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*Dave Cortese, Vice Chair*  
Santa Clara County

*Alicia C. Aguirre*  
Cities of San Mateo County

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and Urban Development

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*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

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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

August 23, 2013

## REQUEST FOR QUALIFICATIONS STATE LEGISLATIVE ADVOCACY SERVICES

To: Interested Parties

The Metropolitan Transportation Commission ("MTC") invites your firm to submit a Statement of Qualifications (SOQ) to act as legislative advocate on behalf of MTC, the Metropolitan Transportation Commission Service Authority for Freeways and Expressways ("MTC SAFE"), the Bay Area Toll Authority ("BATA"), the Bay Area Headquarters Agency (BAHA) and the Bay Area Infrastructure Authority (BAIFA) with the State Legislature in Sacramento. The initial contract would be for a three (3) year period, with the option to renew for an additional three (3) years, subject to the parties' agreement on renewal terms.

This letter, together with its enclosures, comprises the Request for Qualifications (RFQ) for this project. SOQs should be submitted in accordance with the instructions set forth in this RFQ.

### **I. Statement of Qualifications Due Date**

Interested firms must submit an original and four (4) hard copies of their SOQs no later than 4 p.m., Friday, September 13, 2013, as specified below. **SOQs received after that time and date will not be considered.**

### **II. MTC Point of Contact**

SOQ and all inquiries relating to this RFQ shall be submitted to MTC's Legislation and Public Affairs Director, Randy Rentschler, who is the Project Manager, at the address shown below. For telephone inquiries call (510) 817-5780. Email inquiries may be addressed to: [rrentschler@mtc.ca.gov](mailto:rrentschler@mtc.ca.gov).

Randy Rentschler  
Director, Legislation and Public Affairs  
Metropolitan Transportation Commission  
Joseph P. Bort MetroCenter  
101 8th Street  
Oakland, CA 94607-4700

### **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., Friday, August 30, 2013, to guarantee response or consideration.

### **IV. Background**

The Metropolitan Transportation Commission ("MTC"), created pursuant to Government Code § 66500 *et seq.*, is the regional transportation planning agency for the nine-county San Francisco Bay Area.

MTC also serves as the Service Authority for Freeways and Expressways (SAFE), established pursuant to Streets and Highways Code Section 2550 *et seq.* to provide services such as the Freeway Service Patrol and the region's motorist aid call box program along the region's highways.

In 1997, the California Legislature authorized MTC, acting as the Bay Area Toll Authority (BATA), to administer the base \$1 toll on the San Francisco Bay Area's seven state-owned toll bridges (Streets & Highways Code § 30950 *et seq.*). These responsibilities were expanded under Assembly Bill 144 (Hancock, Statutes 2005, Chapter 71; Streets & Highways Code § 188.4 *et seq.*), which authorizes, among other things, the consolidation of all toll revenues under BATA's administration and management.

The Bay Area Headquarters Authority (BAHA) was formed in 2011 pursuant to a joint exercise of powers agreement by MTC and BATA, to plan, acquire, and develop office space and facilities and undertake related activities.

The Bay Area Infrastructure Financing Authority (BAIFA) is a joint exercise of powers authority formed by MTC and BATA formed for the purpose of planning, developing and funding transportation and related projects, including the development of the Express Lanes Network.

MTC's 21-member policy board, on behalf of MTC, MTC SAFE, BATA, BAHA and BAIFA, annually adopts a state and federal legislative program with specified funding and policy objectives. MTC staff then works with its legislative advocates to inform and influence legislative and administrative deliberations to achieve these directives. MTC's Legislation Committee meets monthly to review the status of activities in Sacramento and Washington, provide guidance, and recommend positions on pending legislation to the full Commission. MTC's adopted 2013 Legislative Program is included as *Appendix A*, Final 2013 Legislative Program.

## **V. Scope of Work and Budget**

The firm selected as a result of this RFQ will be expected to work under the direction of the Director of Legislation and Public Affairs for MTC, on behalf of all five agencies' legislative goals. A summary of the experience required to be selected as the agencies' Sacramento legislative advocate appears in *Appendix B, Summary of Required Experience and Expertise*.

The initial contract will be for a three (3) year period, with the option to renew for an additional three years, subject to the parties' agreement on renewal terms. The amount the agency has budgeted for the first year of the contract is \$115,000; subsequent years' budgets will be comparable, and subject to the agency operating budget approval processes.

## **VI. Form of Statement of Qualifications (SOQ)**

Each SOQ should include:

1. A transmittal letter signed by a partner or official of the firm authorized to solicit business and enter into contracts for the firm indicating your firm's interest in providing the services required by this RFQ. The transmittal letter should include the name and telephone number of a principal contact person, if different from the authorizing official.
2. Describe the services and activities that your firm proposes to provide to MTC, including the following information (up to 6 pages):
  - Overall strategy to accomplish work
  - Assignment of work within your firm's team.
3. **Firm Qualifications** (Up to 6 pages). A detailed statement of the firm's qualifications relative to the areas outlined in *Appendix B, Summary of Required Experience and Expertise*, including resumes of the staff members likely to work on the resulting contract and the designation of the lead staff member(s). A description of any similar work performed for government agencies or other related work by the staff listed should be included.
4. **Team Qualifications** (Up to 6 pages). Provide a list identifying (1) each key person on the team; (2) the team leader, (3) the role each will play in executing the scope of work (4) a description of the experience and qualifications of the team members, including brief resumes if necessary.
4. References attesting to each member of the team's previous experience in performing work substantially similar or related to the services requested. Please provide the names of **at least two and not more than four** current clients, along with the names and telephone numbers of client contact person(s) for each reference.
5. Your firm's cost proposal for legislative advocacy services for each year of the initial three year term and a description of all charges that would be passed on to MTC. For

hourly rates, indicate when rates are due to change and approximately how much they can be expected to change each year.

6. Pursuant to the California Political Reform Act, list any campaign contributions exceeding \$250 made to any MTC commissioners listed on the MTC letterhead during the preceding year, and a description of any other potential conflict of interest with MTC by completing the California Levine Act Statement (*Appendix C*) and including it with your firm's SOQ submission.
7. A completed, signed *Appendix D-1, Insurance Requirements* document.

**VII. Evaluation Factors**

The three evaluation factors will be (1) an assessment of overall experience and qualifications in relation to supporting the state legislative advocacy efforts described in *Appendix A* and the experience requirements described in *Appendix B, Summary of Required Experience and Expertise*, (including, without limitation, the firm's ability to enter into the agencies' legislative arena with a sound base of understanding and experience, the qualifications of the particular individuals involved, and references), (2) as assessment of potential conflicts of interest representing MTC and other clients, and (3) annual rates and costs to MTC although they will not be as important as factors (1) and (2) above.

MTC reserves the right to cancel this RFQ, accept or reject any and all submittals, negotiate with any or all firms submitting SOQs, waive minor irregularities in SOQs, and request any additional information from firms submitting SOQs. Any award made will be to the firm whose SOQ is the most advantageous to MTC, based on the evaluation criteria listed above.

Requests for additional information concerning this solicitation may be made to the Project Manager only. The Legislation and Public Affairs Director will recommend the firm(s) to be selected for approval by MTC's Executive Director and its Administration and Legislation Committees.

**VIII. Selection Timetable**

4:00 p.m., Friday, August 30, 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 p.m. (PST), September 13, 2013	Closing date and time for receipt of Statements of Qualifications at MTC
September 19-22, 2013 (approx.)*	Interviews, if held
October 9, 2013*	Recommendation of selected firm to MTC's Administration Committee

October 11, 2013*	Recommendation of selected firm to MTC’s Legislation Committee
October 24, 2013 (approximate)*	Execution of Contract

\*Dates are approximate, and MTC reserves the right to change the Selection Timetable

**IX. Selection Disputes**

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

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

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the MTC Executive Director or appropriate MTC Committee authorizes award.

Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the MTC review officer to recommend a resolution to the Executive Director or Section Director, as appropriate.

The Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Should a Proposer wish to appeal the decision of the MTC Executive Director, it may file a written appeal with the appropriate MTC Committee, no later than 4:00 p.m. on the third day after receipt of the written response from the MTC Executive Director. The appropriate MTC Committee’s decision will be the final agency decision.

Authorization to award a contract to a particular Contractor by the appropriate MTC Committee shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the MTC Executive Director or, if the decision of the MTC Executive Director is appealed, the issuance of the appropriate MTC Committee’s decision.

**X. 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 proprietary 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 D, 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 D-1, Insurance Requirements*. Consultant agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix D-1, Insurance Requirements*, within ten (10) days of MTC's notice to firm that it is 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.

#### **XI. 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.

#### **XII. Authority to Commit MTC**

Based on an evaluation conducted by an evaluation panel, the Executive Director will recommend a consultant to the MTC Administration and Legislative Committees, which will commit MTC to the expenditure of funds in connection with this RFQ.

MTC intends to begin the contract as a lump sum retainer, to be billed in monthly installments, but expects to track the hours worked by the selected firm the first year to determine if another payment mechanism is better suited to the work.

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

Sincerely,



Ann Flemer  
Deputy Executive Director, Policy

AF:RL/lt

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**APPENDIX A**  
**SCOPE OF WORK**  
**FINAL 2013 LEGISLATIVE PROGRAM**

<b>STATE</b>		
<b>Issue</b>	<b>Goal</b>	<b>Strategy</b>
1. Increase Transportation Funding	A. Lower the 2/3 super majority vote for local transportation taxes	Support proposals, such as ACA 23 (Perea) proposed in 2012, to assist in the passage of local transportation measures by amending the constitution to allow a city, county, special district or regional transportation agency to impose a special tax for transportation projects with 55 percent approval.
	B. Support a longer term effort to find new sources of state-wide revenues dedicated to transportation	While we do not expect legislative action for a new or increased statewide revenue source in 2013, we will engage in the efforts of Transportation California — a statewide coalition representing the construction industry, the California Transportation Commission, the California Alliance for Jobs and others who are working toward a future action to secure new revenues — whether in the form of a new dedicated user fee, such as a gas tax or a vehicle license fee, or a new statewide transportation bond.
2. Cap-and-Trade	Secure cap-and-trade revenue to support transportation and implementation of SB 375 (Steinberg)	<p><b>FY 2013-14 Budget Strategy</b></p> <p>Work closely with our Bay Area legislative delegation and members of the Brown Administration to ensure that the broad array of transportation projects that help contribute to greenhouse gas emission reduction are included in the Department of Finance’s (DOF) three-year expenditure plan for the use of “cap-and-trade” revenue that is required to be submitted to the Legislature by May 2013. Staff will also participate in the public input process provided for in AB 1532 (Perez, 2012), which requires the Air Resources Board to hold at least two public workshops in different regions of the state and one public hearing <i>prior</i> to DOF’s submittal of the expenditure plan.</p>

Issue	Goal	Strategy
2. Cap-and-Trade (continued)		<p><b>Long-Term Legislative Strategy</b>                      Support efforts to dedicate allowance revenue from vehicle fuels to transportation system needs that help support the implementation of sustainable communities strategies, as mandated by SB 375. MTC will be an active participant in the newly formed “Transportation Coalition for Livable Communities,” which has organized itself around this common goal. In addition to MTC, the coalition also includes the California Alliance for Jobs, Transportation California, the California State Association of Counties and the League of California Cities, the Self-Help Counties Coalition and the California Transit Association, as well as the Sacramento Area Council of Governments and the Southern California Association of Governments.</p>
3. FY 2013-14 State Budget	Protect transportation funding from diversion to the General Fund	Partner with interested stakeholders to protect transportation funds from diversion to the General Fund and advocate for a FY 2013-14 State Budget that best addresses the state’s extensive transportation needs. Work with the California State Association of Counties and others to impose a sunset provision on the diversion of approximately \$130 million per year in gas tax revenues generated by off-highway (recreational) vehicles out of the State Highway Account to the General Fund — a clear violation of the intent of the 2010 Gas Tax Swap and Proposition 22 (2010).
4. Implementation of MAP-21 (Moving Ahead for Progress in the 21 <sup>st</sup> Century)	Maximize the suballocation of federal funds to metropolitan areas	Work in partnership with the state’s other large metropolitan planning organizations to create a new framework for the distribution of federal funds under MAP-21, including the Surface Transportation Program (STP), the Congestion Mitigation and Air Quality (CMAQ), the new Transportation Alternatives Program and the Highway Safety Improvement Program.

Issue	Goal	Strategy
<p>5. California Environmental Quality Act (CEQA)</p>	<p>Update CEQA to curb its abuse by project opponents and speed up the environmental review process</p>	<p>In collaboration with the Silicon Valley Leadership Group, MTC will engage in the process already underway in Sacramento to modernize CEQA. In particular, MTC will seek the following changes:</p> <ol style="list-style-type: none"> <li>1. Provide expedited review for projects that are consistent with an adopted Sustainable Communities Strategy with a certified environmental impact report (EIR).</li> <li>2. Curtail the ability of litigants to use CEQA to challenge statutorily adopted environmental standards with which projects have already demonstrated compliance.</li> <li>3. Limit consideration of comments to those that are filed during the written comment period of the draft EIR to prohibit the practice of “data dumping” in order to delay adoption of an EIR.</li> <li>4. Modify the requirements for an EIR to be recirculated so that it does not apply to changes made in direct response to public comment if mitigation or project changes can resolve the concern to a “less than significant” impact.</li> <li>5. Allow a project’s long-term environmental benefits to be integrated into the CEQA review process up front.</li> <li>6. Narrow the scope of CEQA so that it would not apply to a transit operator considering service changes or changes to local parking requirements.</li> <li>7. Improve public disclosure requirements.</li> <li>8. Seek ways to expedite project review by regulatory agencies.</li> </ol>

Issue	Goal	Strategy
6. Project Delivery	Seek opportunities to increase flexibility to deliver state, local and regionally-funded projects	Work with the Business, Transportation & Housing Agency and others in support of ways to expedite project delivery within the Department of Transportation (Caltrans). Support efforts to remove hurdles to efficient project delivery at the state, local and regional level, including, but not limited to, providing greater flexibility in contracting methods, such as design-build, design-sequencing and construction management at risk.
7. Senate Bill 375 Implementation	A. Increase funding for infill housing and transit oriented development	Engage with the State Department of Housing and Community Development (HCD) in the development of guidelines for \$50 million in infill incentive grants (\$25 million) and transit-oriented development grants and loans (\$25 million) from Proposition 1C (2006) funding that was reverted to the state as a result of projects that stalled as a result of the loss of redevelopment funding. Provide technical assistance and support to local jurisdictions seeking funding from these grants.
	B. Increase local funding options to replace the loss of redevelopment funding to support economic development and affordable housing	Support efforts, such as SB 1156 (Steinberg) — which created a new avenue for local agencies to use tax-increment financing in support of projects consistent with sustainable communities strategies and was passed by the Legislature in 2012, but vetoed by Governor Brown — to provide new funding options at the local and regional level to help finance affordable housing construction and economic development near existing and planned public transit service.
8. Bridge Toll Revenue	Reduce toll evasion resulting from vehicles driving on toll bridges without license plates	In 2011, the Legislature enacted AB 1215 (Blumenfield), requiring electronic registration of all new vehicles, in part to speed up the delivery of the permanent license plate to the car’s owner. Dealerships were given until July 2012 to comply with the law, so the impact of the legislation on toll violations as a result of “no plate” vehicles is unknown. Staff will monitor the impact of the new law, and if warranted, resume efforts to require a camera-readable license plate be installed on every new or used vehicle at the point of sale.

Issue	Goal	Strategy
9. Carpool Lanes	Protect the time-savings incentive to carpool	Oppose efforts to expand free access to carpool lanes for single-occupant vehicles as an incentive for the purchase of fuel efficient vehicles beyond that which is provided for in current law or for other non-transportation purposes.
10. School Siting Reform	Require school districts to take state and local planning goals into account when siting new schools	Engage in efforts by the California Department of Education to revise its regulations related to school siting — which will affect schools built by a bond measure proposed for the 2014 ballot. Staff will advocate that the regulations ensure school districts take into account state goals related to promoting infill development, preserving open space and reducing greenhouse gas emissions when siting new schools, as well as local and regional plans.

<b>FEDERAL</b>		
Issue	Goal	Strategy
1. Pre-Tax Transportation Fringe Benefits	Restore mode-neutrality in pre-tax transportation benefits	Continue our long-standing advocacy for parity between the pre-tax transportation fringe benefit allowed for public transit and vanpooling and that which is allowed for parking. Furthermore, condition the pre-tax allowance for parking expenses on an employer's offering of a cash-out option to all employees who are offered the parking subsidy.
2. Surface Transportation Authorization	Engage in discussions with Congress and the Obama Administration regarding a multi-year surface transportation bill to succeed MAP-21	Work with our partner Bay Area transportation agencies, Caltrans and other statewide transportation organizations to urge Congress to identify a new, permanent funding source for transportation that builds on the structure and performance-based framework established by MAP-21. Seek a bill that provides a new program focused on metropolitan mobility, increased funding for maintaining our existing roadways and transit systems, a new dedicated funding source for goods movement improvements — and most importantly — a new, dedicated funding source that supports an authorization bill of at least five years.

Issue	Goal	Strategy
<p>3. Federal Appropriations</p>	<p>A. Maximize federal transportation appropriations for MAP-21 programs</p>	<p>Partner with local, regional and statewide transportation agencies as well as national associations to ensure that Congress appropriates funding in fiscal years 2012-13 and 2013-14 consistent with amounts authorized in MAP-21. Monitor and take advantage of opportunities that may emerge during the “fiscal cliff” negotiations to augment transportation funding above MAP-21 authorized levels.</p>
	<p>B. Advocate for Capital Investment Grant funding for Resolution 3434 projects</p>	<p>Seek annual Capital Investment Grant (commonly referred to as “New Starts”) appropriations to help implement the Regional Transit Expansion Program, Resolution 3434, consistent with the full funding grant agreements (FFGAs) approved for the San Francisco Municipal Transportation Agency (SFMTA) Third Street Light Rail/Central Subway project and the Santa Clara Valley Transportation Authority’s BART to Berryessa extension. Seek Small Starts funding for bus rapid transit projects sponsored by Alameda Contra Costa Transit District (International Boulevard) and SFMTA (VanNess Avenue).</p>
	<p>C. Seek increased funding for modernization of the region’s airports and air traffic control systems</p>	<p>Work with the National Alliance for the Advancement of Next Generation (NAANG) — a new coalition that MTC and the region’s major airports and business associations recently joined — to advocate for implementation of the Next Generation Air Transportation System, known as “NextGen.” The primary goals of NextGen are to enhance the safety and reliability of air transportation, to reduce delays in the nation’s skies and reduce aviation’s impact on our environment through more efficient use of fuel. According to FAA’s latest estimates, by 2018, Next Gen will reduce total delays (in flight and on the ground) by about 35 percent compared with doing nothing.</p>

<b>Issue</b>	<b>Goal</b>	<b>Strategy</b>
4. Increase Local/Regional Transportation Funding	Seek passage of the Marketplace Fairness Act in order to increase sales tax revenue available for transportation	Track and support efforts to enact the Marketplace Fairness Act (MFA), which seeks to apply state and local sales tax rates to e-commerce transactions. The MFA has the prospect of increasing funding for Bay Area transportation agencies as a result of increased revenue from county-based transportation sales taxes, the Transportation Development Act (TDA) funds — a key source of transit operating funding — and AB 1107, the permanent ½ cent sales tax for BART (applicable in Alameda, San Francisco and Contra Costa counties).
5. Improve Efficiency of Region’s Air Travel	In partnership with the region’s three major airports, work with the Federal Aviation Administration to balance domestic flights between San Francisco, San Jose and Oakland	The Regional Airport Planning Committee (RAPC) last met in May 2012 where the 2012 Regional Aviation Activity and Tracking Report was released. The report identified, among a number of recommendations, “encouraging airlines to add more flights at the Oakland and San Jose airports, thus shifting more air passengers to these facilities in the years ahead”. Specific action for consideration to advance these recommendations is best considered by a meeting of RAPC and representatives of the three affected airports.

## **APPENDIX B**

### **SUMMARY OF REQUIRED EXPERIENCE AND EXPERTISE**

MTC is seeking a qualified provider for state legislative advocacy services whose experience include demonstrates the ability to:

1. Assist MTC in seeking introduction or passage of legislation to be sponsored or supported by MTC. This may include drafting legislation, finding a legislative author and/or sponsorship of state agencies, influencing legislative analysis, preparing and organizing testimony, and lobbying appropriate officials to develop and pass such legislation.
2. Review proposed legislation and regulations for potential benefit or burden to MTC and Bay Area transportation interests. Work with MTC to assist in developing MTC's position on legislation and proposed regulations and in advocacy for or against pending proposals.
3. Advise the Commission and staff on effective strategies to influence legislative and administrative activities.
4. Assist MTC in scheduling meetings with appropriate members of the Legislature and/or state officials.
5. Coordinate an annual series of meetings in Sacramento with Bay Area lawmakers early in the calendar year to brief lawmakers on MTC's adopted legislative program and priorities, as well as progress in implementing relevant state laws.
6. Assist in preparation of materials, testimony and written communication with regard to MTC's interests concerning legislation, programs and other activities.
7. Attend meetings with MTC Commissioners and staff and testify on behalf of MTC at legislative hearings as required.
8. Provide MTC with monthly written reports regarding legislation, programs and other activities of interest.
9. Coordinate other lobbying groups or individuals with regard to legislation and issues that are in MTC's interests.

**APPENDIX C**  
**CALIFORNIA LEVINE ACT STATEMENT**

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

MTC’s commissioners include:

Alicia C. Aguirre	Federal D. Glover	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 D**  
**MTC'S STANDARD CONSULTANT AGREEMENT**

PROFESSIONAL SERVICES AGREEMENT

Between **METROPOLITAN TRANSPORTATION COMMISSION**

And **INSERT NAME OF CONSULTANT**

For STATE LEGISLATIVE ADVOCACY SERVICES

THIS AGREEMENT is made and entered into as of the **xx** day of **Month**, 20\_\_\_\_, by and between the Metropolitan Transportation Commission (herein called "MTC "), a regional transportation planning agency established pursuant to California Government Code § 66500 and **INSERT NAME OF CONSULTANT**, (herein called "CONSULTANT"**"CONTRACTOR" MAY BE SUBSTITUTED, IF APPROPRIATE**), a **PICK ONE OF THE FOLLOWING:** partnership, \_\_\_\_\_[state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the State of \_\_\_\_\_.

**RECITALS**

WHEREAS, MTC intends to **INSERT BRIEF DESCRIPTION OF PROJECT** (herein called "the Project"); and

WHEREAS, the services required for the Project cannot be performed satisfactorily by the officers and employees of MTC; and

WHEREAS, the parties hereto now wish to enter into an agreement (the "Agreement") pursuant to which CONSULTANT will render professional services in connection with the Project as hereinafter provided.

NOW, THEREFORE, the parties hereto agree as follows:

**1. SCOPE OF SERVICES**

CONSULTANT's services are described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. CONSULTANT agrees to perform or secure the performance of all specified services within the maximum payment specified in Article 3, subject to the prior written approval of a work plan by Rebecca Long, (herein

called "MTC Project Manager"). As MTC Project Manager, Rebecca Long is responsible for communication with CONSULTANT and the administration of this Agreement. MTC'S Executive Director or designated representative may substitute a new MTC Project Manager by written notice to CONSULTANT.

CONSULTANT'S point of contact and the individual authorized to communicate to MTC on behalf of CONSULTANT is **INSERT NAME OF CONSULTANT'S PM** ("CONSULTANT Project Manager"). A change in the CONSULTANT Project Manager requires MTC written approval.

### **1.1 PROGRESS REPORTS**

CONSULTANT shall provide MTC with [**INSERT FOR COST REIMBURSEMENT CONTRACTS OR AS NECESSARY: monthly**] progress reports according to the schedule and form approved by the MTC Project Manager.

### **2. PERIOD OF PERFORMANCE**

CONSULTANT'S services hereunder shall commence on or after \_\_\_\_\_, 201\_\_, and shall be completed no later than \_\_\_\_\_, 201\_\_, unless extended by duly executed amendment or earlier terminated, as hereinafter provided. CONSULTANT's services shall be performed in accordance with the schedule included in Attachment B, Project Schedule, attached hereto and incorporated herein by this reference.

### **3. COMPENSATION AND METHOD OF PAYMENT**

Subject to duly executed amendments, MTC will pay CONSULTANT for its services as described in Attachment A a total amount 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, expenses and any fixed fee not to exceed [**SPELL OUT AMOUNT IN WHOLE DOLLARS (\$\_\_\_\_\_)**] ("Maximum Payment"). MTC shall make payments to CONSULTANT in accordance with the provisions described in Attachment C, Compensation and Method of Payment, attached hereto and incorporated herein by this reference.

All invoices shall be made in writing and delivered or mailed to MTC as follows:

Attention: Accounting Section  
[Metropolitan Transportation Commission](#)  
Joseph P. Bort MetroCenter  
101 - 8th Street  
Oakland, CA 94607-4700

Payment shall be made by MTC within thirty (30) days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative.

**4. KEY PERSONNEL**

The key personnel to be assigned to this work by CONSULTANT and, if applicable, their hourly rates and the estimated hours to be supplied by each are set forth in Attachment D, Key Personnel, attached hereto and incorporated herein by this reference. Substitution of any of the personnel named in Attachment D or a decrease in the hours provided to the project by such personnel of more than 10% requires the prior written approval of the Project Manager or a designee. CONSULTANT shall maintain records documenting compliance with this Article, which shall be subject to the audit requirements of Article 15. CONSULTANT agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. MTC reserves the right to direct removal of any individual, including key personnel, assigned to this work.

**5. AMENDMENTS**

MTC reserves the right to request changes in the services to be performed by CONSULTANT. All such changes shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the Executive Director or a designated representative and CONSULTANT and specifically identified as amendments to the Agreement. The MTC Project Manager is not a designated representative, for purposes of approving an amendment.

**6. TERMINATION**

A. Termination for Convenience. MTC may terminate this Agreement for convenience, in whole or in part, at any time by written notice to CONSULTANT. Upon receipt of notice of termination, CONSULTANT shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to MTC. [CONSULTANT shall be reimbursed for costs incurred for](#)

incomplete deliverables up to the time of termination and a reasonable profit not to exceed \_\_\_%, plus reasonable termination costs, not to exceed the amount payable for such deliverables. If CONSULTANT has any property in its possession belonging to MTC, CONSULTANT will account for the same, and dispose of it in the manner MTC directs. Except as provided above, MTC shall not in any manner be liable for CONSULTANT's actual or projected lost profits had CONSULTANT completed the services required by this Agreement.

B. Termination for Default. If CONSULTANT does not deliver the work products specified in this Agreement in accordance with the delivery schedule or fails to perform in the manner called for in the Agreement, or if CONSULTANT fails to comply with any other material provision of the Agreement, MTC may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on CONSULTANT, setting forth the manner in which CONSULTANT is in default. If CONSULTANT does not cure the breach or describe to MTC's satisfaction a plan for curing the breach within the fifteen (15) day period, MTC may terminate the Agreement for default. In the event of such termination for default, CONSULTANT will be entitled to be reimbursed only for work performed in full compliance with the contract requirements as follows: CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables. Such reimbursement will be offset by any costs incurred by MTC to complete work required under the Agreement. In no event shall MTC be required to reimburse CONSULTANT for any costs incurred for work causing or contributing to the default. If CONSULTANT has any property in its possession belonging to MTC, CONSULTANT will account for the same, and dispose of it in the manner MTC directs. MTC shall not in any manner be liable for the CONSULTANT's actual or projected lost profits had the CONSULTANT completed the services required by this Agreement.

C. If it is determined by MTC that CONSULTANT's failure to perform resulted from unforeseeable causes beyond the control of CONSULTANT, such as a strike, fire, flood, earthquake or other event that is not the fault of, or is beyond the control of CONSULTANT, MTC, after setting up a new delivery or performance schedule, may allow CONSULTANT to continue work, or treat the termination as a termination for convenience.

**7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS**

CONSULTANT shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the types of insurance and financial security listed in Attachment E, Insurance and Financial Security (Bond) Provisions, attached hereto and incorporated herein, against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement. All insurance must be placed with insurers with a Best's rating of A-VIII or better.

**8. INDEPENDENT CONTRACTOR**

CONSULTANT is an independent contractor and not an employee or agent of MTC and has no authority to contract or enter into any agreement in the name of MTC. CONSULTANT has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by CONSULTANT who are assisting in the performance of services under this Agreement. CONSULTANT shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. CONSULTANT shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

**9. INDEMNIFICATION**

To the maximum extent permitted by law, CONSULTANT shall indemnify, keep and hold harmless MTC and those entities (if any) identified as additional insureds in Attachment E, Insurance and Financial Security (Bond) Provisions, and their commissioners, directors, officers, agents, and employees ("MTC Indemnified Parties") against any and all demands, claims, suits or actions arising out of any of the following:

- A. Any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by CONSULTANT caused by any breach of the Agreement or negligent act or omission or willful misconduct of the CONSULTANT or its officers, employees, subconsultants or agents; or
- B. Any allegation that materials or services provided by CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

CONSULTANT further agrees to defend any and all such claims, actions, suits or other legal proceedings and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against any of the MTC Indemnified Parties, CONSULTANT shall, at its expense, satisfy and discharge the same. The provisions set forth in this Article are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable.. This indemnification shall survive termination or expiration of this Agreement.

#### **10. DATA TO BE FURNISHED BY MTC**

All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“MTC Data”) made available to CONSULTANT by MTC for use by CONSULTANT in the performance of its services under this Agreement shall remain the property of MTC and shall be returned to MTC at the completion or termination of this Agreement. No license to such MTC Data, outside of the Scope of Work of the Project, is conferred or implied by CONSULTANT’s 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 Article 11.

##### **10.1 NOT USED**

#### **10.2 NONDISCLOSURE OF CONFIDENTIAL INFORMATION**

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.

#### **11. OWNERSHIP OF WORK PRODUCTS**

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products ("Work Products") prepared or assembled and furnished to MTC by CONSULTANT or its subconsultants pursuant to this 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 and all rights, title and interest in and to such Work Products, including ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the Work Product. CONSULTANT also agrees to execute all papers necessary for MTC to perfect its ownership of the rights in the Work Product. Notwithstanding the above, "Work Products" are not intended nor shall they be construed to include CONSULTANT'S pre-existing intellectual property secured, developed, written, or produced by CONSULTANT prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; CONSULTANT shall retain all right, title and interest in any such pre-existing intellectual property.

CONSULTANT shall be responsible for the preservation of any and all such Work Products prior to transmittal to MTC, and CONSULTANT shall replace any such Work Products as are lost, destroyed, or damaged while in its possession without additional cost to MTC.

CONSULTANT represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

## **12. SUBCONTRACTS**

A. Subconsultants approved by MTC for subcontract work under this Agreement are listed in Attachment F, Subconsultant List, attached hereto and incorporated herein by this reference. Any subconsultants must be engaged under written contract with the CONSULTANT with provisions allowing the CONSULTANT to comply with all requirements of this Agreement, including without limitation Article 11, OWNERSHIP OF WORK PRODUCTS. Failure of a subconsultant to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of CONSULTANT.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between MTC and any subcontractors, and no subcontract shall relieve CONSULTANT of his/her responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to MTC for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subcontractors is an independent obligation from MTC's obligation to make payments to CONSULTANT.

C. Any substitution of subcontractors listed in Attachment F must be approved in writing by MTC's Project Manager in advance of assigning work to a substitute subcontractor.

D. Applicable provisions of this Agreement shall be included in any subcontract or subconsultant agreement in excess of \$25,000 entered into under of this Agreement.

## **13. ASSIGNMENT OF AGREEMENT**

CONSULTANT shall not assign this Agreement, or any part thereof without prior express written consent of the Project Manager or a designated representative, and any attempt thereat shall be void and unenforceable.

**14. RECORDS**

CONSULTANT agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. CONSULTANT further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer. Any conflicting language regarding retention of records contained in Attachment H, Federally-Required Clauses, shall supersede this Article.

**15. AUDITS**

CONSULTANT shall permit MTC, and its authorized representatives to have access to CONSULTANT's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 14. CONSULTANT shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

CONSULTANT further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subcontractor agrees that MTC, or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor for the term specified above.

Any conflicting language regarding audits contained in Attachment H, Federally-Required Clauses, shall supersede this Article.

**16. NOTICES**

Except for invoices submitted by CONSULTANT pursuant to Article 3, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

To MTC:

Attention: **Rebecca Long**  
Metropolitan Transportation Commission  
101 - 8th Street  
Oakland, CA 94607-4700



portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by MTC.

### **18.1 ORGANIZATIONAL CONFLICTS OF INTEREST**

CONSULTANT shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC; 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.

Failure to comply with this section may subject the CONSULTANT to damages incurred by the MTC in addressing organizational conflicts that arise out of work performed by CONSULTANT, or to termination of this Agreement for breach.

### **19. LAWS AND REGULATIONS**

CONSULTANT shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government, including but not limited to MTC, that relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations and procedural requirements which are imposed on MTC as a recipient of federal or state funds are hereby in turn imposed on CONSULTANT.

## **20. CLAIMS OR DISPUTES**

CONSULTANT shall be solely responsible for providing timely written notice to MTC of any claims for additional compensation and/or time in accordance with the provisions of the Agreement. It is MTC's intent to investigate and attempt to resolve any CONSULTANT claims before CONSULTANT has performed any disputed work. Therefore, CONSULTANT's failure to provide timely notice shall constitute a waiver of CONSULTANT's claims for additional compensation and/or time.

CONSULTANT shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by MTC, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given MTC due written notice of a potential claim. The potential claim shall set forth the reasons for which CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

Such notice shall be given to MTC prior to the time that CONSULTANT has started performance of the work giving rise to the potential claim for additional compensation.

If there is a dispute over any claim, CONSULTANT shall continue to work during the dispute resolution process in a diligent and timely manner as directed by MTC, and shall be governed by all applicable provisions of the Agreement. CONSULTANT shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached which resolves CONSULTANT's claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the CONSULTANT claim, they may choose to pursue dispute resolution pursuant to Article 24, DISPUTE RESOLUTION, or MTC may terminate the Agreement.

**21. REMEDIES FOR BREACH**

In the event CONSULTANT fails to comply with the requirements of the Agreement in any way, MTC reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MTC or CONSULTANT shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**22. TEMPORARY SUSPENSION OF WORK**

MTC, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as MTC may deem necessary. The suspension may be due to the failure on the part of CONSULTANT to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of CONSULTANT. The CONSULTANT shall comply immediately with the written order of MTC to suspend the work wholly or in part. The suspended work shall be resumed when CONSULTANT is provided with written direction from MTC to resume the work.

If the suspension is due to CONSULTANT's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the CONSULTANT, all costs shall be at CONSULTANT's expense and no schedule extensions will be provided by MTC.

In the event of a suspension of the work, CONSULTANT shall not be relieved of CONSULTANT's responsibilities under this Agreement, except the obligations to perform the work which MTC has specifically directed CONSULTANT to suspend under this section.

If the suspension is not the responsibility of CONSULTANT, suspension of all or any portion of the work under this Section may entitle CONSULTANT to compensation and/or schedule extensions subject to the Agreement requirements.

### **23. WARRANTY OF SERVICES**

A. In the performance of its services, CONSULTANT represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services, and that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing. In addition, CONSULTANT shall provide such specific warranties as may be set forth in specific Task Orders as agreed upon by the parties.

B. In the event that any services provided by CONSULTANT hereunder are deficient because of CONSULTANT's or subconsultants failure to perform said services in accordance with the warranty standards set forth above, MTC shall report such deficiencies in writing to the CONSULTANT within a reasonable time. MTC thereafter shall have:

1. The right to have CONSULTANT re-perform such services at the CONSULTANT's expense; or
2. The right to have such services done by others and the costs thereof charged to and collected from the CONSULTANT if within 30 days after written notice to CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to the MTC that it has undertaken said re-performance; or
3. The right to terminate the Agreement for default. CONSULTANT shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions.

### **24. DISPUTE RESOLUTION**

A. Informal Resolution of Disputes. CONSULTANT and MTC shall use good faith efforts to resolve all disputes informally at the project manager level. In the event such efforts are unsuccessful, either party may request that MTC provide a written determination as to the proposed resolution of the dispute. Within twenty-one (21) calendar days of the request, MTC's Project Manager shall provide a written determination as to the dispute, which shall include the basis for its decision. Upon CONSULTANT's written acceptance of the Project Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, MTC may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the Project Manager's determination.

If the Project Manager's determination is not accepted by CONSULTANT, the matter shall promptly be referred to senior executives of the parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty calendar (30) days of commencement of senior management negotiations, the parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies, as set forth below.

B. Controversies Subject to Alternative Dispute Resolution. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between MTC and CONSULTANT which cannot be resolved through the informal efforts described above, may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time.

C. Other Remedies. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. CONSULTANT must file a government claim pursuant to Government Code section 910 *et seq.* in order to initiate a civil action.

D. Pending Resolution. CONSULTANT shall continue to work during the dispute resolution process in a diligent and timely manner as directed by MTC, and shall be governed by all applicable provisions of the Agreement.

E. Cost of Alternative Dispute Resolution Proceedings. Each party shall bear the costs and expenses incurred by it in connection with such alternative dispute resolution processes. The cost of any mediator or independent decision maker shall be shared equally between the parties.

F. Survival of this Article. This Article shall survive completion or terminations of this Agreement, but under no circumstances shall either party call for an alternative dispute resolution of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceeding to litigate such claim or dispute under the laws of the State of California.

**25. CHOICE OF LAW**

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

**26. ATTORNEYS' FEES**

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover reasonable attorneys' fees, in addition to all court costs.

**27. PARTIAL INVALIDITY**

If any term or condition of the Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

**28. BENEFIT OF AGREEMENT**

The Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.

**29. NO THIRD PARTY BENEFICIARIES**

This Agreement is not for the benefit of any person or entity other than the parties.

**30. ENTIRE AGREEMENT; MODIFICATION**

This Agreement for Services, including any attachments, constitutes the complete Agreement between the parties and supersedes any prior written or oral communications. CONSULTANT represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both the CONSULTANT and MTC. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the Agreement has been executed by the parties hereto  
as of the day and year first written above.

METROPOLITAN TRANSPORTATION  
COMMISSION

NAME OF CONSULTANT

---

Steve Heminger, Executive Director

---

Insert Appropriate Name, Title

Document1

## **ATTACHMENT A**

### **Scope Of Work**

#### Outline of Services

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

**ATTACHMENT B**

**Project Schedule**

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

**ATTACHMENT C**  
**Compensation and Method of Payment**

A. Compensation. CONSULTANT shall be paid, as full compensation for the satisfactory completion of the work described in Attachment A, the firm fixed sum of agreed upon amount, which includes all labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, subcontractors costs, travel, equipment, materials and supplies. Any amendments to this Agreement shall be based on the hourly rates set forth in Attachment D, Key Personnel, attached hereto and incorporated herein by this reference. In no event shall the total compensation to be paid CONSULTANT under the Agreement exceed the Maximum Payment specified in Article 3 of the Agreement.

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

Task	<u>Deliverables (#)</u>	<u>Amount Due</u>
1	Do this (#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

C. Method of Payment. 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. If applicable, CONSULTANT's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment G.

D. Withheld Amounts and Final Payment. MTC shall withhold, as a retainage, 5% of the value of each payment due hereunder until all services required under this Agreement have been completed and accepted by MTC. Final payment of any balance due

CONSULTANT, including any amounts withheld, will be made promptly after satisfactory completion of the work under this Agreement, and after receipt and written acceptance by MTC of the reports and working papers, if any, which are required to be furnished under this Agreement, and after any post audit of contract costs which may be conducted by MTC. CONSULTANT acknowledges that certain costs may be disallowed as a result of such a post audit.

**ATTACHMENT D**

**Key Personnel Assignments**

	<u>Name</u>	<u>Rate/hour</u>	<u>Est. hours</u>	<u>Task Description</u>
1.		\$xx		
2.				
3.				
4.				
5.				
6.				
7.				
8.				

\* Applicable to development of payment provisions in amendments only.

**ATTACHMENT E**  
**Insurance and Financial Security (Bond) Provisions**

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover CONSULTANT's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that CONSULTANT authorizes to work under this Agreement (hereinafter referred to as "Agents.") CONSULTANT shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

CONSULTANT is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, CONSULTANT shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONSULTANT's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event CONSULTANT or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that CONSULTANT's insurance be primary without right of contribution from MTC. Prior to beginning work under this contract, CONSULTANT shall provide MTC with satisfactory evidence of compliance with the insurance requirements of this section.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONSULTANT's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers Compensation & 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 3 of this Attachment E (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, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits

at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

B. **Acceptable Insurers.** All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A-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 Article 9 of this Agreement.

2. NOT USED

3. ADDITIONAL INSURED

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

- Metropolitan Transportation Commission (MTC)
- Metropolitan Transportation Commission Service Authority for Freeways and Expressways (MTC SAFE)
- Bay Area Toll Authority (BATA)
- Bay Area Headquarters Authority (BAHA)
- Bay Area Infrastructure Financing Authority (BAIFA)

**ATTACHMENT F**

**Subconsultant List**

	<u>Name/Address of Subconsultant</u>	<u>Amount of Subcontract</u>	<u>Description of Work</u>
1.			
2.			
3.			
4.			
5.			
6.			

**LIST "None" ABOVE IF NO SUBCONTRACTORS ARE BEING USED.**

**ATTACHMENT G**

NOT USED

**ATTACHMENT H**

**NOT USED**

**APPENDIX D-1  
INSURANCE REQUIREMENTS**

**Minimum Insurance Coverages.** Consultant shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement, placed with insurers with a Best’s rating of A-VIII or better.

Yes (√)	<b>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.</b>
—	<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

	<p>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 &amp; 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 and Umbrella Insurance, above shall contain the following provisions:

- Inclusion of MTC, MTC SAFE, BATA, BAHA, BAIFA 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 D*, 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.**