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*Steve Heminger*  
Executive Director

*Ann Flemer*  
Deputy Executive Director, Policy

*Andrew B. Frenier*  
Deputy Executive Director, Operations

July 19, 2013

## **REQUEST FOR PROPOSAL (RFP) Travel Model Demand Development**

NOTICE IS HEREBY GIVEN that the Metropolitan Transportation Commission (MTC) invites your firm to submit a proposal for the Travel Model Demand Development project.

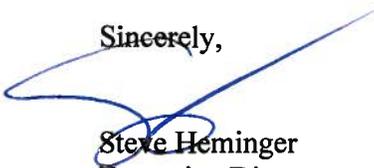
The Request for Proposal (RFP) documents for this project are available for download on the MTC website at <http://procurements.mtc.ca.gov/>. Proposers are responsible for checking the website for any Addenda that may be issued relative to this RFP. Responses should be submitted in accordance with the instructions set forth in the RFP.

Interested firms must submit an original and four (4) copies, as well as one electronic PDF version, of their proposal by **4:00 p.m., Friday, August 30, 2013**, in accordance with the instructions contained in the RFP. Other key RFP Dates are listed in Section V, Consultant Selection Timetable of the RFP.

*MTC Point of Contact*  
David Ory, Project Manager  
Metropolitan Transportation Commission  
Joseph P. Bort MetroCenter  
101 Eighth Street  
Oakland, CA 94607-4700  
Tel: 510/ 817-5755  
E-mail: [dory@mtc.ca.gov](mailto:dory@mtc.ca.gov)

Thank you for your interest.

Sincerely,

  
Steve Heminger  
Executive Director

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## TABLE OF CONTENTS

I. MTC AND PROJECT DESCRIPTION .....	1
A. DESCRIPTION OF MTC .....	1
B. PROJECT DESCRIPTION .....	1
II. PROPOSER MINIMUM QUALIFICATIONS .....	2
III. PRELIMINARY SCOPE OF WORK, PERIOD OF PERFORMANCE, AND BUDGET .....	2
A. PRELIMINARY SCOPE OF WORK .....	2
B. PERIOD OF PERFORMANCE .....	2
C. BUDGET .....	2
IV. PROPOSERS' CONFERENCE AND REQUESTS FOR CLARIFICATION OR EXCEPTIONS .....	2
V. CONSULTANT SELECTION TIMETABLE .....	3
VII. FORM OF PROPOSAL .....	4
VIII. PROPOSAL EVALUATION .....	8
A. VERIFICATION OF MINIMUM QUALIFICATIONS .....	8
B. REVIEW FOR GENERAL RESPONSIVENESS .....	8
C. EVALUATION PANEL AND EVALUATION CRITERIA .....	8
D. PROPOSER DISCUSSIONS .....	9
E. REQUEST FOR BEST AND FINAL OFFER .....	9
IX. GENERAL CONDITIONS .....	9
A. AWARD .....	9
B. CONTRACT ARRANGEMENTS .....	9
C. SELECTION DISPUTES .....	10
D. PUBLIC RECORDS .....	11
E. KEY PERSONNEL .....	12
F. CONFLICTS OF INTEREST .....	12
G. PERSONALLY IDENTIFIABLE INFORMATION .....	12
APPENDIX A, PRELIMINARY SCOPE OF WORK .....	13
APPENDIX B, COST AND PRICE ANALYSIS FORM .....	18
APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT .....	20
APPENDIX D, MTC STANDARD CONSULTANT CONTRACT .....	21
APPENDIX D-1, INSURANCE REQUIREMENTS .....	56

## I. MTC AND PROJECT DESCRIPTION

### A. *Description of MTC*

MTC was created by the state Legislature in 1970 (California Government Code § 66500 *et seq.*) to serve as the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area.

### B. *Project Description*

The broad objective of this work is to improve the analytical tools MTC uses to inform decision makers as to the likely outcomes of various transportation policies and projects considered in our regional planning activities. MTC is currently working on an ambitious effort to overhaul the representation of supply – space, roadways, transit service, bicycle ways, and sidewalks – in our travel model, increasing the fidelity of these representations by one or more orders of magnitude. Details of this work, including deliverables completed to date, are available on-line<sup>1</sup>. The scope of the supply work currently underway includes transferring the representation of demand (with certain modifications) and the application software from the San Diego Association of Governments (SANDAG) travel model. It does not include calibrating the SANDAG model to represent Bay Area conditions. As such, the current work will end with three scenarios, representing years 2000, 2005, 2010, each with complete model inputs – including synthetic populations, zonal data, and networks – and working (and properly tested) application software, i.e., the model sets will be ready for calibration.

The primary purpose of the work under this RFP is to prepare a model system MTC will refer to as *Travel Model Two* for planning work – MTC’s existing activity-based travel model is referred to as *Travel Model One*. *Travel Model Two* will consist of the improved representation of supply noted above paired with the SANDAG representation of demand and the SANDAG application software<sup>2</sup>. This work will involve preparing calibration and validation data; calibrating the SANDAG representation of demand to Bay Area conditions; validating the model system by comparing to observed conditions for at least three historical years (2000, 2005, and 2010); performing sensitivity tests to find application bugs and ensure the model is responding reasonably to likely policy and infrastructure changes; and, documenting the new model system, including the development details and an on-line model user’s guide<sup>3</sup>.

The secondary purpose of this project is to begin work on the *Travel Model Three* modeling system. *Travel Model Three* will consist of the improved representation of supply noted above paired with an improved representation of demand. Useful improvements to the demand side of the model system will be identified via the *Travel Model Two* calibration/validation effort, as well as in consideration of potential planning applications, and may include re-estimating select SANDAG representations of demand using Bay Area data (with the commensurate need to prepare estimation data), adding and/or refining model components, and/or other improvements

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<sup>1</sup> <http://analytics.mtc.ca.gov/foswiki/Main/Development>

<sup>2</sup> Working *draft* documentation of the SANDAG models is available here:  
[http://www.sandag.org/resources/regional\\_models/activity\\_based\\_model/SANDAG\\_ABM\\_Model.zip](http://www.sandag.org/resources/regional_models/activity_based_model/SANDAG_ABM_Model.zip)

<sup>3</sup> The *Travel Model One* User’s Guide is available here:  
<http://analytics.mtc.ca.gov/foswiki/Main/UsersGuide>

to the demand models. As budget allows, subsequent rounds of calibration/validation/testing may be requested to prepare *Travel Model Three* for planning applications.

## II. PROPOSER MINIMUM QUALIFICATIONS

Proposals must demonstrate that the firm or team submitting the proposal (“Proposer”) meets the following Minimum Qualifications to be eligible for consideration for this project.

- Project manager who has played a similar role on a minimum of two (2) projects substantially similar to the services requested by MTC in the last five (5) years prior to the date of this RFP; and
- Each project team member other than support staff has a minimum of one (1) year work or academic experience on similar projects, with specific experience in the tasks which he or she is proposed to work.

Expertise with the technical procedures and software used in MTC’s analytical tools, including the following:

- Activity-based, micro-simulation travel models;
- Java programming language;
- Python scripting/programming language;
- Geographic information systems (GIS); and,
- Citilab’s Cube.

## III. PRELIMINARY SCOPE OF WORK, PERIOD OF PERFORMANCE, AND BUDGET

### *A. Preliminary Scope of Work*

All work will be assigned pursuant to MTC-initiated task orders, which will include a specific scope of work based on the tasks identified in *Appendix A, Preliminary Scope of Work*. Payment for work performed under task orders may be deliverables-based or time and materials, as determined by the MTC Project Manager. A sample task order form is attached hereto as Attachment A-2, Task Order Form to *Appendix D, MTC Standard Consultant Contract*.

### *B. Period of Performance*

MTC expects the work to commence on or about December 2013 and to be completed no later than December 2016. At MTC’s sole option, the contract may be extended for three (3) additional years for work related to the *Appendix A, Preliminary Scope of Work*.

### *C. Budget*

MTC has budgeted three hundred thousand dollars (\$300,000) for this effort.

## IV. PROPOSERS’ CONFERENCE AND REQUESTS FOR CLARIFICATION OR EXCEPTIONS

A Proposers’ Conference will be held at 11:00 a.m., Tuesday, August 6, 2013 at the Joseph P. Bort MetroCenter Building, 101 8<sup>th</sup> Street, Oakland, in the MTC Fishbowl Conference Room.

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

Any requests for clarification of or exceptions to RFP requirements must be received by MTC no later than Thursday, August 13, 2013, to guarantee response or consideration. MTC reserves the right to reject any proposal that contains unauthorized conditions or exceptions.

## V. CONSULTANT SELECTION TIMETABLE

11:00 a.m., on Tuesday, August 6, 2013	Proposers' Conference, at 101 8 <sup>th</sup> Street, Oakland, CA 94607, Fishbowl Conference Room
11:00 a.m., on Tuesday, August 13, 2013	Closing date/time for receipt of requests for modifications/exceptions
No later than three (3) working days prior to the date proposals are due.	Deadline for protesting RFP provisions
<b>4:00 p.m., Friday, August 30, 2013</b>	<b>Closing date/time for receipt of proposals</b>
Week of September 16, 2013	Interviews/Discussions (if held)
Monday, September 23, 2013	Date for receipt of Best and Final Offers (if required)
Wednesday, November 13, 2013	MTC Administration Committee Approval

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

## VI. SUBMITTAL OF PROPOSALS

1. Interested firms must submit an original and four (4) copies, as well as one electronic PDF version, of their proposal by 4:00 p.m., Friday, August 30, 2013. **Submission of an electronic copy of the proposal without hard copies will not satisfy the submission requirement.**
2. Proposals are to be addressed as follows:  
Travel Model Demand Development  
Attention: David Ory  
101 8<sup>th</sup> Street, 3<sup>rd</sup> Floor Receptionist  
Oakland, CA 94607
3. Proposer's name and return address must also appear on the envelope.
4. Proposals will be received only at the address shown above and **no later than the date and time indicated**. MTC is not responsible for deliveries delayed for any reason. Any proposals received after said date and time or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened.
5. No proposals submitted solely by email and no faxed proposals will be considered.

6. All proposals, whether delivered by an employee of the Proposer, U.S. Postal Service, courier or package delivery service, must be received and time stamped at the stated address **prior to or no later than the time designated**. The timestamp located on the 3<sup>rd</sup> floor at the receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of proposals
7. Consultant agrees and acknowledges all RFP specifications, terms and conditions and indicates ability to perform by submission of a proposal.
8. A signed proposal submitted to MTC in response to this RFP shall constitute a binding offer from Consultant to contract with MTC according to the terms of the proposal for a period of one hundred twenty (120) days after the proposals are due to MTC.
9. A proposal may be withdrawn at any time before the date and time when proposals are due by submitting a written request for its withdrawal to the MTC Project Manager.
10. This RFP does not commit MTC to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFP.
11. Only one proposal will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.
12. MTC reserves the right to accept or reject all proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all proposers.
13. MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFP.
14. If the selected proposer fails to enter into a contract with MTC in a timely manner as determined by MTC, in accordance with the terms and conditions of this RFP, MTC reserves the right to reject the proposal and enter into a contract with the next highest scoring firm.

## **VII. FORM OF PROPOSAL**

Proposals must be signed in ink and include a statement that the person or persons signing the proposal is/are authorized to authorize and submit the proposal on behalf of the Proposer. Page limits, where specified, are for single-sided print. Proposers are encouraged to print double-sided copies to save paper.

Proposal content and completeness are most important. Clarity is essential and will be considered in assessing the Proposer's capabilities.

Proposers must provide the information listed below. Any material deviation from these requirements may be cause for rejection of the proposal, as determined in MTC's sole discretion.

Each proposal must include the following:

#### A. Transmittal Letter

Proposals must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and the name and telephone number of a contact person, if different from the signature. Indicate whether there are any conflicts of interest, actual or apparent, that would limit the Proposer's ability to provide the requested services and describe the plan for mitigating such conflicts. Acknowledge the receipt of any addendum to the RFP. Indicate that the Proposal is a firm offer to enter into a contract to perform work related to this RFP for a period of one hundred twenty (120) days from the due date for Proposals.

#### B. Title Page

Proposals must include a title page that includes the RFP subject, the name of the proposer's firm, local address, telephone number, name of contact person, contact person's email address, and the date.

#### C. Table of Contents

Proposals must include a table of contents that clearly identifies the material by section and page number.

#### D. Overview and Summary

This section should clearly convey the Consultant's understanding of the nature of the work and the general approach to be taken, and identify any specific considerations. It should include, but not be limited to, the following:

1. A discussion of the project's purpose;
2. A summary of proposed approach; and
3. The assumptions made in selecting the approach.

#### E. Preliminary Work Plan

This section should present a work plan for the tasks described in *Appendix A, Preliminary Scope of Work*. The proposed work plan should:

1. Discuss how the Consultant will conduct the identified task, identify deliverables, and propose a schedule. The proposal should discuss the tasks in sufficient detail to demonstrate a clear understanding of the project and component tasks. The proposal may include additional tasks or sub-tasks the Consultant believes necessary to accomplish the project goals. The schedule should show the expected sequence of tasks, subtasks and milestones.
2. Provide a staffing plan for each task. Provide an organizational chart that shows roles and responsibilities of key personnel and reporting structure, including reporting and communication relationships between MTC, Consultant staff, and subcontractors, if any.

3. Describe approach to managing resources and maintaining quality results. Include a description of the role of any subcontractors, their specific responsibilities, and how their work will be supervised to maintain quality results.
4. Identify and explain any problem areas and/or potential obstacles (such as maintaining schedule, budget overruns, feasibility, etc.) to successful completion of the Preliminary Scope of Work, attached as *Appendix A*. Discuss methods, formal and informal, that you will use to track and resolve these problems/obstacles during the project.

#### F. Qualifications and References

1. Describe proposed team's qualifications specific to the requirements set forth in Section II, Proposer Minimum Qualifications and Requirements. Identify the personnel, including subcontractors' personnel, whose expertise or experience addresses each of the specified needs. Proposers are welcome to identify and provide examples of any other qualifications they feel are critical to the successful completion of the Preliminary Scope of Work attached as *Appendix A*.
2. Identify key personnel (including subcontractor personnel) and briefly discuss individual qualifications to perform each task. Each key personnel resume should not exceed two pages.
3. Provide a succinct description (one page maximum) of any previous projects similar to the services requested, indicating the project title, duration, budget, sponsoring agency and sponsor project manager, and roles played by individuals proposed for this study. Include the name of the agency for whom the work was performed, year performed, name of the contact person and their telephone number.
4. Provide at least one sample of a written technical report or memorandum and two samples of material developed for a similar study effort. The samples must have been prepared by key members of the Consultant team and should identify the authors. Only one copy of each sample is required, and the samples will be returned after proposal evaluation, upon request. The samples will be considered in evaluating firm and staff expertise and experience, and written presentation effectiveness.
5. Provide a list of references (including references for subcontractors) and their contact information.
6. Provide a summary of all contracts your firm (including subcontractors) has held with MTC, MTC SAFE, BATA, BAHA, or BAIFA in the past three years, including a brief description of the scope of work, the contract amount, and date of execution.

#### G. Cost Proposal

Based on the tasks and staffing plan described in response to E.1 and E.2, listed above, provide a breakdown of the expected expenditures of funds for the tasks – as requested – contained in

*Appendix A, Preliminary Scope of Work.* The budget should include, but is not limited to, a task budget and a line item budget with billing rates for each phase.

**Additional instructions concerning the preparation of the cost proposal are included after each Task in *Appendix A, Preliminary Scope of Work.***

1. The task budget should present a breakdown of hours and expenses by task and deliverable in each phase of the project. Please note the instructions under each Task in *Appendix A, Preliminary Scope of Work.* It should identify or refer to key personnel or job descriptions in relation to each task to provide a full explanation of the resources committed to the project.
2. A line item budget should be submitted for each phase of the project. The line item budget should present a breakdown of costs by cost categories, including billing rates for key personnel and job classifications. The line item budget should be set forth on the Cost and Price Analysis Form attached hereto as *Appendix B* to this RFP. A line item budget should also be submitted for proposed sub-consultants with contracts estimated to exceed \$25,000. *Appendix B* is available in electronic spreadsheet format upon request. The line item budget is requested for evaluation only; payment shall be based on receipt of deliverables satisfactory to MTC.
3. It is important for MTC to be able to determine all project costs, including any computers or software the Consultant would expect MTC to pay for to be able to perform the work. Consultants should include in both the task and line item budget a description of all expenses that would be passed along to MTC.
4. In addition to the task and line item budgets, MTC requests proposers to provide fully loaded hourly rates applicable to time and materials task orders and a description of any increases in hourly rates during the prospective thirty-six (36) month term of the resulting contract.

H. California Levine Act Statement

Submit a signed Levine Act statement (*Appendix C*).

I. Insurance Provisions

Submit a signed acknowledgement that your firm agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix D-1, Insurance Requirements*, within ten (10) days of MTC's notice to firm that it is the successful proposer.

(See Section IX.B of the RFP for how to request exceptions to the minimum insurance requirements.)

## VIII. PROPOSAL EVALUATION

### *A. Verification of Minimum Qualifications*

The Project Manager will review proposals to ensure that each Proposal meets the Minimum Qualifications set out in Section II, Proposer Minimum Qualifications of this RFP. Proposers failing to meet the Minimum Qualifications will not be considered.

### *B. Review for General Responsiveness*

The Project Manager, in consultation with the MTC's Office of General Counsel, will conduct an initial review of the proposals for general responsiveness and inclusion of the items requested in *Appendix C*. Proposers failing to meet the Minimum Qualifications and Requirements listed herein this RFP or satisfy the federal Disadvantaged Business Enterprise (DBE) requirements (if applicable), will not be considered responsive. Also, 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 and will not be evaluated. A proposal that fails to include one or more items requested in the Form of Proposal may be considered responsive, if evaluation in every criterion is possible. MTC reserves the right to request additional information from responsive proposers prior to evaluation.

### *C. Evaluation Panel and Evaluation Criteria*

Responsive proposals will then be evaluated by an evaluation panel of MTC and partner agency staff. The evaluation of the proposals shall be within the sole judgment and discretion of the evaluation panel.

All contact during the evaluation phase shall be through the MTC Project Manager only. Proposers shall neither contact nor lobby any evaluation panel members during the evaluation process. Attempts by proposer to contact and/or influence members of the evaluation panel may result in disqualification of proposer.

Responsive proposals shall be evaluated on the basis of the following evaluation factors, with their relative importance indicated by percentages:

1. Individual and team experience (40%).
2. Written communication skills based on proposal (30%).
3. Approach to completing the project, including but not limited to: understanding of the need, requirements, and timeline; proposed approach to tasks; ability to anticipate and respond to potential challenges; strategy for managing resources; and approach to quality control and quality assurances (20%).
4. Cost effectiveness, including hourly rates; basis for escalation over term of contracts; reasonableness and appropriateness of preliminary task budget (10%).

#### ***D. Proposer Discussions***

Following the initial evaluation, the evaluation panel may elect to recommend award to a particular proposer (with or without interviews), or to enter into discussions with a “short list” of proposers, consisting of those proposers reasonably likely, in the opinion of the panel, to be awarded the contract.

The purpose of discussions with a Proposer on the “short list” will be to identify to that Proposer’s specific deficiencies and weaknesses in its proposal and to provide the Proposer with the opportunity to consider possible approaches to alleviating or eliminating them. These deficiencies or weaknesses may include such things as technical issues, management approach, cost, or team composition. Discussions may take place through written correspondence and/or during face-to-face interviews. The Proposer’s project manager, as well as other key personnel identified by the evaluation panel, will be expected to participate in any discussions. A proposer on the “short list” invited to participate in discussions will be expected to provide a presentation limited to 20 minutes consisting of an overview of its approach to the Project.

#### ***E. Request for Best and Final Offer***

Following discussions, if held, proposers on the “short list” will be given the opportunity to revise their written proposals to address the concerns raised during discussions through issuance of Request for Best and Final Offer (BAFO). Following receipt of the BAFOs, the evaluation panel will evaluate the BAFOs against the evaluation criteria.

MTC reserves the right not to convene oral interviews or discussions, and to make an award on the basis of initial proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint. References may be contacted at any point in the evaluation process.

The panel will recommend a Consultant to the MTC Executive Director, based on their evaluation of the written proposals or BAFOs and oral interviews or discussions (if held). The Executive Director will review the recommendation and, if he agrees, he will approve the award or forward the recommendation to the appropriate MTC Committee for approval (if required).

### **IX. GENERAL CONDITIONS**

#### ***A. Award***

Any award made will be to the Consultant whose proposal is most advantageous to MTC based on the evaluation criteria defined in Section VIII. If the selected firm fails to enter into a contract with MTC in a timely manner as determined by MTC, in accordance with the terms and conditions of this RFP, MTC reserves the right to reject the proposal of the selected firm and enter into a contract with the next highest scoring firm.

#### ***B. Contract Arrangements***

MTC Standard Consultant Contract is attached as *Appendix D*. 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. If no such change is requested, the Proposer will be deemed to accept MTC's standard contract provisions, unless such language is protested in accordance with Section C below.

The selected Consultant will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1, Insurance Requirements*. Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements in *Appendix D-1*, within ten (10) days of MTC's notice 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. 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 pursuant to the protest provisions of this RFP must be brought to MTC's attention no later than the deadline for protesting RFP provisions or compliance with all material insurance requirements will be assumed.

The contract resulting from this RFP will be task-order based with payment on a combination of deliverable- and/or time-and-materials basis.

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

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

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

The Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Should a proposer wish to appeal the decision of the MTC Executive Director, it may file a written appeal with the appropriate MTC Committee, no later than 4:00

p.m. on the third day after receipt of the written response from the MTC Executive Director. The appropriate MTC Committee's decision will be the final agency decision.

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

#### ***D. Public Records***

This RFP and any material submitted in response to this RFP are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt by law. Other than proprietary information or other information exempt from disclosure by law, the content of proposals submitted to MTC will be made available for inspection consistent with its policy regarding Public Records Act requests.

If the Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall require that MTC withhold from disclosure such proprietary materials by marking each page containing propriety information as confidential and shall include the following notice at the front of its proposal:

“The data on the following pages of this proposal, marked along the right margin with a vertical line, contain technical or financial information which are trade secrets and/or which, if disclosed, would cause substantial injury to the proposer's competitive position. The proposer requests that such data be used for review by MTC only, but understands that exemption from disclosure will be limited by MTC's obligations under the California Public Records Act. If a contract is awarded to the proposer submitting this proposal, MTC shall have the right to use or disclose the data, unless otherwise provided by law. [List pages].”

Failure to include this notice with relevant page numbers shall render any “confidential/proprietary” markings inadequate. Individual pages shall accordingly not be treated confidentially. **Any language purporting to render the entire proposal confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the Proposer may not designate any required Proposal Forms or the cost proposal as confidential.**

In the event properly marked data is requested pursuant to the California Public Records Act, the proposer will be advised of the request. If the Proposal requests that MTC withhold such data from disclosure and MTC complies with the Proposer's request, the Proposer shall assume all responsibility for any challenges resulting from the non-disclosure; indemnify MTC and hold it harmless from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting such Proposer information) and pay any and all costs and expenses relating to the withholding of the Proposer information.

If the Proposer does not make each page containing proprietary information as confidential, include a statement described above in front of its proposal, and request that MTC withhold information marked as confidential and requested under the California Public Records Act, MTC shall have no obligation to withhold the information from disclosure, and the Proposer shall not have a right to make a claim or maintain any legal action against MTC or its commissioners, officers, employees, or agents in connection with such disclosure.

***E. Key Personnel***

Key staff persons assigned to the project are expected to remain on the project. Any change in key staff persons of the proposed project team is subject to prior written approval of MTC. Removal of any key staff persons identified in the proposal without written consent of the Project Manager may be considered a material breach of contract.

***F. Conflicts Of Interest***

By submitting a Proposal, the Proposer represents and warrants that no commissioner, officer or employee of MTC is in any manner interested directly or indirectly in the Proposal 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 Proposer 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 RFP 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 a contract that involves the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts of the Proposer, and if so, whether any potential bias can be mitigated acceptably by MTC and the Proposer. After award, the Consultant shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under the agreement resulting from this and other MTC solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other project.

Proposer shall not engage the services of any subcontractor or independent contractor on any work related to this Agreement if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

***G. Personally Identifiable Information***

Consultant agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment G, Special Conditions Regarding Personally Identifiable Information of Appendix D, MTC Standard Consultant Contract.

## APPENDIX A, PRELIMINARY SCOPE OF WORK

The successful Consultant's preliminary scope of work is described below. All required services shall be authorized by Task Order, initiated and developed according to the Task Order Process described in Attachment A-1, of Appendix D, MTC Standard Consultant Contract. Task Orders shall include, at a minimum, a detailed description of the work to be performed, a completion date for performance, a maximum payment amount, payment terms (deliverables-based or time and materials) and subconsultant participation (if any), in a completed form as shown in Attachment A-2, Task Order Form, Appendix D, MTC Standard Consultant Contract, attached hereto and incorporated herein by this reference.

The Consultant may be asked to complete tasks including, but not limited to, those described below.

### Tasks

#### Task 1: Project Management

The Consultant shall participate in weekly project management/update conference calls. The Consultant shall participate in in-person meetings as necessary.

***For the cost proposal, please include one hundred (100) half-hour conference calls and three (3) three-hour meetings. Please include travel budget for three (3) trips to the San Francisco Bay Area for meetings.***

#### Task 2: Identify Needed Calibration and Validation Data Summaries

The *Travel Model Two* modeling system will include the representation of supply currently being improved by MTC with the SANDAG representation of demand – modified as needed – calibrated and validated to Bay Area conditions. In this task, the Consultant shall identify the specific data summaries needed to appropriately calibrate and validate *Travel Model Two*. This identification shall include the best source for the data as well as the specific summaries to be derived from the data. The Consultant shall identify an appropriate year or years for calibration; the model will be validated to, at a minimum, year 2000, 2005, and 2010 conditions. Calibration data is expected to be drawn from the 2012/2013 California Household Travel Survey, 2000 Bay Area Travel Survey, recent operator-specific on-board transit surveys, Decennial Census data, American Community Survey data, and other sources of relevant and useful information. Validation data is expected to be drawn from transit operators, Caltrans, the Caltrans Performance Measurement System (PeMS), Decennial Census data, the American Community Survey data, and other sources of relevant and useful information.

***For the cost proposal, please include the full cost of performing this task.***

Deliverables: 2. Technical memorandum summarizing needed data summaries

### Task 3: Prepare Calibration and Validation Data Summaries

The Consultant shall first design a workplan and then carry out this workplan to prepare the necessary calibration and validation data summaries using the Task 2 deliverables as a guide. The workplan shall include MTC staff, some of whom will be available to assist in developing calibration and validation data.

***For the cost proposal, please include the fully-loaded rates of key personnel who will be assigned to this task, but do not include a task-specific line-item cost.***

Deliverables: 3.1 Technical memorandum describing workplan

3.2 Data summaries

### Task 4: Initial Calibration

The calibration and validation effort will be iterative, with three rounds of calibration expected. In the initial round, the Consultant shall calibrate the model such that the calibration targets are approximately met. The Consultant shall identify areas in which the model has a difficult time meeting the targets (when reasonable adjustments to constants are made) for more detailed investigation in subsequent rounds of calibration.

***For the cost proposal, please include the full cost of performing this task.***

Deliverables: 4.1 Technical memorandum identifying calibration problem areas

4.2 Data summaries of initial calibration results

4.3 Slide deck of initial calibration results

### Task 5: Initial Validation

The initial calibration effort of Task 4 will result in a model system. The Consultant shall use the data summaries developed in Task 3 to assess the performance of the model system, noting areas that are not performing well for investigation in subsequent rounds of calibration and validation. Consultant shall include sensitivity tests in the validation effort.

***For the cost proposal, please include the full cost of performing this task.***

Deliverables: 5.1 Technical memorandum identifying validation problem areas

5.2 Data summaries of initial validation results, including sensitivity tests

5.3 Slide deck of initial validation results, including sensitivity tests

### Task 6: Second Calibration Pass

In the second round of calibration, the Consultant shall expend effort addressing the problems identified in the initial calibration. In addition, the Consultant shall refine all of the adjusted constants to achieve better outcomes – i.e., reasonably match observed data in a behaviorally consistent and logical manner.

***For the cost proposal, please include the full cost of performing this task.***

- Deliverables:
- 6.1 Technical memorandum discussing approach to initial calibration problems
  - 6.2 Technical memorandum identifying remaining calibration problem areas
  - 6.3 Data summaries of second round calibration results
  - 6.4 Slide deck of second round calibration results

Task 7: Second Validation Pass

In the second round of validation, the Consultant shall assess the performance of the model system, as calibrated a second time. Consultant shall note areas in which the model is not performing well for investigation in subsequent rounds of calibration and validation.

***For the cost proposal, please include the full cost of performing this task.***

- Deliverables:
- 7.1 Technical memorandum identifying remaining validation problem areas
  - 7.2 Data summaries of validation results, including sensitivity tests
  - 7.3 Slide deck of validation results, including sensitivity tests

Task 8: Third Calibration Pass

In the third round of calibration, the Consultant shall expend effort addressing the problems identified in the second round calibration. In addition, the Consultant shall refine all of the adjusted constants to achieve better outcomes.

***For the cost proposal, please include the full cost of performing this task.***

- Deliverables:
- 8.1 Technical memorandum discussing approach to calibration problems
  - 8.2 Technical memorandum identifying remaining calibration problem areas
  - 8.3 Data summaries of third round calibration results
  - 8.4 Slide deck of third round calibration results

Task 9: Third Validation Pass

In the third round of validation, the Consultant shall assess the performance of the model system, as calibrated a third time. Consultant shall note areas in which the model is not performing well for investigation in subsequent rounds of calibration and validation. Consultant shall fully document – in a report – the calibration process, adjusted constants (and parameters and/or coefficients, as necessary), and validation results.

***For the cost proposal, please include the full cost of performing this task.***

- Deliverables:
- 9.1 Technical memorandum identifying remaining validation problem areas
  - 9.2 Data summaries of validation results, including sensitivity tests
  - 9.3 Slide deck of validation results, including sensitivity tests
  - 9.4 Technical report on calibration, validation and sensitivity tests

#### Task 10: Additional Rounds of Calibration and Validation

Consultant shall perform and document additional rounds of calibration and validation as necessary.

***For the cost proposal, please include the fully-loaded rates of key personnel who will be assigned to this task, but do not include a task-specific line-item cost.***

#### Task 11: On-line Model User's Guide

Consultant shall develop an on-line model User's Guide within the ABAG/MTC Wiki<sup>4</sup>. The User's Guide should follow the spirit of the current User's Guide and adequately document all aspects of the model's operation, input, and output.

***For the cost proposal, please include the full cost of performing this task.***

Deliverables: 11.1 On-line Model User's Guide

#### Task 12: Design the Travel Model Three Representation of Demand

Using information gleaned from the calibration and validation effort, Consultant shall design the *Travel Model Three* representation of demand. *Travel Model Three* should include improvements that: (a) address a weakness in the *Travel Model Two* system revealed in the calibration and validation work; (b) improve the representation of behavior in the *Travel Model Two* system in a manner that has been successful at another MPO or other planning agency; (c) respond to changes in model parameters based on MTC policy revisions affecting near term planning work; and/or, (d) otherwise improve the modeling system. The "design" should, at a minimum, (i) identify models to be estimated with Bay Area data; (ii) identify models that should be replaced and/or re-specified; (iii) identify sources of data to calibrate proposed models for which observed data is not readily available; (iv) propose a range of solutions for problems that could be addressed with various levels-of-effort; (v) discuss implications for the application software and computing requirements for any proposed changes; and, (vi) provide any other information necessary for the successful implementation of the model system design.

***For the cost proposal, please include the full cost of performing this task.***

Deliverables: 12.1 Technical memorandum on *Travel Model Three* design

#### Task 13: Implement Travel Model Three Representation of Demand

Consultant shall, using the information developed in Task 12, implement the improved representation of demand, building from the *Travel Model Two* system. This work may include: estimating and/or asserting models; collecting and analyzing calibration data; modifying application software; updating and developing new input data; and/or any other modifications to the model system needed to prepare for calibration and validation.

***For the cost proposal, please include the fully-loaded rates of key personnel who will be assigned to this task, but do not include a task-specific line-item cost.***

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<sup>4</sup> Existing User's Guide is available here: <http://analytics.mtc.ca.gov/foswiki/Main/UsersGuide>

Task 14: Calibrate and Validate *Travel Model Three*

Consultant shall calibrate and validate – including sensitivity tests – the *Travel Model Three* model system.

***For the cost proposal, please include the fully-loaded rates of key personnel who will be assigned to this task, but do not include a task-specific line-item cost.***

Task 15: Document *Travel Model Three* System

Consultant shall thoroughly document the *Travel Model Three* system, including a detailed Technical Report on the calibration, validation, and sensitivity testing of the model and an On-line User's Guide.

***For the cost proposal, please include the fully-loaded rates of key personnel who will be assigned to this task, but do not include a task-specific line-item cost.***

Task 16: General Model Development Activities

Consultant shall provide other model development-related activities as needed.

***For the cost proposal, please include the fully-loaded rates of key personnel who will be assigned to this task, but do not include a task-specific line-item cost.***



B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AUDIT	C. DO YOUR CONTRACTS PROVIDE NEGOTIATED OVERHEAD RATES? ( ) NO ( ) YES (IF YES, NAME AGENCY NEGOTIATING RATES)
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D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	TOTAL INDIRECT EXPENSE POOL	BASE FOR TOTAL

16. EXHIBIT A - SUBCONTRACT COSTS (If more space needed, use blank sheets, identify item number)

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT	
		TYPE	AMOUNT
TOTAL			

17. EXHIBIT B - OTHER DIRECT COSTS (If more space needed, use blank sheets, identify item number)

TOTAL	

**CERTIFICATE**

The labor rates and the overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he \_\_\_has, \_\_\_has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he \_\_\_has, \_\_\_has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

*For interpretation of the representation including the term "bona fide employee," see Code of Federal Regulations, Title 44, Part 150.*

NO. OF CONTRACTOR EMPLOYEES: [ ] 500 AND UNDER      [ ] OVER 500 [ ] OVER 750              [ ] OVER 1,000	STATE INCORPORATED IN:
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DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF CONTRACTOR
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**APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT**

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

MTC’s commissioners include:

Amy Rein Worth	Dave Cortese	Alicia C. Aguirre
Tom Azumbrado	Tom Bates	David Campos
Bill Dodd	Dorene M. Giacomini	Federal D. Glover
Scott Haggerty	Anne W. Halsted	Steve Kinsey
Sam Liccardo	Mark Luce	Jake Mackenzie
Joe Pirzynski	Jean Quan	Bijan Sartipi
James P. Spering	Adrienne J. Tissier	Scott Weiner

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any MTC commissioner in the 12 months preceding the date of the issuance of this request for qualifications?

YES  NO

If yes, please identify the commissioner: \_\_\_\_\_

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any MTC commissioners in the three months following the award of the contract?

YES  NO

If yes, please identify the commissioner: \_\_\_\_\_

Answering yes to either of the two questions above does not preclude MTC from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
(SIGNATURE OF AUTHORIZED OFFICIAL)

\_\_\_\_\_  
(TYPE OR WRITE APPROPRIATE NAME, TITLE)

\_\_\_\_\_  
(TYPE OR WRITE NAME OF COMPANY)

**APPENDIX D, MTC STANDARD CONSULTANT CONTRACT**

PROFESSIONAL SERVICES AGREEMENT

between

METROPOLITAN TRANSPORTATION COMMISSION

and

NAME OF CONSULTANT

for

TRAVEL MODEL DEMAND DEVELOPMENT

FISCAL YEARS 2013-2014 to 2015-2016

**PROFESSIONAL SERVICES AGREEMENT**  
Between METROPOLITAN TRANSPORTATION COMMISSION  
And **INSERT NAME OF CONSULTANT**  
For TRAVEL MODEL DEMAND DEVELOPMENT

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

**RECITALS**

WHEREAS, MTC intends to prepare a travel model system for planning work (herein called "the Project"); and

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

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

NOW, THEREFORE, the parties hereto agree as follows:

**1. SCOPE OF SERVICES**

A general description of the tasks to be required of CONSULTANT is included in this Agreement as Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. All required services shall be authorized by Task Order. All services described in a duly executed Task Order are hereby incorporated into the Agreement upon their execution. All Task Orders shall be developed according to the process established in Attachment A-1, Task Order Process, attached hereto and incorporated herein, and should include, at a minimum, a completed form as shown in Attachment A-2, Task Order Form.

In the performance of its services, CONSULTANT represents that it has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services, and CONSULTANT represents that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing. CONSULTANT agrees to perform or secure the performance of all specified services in their entirety with respect to fully executed Task Orders within the Maximum Payment

specified in Article 3. David Ory (herein called "MTC Project Manager") is responsible for communication with CONSULTANT and the administration of this Agreement. MTC'S Executive Director or designated representative may substitute a new MTC Project Manager by written notice to CONSULTANT.

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

### 1.1 PROGRESS REPORTS

CONSULTANT shall provide MTC with progress reports according to the schedule and form approved by the MTC Project Manager.

### 2. PERIOD OF PERFORMANCE

CONSULTANT's services hereunder shall commence on or after December 1, 2013, and shall be completed no later than \_\_\_\_\_, 201\_\_, unless extended by duly executed amendment or earlier terminated, as hereinafter provided. CONSULTANT's services shall be performed in accordance with the schedule included in each signed Task Order.

### 3. COMPENSATION AND METHOD OF PAYMENT

Subject to duly executed amendments, MTC will pay CONSULTANT for its services as described in duly executed Task Orders a total amount including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subcontractors costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee not to exceed three hundred thousand dollars (\$300,000) ("Maximum Payment"). MTC shall make payments to CONSULTANT in accordance with the provisions described in Attachment C, Compensation and Method of Payment, attached hereto and incorporated herein by this reference.

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

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

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

#### 4. KEY PERSONNEL

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

#### 5. AMENDMENTS

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

#### 6. TERMINATION

A. Termination for Convenience. MTC may terminate this Agreement for convenience, in whole or in part, at any time by written notice to CONSULTANT. Upon receipt of notice of termination, CONSULTANT shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to MTC. For terminated deliverables-based Task Orders, CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed \_\_\_%, plus reasonable termination costs, not to exceed the amount payable for such deliverables. For terminated time-and-materials Task Orders, CONSULTANT shall be paid for hours worked, plus authorized expenses and reasonable termination costs, not to exceed the maximum amount payable under the terminated Task Order. If CONSULTANT has any property in its possession belonging to MTC, CONSULTANT will account for the same, and dispose of it in the manner MTC directs. Except as provided above, MTC shall not in any manner be liable for CONSULTANT's actual or projected lost profits had CONSULTANT completed the services required by this Agreement.

B. Termination for Default. If CONSULTANT does not deliver the work products specified in this Agreement in accordance with the delivery schedule or fails to perform in the

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

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

## 7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

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

## 8. INDEPENDENT CONTRACTOR

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

## 9. INDEMNIFICATION

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

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

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

## 10. DATA TO BE FURNISHED BY MTC

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

Scope of Work of the Project, is conferred or implied by CONSULTANT's use or possession of such MTC Data. Any updates, revisions, additions or enhancements to such MTC Data made by CONSULTANT in the context of the Project shall be the property of MTC and subject to the provisions of Article 11.

#### 10.1 PERSONALLY IDENTIFIABLE INFORMATION

CONSULTANT agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment G, Special Conditions Regarding Personally Identifiable Information, attached hereto and incorporated herein by this reference.

#### 11. OWNERSHIP OF WORK PRODUCTS

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

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

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

## 12. SUBCONTRACTS

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

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

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

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

## 13. ASSIGNMENT OF AGREEMENT

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

## 14. RECORDS

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

## 15. AUDITS

CONSULTANT shall permit MTC, and its authorized representatives to have access to CONSULTANT's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and



CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree or have the potential of conflicting with the performance of services required under the Agreement or the impartial rendering of assistance or advice to MTC. CONSULTANT further covenants that in the performance of the Agreement no person having any such interest shall be employed.

No member, officer, employee or agent of MTC, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, CONSULTANT further covenants that it has made a complete disclosure to MTC of all facts of which it is aware upon due inquiry bearing upon any possible interest, direct or indirect, which it believes any member, officer, agent or employee of MTC (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by MTC.

#### 18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

CONSULTANT shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

CONSULTANT shall not engage the services of any subconsultant or independent contractor on any work related to this Agreement if the subconsultant or independent contractor, or any employee of the subconsultant or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONSULTANT shall immediately provide MTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, MTC becomes aware of an organizational conflict of interest in connection with CONSULTANT's performance

of the work hereunder, MTC shall similarly notify CONSULTANT. In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by MTC, MTC will consider the conflict presented and any alternatives proposed and meet with CONSULTANT to determine an appropriate course of action. MTC's determination as to the manner in which to address the conflict shall be final.

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

## 19. LAWS AND REGULATIONS

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

## 20. CLAIMS OR DISPUTES

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

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

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

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

If an agreement can be reached which resolves CONSULTANT's claim, the

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

## 21. REMEDIES FOR BREACH

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

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

## 22. TEMPORARY SUSPENSION OF WORK

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

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

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

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

## 23. WARRANTY OF SERVICES

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

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

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

## 24. DISPUTE RESOLUTION

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

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

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

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

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

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

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

## 25. CHOICE OF LAW

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

## 26. ATTORNEYS' FEES

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

## 27. PARTIAL INVALIDITY

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

28. BENEFIT OF AGREEMENT

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

29. NO THIRD PARTY BENEFICIARIES

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

30. ENTIRE AGREEMENT; MODIFICATION

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

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

METROPOLITAN TRANSPORTATION  
COMMISSION

NAME OF CONSULTANT

---

Steve Heminger, Executive Director

---

Insert Appropriate Name, Title

**ATTACHMENT A**  
**Scope Of Work**  
Outline of Services

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

**IF THERE IS A TASK ORDER TASK, INCLUDE THE FOLLOWING:**

MTC may request additional services on an as-needed basis. All such services shall be authorized by Task Order, initiated and developed according to the Detailed Task Order Process described below. Task Orders shall include, at a minimum, a detailed description of the work to be performed, a completion date for performance, a maximum payment amount, payment terms (deliverables-based or time and materials) and subconsultant participation (if any), in a completed form as shown in Attachment A-2, Task Order Form, attached hereto and incorporated herein by this reference.

## **ATTACHMENT A-1, TASK ORDER PROCESS**

Detailed Task Order Process:

Task Orders will be numbered sequentially. The period of performance shall be as set forth in the individual Task Order. The process for developing, signing and tracking task orders is summarized as follows:

Step 1 – The MTC Project Manager (“MTC PM”) prepares a draft Task Order to issue to CONSULTANT. The MTC PM may solicit feedback from CONSULTANT to facilitate drafting the Task Order.

Step 2\* – CONSULTANT prepares a proposal in response to the draft Task Order. A draft Task Order, as included in this Agreement as Attachment A-2, Task Order Form, attached hereto and incorporated herein by this reference, shall be provided to CONSULTANT for review and comment.

Step 3\* – The MTC PM reviews CONSULTANT’s proposal to determine if it meets the objectives of the draft Task Order and if CONSULTANT’s proposed costs are reasonable. The MTC PM may solicit early feedback from the MTC **INSERT TITLE OF SECTION DIRECTOR** at this time, if necessary. Any changes to the draft Task Order deemed appropriate by MTC shall be incorporated in a draft Final Task Order.

Step 4\* – The MTC PM forwards the draft Final Task Order to the MTC Contract Administrator for review and approval. Once approved, the MTC PM forwards two copies of the Task Order to the MTC **INSERT TITLE OF SECTION DIRECTOR**, for review and approval. The MTC **INSERT TITLE OF SECTION DIRECTOR** signs both copies of a Final Task Order to signify approval and returns them to the MTC PM.

Step 5 – The MTC PM sends both copies of the signed Final Task Order to CONSULTANT, who signs both copies and returns one to the MTC PM.

Step 6 – The MTC PM sends one copy of the fully executed Task Order to the MTC or MTC Task Lead who initiates work, and sends another copy to MTC Finance to encumber funds against the Task Order. The MTC PM keeps the original fully-executed Task Order for the official project record.

Step 7 – Any services added to the Agreement by a Task Order shall be subject to all applicable conditions of the Agreement. Revisions to Task Orders shall require written approval by both the MTC **INSERT TITLE OF SECTION DIRECTOR** and CONSULTANT. Revisions to Task Orders shall require written approval by both the MTC **INSERT TITLE OF SECTION DIRECTOR** and CONSULTANT.

Step 8 – The MTC PM is responsible for overseeing the successful conclusion of the Task Order, and will manage the progress of the work, track invoices against the Task Order budget, and track milestone completion against the Task Order schedule.

Step 9 – Once the MTC PM determines the Task Order is complete, the MTC PM will send written notification to CONSULTANT that the Task Order is complete and that all associated invoices are due to MTC within 30 days. Any balance of budget is made available to spend on future task orders at the MTC PM's discretion.

Step 10 – The MTC PM will annually assess the need for a Contract audit.

*\*The MTC Project Manager may revise the Task Order and/or CONSULTANT may be asked to revise the proposal based on feedback received during Steps 2 through 4.*

**ATTACHMENT A-2**  
**Task Order Form**

1. Task Order No. (include FY)	
2. Title of Task:	
3. MTC Task Lead (if different from MTC Project Manager):	
4. Description of work:	<i>Summarize key task expectations. For more information, see attached <u>Task Order Budget and Schedule and Detailed Description of Work (attached)</u>.</i>
5. Original Maximum Payment:	
6. Amended Maximum Payment:	<i>Include each amendment to maximum payment, by amendment number, for particular fiscal year.</i>
7. Completion Date:	Date Schedule attached.
8. Payment terms:	<i>Check the one that applies (see below for more information):</i> <input type="checkbox"/> Time and Materials <input type="checkbox"/> Deliverables

9. Payment Terms [*complete A for Task Orders including one or more deliverables-based payments or B for Time and Materials Task Orders.*]

**A. Deliverables-based.**

	<u>Deliverable</u>	<i>Total Cost*</i>
1.		\$1
2.		\$1
3.		\$1
4.		\$1
5.		\$1
6.		\$1
7.		\$1
	<b>Total:</b>	\$7.00

**\*Due upon satisfactory completion as determined by the MTC Project Manager.**

**B. Time and Materials**

*Specify hourly rate for applicable personnel and include estimate of expenses.*

	<u>Personnel/Expense</u>	<u>Duties</u>	<u>Rate</u>	<u>Est. Hours</u>	<u>Total Cost</u>
1.			\$		\$1
2.			\$		\$1
3.			\$		\$1
4.			\$		\$1
5.			\$		\$1
<b>Total:</b>					<b>\$5.00</b>

<u>Activity</u>	<u>Lead</u>	<u>Estimated Amount Budgeted</u>
		\$1
		\$1
		\$1
		\$1
		\$1
		\$1
TOTAL MAXIMUM PAYMENT		\$6.00

METROPOLITAN TRANSPORTATION  
COMMISSION

CONSULTANT

\_\_\_\_\_  
Insert name and title of section director  
Date:

\_\_\_\_\_  
Insert name and title of authorized individual  
Date:

Task Order Schedule

<u>Deliverable/Milestone</u>		<u>Due Date</u>
		Date

Detailed Description of Work

**Task Order #: Title**

1. Description of subtask 1.  
***Deliverable – deliverable name***
2. Description of subtask 2.  
***Deliverable – deliverable name***
3. Description of subtask 3.  
***Deliverable – deliverable name***
4. Etc.

**ATTACHMENT B**  
**Project Schedule**

CONSULTANT's services shall be performed in accordance with the schedule included in each duly executed Task Order.

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

**TASK ORDERS**

A. Compensation. CONSULTANT shall be compensated for its work as specified in signed Task Orders. All Task Orders shall be developed according to the process established in Attachment A-1, Task Order Process, attached hereto and incorporated herein, and should include, at a minimum, a completed form as shown in Attachment A-2, Task Order Form. Payment terms may be based on acceptance of agreed-upon deliverables or upon time and materials reimbursement, depending on the requirements of each Task Order. For time and materials-based payment of Task Orders, labor rates in Attachment D, Key Personnel Assignments, shall apply. The hourly rates in Attachment D include all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, equipment, materials and supplies. Said hourly rates shall remain in effect for the term of the Agreement, unless MTC prior written authorization is obtained for any changes. In no event shall the total compensation to be paid CONSULTANT under the Agreement exceed the Maximum Payment specified in Article 3 of the Agreement.

B. Expenses. For time and materials Task Orders, MTC will reimburse CONSULTANT for all expenses deemed reasonable and necessary by MTC incurred by CONSULTANT in the performance of this Agreement. Such reimbursement shall include travel and personal expenses incurred by employees or agents of all CONSULTANTS in accordance with 48 Code of Federal Regulations Part 31 or Office of Management and Budget Circular A-122, as applicable.

C. Method of Payment. CONSULTANT shall submit invoices for services rendered no more frequently than on a monthly basis. Invoices shall identify work for which payment is requested by Task Order number (including fiscal year). All invoices will be dated, numbered in serial order, and signed by CONSULTANT. If applicable, CONSULTANT's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment G.

For Task Orders authorizing payment on the basis of satisfactory deliverables, CONSULTANT shall specify each deliverable for which payment is requested, the amount requested, and the total amount paid to date under the Task Order.

For Task Orders authorizing time and materials payment, CONSULTANT shall specifying the work performed, hours worked, and amount due (by personnel), authorized expenses (with receipts for such expenses), the total amount claimed under the invoice and the amount paid to date under the Task Order.

**ATTACHMENT D**  
**Key Personnel Assignments**

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

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

1. INSURANCE

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

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

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

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONSULTANT's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONSULTANT is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal

& Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC.

MTC and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Umbrella Insurance in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.

The policy shall provide coverage for all work performed by CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.

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

CONSULTANT's Business Automobile Liability coverage shall also be extended to cover pollution liability during loading; unloading and while in transit including, but not limited to, the perils of collision and upset. Coverage may be provided by endorsement to the general liability and automobile policies or by a separate policy.

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

MTC (and those entities listed in Attachment \_\_\_\_), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.

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

C. Self-Insurance. CONSULTANT's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

D. Deductibles and Retentions. CONSULTANT shall be responsible for payment of any deductible or retention on CONSULTANT's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that MTC seeks coverage as an additional insured under any CONSULTANT insurance policy that contains a deductible or self-insured retention, CONSULTANT shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of CONSULTANT, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONSULTANT or subconsultant is not a named defendant in the lawsuit.

E. Claims Made Coverage. . If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, CONSULTANT shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, CONSULTANT shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of CONSULTANT's personnel, subcontractors, and equipment have been removed from MTC's property, and the

work or services have been formally accepted. CONSULTANT must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, CONSULTANT shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

H. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant hereto, including, but not limited to, liability assumed pursuant to Article 9 of this Agreement.

## 2. FINANCIAL SECURITY (BONDS)

NONE

## 3. ADDITIONAL INSUREDS

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

NONE

**ATTACHMENT F**  
**Subconsultant List**

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

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

## **ATTACHMENT G**

### **Special Conditions Relating to Personally Identifiable Information**

**Where access to personally identifiable information (“PII”) is required in the performance of a contract or access to PII is not required but physical access to facilities or computer systems is required and such access presents the potential for incidental access and/or inadvertent disclosure of PII, language substantially in conformance with the following clauses shall be inserted in the contract terms and conditions.**

CONSULTANT 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 CONSULTANT that identifies or describes a person or can be directly linked to a specific individual, including that individual’s account. Examples of PII include **[insert a few types of PII, tailored to the contract]** name, address, phone or fax number, signature, date of birth, or credit card information, bank account number, or travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

#### 1. Right to Audit

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

#### 2. General Confidentiality of Data

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

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

Notwithstanding anything to the contrary in Article 14. Records, of this Agreement, CONSULTANT agrees to retain PII for no longer than **[Project Manager should insert time-frame which should be no longer than necessary for Consultant to carry out its contractual responsibilities under the Agreement. Time-frame shall be no longer than the completion date of the Agreement.]**. At the conclusion of this retention period, CONSULTANT 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. CONSULTANT agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. At the conclusion of the performance period of this Agreement, CONSULTANT shall submit a certification to the MTC Project Manager as follows: “All PII whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in Section 2. General Confidentiality of Data of the Attachment G Special Conditions Relating to Personally Identifiable Information.”

### 3. Compliance with Statutes and Regulations

CONSULTANT agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 *et.seq.*) **[FOR FASTRAK® PROGRAM PII ADD THE FOLLOWING:** and in the California Streets and Highways Code Section 31490]. In addition, CONSULTANT warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and MTC relating to the handling and confidentiality of PII and agrees to indemnify MTC against any loss, cost, damage or liability by reason of CONSULTANT’s violation of this provision.

### 4. Subconsultants

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

### 5. Consultant Guarantees

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

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

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

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

6. Notice of Security Breach

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

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

**ATTACHMENT H**  
**Federally Required Clauses**

**NOT USED**

**ATTACHMENT I**  
**State Required Clauses**

**NOT USED**

**APPENDIX D-1, INSURANCE REQUIREMENTS**

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

Yes (√)	<b>Please certify by checking the box below that required coverages will be provided within ten (10) days of MTC’s notice to firm that it wishes to contract with the firm.</b>
—	<u>Workers' Compensation Insurance</u> with Statutory limits, and Employer’s Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONSULTANT’s employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONSULTANT is a sole proprietor or a corporation with stock 100% owned by officers with no employees.
—	<u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT’s officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC.  MTC, and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT’s operations.
—	<u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT’s officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.
—	<u>Umbrella Insurance</u> in the amount of \$1,000,000 providing excess limits over Employer’s Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
—	<u>Errors and Omissions Professional Liability Insurance</u> for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim.  The policy shall provide coverage for all work performed by CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between

	<p>CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Errors &amp; Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.</p>
<p>—</p>	<p><u>Property Insurance.</u> Property Insurance covering CONSULTANT'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.</p>
<p>MTC and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Consultant's operations.</p> <p>All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A-VIII or better.</p> <p>Consultant's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.</p> <p>Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.</p> <p>In the event that MTC seeks coverage as an additional insured under any Consultant insurance policy that contains a deductible or self-insured retention, Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Consultant, subconsultant, subcontractor, or any of their employees, officers or directors, even if Consultant or subconsultant is not a named defendant in the lawsuit.</p> <p>If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Consultant shall:</p> <ol style="list-style-type: none"> <li>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;</li> <li>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</li> <li>3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.</li> </ol> <p>All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Consultant's personnel, subcontractors, and equipment have been removed from MTC's property, and the work or services have been formally accepted.</p>	

Consultant must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

Prior to commencement of any work hereunder, Consultant shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant hereto, including, but not limited to, liability assumed pursuant to the Indemnification section of this Agreement.

**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 closing date/time for receipt of requests for modifications/exceptions. If such modifications/exceptions are not brought to MTC's attention consistent with the provisions of this RFP, compliance with the insurance requirements will be assumed.**