



METROPOLITAN
TRANSPORTATION
COMMISSION

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Cities of Contra Costa County

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Santa Clara County

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Association of Bay Area Governments

Jake Mackenzie
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Steve Heminger
Executive Director

Ann Flemer
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

March 14, 2014

REQUEST FOR PROPOSAL

For Employment Agency to Assist with Temporary Hiring of High School Internship Program Participants

Dear Contractor:

The Metropolitan Transportation Commission (MTC) invites your firm to submit a proposal to serve as the employment agency to assist with the temporary hiring of high school students selected to participate in MTC's Summer Internship Program, in which students will work at various job sites around the nine-county Bay Area in the months of June, July and August.

This letter, together with its enclosures, comprises the Request for Proposal (RFP) for this project. Responses to this RFP should be submitted in accordance with the instructions set forth below.

Any addenda will be posted on MTC's website. All potential bidders are responsible for checking the website for any addenda to the bid documents.

I. Proposal Due Date

Interested firms must submit an original and three (3) copies of their proposal to MTC **no later than 4:00 p.m. on Monday, April 21, 2014.** ***Proposals received after that date and time will not be considered.***

Proposals will be considered firm offers to enter into a contract and perform the services required under this RFP for a period of one hundred twenty (120) days from their due date, at the terms stated in the proposal.

II. MTC Point of Contact

Proposals and all inquiries relating to this RFP shall be submitted to the address shown below. For telephone inquiries, call (510) 817-5741. E-mail inquiries may be directed to amacaulay@mtc.ca.gov.

Ann Macaulay, Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
Fax: (510) 817-5848
amacaulay@mtc.ca.gov

III. Background

MTC is the transportation, planning, coordinating and financing agency for the nine-county Bay Area. Each summer, MTC sponsors a summer internship program for high school students. The purpose of the program is to introduce high school students to career opportunities in the field of transportation, and to provide MTC's transportation partners (such as transit agencies, city and county public works departments, and county congestion management agencies) with assistance on entry-level tasks.

Approximately thirty (30) to thirty-five (35) paid full-time internships will be available throughout the nine county San Francisco Bay Area, which includes the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma. See *Appendix A-1* for a tentative list of cities in which jobs sites will be located. MTC will recruit students from all of the nine counties in the San Francisco Bay Area. Ideally, students will live in the same city or county in which they work. Students selected to participate in the program will work either full or part-time, for an estimated eight (8) weeks between the months of June and August. Students are paid just above San Francisco's minimum wage.

MTC coordinates the recruitment of the students. Applicants must be at least sixteen (16) years of age and have completed at least the tenth grade by the start of the program. Students must complete an application package consisting of an MTC application, a cover letter stating why they are interested in this program and a letter of recommendation (2 letters if their GPA is below 2.8). MTC will match students with job sites located near the student's home. The job supervisors will conduct the interviews, and are responsible for making a selection from the pool of applicants given to them by MTC.

IV. Scope of Work, Schedule and Budget

The MTC will go through the recruitment process. The MTC Internship Coordinator will make the final decision on which students are selected to participate in the internship program. The Contractor will hire those students selected to participate in the internship program by putting the students on the Contractor's payroll. The selected Contractor will be responsible for compliance with federal and state child labor laws. The Contractor will need to be mindful of the fact that this may be the students' first time in the work force. Because of this, MTC expects that the selected Contractor to have good communication skills, an empathetic approach, and a willingness to walk students through the process of holding their first jobs.

MTC intends to enter into a contract with the selected Contractor by May 2014. Each subsequent year of the program will start in mid-April. This is approximately a ten (10) week project. The MTC orientation will occur the third or fourth week of June. Students will begin their summer internships in late June, but not prior to the orientation date determined by the MTC Internship Coordinator. *Appendix A*, the Scope of Work for the project, describes the specific tasks required under this RFP. MTC expects the work for this effort to be completed by September 10, 2014.

The MTC Commission may renew the contract for five (5) consecutive summer hiring seasons (through 2020), subject to approval of any changes to the intern program, satisfactory performance by the Contractor, and approval of the Internship budget by MTC.

V. Proposers' Conference, Requests for Clarification or Exceptions

A proposers' conference will be held on Tuesday, March 25, 2014 at 11 a.m. in the Staff conference room at the Joseph P. Bort MetroCenter Building, 101 8th Street, 3rd Floor, Oakland.

Any requests for clarification of or exceptions to RFP requirements must be received by MTC no later than 4:00 p.m. on Thursday, March 27, 2014 to guarantee response or consideration.

VI. Form of Proposal

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

Each proposal shall include:

1. Transmittal Letter- A transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm. The transmittal letter should include the name, telephone number and email of a contact person if different from the signator. The letter should indicate that the SOQs are firm offers to enter into a contract and performed work related to this RFP for a period of one hundred twenty (120) days from SOQ submission.
2. Title Page-Title page showing the RFP subject, the name of the proposer's firm, address, telephone number, name of contact person, and the date.
3. A summary, which describes the Contractor's company, office location and any relevant experience.
4. A detailed statement of the firm's qualifications and experience specifically your role in employing staff under the age of 18. Address your previous experience and how you would address each task in the Appendix A, Scope of Work.
5. The agency's billing and salary payment process, i.e., weekly, bi-weekly. Along with an explanation as to how your firm will pay students who are not on direct deposit; give precise timeline as to when these students' will receive their checks.
6. Describe your style in managing agency hires, particularly hires under 18.
7. Appendix B, Price Proposal Form, signed by an individual authorized to solicit business and enter into contracts for the firm, including the name and telephone number of a contact person, who will be working with the students, if different from the person signing the letter.
8. Appendix C, Contractor's Reference Form, which lists at least three (3) references of clients for whom you have performed similar work, including the name of the client; also the name and telephone number of a contact person for each project.
9. Appendix D, A signed Levine Act statement.
10. Appendix E-1, A signed Insurance Requirement Form.

VII. Proposal Evaluation Factors

The Project Manager, in consultation with the MTC Office of General Counsel, will conduct an initial review of the proposals for inclusion of the items requested in Form of Proposal above.

Any proposal that does not include enough information to permit the evaluators to rate the proposal in any one of the evaluation factors listed below will be considered non-responsive. A proposal that fails to include one or more items requested in Form of Proposal may be considered complete and generally responsive, if evaluation in every criterion is possible.

Responsive proposals will be evaluated by a panel of staff representatives from MTC, based on the following criteria, all relatively equal in importance:

- Firms knowledge of FLSA and Child labor Laws and overall experience in agency operations.
- Identification of a consistent account representative and the level of experience this person has with CA labor laws specifically to the employment of minors.
- Cost-effectiveness.
- Demonstrated experience successfully managing a student placement program.

The panel may select a firm based on written proposals alone or may develop a “short-list” of firms to be interviewed. Panel may interview the Proposers Project Manager as well as the Proposers identified account representative, if not the same person. Following the interviews, the panel will recommend a firm to MTC’s Executive Director. If he agrees with the recommendation, he will forward it to MTC’s Administration Committee for approval.

MTC reserves the right to accept or reject any and all proposals, waive minor irregularities in proposals, request additional information or revisions to proposals, and negotiate with any or all proposers. Any award made will be made to the firm whose proposal is the most advantageous to MTC, based on the evaluation criteria listed above.

VIII. Contractor Selection Timetable

11 a.m. on Tuesday, March 25, 2014	Proposers' Conference, Staff Conference Room
4:00 p.m. on Thursday, March 27, 2014	Deadline for requests for exceptions to standard contract provisions
No later than 3 working days before the proposal due date	Objections to RFP Provisions
4:00 p.m. on Monday, April 21, 2014	Closing date and time for receipt of proposals
Week of April 28, 2014*	Interviews (if necessary)
May 14, 2014*	Recommendation of Contractor to Administration Committee
May 2014* (approximate)	Execution of Contract

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

IX. Selection Disputes

A proposer may object to a provision of the RFP on the grounds that it is arbitrary, biased, or unduly restrictive, or to the selection of a particular Contractor on the grounds that MTC procedures, the provisions of the RFP or applicable provisions of federal, state or local law have

been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

1. No later than three (3) working days prior to the date proposals are due, for objections to RFP provisions; or
2. No later than three (3) working days after the date the proposer is notified that it was found to be non-responsive; or
3. No later than three (3) working days after the date on which the contract is authorized by the MTC Administration Committee or the date the firm is notified that it was not selected, whichever is later, for objections to Contractor selection.

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the MTC Administration 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 MTC 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 MTC, no later than 4:00 p.m. on the third business day after receipt of the written response from the MTC Executive Director. MTC's decision will be the final agency decision.

Authorization to award an agreement to a particular consultant by MTC 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 MTC's decision.

X. General Conditions

MTC will not reimburse any Contractor for costs related to preparing and submitting a proposal.

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

MTC reserves the right in its sole discretion not to enter into any contract.

MTC's contract provision are enclosed for your reference as *Appendix E*. 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 Contractor will be deemed to accept MTC's standard contract provisions, unless such language is protested in accordance with the procedures listed above.

The selected Contractor will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix E-1*. Contractor agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix E-1, Insurance Requirements*, within five (5) days of MTC's notice to firm that it is the successful proposer. 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 proposer 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 RFP provisions listed above. If such objections are not brought to MTC's attention consistent with the protest provisions of this RFP, compliance with all material insurance requirements will be assumed.

XI. Authority to Commit MTC

Based on an evaluation conducted by a selection panel, the Executive Director of MTC will recommend a Contractor to the MTC Administration Committee, which will commit MTC to the expenditure of funds in connection with this RFP.

Thank you for your participation.

Sincerely,



Steve Heminger
Executive Director

SH: AM

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APPENDIX A SCOPE OF WORK

Prior to the student starting in their Internship position:

The Contractor will hire those students selected to participate in the internship program by putting the students on the Contractor's payroll. The Contractor will assign each student to the work site approved by the MTC project manager or designee. Student selection will begin in mid-April 2014, and continue until all slots are filled. Students will begin their summer internships in late June or early July 2014 but in no event prior to the orientation. Start dates will vary for each student.

The Contractor will:

- Assign each student to the work site identified by the MTC Project Manager or Representative.
- Ensure the selected student receives a new employee packet consisting of the employment documentation that they will bring to the opening orientation. Along with a welcome letter and instructions on what to fill out prior to orientation.
- Create a "Pay periods and pay dates" schedule, that will be provided to the students along with their in-processing packet.

EXAMPLE

Beginning Payroll Date	Ending Payroll Date	Timesheets Due	Pay Day
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- Work in coordination with the MTC project manager, or a representative, on planning the agenda for the opening orientation which is held at MTC's building located at 101 Eighth Street, Oakland, CA
- Have at least two representatives in attendance at the orientation ready to present and assist the students on how to properly fill out the forms they received. Representatives should also be ready to go over the personnel/administrative policies, procedures and protocols.
- Introduce to the students their point of contact to resolve any payroll or other administrative issues.
- Provide students with timesheets and any other materials needed for each payroll period.
- The hiring process must be completed before students can begin their employment.

Due Date: The orientation session is scheduled for one day, the second or third week of June and is expected to run from 9 a.m. until 2 p.m. The Contractor will send to MTC a spreadsheet tracking each student and listing documents completed and documents pending completion. Every Friday, by Close of business or 5:00 PM, whichever is earlier.

After start of Internship:

The Contractor will be responsible for administrative tasks related to the interns' employment. Contractor will be responsible for compliance with federal and state child labor laws and for ensuring timely payment of interns. Each student shall be paid \$10.75 per hour (this is the current wage, which is subject to any increase in the Federal or state minimum wage). If the

student does not have direct deposit, the Contractor will be expected to have a system in place, approved by MTC, which will ensure each student is paid in a timely manner.

The Contractor will:

- Provide MTC with a weekly report on status of mandatory documentation. Once all documents are received by the contractor, no further reports are required.
- Collect timesheets from students beginning with the day of the opening orientation.
 - Check each timesheet as it is received and ensure compliance with the FLSA.
 - If timesheets are not properly filled out, work with students and or supervisors to correct identified deficiencies.
 - Ensure students are not paid on incorrectly submitted time cards.
- Work with agencies to avoid students working overtime.
 - Inform MTC of any overtime hours performed and who was contacted about the incidence.
- Process paychecks for the students on a weekly or biweekly basis.
- Ensure student and agency supervisor contact information is accurate and up-to-date.
- Provide MTC with a by-name report of supervisors that submit improperly completed time cards.
- Immediately report any problems or issues that arise with the interns.
- Provide guidance to student and supervisors to ensure that job assignments and scheduling of hours are compliant with federal and state child labor laws.
- Work with students unable to attend the orientation in order to ensure that the student receives all necessary information and documents.
- Invoice MTC after each pay period in which students are paid. Invoices to MTC should be coordinated so that a single invoice includes all students who worked the pay period being invoiced. Additionally, each invoice to MTC should reflect only those hours for which a student was paid and for which there is a signed timesheet as supporting documentation. Each invoice to MTC must include required supporting documentation.
- Provide to the MTC Project Manager reports that indicate the number of hours each student intern worked, as shown in their most recent timesheet submittal.

Due Date: Ongoing during period of time when any student is working. The reports are due no later than five (5) working days, after timesheets are submitted to the Contractor.

APPENDIX A-1
LIST OF TENTATIVE INTERN WORK SITE LOCATIONS*

Alameda County

City of Hayward
City of Pleasanton
AC Transit
BART
Caltrans (work site located in Oakland)

Contra Costa County

Tri Delta Transit (work site is in Antioch)
Town of Danville
City of Pittsburg

Marin County

Golden Gate Bridge, Highway & Transportation District
City of Novato

Napa County

Napa County Transportation Planning Agency (work site located in city of Napa)
City of St Helena

San Francisco County

SF Department of Parking and Traffic

San Mateo County

City of Burlingame
City of Millbrae

Santa Clara County

Santa Clara County (work site located in San Jose)
City of Morgan Hill
City of Saratoga

Solano County

City of Fairfield
City of Rio Vista
City of Dixon

Sonoma County

Sonoma County (work site is in Santa Rosa)
City of Healdsburg
City of Santa Rosa

**MTC reserves the right to change these locations.*

**APPENDIX B
 PRICE PROPOSAL FORM**

1.	Indicate fee (inclusive of all applicable surcharges, such as taxes, insurance, overhead, and profit) to MTC for services specified in <i>Appendix A</i> . Charge shall be expressed as a percentage (%) of the per hour, per student rate. The percentage listed shall remain firm for the initial and optional extension periods.		
	<table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 70%;">Fee Per Hour Per Student</td> <td style="border: none; width: 30%; text-align: right;">_____ %</td> </tr> </table>	Fee Per Hour Per Student	_____ %
Fee Per Hour Per Student	_____ %		

		Yes	No
2.	Are all services described in the scope of work included in the price above?		

3. If No, indicate which services will be priced separately and at what cost to MTC:

SIGNATURE OF AUTHORIZING OFFICIAL:

Name of Proposer	
Address	
Phone Number	
Email	
License Number and Type	
Representative Name and Title	
By signing below you acknowledge and agree to provide the required services, and comply with all the terms and conditions (including all applicable insurance requirements) listed in this RFP.	
Name of Authorizing Official	
Authorized Signature	

PLEASE SIGN PROPOSAL. UNSIGNED PROPOSALS WILL NOT BE CONSIDERED.

APPENDIX C
CONTRACTOR'S REFERENCE FORM

Name of Proposer

Representative Name & Title

Phone Number

Reference Form shall include a minimum of three separate contracts of a similar nature that have been completed by Contractor within the last year. Please include name and telephone number of contact person who may be contacted for reference.

1. Client's Name

Contact Person

Address

City & Zip Code

Phone Number & Email

2. Client's Name

Contact Person

Address

City & Zip Code

Phone Number & Email

3. Client's Name

Contact Person

Address

City & Zip Code

Phone Number & Email

APPENDIX D

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 E
MTC LETTER AGREEMENT

Date, 2014

Name
Address
City, State, Zip Code + Four

RE: Professional Services Agreement

Dear insert name:

This letter, effective as of _____, 201_ (“Effective Date”) is the agreement between insert name of firm (“Contractor”) and the Metropolitan Transportation Commission (“MTC”) for the performance of professional services in connection with insert brief description of project (“the Agreement”).

1. It is agreed that Contractor will perform all the services specified in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference, and Contractor will be compensated as per Article 3, below.
2. Work will be performed under the direction of Ann Macaulay or a designated representative (herein "Project Manager") who will approve a work plan prior to your beginning work.
3. As full compensation for the satisfactory completion of all services, Contractor shall be paid the student intern’s hourly wage (\$___ per hour) plus ___ percent, or \$_____ for each hour worked by the student interns participating in MTC’s High School Summer Internship Program. This sum includes payment for taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, materials and supplies. Total compensation for all services shall not exceed _____dollars (\$_____) for the period from ___, 2014 to June 30, 2014, and _____dollars (\$_____) for the period from July 1, 2014 to June 30, 2015.

Contractor’s services will be billed after each weekly pay period in which student interns participating in MTC’s High School Summer Internship Program are paid by _____. Payment will be made within thirty (30) days of receipt of an acceptable invoice, approved by Project Manager, describing the work performed, the payment requested, and the total amount previously paid under the Agreement. All invoices must be made in writing and delivered or mailed to MTC as follows:

Attention: MTC Accounting Section
Joseph P. Bort MetroCenter
101 - 8th Street
Oakland, CA 94607-4700

Payment shall be made by MTC within thirty (30) days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative. If applicable, Contractor's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment C.

4. The term of the Agreement shall begin on the Effective Date and conclude on June 30, 2015, unless MTC terminates this agreement earlier as provided below.
5. MTC may terminate the Agreement without cause upon three (3) days' prior written notice. If MTC terminates the Agreement without cause, Contractor will be entitled to payment for costs incurred for incomplete work up to the time of termination, plus reasonable termination costs, not to exceed the maximum amount payable under the Agreement for the incomplete work. If Contractor fails to perform as specified in the Agreement, MTC may terminate the Agreement for cause by advance 10-day written notice, providing Contractor with the opportunity to cure the default or present an acceptable plan for cure within the 10-day period. At the end of the 10-day period, if the default has not been cured or an acceptable plan of cure presented, MTC may issue a notice of termination for default, effective immediately, and Contractor will be entitled only to costs incurred for acceptable work performed in accordance with the Agreement, not to exceed the maximum amount payable under the Agreement for such work.
6. Except for invoices submitted by Contractor, 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: Ann Macaulay
Metropolitan Transportation Commission
101 - 8th Street
Oakland, CA 94607-4700
Email: amacaulay@mtc.ca.gov
Fax: (510) 817-5848

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

7. In performing services under the Agreement, Contractor will be acting as an independent contractor and not as an agent or employee of MTC. Contractor will have no authority to contract in the name of MTC, and Contractor will be responsible for its own acts and those of its agents and employees.
8. Contractor agrees to obtain and maintain at its own expense for the duration of the Agreement the types of insurance listed in Attachment B, Insurance Requirements, Part 1, against claims, damages or losses due to injuries to persons or damage to property or other losses arising in connection with the performance of the Agreement, placed with insurers with a Best's rating of A-VIII or better.
9. Contractor shall indemnify and hold harmless MTC, the Additional Insureds listed in Attachment B, Insurance Requirements, Part 2, and its commissioners, directors, officers, agents, and employees or any of them ("the MTC Indemnitees") from any and all claims, demands, suits, or other legal proceedings actions ("the Claims") arising out of: (a) any injury or death to persons or property or pecuniary, financial or economic losses caused by any breach of the Agreement by Contractor or by any negligent act or omission or willful misconduct of the Contractor or its officers, employees, subconsultants or agents or any of them, under or in connection with this Agreement; or (b) based on an allegation that materials or services provided by Contractor under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party. CONTRACTOR agrees at its own cost, expense and risk to defend any and all such Claims against the MTC Indemnitees, and to pay and satisfy any resulting judgments, plus attorneys' fees and costs. This indemnification shall survive the termination or expiration of this Agreement.
10. Contractor agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment C, Special Conditions Regarding Personally Identifiable Information, attached hereto and incorporated herein by this reference.
11. All data, reports, surveys, studies, drawings, software (object or source code), electronic

databases, and any other information, documents or materials (“MTC Data”) made available to Contractor by MTC for use by Contractor in the performance of its services under the Agreement shall remain the property of MTC and shall be returned to MTC at the completion or termination of the Agreement. No license to such MTC Data, outside of the Scope of Work of the Project, is conferred or implied by your use or possession of such MTC Data. Any updates, revisions, additions or enhancements to such MTC Data made by Contractor in the context of the Project shall be the property of MTC and subject to the provisions of the following paragraph.

12. MTC may be required to make available to Contractor 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 Contractor, 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 Contractor; b) Contractor can demonstrate to have had rightfully in its possession prior to disclosure by MTC or its contractors, vendors or licensors; c) Contractor 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. Contractor 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. Contractor 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, Contractor shall destroy or return to MTC, at MTC’s option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by MTC.

13. All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products (“Work Products”) prepared or assembled and furnished to MTC by Contractor or its subconsultants pursuant to the Agreement shall be and are the property of MTC. MTC shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the Contractor or in the hands of any subconsultant upon completion or termination of the work shall be immediately delivered to MTC. Contractor hereby assigns to MTC ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the Work Product. Contractor also agrees to execute all papers necessary for MTC to perfect its ownership of the entire copyright in the Work Product. Contractor shall be responsible for the preservation of any and all such Work Products prior to transmittal to MTC, and shall replace any such Work Products as are lost, destroyed, or damaged while in its possession without additional cost to MTC. Notwithstanding the above, Work Products are not intended to include Contractor’s pre-existing intellectual property secured, developed, written, or produced by Contractor prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; Contractor shall retain all right, title and interest in any such pre-existing intellectual property.
14. Contractor agrees to retain all documents, working papers, records, accounts and other materials relating to its performance under the Agreement for four years following the fiscal year of the last expenditure under the Agreement or until completion of any litigation, claim or audit, whichever is longer, and MTC may inspect and audit such records during that period of time.
15. No member, officer, employee or agent of MTC, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, Contractor 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. Contractor 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. Contractor 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, Contractor becomes aware of an organizational conflict of interest in connection with the work performed hereunder, Contractor shall immediately provide MTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest. Contractor'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 Contractor's performance of the work hereunder, MTC shall similarly notify Contractor. In the event a conflict is presented, whether disclosed by Contractor or discovered by MTC, MTC will consider the conflict presented and any alternatives proposed and meet with Contractor to determine an appropriate course of action. MTC's determination as to the manner in which to address the conflict shall be final.
17. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between MTC and Contractor that cannot be resolved through the informal, good faith efforts of the parties may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. Contractor must file a government claim pursuant to Government Code section 910 *et seq.* in order to initiate a civil action. The

prevailing party in any dispute shall be entitled to payment of its attorneys' fees and costs. This section shall survive the termination or expiration of the Agreement.

18. All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of California applicable to agreements made and to be performed within the State.
19. Contractor will not assign or subcontract any part of the Agreement without the prior written consent of MTC, and any attempt to do so will be void and unenforceable.
20. This Agreement constitutes the complete agreement between the parties and supersedes any prior written or oral communications. Any amendment of the Agreement must be in writing, specifically identified as an amendment to the Agreement, and signed by both Contractor and the Executive Director of MTC, or his designated representative. The Project Manager is not a designated representative, for purposes of approving an amendment.

If you agree, please sign both copies of this letter in the space provided below and return one to us. The other copy is for your files.

Very truly yours,

Steve Heminger
Executive Director

SH: DR

J:\CONTRACT\Procurements\Misc Professional Svcs\RFPs\FY 13-14\HS Internship\App E.docx

Accepted and Agreed to this _____ day
of _____, 2014.

insert name and, if known, title

ATTACHMENT A

SCOPE OF WORK AND SCHEDULE

ATTACHMENT B

Insurance Provisions

PART 1

A. Minimum Coverages. The insurance requirements specified in this section shall cover CONTRACTOR'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 CONTRACTOR authorizes to work under this Agreement (hereinafter referred to as "Agents.") CONTRACTOR 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.

CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event CONTRACTOR 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 CONTRACTOR's insurance be primary without right of contribution from MTC. Prior to beginning work under this contract, CONTRACTOR shall provide MTC with satisfactory evidence of compliance with the insurance requirements of this section.

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 CONTRACTOR's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation endorsement in favor of MTC. In addition, the Workers' Compensation and Employers Liability coverage shall apply to all temporary employees working in the High School Internship Program, and the policy should be endorsed with an Alternate Employer Endorsement (WC 00 02 01A) naming MTC as the Alternate Employer.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of CONTRACTOR and CONTRACTOR'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 those entities listed in Part 2 of this Attachment C (if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONTRACTOR's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by CONTRACTOR and CONTRACTOR'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. 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 CONTRACTOR and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONTRACTOR. No contract or agreement between CONTRACTOR and any subcontractor/consultant shall relieve CONTRACTOR of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONTRACTOR and any subcontractor/consultant working on behalf of CONTRACTOR on the project.

5. Property Insurance. Property Insurance covering CONTRACTOR'S own business personal property and equipment to be used in performance of this Agreement AND materials or property to be purchased and/or installed on behalf of MTC (if any). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

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

MTC (and those entities listed in Part 2 of this Attachment , if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause

as respects any claims, losses or liability arising directly or indirectly from CONTRACTOR's operations.

B. Acceptable Insurers. All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A-VIII or better.

C. Self-Insurance. CONTRACTOR'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. CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR'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 CONTRACTOR insurance policy that contains a deductible or self-insured retention, CONTRACTOR 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 CONTRACTOR, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONTRACTOR 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, CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR's personnel, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally accepted. CONTRACTOR 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, 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.

H. Disclaimer. The foregoing requirements as to the types and 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 Section 9 of this Agreement.

Part 2

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

- Metropolitan Transportation Commission (MTC)

Attachment C
Special Conditions Relating to Personally Identifiable Information

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

1. Right to Audit

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

2. General Confidentiality of Data

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

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

Notwithstanding anything to the contrary in Article 14, Records, of this Agreement, CONTRACTOR agrees to retain PII for no longer than four years following the fiscal year of the last expenditure under this Agreement. At the conclusion of this retention period, CONTRACTOR agrees to use Department of Defense (“DOD”) approved software to wipe any disks containing PII. Hard drives and computers shall be reformatted and reimaged in an equivalently secure fashion. CONTRACTOR agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. At the conclusion of the performance period of this Agreement, CONTRACTOR shall submit a certification to the MTC Project Manager as follows: “All PII whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in Section 2. General Confidentiality of Data of the Attachment C, Special Conditions Relating to Personally Identifiable Information.”

3. Compliance with Statutes and Regulations

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

4. Subconsultants

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

5. Contractor Guarantees

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

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

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

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

6. Notice of Security Breach

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

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

APPENDIX E-1 INSURANCE REQUIREMENTS

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

Yes (√)	Please certify by checking the boxes at left that required coverages will be provided within five (5) days of MTC's notice to firm that it is the successful proposer.
___	<p><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 CONTRACTOR's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation endorsement in favor of MTC. In addition, the Workers' Compensation and Employers Liability coverage shall apply to all temporary employees working in the High School Internship Program, and the policy should be endorsed with an Alternate Employer Endorsement (WC 00 02 01A) naming MTC as the Alternate Employer.</p>
___	<p><u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of CONTRACTOR and CONTRACTOR'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.</p> <p>MTC, and its 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 CONTRACTOR's operations.</p>
___	<p><u>Business Automobile Insurance</u> for all automobiles owned, used or maintained by CONTRACTOR and CONTRACTOR'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.</p>
___	<p><u>Errors and Omissions Professional Liability Insurance</u> (if applicable) in an amount no less than \$1,000,000. If such policy is written on a "Claims-Made" (rather than an "occurrence") basis, CONTRACTOR 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 CONTRACTOR and</p>

	any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONTRACTOR. No contract or agreement between the CONTRACTOR and any subcontractor/consultant shall relieve the CONTRACTOR of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by the CONTRACTOR and any subcontractor/consultant working on behalf of the CONTRACTOR on
_____	<u>Property Insurance</u> covering CONTRACTOR'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 CONTRACTOR shall also be liable for the deductible.

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 proposer.	
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 RFP provisions. If such objections are not brought to MTC's attention consistent with the protest provisions of this RFP, compliance with the insurance requirements will be assumed.