REQUEST FOR PROPOSALS
for
Legal Services

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March 28, 2013

Dear Prospective Proposer:

Subject: REQUEST FOR PROPOSALS FOR LEGAL SERVICES (13-10)

Monterey-Salinas Transit District (MST) is interested in receiving proposals from qualified attorneys and law firms under a negotiated procurement for legal services. MST is a California public agency established by California Public Utilities Code, section 120000 et seq. MST and its subsidiaries are subject to the California Tort Claims Act (Cal. Pub. Util. Code § 120202).

The intent of this Request for Proposals (RFP) is to establish a list of qualified attorneys and law firms to advise, assist, and represent the District in the areas of law as described in the attached Scope of Work (Section B). This list of qualified attorneys and law firms shall remain effective for up to a three-year period. Although the District has historically needed legal assistance in the categories described in the Scope of Work, please be advised that the District does not guarantee work to any qualified attorneys for any category. Conversely, the District may hire specific attorneys for specified durations for work that is outside of the scope of this RFP.

This letter, together with its attachments, comprises the RFP for legal services. This proposal package includes the following:

- **Proposal Instructions and Conditions (Section A).** This attachment offers general instructions on the proposal and evaluation process and describes the requirements that the Proposer must meet.

- **Scope of Work (Section B).** The attorney or law firm will be expected to perform the legal services described in the Scope of Work.

- **Standard Services Agreement and attached Federal Requirements (Section C).** The successful Proposer will be required to execute the Agreement and to comply with the insurance provisions contained therein. Any proposed waiver or changes to the Agreement must be clearly identified in the proposal with any cost impacts specifically identified. It is within MST’s discretion to accept or reject any proposed waiver or change to the Agreement. Any requested waivers or changes regarding subcontractors’ insurance should identify the subcontractor’s scope of work, current insurance levels, and associated costs of proposed insurance amounts.
CALENDAR OF EVENTS

The schedule of events leading from issuance of the RFP to award of a contract is as follows:

<table>
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<tr>
<td>March 28, 2013</td>
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<td>May 24, 2013</td>
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<tr>
<td>Week of June 3rd, 2013</td>
<td>Proposal Interviews and Negotiations with short-listed firms, if necessary</td>
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<tr>
<td>Week of June 10th, 2013</td>
<td>Notice of Intent to Award</td>
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<td></td>
<td>MST will announce the list of Qualified Attorneys and Law Firms</td>
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We believe this timetable is reasonable and do not expect nor desire a lengthy glossy proposal. The proposal should be brief and to the point.

MST POINT OF CONTACT

Sandra Amorim-Ruiz, Purchasing Manager, is the sole point of contact for this solicitation; Ms. Amorim-Ruiz can be reached via telephone at (831) 393-8127 or via E-mail at samorim@mst.org. Proposers are directed not to contact other representatives of MST, including the General Counsel or Director of Human Resources/Risk Management, or Board members in connection with this RFP. Noncompliance with this requirement may result in your firm's proposal being considered nonresponsive.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION (NOTE – THIS PROVISION WILL ONLY APPLY TO THOSE CONTRACTS AWARDED AND PAID FOR WITH FEDERAL FUNDS)

This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR 26), entitled “Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs.” In order to ensure MST achieves its federally mandated statewide overall DBE goal, MST encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed, in whole or in part, with federal funds. Proposer is also encouraged to use services offered by financial institutions owned and controlled by DBEs. The Proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

As required by federal law, MST has established an overall DBE goal that MST must participate in as a condition of receipt of funding. In order to ascertain whether the statewide overall DBE goal is being achieved, MST is tracking DBE participation on all federal-aid contracts. To assist Proposers in ascertaining DBE availability for specific items of work, MST advises that it has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project, and the likely DBE availability advisory percentage is zero (0) percent. MST also advises that participation of DBEs in the specified percentage is not a condition of execution of this Agreement.
Proposer shall be fully informed in respect to the requirements of the DBE regulations. The DBE regulations in their entirety are incorporated herein by this reference. Proposer’s attention is directed to the following matters:

A. A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.

B. A DBE may participate as a prime Proposer, subcontractor, joint-venture partner with a prime or subcontractor, vendor of materials or supplies, or as a trucking company.

C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.

D. A DBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.

E. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:


F. When reporting DBE participation, the Proposer may count the cost of materials or supplies purchased from DBEs as follows:

1. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns,
operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers’ own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers’ representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.

3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

4. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

ENCOURAGEMENT OF USE OF QUALIFIED LOCAL BUSINESS ENTERPRISES

As an expression of policy for procurements not subject to the provisions of Federal Transit Administration Circular 422.1E and any successors thereof entitled “Third-Party Contracting Requirements,” MST strongly encourages the use of qualified business enterprises with offices located in Monterey County. Such a policy shall not exempt application of the requirements of the Board’s Equal Employment Opportunity Plan or the Board’s DBE Program. A local business enterprise will be generally defined as having: an office within Monterey County, a current paid business tax certificate or business license listing an address within Monterey County, and at least one full-time employee at this address for at least six months prior to the date of solicitation services. With regard to all procurements, federal and nonfederal, the General Manager/CEO shall ensure that local business enterprises are given an opportunity to compete. Steps shall be taken to notify all potentially interested local firms.

TERMS AND CONDITIONS

The proposed contract terms and conditions are identified in the Standard Services Agreement and Federal Requirements in Section C.
PROPOSAL EVALUATION PROCESS

Any contract resulting from this RFP will be awarded to the qualified list of attorneys and law firms whose proposal, as determined by MST, best meets the requirements set forth in the Proposal Instructions to Proposers (Section A) and the Scope of Work (Section B). MST uses a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include experience and qualifications, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to MST.

An evaluation committee will review all proposals received using the criteria described in Section A.3.1. MST may elect to interview qualified Proposers. MST reserves the right to reject all proposals, to select without further discussion or interviews, to request additional information, and to negotiate the final terms and conditions.

MST may, at its sole and absolute discretion, reject any or all parts of the proposals; re-advertise this RFP; postpone or cancel, at any time, this RFP process; or waive any irregularities in this RFP. The decision as to who shall receive a contract award, or whether or not an award shall ever be made as a result of this RFP, shall be at the sole and absolute discretion of MST.

PROPOSAL ACCEPTANCE PERIOD

One original and two (2) copies of the completed proposal should be submitted to MST no later than 5:00 p.m. prevailing local time on May 24, 2013. No exceptions will be made to this deadline. All proposals shall be delivered to MST at One Ryan Ranch Road, Monterey, California 92101, Attention: Sandra Amorim-Ruiz. Clearly specify on the proposal “(RFP) 13-10, MST Legal Services.” Proposals will not be accepted via facsimile.

Sincerely,

Kelly Halcon
Director of Human Resources/Risk Management

Attachments:  A. Proposal Instructions to Proposers  
B. Scope of Work  
C. Standard Services Agreement, Federal Requirements, Forms, State Requirements  
D. Legal Services Addenda Acknowledgement Form
SECTION A

A.1 PROPOSAL INSTRUCTIONS TO PROPOSERS
A.2 PROPOSAL CONTENT, REQUIREMENTS, AND FORMAT
A.3 EVALUATION AND AWARD
A.1 PROPOSAL - INSTRUCTIONS TO PROPOSERS

A. Preproposal Conference

There will be no preproposal conference in association with this Request for Proposals (RFP).

B. Interviews

If MST feels that interviews are necessary, they will be planned for the Week of June 3rd, 2013. Those firms that are short-listed or within a competitive range will be notified in writing of the time designated for interviews.

C. Examination of Proposal Documents

By submitting a proposal, Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP and that it is capable of performing quality work to achieve MST’s objectives.

D. Addenda

Any MST changes to the requirements will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. MST will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions.

E. Clarifications

1. Examination of Documents

   Should a Proposer require clarifications of this RFP, the Proposer shall notify MST in writing in accordance with Section E.2 below. Should it be found that the point in question is not clearly and fully set forth, MST will issue a written addendum clarifying the matter, which will be sent to all firms participating in this RFP and that are listed in MST’s bidders list.

2. Submitting Requests

   a. All questions, including questions that could not be specifically answered at the preproposal conference, clarifications, or comments must be put into writing and must be received by MST no later than 5:00 p.m. on April 26, 2013.

   b. Requests for clarifications, questions, and comments must be clearly labeled, "Written Questions." MST is not responsible for failure to respond to a request that has not been labeled as such.
c. All requests must provide sufficient information in order to make a decision based upon the initial submittals. MST shall make its determination based upon this information. Inadequate information will cause your request be denied.

d. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:

(1) **U.S. Mail**: Monterey-Salinas Transit District, One Ryan Ranch Road, Monterey, CA 93940.
(2) **Personal Courier**: Monterey-Salinas Transit District, One Ryan Ranch Road, Monterey, CA 93940
(3) **Facsimile**: MST’s fax number is (831) 899-3954.
(4) **E-mail**: samorim@mst.org

3. **MST Responses**

Responses from MST will be provided in writing to all Proposers and “interested parties.” All written questions that contain proprietary or confidential information must be clearly designated. To the extent possible, MST will not divulge such information to Proposers or “interested parties.”

F. **Submission of Proposals**

1. **Date and Time**

Proposals must be submitted at or before 5:00 p.m. on May 24, 2013. Proposals received after the above-specified date and time will be returned to the Proposer unopened.

2. **Address**

Proposals delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

Monterey-Salinas Transit District  
Attention: Sandra Amorim-Ruiz, Purchasing Manager  
One Ryan Ranch Road  
Monterey, CA 93940

Or proposals delivered using the U.S. Postal Services shall be addressed as follows:

Monterey-Salinas Transit District  
Attention: Sandra Amorim-Ruiz, Purchasing Manager  
One Ryan Ranch Road  
Monterey, CA 93940
3. **Identification of Proposals**

Proposers shall submit one (1) original and two (2) copies of their proposal in a sealed package, addressed as shown above, bearing the Proposer’s name and address, and clearly marked as follows:

“RFP 13-10: MST Legal Services”

Proposers shall be entirely responsible for any consequences resulting from any inadvertent opening of unsealed or improperly identified packages. It is the Proposer’s sole responsibility to see that its proposal is received as required. Proposals arriving late due to a delay in the delivery process will not be accepted.

4. **Acceptance of Proposals**

   a. MST reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.

   b. MST reserves the right to withdraw this RFP at any time without prior notice, and MST makes no representations that any contract will be awarded to any Proposer responding to this RFP.

   c. MST reserves the right to postpone proposal openings for its own convenience.

   d. MST reserves the right to require confirmation of information furnished by Proposer or for the Proposer to provide additional evidence of qualifications to perform the work or to obtain information from any source that has the potential to improve the understanding and evaluation of the proposals.

   e. Proposals received by MST are considered public information and will be made available upon request after award.

   f. Proposals submitted are not to be copyrighted.

G. **Precontractual Expenses**

Precontractual expenses are defined as expenses incurred by Proposer in:

1. Preparing its proposal in response to this RFP;

2. Submitting that proposal to MST;

3. Negotiating with MST any matter related to this proposal; or

4. Any other expenses incurred by Proposer prior to date of award, if any, of the Agreement.

MST shall not, in any event, be liable for any precontractual expenses incurred by Proposer in the preparation of its proposal. Proposer shall not include any such expenses as part of its proposal.
H. Preaward Audit

Prior to contract award, the selected Proposers may be required to undergo an audit of their proposed costs and prices. MST’s Internal Audit Department or designee will conduct the audit for the purpose of determining whether the Proposers’ prices are fair and reasonable.

I. Joint Offers

Where two Proposers desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. MST intends to contract with a single firm and not with multiple firms doing business as a joint venture.

J. Taxes

Price proposals are subject to state and local sales taxes. However, MST is exempt from the payment of federal excise and transportation taxes.

K. Contract Type

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be structured as a fixed price plus cost for services described and included in this RFP as Section B, Scope of Work. The selected Proposer(s) would be paid a fixed hourly rate plus previously approved costs as identified in their proposal.

L. Proposed Agreement

The successful Proposer will be subject to the provisions contained in Section C, Sample Standard Services Agreement and the General Conditions, and the Federal Requirements (where the individually awarded contract is federally funded) included in this RFP, and this includes any changes that may be made to reflect the terms of the successful Proposer’s proposal. The final Agreement shall also incorporate other pertinent terms and conditions set forth in this RFP.

The Proposer’s attention is directed to Section C.1, titled “Insurance,” which specifies the minimum insurance requirements that must be met by the successful Proposer. The Proposer is required to provide evidence of their ability to acquire the required insurance with their proposal. Should the Proposer be unable to provide evidence of insurance within fourteen (14) days after notification of award by MST, award may be made to an alternative Proposer.

The Proposer’s inability or unwillingness to meet any requirements set forth in Section C, as a condition of contract award, must be stated as an exception in the proposal.

M. Protests

1. Protests Prior to Proposal Due Date

Following the advertisement of this formal RFP, prior to the issue and prior to the due date, a protest may be filed with MST. Protests must be in writing and received by MST within ten (10) calendar days after the first advertisement of the RFP. The General Manager/CEO or his designee will notify all Proposers that a protest has been filed and will issue a written decision on the protest prior to the due date. A protest may be renewed by refiling the protest with MST within fifteen (15) calendar days from the postmark date of the notice of intent to award.
2. **Protests Received After Proposal Due Date**

MST will evaluate all proposals and determine the best-qualified proposers. A notice of intent to award will be mailed to all proposers. Any protest to the notice must be in writing and received by MST within fifteen (15) calendar days from the postmark date of the notice.

3. **Protest Contents**

The protestor must demonstrate or establish a clear violation of a specific law or regulation; e.g., a violation of the prohibition against exclusionary or unduly restrictive specifications. The protest must contain a full and complete written statement of the grounds for protest and all supporting documentation. MST may, but is not obligated to, request additional information concerning the grounds for protest.

4. **Replies to Protests**

MST’s Protest Committee will review all protests as soon as possible. All material submitted by the protestor will be considered. Such material will not be withheld from any interested party outside of MST or any agency, which may be involved with the procurement except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor considers that the protest contains proprietary material, which should be withheld, a statement advising of this fact may be affixed to the front page of the protest document, and alleged proprietary information shall be so identified wherever it appears.

MST’s Protest Committee will reply to all protests in writing with its determination.

5. **Request for Protest Reconsideration**

Upon receipt of MST's decision, the protestor may file a request for protest reconsideration. A request for protest reconsideration must be directed to the General Manager/CEO in writing and received within five (5) full working days from the postmark date of the reply from MST. Protestors shall have an opportunity to appear and be heard before the MST Board prior to the opening of the procurement solicitation in the case of protests based on the content of the procurement solicitation or prior to final award in the case of protests based on other grounds or the renewal of protests based on the content of the procurement solicitation. The decision of the protest by the MST Board shall be in writing and constitutes a final administrative decision for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure.

6. **FTA Review of Protests**

A. **Review of Protests**

1. The FTA will only review protests regarding the alleged failure of the subgrantee to have written protest procedures or alleged failure to follow such procedures.

2. Alleged violations on other grounds are under the jurisdiction of the appropriate state or local administrative or judicial authorities. Alleged
violations of a specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation. See, e.g., Buy America Requirements, 49 CFR Part 661 (Section 661.15); Participation by Minority Business Enterprise in Department of Transportation Programs, 49 CFR Section 23.73.

3. FTA will only review protests submitted by an interested party as defined in paragraph C (below).

B. Remedy

FTA’s remedy for a subgrantee’s failure to have written protest procedures or failure to follow such procedure is limited to requiring the subgrantee to develop such procedures, if necessary, and follow such procedures in reviewing the protest at issue if the subgrantee desires FTA financial participation in the contract in question. In instances where a grantee has awarded to another Proposer prior to FTA’s decision on the protest, FTA may refuse to participate in funding the contract.

C. Definitions

For the purposes of this section, the following definitions apply:

1. “Days” refers to working days of the Federal Government.

2. “File” or “submit” refers to the date of receipt by FTA.

3. “Interested party” means an actual or prospective Proposer whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

4. “Proposal” includes the term “offer” or “proposal” as used in the context of negotiated procurements.

D. Time for Filing

1. Protestors shall file a protest with FTA not later than five (5) days after a final decision is rendered under the subgrantee’s protest procedure. In instances where the protestor alleges that the subgrantee failed to make a final determination on the protest, protestors shall file a protest with FTA not later than five (5) days after the protestor knew or should have known of the subgrantee’s failure to render a final determination on the protest.

2. Subgrantees shall not award a contract for five (5) days following its decision on a Proposal protest except in accordance with the provisions and limitations of subparagraph H. After five (5) days, the subgrantee shall confirm with the FTA that the FTA has not received a protest on the contract in question.
E. Submission of Protest to the FTA

1. Protests should be filed with the appropriate FTA Regional Office with a concurrent copy to the subgrantee.

2. The protest filed with the FTA shall:
   (a) Include the name and address of the protestor.
   (b) Identify the subgrantee, project number, and the number of the contract solicitation.
   (c) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
   (d) Include a copy of the local protest filed with the subgrantee and a copy of the subgrantee's decision, if any.

F. Grantee Response

1. FTA shall notify the subgrantee in a timely manner of the receipt of a protest. FTA shall instruct the subgrantee to notify the Protestor of the protest if award has been made or, if no award has been made, to notify all interested parties. The subgrantee shall notify all who receive such notice that they may communicate further directly with the FTA.

2. The subgrantee shall submit the following information not later than ten (10) days after receipt of notification by FTA of the protest:
   (a) a copy of the subgrantee's protest procedure;
   (b) a description of the process followed concerning the protestor's protest; and
   (c) any supporting documentation.

3. The subgrantee shall provide the protestor with a copy of the above submission.

G. Protestor Comments

The protestor must submit any comments on the subgrantee's submission not later than ten days after the protestor's receipt of the subgrantee's submission.

H. Withholding of Award

When a protest has been timely filed with the subgrantee before award, the subgrantee shall not make an award prior to five (5) days after the resolution of the protest, or if a protest has been filed with the FTA, during the pendency of that protest, unless the subgrantee determines that:
1. The items to be procured are urgently required;

2. Delivery or performance will be unduly delayed by failure to make the award promptly; or

3. Failure to make prompt award will otherwise cause undue harm to the grantee or the Federal Government.

In the event that the subgrantee determines that the award is to be made during the five-day period following the local protest decision or the pendency of a protest, the subgrantee shall notify the FTA prior to making such award. FTA will not review the sufficiency of the subgrantee's determination to award during the pendency of a protest prior to FTA's Proposal protest decision. FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest.

I. FTA Action

Upon receipt of the submissions, FTA will either request further information or a conference among the parties or will render a decision on the protest.

N. Changes

1. Preaward

Prior to award of a contract, the Scope of Work, Technical Specifications, Addenda, Sample Standard Services Agreement, Federal Requirements, forms, and all certification documents of this RFP constitute the potential contract. Any requests to change these must be submitted in writing to MST. All changes to this RFP will be made by written addendum. There will be no oral changes. Oral communications are not binding.

MST’s Procurement Department reserves the right to change or cancel the Proposal opening date for its own convenience.

2. Post-Award

Upon contract award, the RFP in its entirety, all addenda, MST’s response to questions/clarifications, the final proposal determined to be the most advantageous to MST, and the Standard Services Agreement and conditions constitute the contract.

Changes to the contract shall be conducted as follows:

a. Changes by Proposer(s): Proposed changes must be submitted in writing to the Contracting Officer for prior approval. The request must state the reason, any possible changes to the project schedule, and any impacts to the cost of the project.

   The Contracting Officer shall respond in writing to the proposed change. All approved changes shall be confirmed by written addendum or change order. Oral changes are not permitted or binding. The Proposer shall be liable for all costs resulting from and/or for satisfactorily correcting any specification change not properly ordered or approved by written modification to the contract.
Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the contract dispute clause herein.

b. **Changes by MST:** In the event that work, materials, or equipment shall be required that are not specified, indicated, or otherwise provided for herein, the Proposer shall, if ordered in writing by the General Manager/CEO or his designee, perform such work and furnish such materials or equipment at the Contractor’s normal prices, less discounts ordinarily allowed to users of such materials or equipment or at regular labor charges less customary discount, or both.

If any work, materials, or equipment specified, indicated or otherwise provided for in the contract or in the specifications forming a part of the contract, is required to be omitted from, in, or about the work, the Proposer shall, if ordered by the General Manager/CEO or his designee, omit the performance of such work and the furnishing of such materials or equipment. There shall be deducted from the amount to be paid to the Proposer an amount, which the General Manager/CEO or his designee and the Proposer shall determine and mutually agree to be the reasonable value of such work, materials or equipment, and such determination and agreement shall be final and conclusive upon the Proposer.

It is understood, however, that the amount of work, materials, or equipment required by the contract shall not, in accordance with above provisions referring to additions or omissions, be so increased or diminished as to substantially alter the general character or extent of the contract.

### 3. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising from the contract which is not disposed by agreement shall be decided by the General Manager/CEO or his designee, who shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to the Proposer. The decision of the General Manager/CEO or his designee shall be final and conclusive unless within thirty (30) days from the date of receipt of such copy, the Proposer mails or otherwise furnishes to FTA a written appeal. The decision of FTA’s duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessary to imply bad faith, or not supported by substantial evidence in connection with any appeal proceeding under this clause, the Proposer shall be afforded an opportunity to be heard and to offer evidence of its appeal. Pending final decision of a dispute hereunder, the Proposer shall proceed diligently with the performance of the contract and in accordance with the General Manager/CEO or his designee’s decision.

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.
A.2 PROPOSAL CONTENT, REQUIREMENTS, AND FORMAT

A. Presentation

Proposals shall be typed, double-spaced, and submitted on 8 1/2" x 11" paper using a single method of fastening. Proposals should be typed and not include any unnecessarily elaborate or promotional materials. Lengthy narrative is discouraged, and presentations should be brief and concise. Proposals should not exceed one hundred (100) pages in length, excluding any appendices. Appendices should provide information relevant to the proposal and not consist of the Proposer’s general marketing materials.

B. Letter of Transmittal

The Letter of Transmittal shall be addressed to Sandra Amorim-Ruiz, Purchasing Manager, MST Procurement Department, and must, at a minimum, contain the following:

a. Identification of Proposer, including name, address, and telephone number.

b. Proposed working relationship between Proposer and subcontractors, if applicable.

c. Acknowledgment of receipt of all RFP addenda, if any. Please use MST Addenda Acknowledgement Form provided (Section D).

d. Name, title, address, and telephone number of contact person during period of proposal evaluation.

e. A statement to the effect that the proposal shall remain valid for a period of not less than 180 days from the date of submittal.

f. Signature of a person authorized to bind Proposer to the terms of the proposal.

C. Technical Proposal

a. Qualifications, Related Experience, and References of Proposer. This section of the proposal should establish the ability of the attorney or law firm to satisfactorily perform the legal services by reasons of:

   • experience in performing work of a similar nature;
   • demonstrated competence in the services to be provided;
   • strength and stability of the firm;
   • staffing capability;
   • workload;
   • record of meeting performance standards on similar legal services agreements; and
   • supportive client references.
Particular attention should be given to Section B, Scope of Work, to ensure the Proposer’s ability to fulfill all requirements is demonstrated in its submittal. Attorneys and law firms must identify the legal category(ies) to which their proposal applies. For each category, demonstrate that you (and other personnel or subcontractors that will be performing the work, if applicable) are qualified to perform the pertinent responsibilities described in the attached Scope of Work. Qualifications are demonstrated by the following:

Proposer shall:

(1) Provide a brief profile of the individual or firm, identify the types of law services offered as described in the areas of law outlined in the scope of work; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size, and location of offices; and number of employees. The Proposer must provide the number of years of experience for each area of law they identify.

(2) Provide a general description of the individual or firm’s financial condition and identify any conditions; e.g., bankruptcy, pending litigation, planned office closures, impending merger, which may impede Proposer’s ability to provide legal services.

(3) Proposers shall provide a complete list of legal service contracts currently awarded to the individual or firm by MST or any other public agency. This list shall include an accurate contact name and telephone number for each contract listed, including the present status of each contract. Any requests for a conflicts waiver must be submitted with your proposal.

(4) Describe the firm’s experience in performing legal services of a similar nature for public transportation agencies, municipalities, or other government agencies. Include, at a minimum, the name of the contracting agency, type of legal service(s) provided, the contract period, and the name, address, and telephone number of a contact person. Highlight the participation in such work by the key personnel proposed for assignment to the legal services described in this RFP. Describe your experience in working with the various government agencies identified in this RFP. Describe your experience in working with the California Tort Claims Act and, in particular, defending government agencies under this Act.

(5) Identify subcontractors by attorney or firm name, address, contact person, telephone number, and project function. Describe Proposer’s experience working with each subcontractor. Describe role of proposed subcontractor.

(6) Identify your experience working with applicable local, state, and federal laws and regulations, including, but not limited to, the California Tort Claims Act, California Penal Code, California Public Utilities Code, Federal Davis Bacon Act, California Public Contracts Code, Federal 13(c) provisions, and Title 49 of the Code of Federal Regulations (transportation experience).
(7) Provide as a minimum three (3) references for legal services cited as related experience, and furnish the name, title, address, and telephone number of the person(s) at the organization who is most knowledgeable about the services performed. Proposer may also supply references from other work not cited in this section as related experience. Proposer should ensure contact names/telephone numbers are accurate; inaccurate references may be a factor in the overall evaluation of the proposal. Each reference must specifically address start/end dates of the project and services provided that should be correlated with the requirements of this RFP. MST reserves the right to contact any and all clients or agencies listed as part of the reference verification.

b. Proposed Staffing, Firm Organization, and Management Plan

This section of the proposal should establish the method that will be used by the Proposer to manage the legal services offered as well as identify key personnel assigned.

Proposer shall:

(1) Provide education, experience, course work, training, special qualifications, and applicable professional credentials of proposed legal staff.

(2) Furnish brief resumes (not more than two [2] pages each) for the proposed key attorneys, the firm’s Managing Partner or Legal Services Manager, and all key legal personnel that will be assigned to MST’s legal services contract, including paralegals and associates. The ability of the legal team to respond immediately to issues relating to the legal service proposed. The Proposer should demonstrate how this requirement will be fulfilled and should indicate the percentage of time each individual will be dedicated to MST legal services.

(3) Identify key personnel proposed to perform the legal services selected from the Scope of Work and include areas of subcontracted services.

(4) Include a firm organization chart, which clearly delineates communication/reporting relationships among the legal staff, the subcontractors, and their assigned tasks in relation to MST legal services requirements.

(5) Include a statement that key personnel proposed will be available to perform the proposer’s legal services for the duration of the contract acknowledging that no person designated as "key" to the proposed service shall be removed or replaced without the prior written concurrence of MST.

(6) Describe the process the firm will use to attract qualified attorneys, paralegals, and office staff. Describe the firm’s participation in their staffs continued education and training. Also describe the firm’s drug and alcohol testing procedures and policy.
c. **Work Plan**

Proposer shall provide a narrative that addresses the legal services they are proposing as outlined in the MST Scope of Work. The narrative should show the Proposer’s understanding of MST’s needs and legal requirements. Throughout the narrative, Proposer will include references for each area of legal services they are proposing. This section should also address Proposer’s plan to fulfill its obligations for legal services.

**Proposer shall:**

1. **Records Retention**

   Proposers should discuss the process used to establish and maintain MST’s legal files and documents. The processes used to ensure confidentiality and the storage terms, where applicable.

2. **Insurance**

   Submit a statement or provide proof that the required insurance coverage contained in the Proposed Agreement can be obtained by the firm. Should Proposer be unable to provide evidence of insurability, MST may remove that Proposer’s proposal from consideration.

d. **Exceptions/Deviations**

State any exceptions to or deviations from the requirements of this RFP, segregating "technical" exceptions from "contractual" exceptions. Where Proposer wishes to propose alternative approaches to meeting MST’s technical or contractual requirements, these should be thoroughly explained.

Proposer may also propose procedural or technical enhancements/innovations to the Scope of Work, which do not materially deviate from the objectives or required content of the project.

D. **Cost and Price Proposal**

Within each work order document, MST and Proposer shall agree on one of the following methods of compensation listed below. Billing shall correspond to the method of payment approved in each awarded contract.

- **Cost Plus Fixed Fee**

  For services rendered, MST shall pay the Proposer the approved hourly rate incurred by Proposer in performing the work, exclusive of any fixed fee. In addition, Proposer shall be reimbursed for actual costs set forth in the price proposal, such as copy charges, facsimile charges, depositions, expert witness fees, etc. The Proposer shall be reimbursed for actual travel expenses incurred in the performance of this work.
• **Reimbursable Expenses**

Reimbursable expenses means the actual expenses incurred in connection with the project for: transportation and subsistence incidental thereto, reproduction charges, facsimile charges, exhibit charges, depositions, expert witness fees, etc. Proposers shall provide monthly invoices for all work performed on active cases.

• **Price Proposal Format**

As part of their cost and price proposal, the Proposer shall submit proposed pricing for the legal services they have proposed as described in Section B, Scope of Work. The cost and price proposals should be brief, concise, and in letter format. Although no page limitation will be imposed, clarity and terse expression are essential and will be considered in assessing the proposer’s capabilities. MST has found that discussion length has no bearing on the proposer’s understanding or technical abilities. Cost proposals shall include hourly rates for each attorney, paralegal, and/or subcontractor Proposer intends to use during any awarded contract, copy charges, facsimile charges, color copy charges, attorney service charges, Lexis/Westlaw charges, including any volume discount credits, etc. Proposers are cautioned that only those attorneys and legal staff outlined in their proposal may be utilized during any awarded contract, unless prior approval is obtained from the MST General Counsel or Director of Human Resources/Risk Management. Any such approval is expressly conditioned upon the hourly rate of the new staff member being at or below the already approved rates agreed to in any awarded contract. All hourly rates of approved staff shall be fixed for the first three years of any awarded contract. Thereafter the hourly rates shall only increase in an amount equal to the Consumer Price Index (CPI) for the Monterey County Region; i.e. in years 4 and 5 of any awarded contract, but in no case shall any yearly increase exceed 4%. Hourly rate increases based upon the CPI for the Monterey County Region shall not be automatic and must be requested by each Proposer for each awarded contract. Requests for hourly rate increases shall not be retroactive and shall become effective once calculated by MST. MST expressly reserves the right to negotiate any and all proposed hourly rates for each staff member or subcontractor that the Proposer is requesting to utilize during the term of any awarded contract.

Cost and price proposals are to be provided in a separate, sealed envelope.

E. **Appendices**

Information considered by Proposer to be pertinent to this project and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Proposers are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief.
F. **Party and Participant Disclosure Forms**

In conformance with the statutory requirements of the State of California Government Code Section 84308, part of the Political Reform Act and Title 2, California Code of Regulations 18438 through 18438.8, regarding campaign contributions to members of appointed Boards of Directors, Proposer is required to complete the Party and Participant Disclosure Forms provided in Section C.3 of this RFP and submit as part of the proposal, if applicable. Proposer is required to submit only one copy of the completed form(s) as part of its proposal, and it should be included in only the original proposal. The prime contractor and subcontractors must complete the form entitled "Party Disclosure Form." Reporting campaign contributions is a requirement from the proposed submittal date up and until MST’s Board of Directors takes action.

G. **Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Participant and Lower-Tier Participants – Section C**

Each awarded contract may be a covered transaction for purposes of 49 CFR Part 29 in the event that federal funding is utilized for payment by MST. As such, the successful bidder or Proposer is required to verify that the bidder or Proposer, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are not excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The successful Proposer is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower-tier covered transaction it enters into.

By signing and submitting its proposal, the successful Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by MST. If it is later determined that the successful Proposer knowingly rendered an erroneous certification, in addition to remedies available to MST, the Federal Government may pursue available remedies, including, but not limited to, suspension and/or debarment. The successful Proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The successful Proposer further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

- **Submission Requirements**

Each Proposer shall complete the certification, "Certification of Primary Participant Regarding Debarment, Suspension, and other Responsibility Matters," included in this RFP for itself and its principals and submit this certification with its proposal. Failure to do so may result in rejection of the proposal.

H. **Restrictions of Lobbying – Section C**

As a recipient of federal funds, MST is required to certify compliance with the influencing restrictions and efforts of Proposer to influence federal officials regarding specific procurements in excess of $100,000 that must be disclosed pursuant to section 1352, Title 31, U.S. Code.
This RFP includes the following: a certification form entitled "Certification of Restrictions on Lobbying," the Office of Management and Budget (OMB) Standard Form LLL entitled "Disclosure of Lobbying Activities," and a document entitled "Limitation on Payments to Influence Certain Federal Transactions."

The Proposer to this solicitation will be required to complete and submit to MST the certification form entitled "Certification of Restrictions on Lobbying" whether or not any lobbying efforts took place. If the successful Proposer did engage in lobbying activities, then OMB Standard Form LLL "Disclosure of Lobbying Activities" must also be completed and submitted to MST. This form should be completed and submitted with the proposal. Failure to provide the completed and signed forms will result in the proposal removal from consideration.

I. Drug and Alcohol Testing – Section C

The Proposer agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR part 655, produce any documentation necessary to establish its compliance with Part 655 and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or MST, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655, and review the testing process. The Proposer agrees further to certify annually its compliance with Part 655 before January 1, 2007, and to submit the Management Information System (MIS) reports before January 1, 2007 to MST. To certify compliance, the Proposer shall use the “Substance Abuse Certifications” in the Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements,” which is published annually in the Federal Register.

Proposer is required to submit Section C, Drug and Alcohol Certification, in their proposal, or the proposal may be considered nonresponsive and not considered for further review.
A.3. Evaluation and Award

A.3.1 Evaluation Criteria

MST will evaluate the offers received based on the following criteria:

1. Pass/Fail Criteria
   
   a) Proposer has demonstrated the ability to meet the insurance requirements described in the Agreement. Proof of ability should be attached to your proposal. (P/F)
   
   b) Proposer has demonstrated at least five years of relevant experience as an attorney. Experience is relevant if it falls within a category in the Scope of Work. (P/F)
   
   c) Proposer has demonstrated previous experience working for or with public agencies, transit entities, or corporations. (P/F)
   
   d) Proposer is a licensed member of the California Bar and in good standing. Please attach proof from the California Bar. (P/F)

2. Qualifications of the Firm or Sole Practitioner  

   Technical experience in performing legal services of a similar nature; experience working with public agencies; strength and stability of the firm or sole practitioner; strength, stability, experience, and technical competence of subcontractors; assessment by client references; references with demonstrated success in providing similar services.

3. Staffing, Firm Organization, and Management Plan  

   Qualifications of attorneys and legal staff, particularly key attorneys and the Managing Partner; key personnel’s level of involvement in performing related work cited in “Qualifications of the Firm” section; logic of firm organization; adequacy of labor commitment. Your response should also include your procedures for delegating work and the types of work given to paralegals, law clerks, and associates in order to provide cost-effective services to MST.

4. Work Plan  

   Depth of Proposer’s understanding of MST’s requirements as set forth in Section B, Scope of Work, and within this RFP; overall quality of work plan; logic, clarity, and specificity of work plan; appropriateness of labor distribution among the activities; ability to meet legal services proposed; reasonableness of legal service proposed; methods or processes used for data retention and confidentiality; evidence of insurability.
5. **Cost and Price**

The reasonableness of the total cost proposal and the competitiveness of this amount with other offers received; adequacy of data in support of figures quoted; reasonableness of hourly rates; basis on which prices are quoted.

### A.3.2 Evaluation Procedure

MST uses a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include experience and qualifications, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to MST.

An evaluation committee will be appointed to review all proposals received. The committee will be comprised of MST staff and may include outside personnel. The committee members will evaluate each proposal using the pass or fail criteria identified in Section A.3.1. Proposers who pass all of the categories of the pass or fail criteria will continue with the evaluation process. The committee will first evaluate the technical proposals of each firm. The technical proposals will be evaluated and scored by each member of the committee without influence of price. The committee will then open the cost and price proposals from each firm and evaluate and score them accordingly.

During the initial evaluation process, the committee may or may not contact any or all of the firms with specific questions or requests for clarification. After both the technical and cost/price proposals have been evaluated and scored, the committee will arrive at a “comprehensive proposal score” for each proposal. A list of top-ranked proposals or firms within a competitive range will be developed based upon the total comprehensive scores of each committee member. At this time, the committee may decide that the evaluation process is complete and final. The committee will then develop a list of qualified attorneys and firms from the proposals within the competitive range.

If the committee has determined that it is necessary, it may then conduct interviews and negotiations with firms within the established competitive range. MST has established the Week of August 27, 2012, to conduct interviews and negotiations if needed. All prospective Proposers are asked to keep these dates available. No other interview dates will be provided; therefore, if a Proposer is unable to attend one of these dates, their proposal may be eliminated from further consideration. The interview may consist of a short presentation by the Proposer after which MST may ask questions and/or request clarification related to any part of the firm’s proposal and qualifications. MST may also enter into negotiations with the Proposer.

If interviews and negotiations have been conducted and they have concluded, the evaluation committee may choose to proceed with one of the following processes:

A. The committee may find it necessary to allow its members to rescore the proposals a second time in light of information gained during the interview and negotiation process. The proposals will be scored in the same manner as the original proposals.
B. The committee may ask the Proposers to consider the dialog of negotiations and revise their proposals for resubmission. A deadline will be set for submission of the revised proposals. If a Proposer is unable to meet the deadline or chooses not to revise their proposal, their existing proposal will be rescoring along with revised proposals in the same manner as the original proposals. (Both Options A and B may result in a new ranking and competitive range.)

After a final ranking and competitive range has been established, the evaluation committee may recommend to the General Manager/CEO a group of qualified attorneys and law firms from the firms within the competitive range whose proposal(s) are most advantageous to MST. The General Manager/CEO will review the evaluation committee’s recommendation and may enter into further negotiations with Proposer(s) or forward its decision to the MST Board of Directors for final action.

A.3.3 Award and Execution

The evaluation committee will evaluate the proposals received and will submit (with approval of the General Manager/CEO) the list of qualified attorneys and law firms considered to be the most advantageous to MST’s Board of Directors for consideration and approval. MST may also negotiate contract terms with the selected Proposers prior to award and expressly reserves the right to negotiate with several Proposers simultaneously and to award contracts to multiple Proposers offering the most favorable terms to MST.

Attorneys and law firms placed on the qualified list will be required to execute the Standard Services Agreement and to comply with the insurance provisions contained therein. Placement on this list and execution of the Agreement will not guarantee the assignment of legal work in any category. MST reserves the right to award its total legal services requirements to one Proposer or to apportion those requirements among several Proposers as MST may deem to be in its best interest.

In addition, negotiations may or may not be conducted with Proposers; therefore, the proposal submitted should contain Proposer’s most favorable terms and conditions since the selection and award may be made without discussion with any Proposer.

Prior to being placed on the qualified list of attorneys or law firms or any award of a contract, the selected Proposer may be required to submit to a preaward audit of their financial records to confirm claims of financial stability and ascertain the capacity of the firm’s accounting system responsibilities for administering the Agreement.

A.3.4 Notification of Award and Debriefing

Proposers who submit a proposal in response to this RFP shall be notified regarding the attorneys or law firms selected for awarded. Such notification shall be made within three (3) days of the date that the contract is awarded.

Proposers who were not awarded the contract may obtain a prompt explanation concerning the strengths and weaknesses of their proposal. Unsuccessful Proposers who wish to be debriefed must request the debriefing in writing or electronic mail, and MST must receive it within three (3) days of notification of the contract award.
SECTION B

B.1 SCOPE OF WORK ........................................................................................................................................................................28
B.1 SCOPE OF WORK FOR LEGAL SERVICES FOR THE MONTEREY-SALINAS TRANSIT DISTRICT (MST)

I. Scope of Services Requested

A. MST seeks qualified attorneys and law firms to provide legal services for the district as described below. In general, the district has in common the categories of labor and employment, liability, and workers’ compensation. MST also needs qualified attorneys in the areas of environmental law, construction contract law, condemnation, taxicab regulation, finance, public employee law, Americans with Disabilities Act (ADA), civil rights, criminal law, historic designation, conflicts of interest, Storm Water Prevention and Pollution, corporate transactional law, and intellectual property.

B. General Requirements

Attorneys for all the agencies must actively participate in all aspects of the case as requested.

C. MST Services

- Environmental Law

  General. Advise and assist staff as necessary in review and preparation of environmental documents under California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). Work with permitting agencies to secure necessary permits for construction. Assist in negotiations of mitigation requirements with regulating agencies. Assist in site cleanup issues, including permitting, disposal, and site closure. Assist in Storm Water Prevention and Pollution requirements and claims. Pursue actions against responsible practices for costs of cleanup. Defend MST Board in challenges to MST Board’s environmental reviews and analyses. Report to the MST Board as necessary.

- Labor and Employment Law

  General. Advise and assist staff on various public agency labor law issues and public employee law issues. Represent the MST Board in labor-related and employee rights litigation. Report to the MST Board as necessary.

- Construction Contracts and Claims Law

  General. Advise and represent MST Board in construction contract and claims resolution. Represent the MST Board in litigation relating to construction defects, contractor and subcontractor performance issues, and contract claims. Report to the MST Board as necessary.

- Eminent Domain and Condemnation
General. Assist and advise staff in property acquisitions, inverse condemnation claims, and changes in eminent domain law. Represent MST Board in condemnation proceedings and inverse condemnation cases. Provide real estate services, including, but not limited to, unlawful detainer, general real estate advice, landlord tenant law, etc. Advise and assist staff in review of property-related documents, including developer agreements, licensees, leases, easements, and deeds. Report to the MST Board as necessary.

- **Taxicab Regulation**

  General. Advise and assist staff in preparation and administration of regulatory documents relative to the taxicab industry. Represent MST in various administrative proceedings and litigation. Report to the MST Board as necessary.

- **Finance**

  General. Advise and assist staff in the preparation of financing documents, including sale/leaseback, lease/leaseback, revenue anticipation notes, bond issuances, public and private sector financing and other such matters. Advise and assist staff in the formation of nonprofit and public benefit corporations, including tax implications. Report to the MST Board as necessary.

- **Americans with Disabilities Act**

  General. Advise and assist staff in responding to Americans with Disabilities Act (ADA) claims. Represent MST in various administrative proceedings and litigation. Report to the MST Board as necessary.

- **Civil Rights**

  General. Advise and assist staff in responding to claims and complaints regarding violations of civil rights, both federal and state. Represent and defend MST in various administrative proceedings and litigation. Report to the MST Board as necessary.

- **Criminal Law**

  General. Represent Code Compliance and Security Officers during criminal proceedings, including Pitchess motions and various discovery motions. Represent and defend MST and staff in various criminal proceedings. Act as a liaison with the Monterey County District Attorney’s office and various City Attorney offices for criminal proceedings involving violations of MST ordinances. Report to the General Counsel and to the MST Board as necessary.
**Historic Designation**

*General.* Advise and assist staff in preparing all necessary documents for historic designation. Represent MST in various administrative proceedings and litigation as it relates to local, state or federal historic designation. Report to the MST Board as necessary.

**Conflicts of Interest**

*General.* Advise and counsel MST regarding Fair Political Practices Commission rules and regulations. Assist staff in preparing annual Conflict of Interest Code amendments and filing forms. Represent MST and staff in various administrative proceedings and litigation. Report to the MST Board as necessary.

**Storm Water Prevention and Pollution**

*General.* Advise and assist staff in preparing all documents necessary to comply with Storm Water Prevention and Pollution regulations. Represent MST and its contractors and subcontractors at various administrative proceedings and litigation. Report to the MST Board as necessary.

**Corporate and Transactional Law**

*General.* Advise and counsel MST regarding all aspects of corporate and transactional law, including forming public benefit and nonprofit corporations. Represent MST at various administrative proceedings and litigation. Report to the MST Board as necessary.

**Intellectual Property**

*General.* Advise and assist MST Board in matters relating to patents, trademarks and copyrights, including filings and enforcement issues. Report to MST Board as necessary.

**Labor and Employment Law**

*General.* The legal work includes collective bargaining, handling grievance and interest arbitrations, handling employment discrimination lawsuits, and advising on matters of labor and employment law. Report to MST Board as necessary.

**Requirements**

a. The attorney should be familiar with 49 U.S.C. Section 5333 [Section 13(c) of the Federal Transit Act] and have experience handling matters before the United States Department of Labor involving Section 13(c) protective arrangements and handling litigation involving Section 13(c) disputes.
b. The attorney should have experience in collective bargaining, preferably in the public transportation industry.

c. The attorney should have experience handling grievance arbitrations under a collective bargaining agreement and interest arbitrations under a Section 13(c) agreement.

d. The attorney should have experience handling administrative agency matters, such as safety matters before Cal/OSHA, and wage and hour matters before the U.S. Department of Labor and the California Labor Commissioner.

e. The attorney should have experience advising companies in the field of labor and employment law, preferably in the public transportation industry.

f. The attorney should have at least five years of experience in handling employment discrimination and wrongful termination matters before the California Superior Courts and United States District Courts.

- Liability Attorney

General

a. Represent MST as legal counsel in threatened and actual litigation in state and federal courts, including familiarity and experience with the California Tort Claims Act.

b. Prepare appropriate legal pleadings and documents necessary to defend liability lawsuits, including demurrers, answers to complaints, cross complaints, motions, dismissals, and other pleadings as necessary.

c. Provide opinions as to cases assigned, including determinations of both liability and damages, as requested.

d. Handle approved legal discovery, including the preparation of interrogatories, the conducting of depositions, and the subpoena of records.

e. Arrange for the selection of expert witnesses, including doctors, engineers, accident reconstructionists, and other witnesses.

f. Appear at court hearings, court conferences, and trials.
g. Work closely with and obtain authority from the MST Director of Human Resources/Risk Management to agree on a plan of defense.

h. There shall be no associates used without prior approval of the General Counsel or Director of Human Resources/Risk Management of the case. Only individual attorneys will be considered, not the firm.

i. Report to MST Board as necessary.

Requirements


b. Five years’ minimum experience practicing civil tort defense in California representing public agencies.

c. Minimum of three civil tort defense jury trials to verdict in the last five years representing public agencies.

• **Workers’ Compensation**

  **General.** To perform all duties of defending MST in all matters, as directed by the Workers’ Compensation Administrator, pertaining to any aspect of workers’ compensation claims from file creation/review through trial.

  **Requirements**

  a. Five years’ California workers' compensation defense for self-insured employers and related subrogation proceedings and recoveries.

  b. Must have handled at least 10 trials at the Workers’ Compensation Appeals Board in the last 3 years and 3 trials related to workers’ compensation subrogation matters.

  c. Work closely with and obtain authority from MST Director of Human Resources/Risk Management to plan strategy and conduct necessary discovery.

  d. There shall be no associates used without prior approval of the Director of Human Resources/Risk Management of the case. Only individual attorneys will be considered, not the firm.

  e. Report to MST Board as necessary.
II. Claims Procedures and Settlements

A. All Proposers awarded contracts through this RFP process are expected to be familiar with MST Policy No. 51, “Claims Against MST,” including the settlement of any and all claims or complaints. In particular, Contractors are reminded that all settlements under $25,000 must have the prior approval of the General Manager/CEO. All settlements over $25,000 must be approved by the MST Board.
SECTION C

C.1 SAMPLE STANDARD SERVICES AGREEMENT ............................................................... 36

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This Agreement is entered into this ______ day of _______________ 2013, in the state of California by and between Monterey-Salinas Transit District (“MST”), a California public agency, and the following contractor, hereinafter referred to as "Contractor":

Name: ____________________________ Address: ____________________________

Form of Business: ___________________ (Corporation, partnership, sole proprietor, etc.)

Telephone: _________________________

Authorized person to sign contracts: ____________________________________________

Name ____________________________ Title ____________________________

The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MST services and materials, as follows:

Provide legal services as directed, in accordance with the Standard Services Agreement, Standard Conditions Services, Scope of Work, Cost Proposal, RFP for Legal Services, and where applicable Federal Requirements. Billing rates shall be in accordance with the MST-approved Contractor Cost Proposal. If there are any conflicts between the Standard Services Agreement, Standard Conditions Services, Scope of Work, Cost Proposal, and where applicable Federal Requirements, the following order of precedence shall apply:

1. RFP for Legal Services, Scope of Work, Contractor’s Response to the RFP and Contractor’s Cost Proposal.

This contract shall remain in effect for a five-year term. The total cost of this Agreement shall not exceed $________________ without the express written consent of MST. Attorneys, paralegals, and subcontractors not otherwise identified in Contractor’s Cost Proposal and Response to the RFP are not authorized to work without the prior approval of MST. In the event that the designated lead attorney leaves his or her law firm, MST may maintain this Standard Services Agreement with either the designated attorney or the law firm in MST’s sole and absolute discretion.

Monterey-Salinas Transit District

By: ____________________________ General Manager/CEO

Firm: ____________________________

Approved as to form:

By: ____________________________ Office of General Counsel

Signature ____________________________

Title: ____________________________

AMOUNT ENCUMBERED

BUDGET ITEM

FISCAL YEAR

$________________

By: ____________________________

Assistant General Manager of Finance and Administration

Date
1. INDEPENDENT CONTRACTOR

Contractor hereby declares that it is engaged in an independent business and agrees that in the performance of this agreement it shall act as an independent contractor and not as an employee of MST. Contractor has and hereby retains full control of all the employment, compensation, and discharge of all employees of Contractor assisting in its performance hereunder. Contractor shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters. Contractor shall be responsible for its own acts and those of its agents and employees during the term of this agreement. MST shall be responsible for its own acts and those of its agents and employees during the term of this agreement. Except as otherwise specifically provided, as an independent contractor, Contractor will be solely responsible for determining means and methods for performing the services described in the scope of work. Contractor shall perform the work contemplated with resources available within its own organization.

2. INSURANCE

Contractor will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself.

All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best.

A. COVERAGE REQUIRED - ALL CONTRACTS

(1) Liability

(a) Commercial General Liability. At all times during this contract and, with respect to Products and Completed Operations Liability, for 12 months following the acceptance of the work by MST, Contractor agrees to maintain Commercial General Liability Insurance for bodily injury and property damage in an occurrence form and with insurance companies acceptable to MST. Commercial General Liability Insurance must include coverage for the following:

- Premises/Operations Liability
- Products/Completed Operations Liability
- No Explosion, Collapse, and Underground (XCU) exclusion
- Contractual Liability, with respect to this agreement
- Personal Injury Liability
- Broad Form Property Damage
- Independent Contractors
All such policies shall name in the endorsement Monterey-Salinas Transit District (MST), their directors, officers, agents, and employees as additional insureds as their interests may appear.

(b) **Automobile Liability.** At all times during this contract, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles.

(c) **Workers’ Compensation/Employer Liability.** At all times during this contract, Contractor agrees to maintain Workers’ Compensation and Employers’ Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against MST and the policy form must permit and accept such waiver.

### B. ADDITIONAL COVERAGES REQUIRED (AS INDICATED)

- **(1) Owner-Provided Builder’s Risk**
  - MST will provide Builder’s Risk Insurance on a special form basis, excluding the perils of earthquake and flood, at a limit of not less than the full replacement value of the work and covering the work and all materials and equipment to be incorporated therein, including property in transit elsewhere, and insuring the interests of the Contractor, subcontractors, materialmen, and MST, MST’s contractor for design, and MST’s contractor for construction management. However, Contractor is responsible for the portion of any loss that is within the deductible amount of this Builder’s Risk Insurance, which is currently at $50,000 but is subject to change.

- **(2) Railroad Protective or Equivalent**
  - Any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing must be deleted. Option: purchase separate Railroad Protective Liability Policy as required.

- **(3) Professional Liability**
  - At all times during this contract, and for 12 months following acceptance of work by owner, Contractor agrees to maintain Professional Liability Insurance with respect to services or operations under this agreement.
(4) **Pollution Legal Liability**

At all times during this contract, and for 24 months following, Contractor agrees to maintain Pollution Legal Liability Insurance with respect to services or operations under this agreement. The extended discovery period must be no less than 24 months.

(5) **Contractor Equipment**

At all times during this contract, Contractor agrees to maintain Contractor's Equipment Insurance on a special form basis covering equipment owned, leased, or used by Contractor. Contractor waives any rights of subrogation against MST, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless MST for any loss or damage to its equipment.

(6) **Installation Floater**

At all times during this contract, Contractor agrees to maintain Installation Floater Insurance on a special form basis covering property owned or provided by Contractor. Contractor waives any rights of subrogation against MST, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless these entities for any loss or damage to its property.

(7) **Primary and Non-Contributory Insurance**

Contractor agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MST, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required).

C. **MINIMUM POLICY LIMITS REQUIRED**

<table>
<thead>
<tr>
<th>Insurance Coverage</th>
<th>Combined Single Limit (CSL)</th>
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</thead>
<tbody>
<tr>
<td>Commercial General Liability (Per Occurrence)</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Automobile Liability</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Worker's Compensation Employer's Liability</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

Additional Coverages (as indicated under Section B, Additional Coverages Required):

- B (1) Builder's Risk  
- B (2) Railroad Protective  
- B (3) Professional Liability $2,000,000
D. POLICY PROVISION REQUIRED

All policies and coverages shall contain a provision for 30 days written notice by the Insurer(s) to MST Purchasing Manager of any cancellation or material reduction of coverage. A ten-day notice is required for non-payment of premium.

E. EVIDENCE REQUIRED

Within ten working days following receipt of notice that a contract has been awarded, Contractor shall have provided the MST Purchasing Manager with satisfactory certification by a qualified representative of the Insurer(s) that Contractor's insurance complies with all provisions in this insurance section.

F. SPECIAL PROVISIONS

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by MST or their insurance Contractor(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this agreement, including but not limited to the provisions concerning indemnification.

MST reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined above.

3. TERMINATION OF AGREEMENT

MST may terminate this agreement, in whole or in part, at any time by written notice to the Contractor when it is in MST’s best interest. The Contractor shall be paid its costs, including contract closeout costs and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to MST to be paid to the Contractor. If the Contractor has any property in its possession belonging to MST, the Contractor will account for the same and dispose of it in the manner that MST directs.

The Contractor shall notify subcontractors and service or supply vendors providing services under this contract of the early termination date of this contract. Failure to notify any subcontractor and service or supply vendor shall result in the Contractor being liable for the termination costs incurred by any subcontractor and service or supply vendor for work performed under this contract, except those specifically agreed to in the termination notice to the Contractor.
4. INDEMNITY

As between MST and Contractor, Contractor is deemed to assume responsibility and liability for, and Contractor shall indemnify and hold harmless, MST and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which MST or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or subcontractors in its or their performance under this Agreement. In addition to any other remedy authorized by law, so much of the money due Contractor under this agreement as shall be considered necessary by MST may be retained until disposition has been made of any claim for damages.

5. NONASSIGNMENT

Any attempt by Contractor to assign, subcontract, or transfer all or part of this agreement shall be void and unenforceable without MST’s prior written consent; which consent shall not be unreasonably withheld. Any such consent shall not relieve Contractor from full and direct responsibility for all services performed prior to the date of assigning, subcontracting, or transferring this agreement.

6. SUBCONTRACTORS

Any contract in excess of $25,000, entered into as a result of this contract, shall contain all of the provisions stipulated in this contract to be applicable to subcontractors, including, but not limited to, provisions pertaining to costs, records, and payment methods.

7. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To MST:

Monterey-Salinas Transit District (MST)
Attention: General Manager/CEO
One Ryan Ranch Road
Monterey, CA 93940

To Contractor:

As shown on front page.
8. CONSIDERATION PAID

MST shall reimburse the Contractor for actual costs (including labor costs, employee benefits, overhead, and other direct costs) incurred by the Contractor in performance of the work, in an amount not to exceed $__________ exclusive of any fixed fee. Actual costs shall not exceed the estimated wage rates and other costs set forth in the Contractor's proposal.

In addition, MST shall pay the Contractor a fixed fee of $0.00. Said fixed fee shall not be altered unless there is a significant alteration in scope, complexity, or character of the work to be performed.

Fees and all other charges will be billed monthly as the work progresses, and the net amount shall be due at the time of billing.

Total expenditures made under this contract, including the fixed fee, shall not exceed the sum of $__________.

Reimbursement for transportation and subsistence costs shall not exceed the rates to be paid nonrepresented/excluded state employees under current State Department of Personnel Administration rules detailed in the State Travel and Expense Guide.

Equipment purchases shall be made in accordance with 49 CFR, Part 18.32.

9. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

MST's Equal Employment Opportunity Program, is part of this agreement (a copy can be obtained from MST's Clerk of the Board). A Certificate of Compliance and a Workforce Report form signed by the Contractor is a condition for the award of this contract.

10. COST PRINCIPLES

The Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, shall be used to determine the allowability of individual items of cost.

The Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments.

Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments, are subject to repayment by the Contractor to MST.
11. NOTICE OF POTENTIAL CLAIM FOR OUT-OF-SCOPE WORK

The Contractor shall not be entitled to additional compensation for out-of-scope work unless he has given MST a written notice of potential claim for any such work. The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the out-of-scope work involved, and, insofar as possible, the amount of the potential claim. The notice must be given to MST prior to the time Contractor shall have performed the work, if based on an act or failure to act by MST or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim.

It is the intention of this section that any claim for out-of-scope work be brought to the attention of MST at the earliest possible time in order that matters related to any such work can be settled in a prompt manner. The Contractor hereby agrees that he shall have no right to additional compensation for any claim for out-of-scope work for which no written notice of potential claim as herein required was filed.

12. LITIGATION EXPENSES

Should litigation be necessary to enforce any term or provision of this agreement, or to collect any portion of the amount payable under this agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

13. EXCLUSIVE USE

The services hereunder are provided for the exclusive use of MST and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Contractor, are not to be used or relied upon by other parties except as authorized by MST.

14. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION (applies to federally funded contracts only)

This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR 26), entitled “Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs.” In order to ensure MST achieves its federally mandated statewide overall DBE goal, MST encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with federal funds. Contractor is also encouraged to use services offered by financial institutions owned and controlled by DBEs. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

As required by federal law, the California Department of Transportation (Caltrans) has established a statewide overall DBE goal that MST must participate in as a condition of receipt of funding. In order to ascertain whether that statewide overall DBE goal is being achieved, MST is tracking DBE participation on all federal-aid contracts. To assist Proposers in ascertaining DBE availability for specific items of work, MST advises that it has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project, and the likely DBE availability advisory percentage is zero percent. MST also advises that participation of DBEs in the specified percentage is not a condition of execution of this Agreement.
Contractor shall be fully informed in respect to the requirements of the DBE Regulations. The DBE Regulations in their entirety are incorporated herein by this reference. Contractor’s attention is directed to the following matters:

A. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto.

B. A DBE may participate as a prime contractor, subcontractor, joint-venture partner with a prime or subcontractor, vendor of materials or supplies, or as a trucking company.

C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.

D. A DBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.

E. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:


2. Caltrans’ DBE Directory This Directory may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520.

F. When reporting DBE participation, the Contractor may count the cost of materials or supplies purchased from DBEs as follows:

1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers’ own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packers, brokers, manufacturers’ representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.
3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

4. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

G. When reporting DBE participation, the Contractor may count the participation of DBE trucking companies as follows:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.

2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

6. For the purposes of paragraph 15(G), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

7. Prior to the fifteenth of each month, the Contractor shall submit documentation to MST showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to MST showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement. The Contractor shall also submit to MST documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month.
If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

15. PROMPT PAYMENT

No retainage will be held by the agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with MST’s prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specific in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor, or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor’s performance, or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

16. RECORDS RETENTION

The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract including, but not limited to, the costs of administering the contract. The Contractor shall make such materials available at its respective office at all reasonable times during the contract period and for three years from the date of final payment under the contract. MST, the state, the State Auditor, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Contractor that are pertinent to the contract for audit examination, excerpts, and transactions, and copies thereof shall be furnished if requested.

17. COVENANT AGAINST CONTINGENT FEES

Contractor warrants that she or he has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this agreement, and that she or he has not agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this agreement. For breach or violation of this warranty, MST shall have the right to annul this agreement without liability or, at its discretion, to deduct from the agreement a price or consideration, or otherwise recover the full amount of such fee, percentage, brokerage fee, gift, or contingent fee.

18. OWNERSHIP OF DOCUMENTS

Tracings, plans, specifications, and maps prepared or obtained under the terms of this agreement shall be delivered to and become the property of MST. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under this agreement shall be made available, upon request, to MST without restriction or limitation on its use.
19. TIME

The Contractor acknowledges that timely performance is an important element of this agreement. Accordingly, the Contractor shall put forth its best professional effort to complete its services in accordance with the agreed-upon schedule.

20. ENTIRE AGREEMENT

This agreement is the entire agreement of the parties and no attempted modification shall be binding unless in writing and signed by MST and the Contractor. All questions pertaining to the validity and interpretation of this agreement shall be determined in accordance with the laws of California applicable to contracts made to be performed within the state.

21. NONDISCRIMINATION BY CONTRACTOR

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as MST deems appropriate.

Attachment: Certificate of Compliance
CERTIFICATE OF COMPLIANCE
WITH MST EQUAL OPPORTUNITY PROGRAMS AND DBE CONTRACTOR INFORMATION FORM

I hereby certify that, in performing under contract(s) or purchase order(s) awarded by Monterey-Salinas Transit District (MST), I will comply with the provisions of MST Equal Employment Opportunity Program, and rules and regulations adopted pursuant thereto, Title VI of the Civil Rights Act of 1964, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations relating to equal employment opportunity, including laws and regulations hereinafter enacted.

DBE subcontractor participants are listed below; the successful bidder must execute and return this form even if no DBE participation will be reported:

<table>
<thead>
<tr>
<th>Company Name and Address</th>
<th>Description of Work</th>
<th>Dollar Amount</th>
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<tbody>
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If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE. I agree to make a good-faith effort to meet the goals of this plan as part of my contractual obligations to MST.

Date: ________________________________  Firm: ________________________________

By: ________________________________
Signature

Title: ________________________________

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SCOPE OF WORK

LEGAL SERVICES FOR THE
MONTEREY-SALINAS TRANSIT DISTRICT (MST),

I. Scope of Services Requested

A. MST seeks qualified attorneys and law firms to provide legal services for each entity as described below. In general, the agencies have in common the categories of labor and employment, liability, and workers’ compensation. MST also needs qualified attorneys in the areas of environmental law, construction contract law, condemnation, taxicab regulation, finance, public employee law, Americans with Disabilities Act (ADA), civil rights, criminal law, historic designation, conflicts of interest, Storm Water Prevention and Pollution, corporate transactional law, and intellectual property.

B. General Requirements

Attorneys for all the agencies must actively participate in all aspects of the case as requested.

C. MST Services

- Environmental Law

  General. Advise and assist staff as necessary in review and preparation of environmental documents under California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). Work with permitting agencies to secure necessary permits for construction. Assist in negotiations of mitigation requirements with regulating agencies. Assist in site cleanup issues, including permitting, disposal, and site closure. Assist in Storm Water Prevention and Pollution requirements and claims. Pursue actions against responsible practices for costs of cleanup. Defend MST Board in challenges to MST Board’s environmental reviews and analyses. Report to the MST Board as necessary.

- Labor and Employment Law

  General. Advise and assist staff on various public agency labor law issues and public employee law issues. Represent the MST Board in labor-related and employee rights litigation. Report to the MST Board as necessary.
- Construction Contracts and Claims Law

General. Advise and represent MST Board in construction contract and claims resolution. Represent the MST Board in litigation relating to construction defects, contractor and subcontractor performance issues, and contract claims. Report to the MST Board as necessary.

- Eminent Domain and Condemnation

General. Assist and advise staff in property acquisitions, inverse condemnation claims, and changes in eminent domain law. Represent MST Board in condemnation proceedings and inverse condemnation cases. Provide real estate services, including but not limited to, unlawful detainer, general real estate advice, landlord tenant law, etc. Advise and assist staff in review of property-related documents, including developer agreements, licenses, leases, easements, and deeds. Report to the MST Board as necessary.

- Taxicab Regulation

General. Advise and assist staff in preparation and administration of regulatory documents relative to the taxicab industry. Represent MST in various administrative proceedings and litigation. Report to the MST Board as necessary.

- Finance

General. Advise and assist staff in the preparation of financing documents, including sale/leaseback, lease/leaseback, revenue anticipation notes, and other such matters. Advise and assist staff in the formation of nonprofit and public benefit corporations, including tax implications. Report to the MST Board as necessary.

- Americans with Disabilities Act

General. Advise and assist staff in responding to Americans with Disabilities Act (ADA) claims. Represent MST in various administrative proceedings and litigation. Report to the MST Board as necessary.

- Civil Rights

General. Advise and assist staff in responding to claims and complaints regarding violations of civil rights, both federal and state. Represent and defend MST in various administrative proceedings and litigation. Report to the MST Board as necessary.

- Criminal Law

General. Represent Code Compliance and Security Officers during criminal proceedings, including Pitchess motions and various discovery motions. Represent and defend MST and staff in various criminal proceedings. Act as a liaison with the San Diego County District
Attorney's office and various City Attorney offices for criminal proceedings involving violations of MST ordinances. Report to the General Counsel and MST Board as necessary.

- **Historic Designation**
  
  General. Advise and assist staff in preparing all necessary documents for historic designation. Represent MST in various administrative proceedings and litigation as it relates to state or federal historic designation. Report to the MST Board as necessary.

- **Conflicts of Interest**
  
  General. Advise and counsel MST regarding Fair Political Practices Commission rules and regulations. Assist staff in preparing annual Conflict of Interest Code amendments and filing forms. Represent MST and staff in various administrative proceedings and litigation. Report to the MST Board as necessary.

- **Storm Water Prevention and Pollution**
  
  General. Advise and assist staff in preparing all documents necessary to comply with Storm Water Prevention and Pollution regulations. Represent MST and its contractors and subcontractors at various administrative proceedings and litigation. Report to the MST Board as necessary.

- **Corporate and Transactional Law**
  
  General. Advise and counsel MST regarding all aspects of corporate and transactional law, including forming public benefit and nonprofit corporations. Represent MST at various administrative proceedings and litigation. Report to the MST Board as necessary.

- **Intellectual Property**
  
  General. Advise and assist MST Board in matters relating to patents, trademarks, and copyrights, including filings and enforcement issues. Report to MST Board as necessary.
• **Labor and Employment Law**

**General.** The legal work includes collective bargaining, handling grievance and interest arbitrations, handling employment discrimination lawsuits, and advising on matters of labor and employment law. Report to MST Board as necessary.

**Requirements**

a. The attorney should be familiar with 49 U.S.C. Section 5333 [Section 13(c) of the Federal Transit Act] and have experience handling matters before the United States Department of Labor involving Section 13(c) protective arrangements and handling litigation involving Section 13(c) disputes.

b. The attorney should have experience in collective bargaining, preferably in the public transportation industry.

c. The attorney should have experience handling grievance arbitrations under a collective bargaining agreement and interest arbitrations under a Section 13(c) agreement.

d. The attorney should have experience handling administrative agency matters, such as safety matters before Cal/OSHA, and wage and hour matters before the U.S. Department of Labor and the California Labor Commissioner.

e. The attorney should have experience advising companies in the field of labor and employment law, preferably in the public transportation industry.

f. The attorney should have at least five years of experience in handling employment discrimination and wrongful termination matters before the California Superior Courts and United States District Courts.

• **Liability Attorney**

**General**

a. Represent MST as legal counsel in threatened and actual litigation in state and federal courts, including familiarity and experience with the California Tort Claims Act.

b. Prepare appropriate legal pleadings and documents necessary to defend liability lawsuits, including demurrers, answers to complaints, cross complaints, motions, dismissals, and other pleadings as necessary.

c. Provide opinions as to cases assigned, including determinations of both liability and damages, as requested.
d. Handle approved legal discovery, including the preparation of interrogatories, the conducting of depositions, and the subpoena of records.

e. Arrange for the selection of expert witnesses, including doctors, engineers, accident reconstructionists, and other witnesses.

f. Appear at court hearings, court conferences, and trials.

g. Work closely with and obtain authority from the MST Director of Human Resources/Risk Management to agree on a plan of defense.

h. There shall be no associates used without prior approval of the General Counsel or Director of Human Resources/Risk Management of the case. Only individual attorneys will be considered, not the firm.

i. Report to MST Board as necessary.

Requirements


b. Five years’ minimum experience practicing civil tort defense in California representing public agencies.

c. Minimum of three civil tort defense jury trials to verdict in the last five years representing public agencies.

- Workers’ Compensation

General. To perform all duties of defending, MST in all matters, as directed by the Director of Human Resources/Risk Management pertaining to any aspect of workers’ compensation claims from file creation/review through trial.

Requirements

a. Five years’ California workers’ compensation defense for self-insured employers and related subrogation proceedings and recoveries.

b. Must have handled at least 10 trials at the Workers’ Compensation Appeals MST Board in the last 3 years and 3 trials related to workers’ compensation subrogation matters.

c. Work closely with and obtain authority from MST Director of Human Resources/Risk Management to plan strategy and conduct necessary discovery.
d. There shall be no associates used without prior approval of the Director of Human Resources/Risk Management of the case. Only individual attorneys will be considered, not the firm.

e. Report to MST Board as necessary.

II. Claims Procedures and Settlements

A. All Proposers awarded contracts through this RFP process are expected to be familiar with MST Policy No. 51, “Claims Against MST,” including the settlement of any and all claims or complaints. In particular, Contractors are reminded that all settlements under $25,000 must have the prior approval of the General Manager/CEO. All settlements over $25,000 must be approved by the MST Board. A copy of MST Policy No. 51 is attached to the Sample Standard Services Agreement included with this RFP.
SUBCONTRACTOR'S STATEMENT OF ELIGIBILITY

_________________________________ certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any federal project by any federal department or agency.

Where the Subcontractor is unable to certify any of the statements in the certification, such Subcontractor shall attach an explanation with this form.

The Subcontractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et. seq., are applicable.

_________________________________

Name and Title of Official

_________________________________  Date: ___________________

Signature: ___________________________
PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In accordance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the contractor, any officer of the contractor, or any employee of the contractor who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

YES ☐    NO ☐

If the answer is yes, explain the circumstances in the following space.

Name of Contractor: ____________________________________________________________

Signature of Contractor: _________________________________ Date: _________________

(SIGN HERE)

STATEMENT OF ELIGIBILITY

________________________________________________hereby certifies that it

☐ is    ☐ is not
(Must Check One)

included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

Name of Contractor: ____________________________________________________________

Signature of Contractor: _________________________________ Date: _________________

(SIGN HERE)
In accordance with Title 23, United States Code Section 112, and Public Contract Code Section 7106, the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not, directly or indirectly, induced or solicited any other bidder to put in a false or sham bid; and has not, directly or indirectly, colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

Name of Contractor: __________________________________________________________________________

Signature of Contractor: ___________________________ Date: __________________________

(SIGN HERE)
CERTIFICATION OF
RESTRICTIONS ON LOBBYING

The CONTRACTOR hereby certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction is made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Executed this ______ day of ________________________, 2013

Name of Contractor: ____________________________________________________________

Signature of Contractor: ___________________________________  Date: ___________________

(SIGN HERE)
DISCLOSURE OF LOBBYING ACTIVITIES
Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<table>
<thead>
<tr>
<th>1. Type of Federal Action</th>
<th>2. Status of Federal Action</th>
<th>3. Report Type:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. contract</td>
<td>a. bid/offer/application</td>
<td>a. initial filing</td>
</tr>
<tr>
<td>b. grant</td>
<td>b. initial award</td>
<td>b. material change</td>
</tr>
<tr>
<td>c. cooperative agreement</td>
<td>c. post-award</td>
<td></td>
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<tr>
<td>d. loan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. loan guarantee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>f. loan insurance</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For Material Change Only:
Year __________ quarter __________
date of last report _______________

<table>
<thead>
<tr>
<th>4. Name and Address of Reporting Entity:</th>
<th>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime</td>
<td></td>
</tr>
<tr>
<td>Subawardee</td>
<td></td>
</tr>
<tr>
<td>Tier __________, if known:</td>
<td></td>
</tr>
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</table>

Congressional District, if known:

<table>
<thead>
<tr>
<th>6. Federal Department/Agency:</th>
<th>7. Federal Program Name/Description:</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

<table>
<thead>
<tr>
<th>8. Federal Action Number, if known:</th>
<th>9. Award Amount, if known:</th>
</tr>
</thead>
<tbody>
<tr>
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<td>$</td>
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</table>

<table>
<thead>
<tr>
<th>10. a. Name and Address of Lobbying Entity</th>
<th>b. Individuals Performing Services (including address if different from No. 10a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(if individual, last name, first name, Mi)</td>
<td>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>11. Amount of Payment (check all that apply):</th>
<th>13. Type of Payment (check all that apply):</th>
</tr>
</thead>
<tbody>
<tr>
<td>$_________________________</td>
<td>a. retainer</td>
</tr>
<tr>
<td>□ actual</td>
<td>b. one-time fee</td>
</tr>
<tr>
<td>□ planned</td>
<td>c. commission</td>
</tr>
<tr>
<td></td>
<td>d. contingent fee</td>
</tr>
<tr>
<td></td>
<td>e. deferred</td>
</tr>
<tr>
<td></td>
<td>other; specify: ___________________________</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>12. Form of Payment (check all that apply):</th>
<th>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ a. cash</td>
<td>(attach Continuation Sheet(s) SF-LLL-A if necessary)</td>
</tr>
<tr>
<td>□ b. in-kind; specify: nature __________________________</td>
<td></td>
</tr>
<tr>
<td></td>
<td>value ___________________________</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>15. Continuation Sheet(s) SF-LLL-A attached:</th>
<th>16. Information requested through this form is authorized by title 31 U.S.C., Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes</td>
<td>Signature: ___________________________</td>
</tr>
<tr>
<td>□ No</td>
<td>Print Name: ___________________________</td>
</tr>
<tr>
<td></td>
<td>Title: ___________________________</td>
</tr>
<tr>
<td></td>
<td>Telephone No. ___________________________ Date: __________</td>
</tr>
</tbody>
</table>

Authorized for Local Reproduction Standard Form - LLL
INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.

2. Identify the status of the covered federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.

4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant or loan award number, or the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in items 4 or 5.

10. A. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered federal action.

   B. Enter the full names of the individual(s) performing services, and include full address if different from 10A. Enter last name, first name, middle initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.
## ACKNOWLEDGMENT OF ADDENDA

Proposer acknowledges the receipt of the following Addenda:

<table>
<thead>
<tr>
<th>Addendum No.</th>
<th>Date</th>
<th>Addendum No.</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>4</td>
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<td>3</td>
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<td>6</td>
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Signature of Proposer: ____________________________

Date: ____________________________

Sign Here