>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.</p> <p>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</p>	

limited to, liability assumed pursuant to Article 9 of *Appendix C*.

Subcontractor's Insurance: See Appendix C, Standard Consultant Agreement, at Attachment E, regarding CONSULTANT'S liability for Subcontractors.

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

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

NOTE: If you were unable to check "Yes" for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to MTC's attention no later than the date for requests for clarifications and 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.