



METROPOLITAN
TRANSPORTATION
COMMISSION

Joseph P. Bort MetroCenter
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Oakland, CA 94607-4700
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March 11, 2014

REQUEST FOR QUALIFICATIONS
LEGAL SERVICES ASSISTANCE

Dear Counsel:

The Metropolitan Transportation Commission (MTC), on behalf of itself, the MTC Service Authority for Freeways and Expressways (MTC SAFE), the Bay Area Toll Authority (BATA), the Bay Area Infrastructure Financing Authority (BAIFA), the Bay Area Headquarters Authority (BAHA), and the Regional Administrative Facility Corporation (RAFC) invites your firm to submit a Statement of Qualifications (SOQ) to provide legal services on an as-needed basis in the following areas of government agency practice:

- Public sector employment law and workers' compensation
- Civil rights law, including Title VI, Title VII, and the ADA
- Public sector law, including procurement, the Ralph M. Brown Act, the California Public Records Act, and federal requirements
- Contracts and related transactional work
- Environmental law, including NEPA and CEQA
- Construction law and California express lane development
- Transportation law
- Litigation and government contract claims
- Privacy and data security
- Intellectual Property
- Real estate transactions and commercial leasing

Law firms may submit SOQs related to one or more of the specified areas of specialty, provided that the firm meets the Minimum Qualifications listed in Section V of this RFQ. MTC intends to enter into contracts with one or more firms for a period extending through June 30, 2018. MTC's annual budget for the legal services contracts in total (not including litigation) is \$300,000.

All references to "MTC" in this RFQ include MTC SAFE, BATA, BAIFA, BAHA, and RAFC.

This letter together with its enclosures comprises the RFQ for this project. Responses to the RFQ 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 three (3) hard copies and an electronic pdf. copy of their SOQ by **4:00 p.m., March 31, 2014. Statements of Qualifications received after that date and time will not be considered.** Submission of an electronic copy only will not satisfy submission requirements.

Amy Rein Worth, Chair
Cities of Contra Costa County

Dave Cortese, Vice Chair
Santa Clara County

Alicia C. Aguirre
Cities of San Mateo County

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

Tom Bates
Cities of Alameda County

David Campos
City and County of San Francisco

Bill Dodd
Napa County and Cities

Dorene M. Giacomini
U.S. Department of Transportation

Federal D. Glover
Contra Costa County

Scott Haggerty
Alameda County

Anne W. Halsted
San Francisco Bay Conservation
and Development Commission

Steve Kinsey
Marin County and Cities

Sam Liccardo
San Jose Mayor's Appointee

Mark Luce
Association of Bay Area Governments

Jake Mackenzie
Sonoma County and Cities

Joe Pirzynski
Cities of Santa Clara County

Jean Quan
Oakland Mayor's Appointee

Bijan Sartipi
California State
Transportation 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

II. MTC Contact

Statements of Qualifications (SOQs) and all inquiries relating to this RFQ should be submitted to the MTC General Counsel (also referred to in the RFQ as the Project Manager) as shown below.

Adrienne D. Weil, MTC General Counsel
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland CA 94607-4700
aweil@mtc.ca.gov

III. Notice of Addenda and Requests for Exceptions

Any addenda to this RFQ that may be issued by MTC will be posted at <http://www.mtc.ca.gov/jobs/>. It is each interested law firm's responsibility to check for addenda to this RFQ and comply with new or revised requirements that may be stated therein.

Requests for clarification or exception to RFQ provisions must be received no later than 4:00 p.m., March 18, 2014 to guarantee consideration.

IV. Background

MTC is the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area, established pursuant to California Government Code Sections 66500 *et seq.* MTC functions as both the regional transportation planning agency (RTPA) – a state designation – and for federal purposes, as the region's metropolitan planning organization (MPO) and designated recipient for certain federal grant funds.

The MTC SAFE, established pursuant to California Streets and Highway Sections 2550 *et seq.* MTC SAFE, in partnership with California Highway Patrol and California Department of Transportation, oversee the installation and operation of call boxes and provides roadside assistance to motorists on the Bay Area Free ways. Its revenues are derived from a one-dollar vehicle registration fee.

BATA is a public agency created by Senate Bill 226 effective January 1, 1998. Senate Bill 226 amended Streets and Highway Code Section 30950 *et seq.* and transferred to BATA certain California Transportation Commission (CTC) and State of California, Department of Transportation (Caltrans) duties and responsibilities for the disposition of toll revenues collected from toll bridges owned and operated by Caltrans in the San Francisco Bay Area.

BAIFA is a Joint Powers Authority (JPA) created by a Joint Exercise of Powers Agreement between MTC and BATA in 2006. BAIFA is charged with planning, developing, operating and financing transportation projects. In September 2011, the Joint Exercise of Powers Agreement was amended to permit BAIFA to participate in developing and operating express lanes.

BAHA was created as a JPA between BATA and MTC. BAHA purchased 375 Beale Street (formerly known as 390 Main Street, San Francisco) in October 2011 and is renovating the building as the Regional Agency Headquarters Facility for MTC, BATA, the Bay Area Air Quality Management District and the Association of Bay Area Governments (ABAG).

RAFC is a non-profit mutual benefit corporation formed in 1983 to operate and manage the Joseph P. Bort MetroCenter, a condominium office building located at 8th and Oak Streets in Oakland. The MetroCenter is occupied by its three owner-members: MTC, ABAG, and the San Francisco Bay Area Rapid Transit District. In connection with MTC's pending move to the 375 Beale Street Building, selected legal counsel may be asked to assist MTC in the disposition of the MetroCenter Building.

The Office of General Counsel (OGC) advises and provides legal services to all six agencies. From time to time, the OGC requires outside legal assistance in specialized areas of law, which is the purpose of this RFQ.

V. Minimum Qualifications

To be eligible for consideration for any of the areas of specialty, law firms must meet the following minimum qualifications:

1. Attorneys must be licensed to practice before the state and federal courts in the State of California and be in good standing with the State Bar of California.
2. Firms must have at least five (5) years experience in each area of law for which the firm has expressed an interest in its SOQ.
3. The Partner in charge must have at least ten (10) years relevant experience.
4. Firms must have substantial experience representing government sector clients, including at least one of the following:
 - a) Firm serves as general counsel for at least one (1) transportation agency; or
 - b) Firm has represented at least five (5) government sector clients during the last three (3) years, at least one (1) of which must be in the transportation sector; or
 - c) Litigation only: Firm has handled at least two (2) cases on behalf of public sector clients during the past three (3) years.

Law firms are not required to have experience in all requested areas. However, full service firms able to provide legal services in more than one area will be favorably considered.

VI. Scope of Work and Budget

Each contract awarded by MTC will include a general scope of work based on one or more of the areas of specialty identified above. Work will be requested on an as-needed basis. Pre-qualification by MTC does not guarantee that a contract will be awarded.

The six agencies have established a total annual budget for the contracts resulting from this RFQ (not including litigation, if any) of \$300,000. Contracts resulting from this solicitation, if awarded, will combine payment on an hourly fee for service basis, plus expenses, and fixed fees for defined services.

VII. Form of Statement of Qualification (SOQ)

MTC asks that the SOQ follow the following format. Proposers are encouraged to print double-sided copies to save paper.

1. A transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm. The transmittal letter should refer to this RFQ by title and date and should include the name and telephone number of a contact person and a statement that the SOQ is a firm offer to enter into a contract with MTC according to the terms of this RFQ. The transmittal letter should clearly indicate all areas of practice for which the law firm wishes to be considered.
2. A firm profile and summary of the firm's qualifications in relation to the requested areas of expertise. The summary should include a brief history of the firm's experience in representing government entities, particularly transportation agencies.
3. Descriptions of any assignments relevant to meeting the Minimum Qualifications, listed in Section V, above. The description should include the following:
 - Client agency
 - General description of work performed
 - Names of the staff proposed for this project who worked on the project and their roles
 - A summary of the outcome and achievements of the assignment
4. Resumes of proposed personnel that should include: a description of relevant experience, proposed role, length of work experience, and areas of expertise.
5. References who can attest to key staff's experience in performing work substantially similar to the services covered by this RFQ for which the firm is submitting an SOQ. References should include contact information and the name of the project or projects done by the consultant for that client.
6. A description of any potential conflicts of interest with other clients and how prospective conflicts will be handled.
7. A signed California Levine Act statement (*Appendix A*).
8. Hourly rates for all proposed project personnel. A description of all costs and expenses that would be passed along to MTC. A statement that the rates indicated shall be firm through December 31, 2015, and a description of the basis on which hourly rates will escalate, with a "not to exceed" cap.

VIII. Evaluation Factors

SOQs will be evaluated initially to determine that they meet the minimum qualifications. All SOQs meeting the minimum qualifications will be evaluated based on the following criteria, in descending order of relative importance:

- Qualifications and experience of attorneys who will be providing services in the areas of law to which the SOQ is directed, including relevant experience of lead attorney and experience representing public agencies, especially public agencies involved in transportation matters.
- Depth and breadth of experience in relation to the subject matter for which the firm seeks to provide legal services; availability of qualified attorneys to work on multiple projects at the same time; and scope of services offered.

- Hourly rates and cost effectiveness (including local presence of key personnel).

The evaluation team may interview one or more firms prior to selection or may recommend a panel without interviews. References may be contacted at any time during the evaluation process.

The evaluation team will recommend a list of firms to the MTC Executive Director, to be forwarded to the MTC Administration Committee for approval. Thereafter, the Executive Director or the MTC Administration Committee may authorize individual contracts, depending on their dollar amounts.

Selection to be on the panel will not necessarily result in award of a contract. Once a panel has been selected, MTC reserves the right in its sole discretion to determine which law firm's qualifications, experience, available resources and cost best suit each assignment.

MTC reserves the right to accept or reject any and all SOQs submitted, to waive minor irregularities in SOQs, and to request additional information from the firms. Any awards made will be to firms whose qualifications are best suited to the assignment and most advantageous to MTC, based on the evaluation criteria outlined above. MTC reserves the right to award one or more contracts at the time the panel is approved.

IX. Consultant Selection Timetable

4:00 p.m., March 18, 2014	Closing date and time for requests for clarifications/ exceptions
No later than three (3) business days prior to the date SOQs are due	Closing date and time for objections to RFQ provisions
4:00 p.m., March 31, 2014	Closing date and time for receipt of Statements of Qualifications
Week of April 14 , 2014*	Oral interviews, if necessary
May 14, 2014*	MTC Administration Committee approval of panel of law firms

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

X. Selection Disputes

A firm submitting or intending to submit an SOQ may object to a provision of the RFQ on the foundation that it is arbitrary, biased or discriminatory, or to the selection of a particular firm 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 business day prior to the date SOQs are due, for objections to RFQ provisions; or
- 2) no later than 4:00 p.m. on the third business day after notification that the firm has not met the minimum qualifications; or

- 3) no later than 4:00 p.m. on the third business day after the date on which the firm is notified that it was not selected or the date the panel is approved by the MTC Administration Committee, whichever is later.

The evaluation record shall remain confidential until the MTC Administration Committee selects the panel.

The MTC Executive Director or a designated representative will appoint a staff review officer to consider the protest. The Executive Director (or designee) will respond to the protest in writing, based on the recommendation of a staff review officer. Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the MTC review officer to recommend a resolution to the MTC Executive Director.

Should the protestor wish to appeal the decision of the Executive Director, it may file a written appeal with the MTC Administration Committee, no later than 4:00 p.m. on the third business day after receipt of the written response from the Executive Director. The Administration Committee's decision will be the final agency decision.

Authorization to award a contract to a particular firm by the MTC Administration 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 Executive Director or, if the decision of the Executive Director is appealed, the issuance of the MTC Administration Committee's decision.

XI. Conflicts of Interest

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

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

Whenever MTC is awarding an agreement that involves the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts of the proposer, and if so, whether any potential bias can be mitigated acceptably by MTC and the firm. If the conflict cannot be mitigated acceptably, MTC may disqualify the firm. After award, the firm 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 an agreement as a result of information gained in performance of this or some other project.

The firm shall not engage the services of any subcontractor or independent contractor on any work under this RFQ 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 RFQ.

XII. General Conditions

Materials submitted by respondents and evaluated by MTC are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*) after the MTC Administration Committee authorizes selection of the pre-qualified panel.

MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFQ. Selection of a firm to perform as needed legal services assistance does not guarantee that MTC will contract with the firm or that the firm will be given any projects.

MTC's Standard Consultant Agreement is enclosed for your reference as *Appendix B*. If a firm wishes to propose a change to any standard MTC contract provision, the provision and the proposed alternative language must be submitted by the deadline specified above for requests for exception. If no such change is requested, the firm will be deemed to accept MTC's standard contract provisions based on its submission of an SOQ.

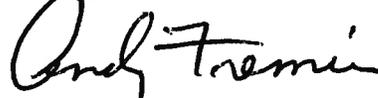
The selected firms will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix C*, which includes professional liability insurance in the amount of \$5,000,000. By submitting an SOQ, a firm agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix C, Insurance Requirements*, within ten (10) days of MTC's notice to a firm that it is prepared to enter into a contract with the firm. Requests to change MTC's insurance requirements must be brought to MTC's attention no later than the date for requesting exceptions to RFQ provisions. If such objections are not brought to MTC's attention by that deadline, compliance with the insurance requirements will be assumed.

XIII. Authority to Commit MTC

Based on the recommendation of the selection panel, the Executive Director of MTC will recommend a panel of law firms to the MTC Administration Committee, which has the authority to commit to the expenditure of funds in connection with this RFQ.

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

Sincerely,



Andrew B. Fremier
Deputy Executive Director, Operations

SH: DR

**APPENDIX A
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. Giacopini	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 B

MTC'S STANDARD CONSULTANT AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

Between METROPOLITAN TRANSPORTATION COMMISSION

And _____

For LEGAL SERVICES

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2014, by and between the Metropolitan Transportation Commission ("MTC"), a regional transportation planning agency established pursuant to California Government Code § 66500 and _____, ("LEGAL COUNSEL").

RECITALS

WHEREAS, MTC intends to contract for the services of one or more law firms to provide legal services to MTC, the MTC Service Authority for Freeways and Expressways ("MTC SAFE"), the Bay Area Toll Authority ("BATA"), the Bay Area Headquarters Authority ("BAHA"), the Bay Area Infrastructure Financing Authority ("BAIFA") and the Regional Administrative Facility Corporation ("RAFC"); on an as-needed basis (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 LEGAL COUNSEL will render professional services in connection with the Project as hereinafter provided;

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

LEGAL COUNSEL's services are generally described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. LEGAL COUNSEL agrees to provide legal services on an as-needed basis as directed by Adrienne Weil, MTC's General Counsel ("Project Manager") or a designated representative, which shall include MTC's Deputy General Counsel (currently Cynthia E. Segal, and Senior Counsel (currently, Brooke D. Abola and Matthew A. Lavrinets). As Project Manager, Adrienne D. Weil is responsible for the administration of this Agreement.

2. PERIOD OF PERFORMANCE

LEGAL COUNSEL's services hereunder shall commence on or after July 1, 2014, and shall be completed no later than June 30, 2018, unless earlier terminated or extended as

hereinafter provided in to Article 5, Amendments. Funding after June 30, 2015, is subject to MTC's annual agency budget approval process.

3. COMPENSATION AND METHOD OF PAYMENT

A. Compensation. LEGAL COUNSEL shall be compensated for services based on the hourly rates for the key personnel set forth in Attachment B, Key Personnel and Billing Rates, attached hereto and incorporated herein by this reference, which include all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, materials and supplies; provided, however, that the Project Manager and LEGAL COUNSEL may agree in writing to lump sum deliverable amounts for work requested by MTC. Such authorization shall be signed by the Project Manager and LEGAL COUNSEL and shall contain a description of the work requested in sufficient detail to define the deliverable for which payment shall be made.

B. Expenses. MTC will reimburse LEGAL COUNSEL for all expenses deemed reasonable and necessary by MTC incurred by LEGAL COUNSEL in the performance of this Agreement. Reimbursable expenses shall include actual courier messenger services, docket/search fees, outbound faxes, express mail or special handling mail; mileage; outside document production; photocopying charges; publication charges; postage; long distance telephone charges; actual on-line legal research charges, not to exceed \$100 without prior approval; court and other litigation costs; and pre-authorized transportation and other expenses incurred by employees or agents of LEGAL COUNSEL on MTC's behalf.

C. Maximum Payment. Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation and reimbursement for expenses to be paid LEGAL COUNSEL under this Agreement exceed: _____.

D. Method of Payment. LEGAL COUNSEL shall submit invoices for services rendered on a monthly basis, identifying the work for which payment is requested; the hours worked or the deliverable completed; any authorized expenses, together with receipts for such expenses, if requested; the total amount requested; and the cumulative amount billed and paid under this Agreement. 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. All invoices shall be made in writing and delivered or mailed to MTC as follows:

Attention: Adrienne D. Weil
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 - 8th Street
Oakland, CA 94607-4700

4. KEY PERSONNEL

The key personnel to be assigned to this work by LEGAL COUNSEL and their hourly rates, if applicable, are set forth in Attachment B, Key Personnel and Billing Rates, attached hereto and incorporated herein by this reference. LEGAL COUNSEL agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken.

5. AMENDMENTS

MTC reserves the right to request changes in the services to be performed by LEGAL COUNSEL. 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 LEGAL COUNSEL and specifically identified as amendments to the Agreement. The Project Manager is not a designated representative, for purposes of approving an amendment.

Any services added to the scope of the Agreement by an amendment shall be subject to all applicable conditions of the Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed amendment.

6. TERMINATION

MTC may terminate this Agreement, in whole or in part, at any time by written notice to LEGAL COUNSEL. Upon receipt of notice of termination, LEGAL COUNSEL 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. LEGAL COUNSEL shall be reimbursed for hours performed, plus expenses, up to the time of termination, not to exceed the maximum amount payable under the Agreement or, for deliverables-based payment, not to exceed the maximum payable for the deliverable.

LEGAL COUNSEL may withdraw from representation of MTC, and terminate this Agreement, at any time, as required or permitted by Rule 3-700 of the California Rules of Professional Conduct, on "Termination of Employment," operative May 27, 1989 (and as those Rules may be amended from time to time).

7. INSURANCE REQUIREMENTS

A. Minimum Coverages. LEGAL COUNSEL 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, placed with insurers with a Best's rating of A-VIII or better.

1. Workers' Compensation Insurance 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 LEGAL COUNSEL's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation endorsement in favor of MTC.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of LEGAL COUNSEL and LEGAL COUNSEL'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 and its 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 LEGAL COUNSEL's operations.

3. Business Automobile Insurance for all automobiles owned, used or maintained by LEGAL COUNSEL and LEGAL COUNSEL'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.

4. Umbrella Insurance in the amount of \$4,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance.

5. Errors and Omissions Professional Liability Insurance (if applicable) in an amount no less than \$5,000,000. If such policy is written on a "Claims-Made" (rather than an "occurrence") basis, LEGAL COUNSEL 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 LEGAL COUNSEL and any work performed or conducted by any subcontractor/subconsultant working for or performing services on behalf of the LEGAL COUNSEL. No contract or agreement between the LEGAL COUNSEL and any subcontractor/subconsultant shall relieve the LEGAL COUNSEL of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by the LEGAL COUNSEL and any subcontractor/subconsultant working on behalf of the LEGAL COUNSEL on the project.

6. Property Insurance. Property Insurance covering LEGAL COUNSEL'S own business personal property and equipment to be used in performance of this Agreement. Coverage shall be written on a "Special Form" ("All Risk") that includes theft, but may exclude

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, LEGAL COUNSEL shall also be liable for the deductible.

B. Deductibles. Any deductible, or self-insured retention of \$100,000 or greater, shall be subject to the approval of MTC. Any other special coverage restrictive devices such as “coinsurance” must be declared and approved by the Project Manager prior to job commencement. Such approval will not unreasonably withheld.

C. Notice of Termination. All LEGAL COUNSEL policies shall provide that the insurance carrier shall give written notice to MTC at least 30 days prior to cancellation of the policy or policies (unless canceled for non-payment, then 10 days prior written notice will be given), and shall provide notice of such cancellation to MTC and any other additional insured.

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

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

E. Certificates of Insurance. Prior to commencement of any work hereunder, LEGAL COUNSEL 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. LEGAL COUNSEL agrees, upon written request by MTC, to furnish copies of such policies or endorsements, certified by an authorized representative of the insurer.

F. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by LEGAL COUNSEL are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by LEGAL COUNSEL pursuant hereto.

G. Subcontractor’s Insurance. LEGAL COUNSEL shall require each of its subcontractors to provide the aforementioned coverages, unless such coverages are waived or reduced in writing by the MTC Project Manager.

8. STATUS OF LEGAL COUNSEL

LEGAL COUNSEL is an independent contractor retained through this Agreement to provide legal services in specific areas of law and not to participate in or advise MTC on general ongoing decisions. LEGAL COUNSEL is not an employee of MTC and has no authority to

contract or enter into any other agreement in the name of MTC. LEGAL COUNSEL has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by LEGAL COUNSEL who are assisting in the performance of services under this Agreement. LEGAL COUNSEL 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. LEGAL COUNSEL shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

LEGAL COUNSEL shall conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendations or counsel independent of the control and direction of MTC or any MTC official, other than normal contract monitoring, and shall possess no authority with respect to any MTC decision beyond rendition of information, advice, recommendations or counsel. The authority of LEGAL COUNSEL to make representations or statements on behalf of MTC shall be limited to representations or statements that reflect or convey agency decisions of MTC, and which are of a type that outside counsel normally make in the context of representation of a client.

The Executive Director of MTC has determined that LEGAL COUNSEL has been hired to perform a range of duties that are limited in scope and thus is not required to comply with disclosure requirements of the MTC Conflict of Interest Code (MTC Resolution No. 1198, and of the Political Reform Act, Government Code § 81000 *et seq.*, and related regulations).

9. WORK PRODUCTS CONFIDENTIAL

Work products prepared or assembled by LEGAL COUNSEL, obtained from others by LEGAL COUNSEL or made available to LEGAL COUNSEL by MTC in connection with the services under this Agreement shall be treated as confidential by LEGAL COUNSEL and subject to the Attorney Work Product Doctrine and the attorney-client privilege, and LEGAL COUNSEL agrees that they shall not be made available to any individual or organization without prior approval of MTC.

10. SUBCONTRACTS

LEGAL COUNSEL shall not subcontract all or any portion of its services under this Agreement without the prior written approval of the Project Manager or a designated representative, and any attempt to do so shall be void and unenforceable. In the event that LEGAL COUNSEL enters into one or more subcontracts pursuant to this Article, it is understood and agreed that the participating subcontractors shall be solely and directly responsible to LEGAL COUNSEL, and MTC shall have no obligation to them.

11. ASSIGNMENT OF AGREEMENT

LEGAL COUNSEL 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.

12. RECORDS

LEGAL COUNSEL shall maintain full and adequate books, records, and accounts in accordance with generally accepted accounting practices. All such books, records, accounts, and any and all work products, materials, and other data relevant to its performance under this Agreement shall be retained by LEGAL COUNSEL for a minimum of four (4) years following the fiscal year of the last expenditure under this Agreement.

13. AUDITS

LEGAL COUNSEL shall permit MTC and its authorized representatives to have access to LEGAL COUNSEL'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 12. LEGAL COUNSEL shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

14. NOTICES

Except for invoices submitted by LEGAL COUNSEL 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: Adrienne Weil General Counsel Metropolitan Transportation Commission 101 - 8th Street Oakland, CA 94607-4700 Email: aweil@mtc.ca.gov Fax: 510.817-5830
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To LEGAL COUNSEL:	Attention: _____ _____
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15. PROHIBITED INTEREST

No member, officer, employee or agent of MTC, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100

et seq., direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, LEGAL COUNSEL further covenants that it has made a complete disclosure to MTC of all facts of which it is aware upon due inquiry bearing upon any possible interest, direct or indirect, which it believes any member, officer, agent or employee of MTC (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by MTC.

16. SOLICITATION OF CONTRACT

LEGAL COUNSEL warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for LEGAL COUNSEL, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than bona fide employees working solely for LEGAL COUNSEL, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of the Agreement. For breach or violation of this warranty, MTC shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from LEGAL COUNSEL's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

17. INTEREST OF THE LEGAL COUNSEL

LEGAL COUNSEL covenants that it has a duty to disclose any potential conflicts of interest and has disclosed any potential conflicts of interest existing at the time of execution of the Agreement. LEGAL COUNSEL will otherwise act in accordance with its ethical obligations in performing its work for MTC.

18. LAWS AND REGULATIONS

LEGAL COUNSEL shall comply with any and all 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 LEGAL COUNSEL.

19. REMEDIES FOR BREACH

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 LEGAL COUNSEL 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.

20. 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.

21. MEDIATION

Prior to the initiation of any legal proceedings, the parties of this Agreement agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to non-binding mediation. Such mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The Party seeking to initiate mediation shall do so by submitting a formal, written request to the other party to this Agreement. This section shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation 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.

22. ENTIRE AGREEMENT

The Agreement is the entire agreement of the parties. LEGAL COUNSEL represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature.

23. 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.

24. BENEFIT OF AGREEMENT

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

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

METROPOLITAN
TRANSPORTATION COMMISSION

Steve Heminger, Executive Director

ATTACHMENT A

Scope Of Work

Outline of Services

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

ATTACHMENT B

Key Personnel Assignments

	<u>Name</u>	<u>Rate/hour</u>	<u>Description</u>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

APPENDIX C

INSURANCE REQUIREMENTS

Minimum Insurance Coverages. LEGAL COUNSEL 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 five (5) days of MTC's notice to firm that it wishes to contract with the firm.
—	<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 LEGAL COUNSEL'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 LEGAL COUNSEL is a sole proprietor with no employees.
—	<u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of LEGAL COUNSEL and LEGAL COUNSEL'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, and its 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 LEGAL COUNSEL's operations.
—	<u>Business Automobile Insurance</u> for all automobiles owned, used or maintained by LEGAL COUNSEL and LEGAL COUNSEL'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 \$4,000,000 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 \$5,000,000. If such policy is written on a "Claims-Made" (rather than an "occurrence") basis, LEGAL COUNSEL 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

	<p>policy shall provide coverage for all work performed by the LEGAL COUNSEL and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the LEGAL COUNSEL. No contract or agreement between the LEGAL COUNSEL and any subcontractor/consultant shall relieve the LEGAL COUNSEL of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by the LEGAL COUNSEL and any subcontractor/consultant working on behalf of the LEGAL COUNSEL on the project.</p>
<p>_____</p>	<p><u>Property Insurance</u> covering LEGAL COUNSEL'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 LEGAL COUNSEL shall also be liable for the deductible.</p>
<p>Deductibles: Any deductibles or self-insurance retentions over \$100,000 are subject to the approval of MTC.</p> <p>Notice of Termination: All LEGAL COUNSEL policies shall provide that the insurance carrier shall give written notice to MTC at least 30 days prior to cancellation, non-renewal or material change of coverage in the policy or policies, and shall provide notice of such change to MTC and any other additional insured.</p> <p>Additional Provisions: Each policy or policies of insurance described in <u>Commercial General Liability Insurance</u>, above shall contain the following provisions:</p> <ul style="list-style-type: none"> • Inclusion of MTC, MTC SAFE, BATA, BAIFA, BAHA, RAFC, their 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, MTC SAFE, BATA, BAIFA, BAHA or RAFC will be called on to contribute to a loss. <p>Certificates of Insurance: Promptly on execution of this Agreement and prior to commencement of any work hereunder, LEGAL COUNSEL 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. LEGAL COUNSEL 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.</p> <p>Disclaimer: The foregoing requirements as to the types of limits of insurance coverage to be maintained by LEGAL COUNSEL are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by LEGAL COUNSEL pursuant hereto.</p> <p>Subcontractor's Insurance: LEGAL COUNSEL shall require each of its subcontractors to provide the aforementioned coverages, unless such coverages are waived or reduced in writing by the MTC Project Manager.</p>	

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 protesting 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.