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February 18, 2016

**REQUEST FOR QUALIFICATIONS (RFQ)**

**Financial Advisory Services**

NOTICE IS HEREBY GIVEN that the Bay Area Toll Authority (BATA) invites your firm to submit a Statement of Qualification (SOQ) for Financial Advisory Services.

The RFQ documents for this project are available for download on the BATA website at <http://procurements.mtc.ca.gov/>. Proposers are responsible for checking the website for any Addenda to this RFQ. Responses should be submitted in accordance with the instructions set forth in the RFQ.

Interested firms must submit an original and six (6) copies, as well as one electronic PDF version, of their SOQ by **4:00 p.m. on Friday, March 18, 2016**, in accordance with the instructions contained in the RFQ. Other key RFQ Dates are listed in Section V, Consultant Selection Timetable of the RFQ.

Sue Woo, Project Manager  
Bay Area Toll Authority  
Joseph P. Bort MetroCenter,  
101 Eighth Street, Oakland, CA 94607-4700  
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E-mail: [swoo@mtc.ca.gov](mailto:swoo@mtc.ca.gov)

Thank you for your interest.

Sincerely,

  
Steve Heminger  
Executive Director

SH: SW

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*Dave Cortese, Chair*  
Santa Clara County

*Alicia C. Aguirre*  
Cities of San Mateo County

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

*Jason Baker*  
Cities of Santa Clara County

*Tom Bates*  
Cities of Alameda County

*David Campos*  
City and County of San Francisco

*Dorene M. Giacopini*  
U.S. Department of Transportation

*Federal D. Glover*  
Contra Costa County

*Scott Haggerty*  
Alameda County

*Anne W. Halsted*  
San Francisco Bay Conservation  
and Development Commission

*Steve Kinsey*  
Marin County and Cities

*Sam Liccardo*  
San Jose Mayor's Appointee

*Mark Luce*  
Napa County and Cities

*Jake Mackenzie*  
Sonoma County and Cities

*Julie Pierce*  
Association of Bay Area Governments

*Bijan Saripati*  
California State  
Transportation Agency

*Libby Schauf*  
Oakland Mayor's Appointee

*James P. Spering*  
Solano County and Cities

*Adrienne J. Tissier*  
San Mateo County

*Scott Wiener*  
San Francisco Mayor's Appointee

*Amy Rein Worth*  
Cities of Contra Costa County

*Steve Heminger*  
Executive Director

*Alli Bockelman*  
Deputy Executive Director, Policy

*Andrew R. Fremier*  
Deputy Executive Director, Operations

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## I. BATA AND PROJECT DESCRIPTION

### A. Description of BATA

BATA was created by the California Legislature in 1997 to administer the base \$1 auto toll on the San Francisco Bay Area's seven state-owned toll bridges. In August 2005, the California Legislature expanded BATA's responsibilities to include administration of all toll revenue and joint oversight of the toll bridge construction program with Caltrans and the California Transportation Commission.

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

BAIFA was created as a Joint Powers Authority (JPA) between the Metropolitan Transportation Commission (MTC) and the Bay Area Toll Authority (BATA) to plan, develop, operate and finance transportation projects, including express lanes. In October 2011, the California Transportation Commission (CTC) found the Express Lane Network eligible for development and operation by MTC under Section 149.7 of the Streets and Highways Code. In March 2013, MTC delegated its express lane responsibilities to BAIFA.

### B. Project Description

BATA is seeking SOQs from firms qualified to provide comprehensive financial advice for managing its \$9 billion debt portfolio, its \$3.5 billion investment portfolio and its \$1.9 billion swap portfolio and all future financing needs. BATA also intends to contract for financial advisory services to be provided to MTC and BAIFA on an as-needed basis.

## II. MINIMUM QUALIFICATIONS

SOQs must demonstrate that the firm or team submitting the SOQ ("Proposer") meets the following Minimum Qualifications to be eligible for consideration for this project.

- Firm must be an independent consultant, qualified to operate in California as a financial and investment advisor.
- Firm must have a policy against serving as both underwriter and financial advisor on the same offering of bonds or other debt securities.
- Firm must have minimum ten (10) years' experience in providing financial, swap and investment advisory services. Services provided must include the following:
  - Twenty (20) public agency clients of which at least ten (10) must be located in the State of California.
  - Served as lead advisor on at least five (5) \$100 million or greater financings over the last three (3) years. Of the five (5) financings, they must have included the following:
    - three (3) must have been related to transportation;
    - one (1) must have been toll related; and
    - one (1) must have been located in the State of California.

- Firm must have significant presence in the State of California as demonstrated by the following:
  - Firm shall have at least ten (10) different California government entity clients
  - Firm shall currently have at least one office in the nine-county San Francisco Bay Area.

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

#### ***A. Scope of Work***

The scope of work for the project is provided in *Appendix A, Preliminary Scope of Work*. The Proposer selected to enter into a contract (“Consultant”) will be expected to perform all work and analysis necessary to complete the scope of work. All work will be assigned pursuant to BATA-initiated task orders that will include a specific scope of work based on the tasks identified in *Appendix A, Preliminary Scope of Work*. Payment for work performed under task orders may be deliverables-based or time and materials, as determined by the BATA Project Manager. A sample task order form is attached hereto as Attachment A-2, Task Order Form to *Appendix D, BATA Standard Consultant Contract*.

#### ***B. Period of Performance***

BATA expects the work to commence on or about July 1, 2016, and to be completed no later than June 30, 2021. At BATA’s sole option, the contract may be extended for two (2) additional years for work contemplated by *Appendix A, Preliminary Scope of Work*.

#### ***C. Budget***

The contract value for general financial swap and investment advisory services will not exceed more than two hundred fifty thousand dollars (\$250,000) per fiscal year subject to approval of the BATA budget and/or any relevant financing documents.

Fees payable for services specific to financing or swap transactions are expected to be authorized by BATA, BAIFA or MTC resolution.

### **IV. PRE-SUBMITTAL CONFERENCE AND REQUESTS FOR CLARIFICATION OR EXCEPTIONS**

A pre-submittal conference will be held at 10:00 a.m. on Tuesday, March 8, 2016 at 101 Eighth Street in Oakland, CA, in the Rockridge conference room.

Any addenda will be posted on BATA’s website. All Proposers are responsible for checking the website for any addenda to the RFQ.

Any requests for clarification of or exceptions to RFQ requirements must be received by BATA no later than 4:00 p.m. on Thursday, March 10, 2016, to guarantee a response or consideration. BATA reserves the right to reject any SOQ that contains unauthorized conditions or exceptions.

## V. CONSULTANT SELECTION TIMETABLE

10:00 a.m., on Tuesday, March 8, 2016	Pre-Submittal Conference, at 101 Eighth Street, Oakland, CA 94607, Conference Room - Rockridge
4:00 p.m., on Thursday, March 10, 2016	Closing date/time for receipt of requests for modifications/exceptions
No later than three (3) business days prior to the date SOQs are due.	Deadline for protesting RFQ provisions
<b>4:00 p.m., Friday, March 18, 2016</b>	<b>Closing date/time for receipt of SOQs</b>
Week of March 28, 2016*	Interviews (if held)
April 13, 2016*	BATA Oversight Committee Approval

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

## VI. SUBMITTAL OF SOQ

1. Interested firms must submit an original and six (6) copies, as well as one electronic PDF version, of their SOQ by **4:00 p.m. on Friday, March 18, 2016. Submission of an electronic copy of the SOQ without hard copies will not satisfy the submission requirement. No SOQs submitted solely by email and no faxed SOQs will be considered.**
2. SOQs are to be addressed as follows:

Financial Advisory Services  
Attention: Sue Woo  
101 Eighth Street, 3rd Floor Receptionist  
Oakland, CA 94607
3. Proposer's name and return address must also appear on the envelope.
4. SOQs will be received only at the address shown above and **no later than the date and time indicated.** BATA is not responsible for deliveries delayed for any reason. Any SOQ received after said date and time or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened.
5. All SOQs, whether delivered by an employee of the Proposer, U.S. Postal Service, courier or package delivery service, must be received and time stamped at the stated address **prior to or no later than the time designated.** The timestamp located on the 3<sup>rd</sup> floor at the receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of SOQs
6. Proposer agrees and acknowledges all RFQ specifications, terms and conditions and indicates ability to perform by submission of a SOQ.

7. A signed SOQ submitted to BATA in response to this RFQ shall constitute a binding offer from Proposer to contract with BATA according to the terms of the SOQ for a period of one hundred twenty (120) days after the SOQs are due to BATA.
8. A SOQ may be withdrawn at any time before the date and time when SOQs are due by submitting a written request for its withdrawal to the BATA Project Manager.
9. This RFQ does not commit BATA to award a contract or to pay any costs incurred by any Proposer in the preparation of a SOQ in response to this RFQ.
10. Only one SOQ will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.
11. BATA reserves the right to accept or reject all SOQs submitted, waive minor irregularities, request additional information, and negotiate with any or all Proposers.
12. BATA reserves the right in its sole discretion not to enter into any contract as a result of this RFQ.
13. If the selected Proposer fails to enter into a contract with BATA in a timely manner as determined by BATA, in accordance with the terms and conditions of this RFQ, BATA reserves the right to reject the SOQ and enter into a contract with the next highest scoring Proposer.
14. Online Vendor Registration is required to be eligible for contract award. Proposers should visit <http://procurements.mtc.ca.gov/Vendors/vendor-information.html> to register in the BATA Vendor Database.

## **VII. FORM OF SOQ**

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

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

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

Each SOQ must include the following:

### **A. Transmittal Letter**

SOQs must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and containing the name and telephone number of a contact

person, if different from the signatory. Indicate whether there are any conflicts of interest, actual or apparent, that would limit the Proposer's ability to provide the requested services and describe the plan for mitigating such conflicts. Acknowledge the receipt of this RFQ and any Addendum to the RFQ. Indicate that the SOQ is a firm offer to enter into a contract to perform work related to this RFQ for a period of one hundred twenty (120) days from the due date for SOQs.

#### B. Title Page

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

#### C. Table of Contents

SOQs must include a table of contents that includes a clear identification of the material by section and page number.

#### D. Financials

In a separate sealed envelope: provide a copy of the firm's most current and prior year's financial statements. The most current cannot be dated prior to December 2014. The statements will not be considered part of the SOQs for purposes of the California Public Records Act and will be reviewed to determine responsibility only. The statements will be returned to Proposers prior to panel selection.

#### D. Minimum Qualifications

Provide a description of the Proposer's qualifications specific to the minimum qualifications listed under Section II, Minimum Qualifications above. Identify the project or personnel whose expertise or experience addresses each of the specified needs. The description shall be sufficiently detailed for the BATA Project Manager to determine whether the Proposer is in compliance with each of the minimum qualifications listed.

#### E. Experience and Availability

- 1) Provide a name of an Account Relationship Manager and other qualified and available staff that will be dedicated to BATA's account. Identify key staff and their qualifications (attach resumes as appropriate) and office location. Demonstrate that assigned personnel have experience in the following areas:
  - Bidding and evaluating revenue bond structures and pricing
  - Pricing and structuring financial products
  - Structuring reserve and capital project funds
  - Performing complex proforma and modeling analysis
  - Extensive knowledge of transportation finance
  - Experience with federal/state transportation funding
  - Assisting with due diligence and disclosure practices
  - Assessing bond market conditions

- Performing swap analysis
  - Performing investment and strategic analysis
- 2) Provide a brief analysis no longer than five (5) single sided pages (total), in response to the prompts below:
- BATA has completed its financing program. What are your thoughts on next steps for BATA, if any?
  - Since interest rates are expected to rise, what is your view on variable rate debt versus fixed rate debt?
  - In a typical financing, how would you define the role and responsibility of the following financing team members:
    - Financial/Municipal Advisor
    - Underwriter
    - Banker
    - Bond Counsel
    - Issuer
  - Provide your thoughts on the MSRB's new municipal advisory qualifications exam and other requirements.

#### H. California Levine Act Statement

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

#### I. Insurance Provisions

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

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

#### J. Taxpayer Identification Number and Certification

Submit a W-9, Request for Taxpayer Identification Number and Certification (containing original signature) available at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

## VIII. SOQ EVALUATION

### A. *Verification of Minimum Qualifications*

The BATA Project Manager will review SOQs to ensure that each SOQ meets the Minimum Qualifications set out in Section II, Minimum Qualifications of this RFQ. Proposers failing to meet the Minimum Qualifications will not be considered.

### ***B. Review for General Responsiveness***

The BATA Project Manager, in consultation with BATA's Office of General Counsel, will conduct an initial review of the SOQs for general responsiveness and inclusion of the items requested in Section VII, Form of SOQ. Proposers failing to meet the Minimum Qualifications listed in this RFQ or to satisfy the federal Disadvantaged Business Enterprise (DBE) requirements (if applicable), will not be considered responsive. Also, any SOQ that does not include enough information to permit the evaluators to rate the SOQ in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. A SOQ that fails to include one or more items requested in Section VII, Form of SOQ may be considered responsive, if evaluation in every criterion is possible. BATA reserves the right to request additional information from responsive Proposers prior to evaluation.

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

Responsive SOQs will then be evaluated by an evaluation panel. The evaluation of the SOQs shall be within the sole judgment and discretion of the evaluation panel.

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

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

1. Firm and staff qualifications and experience with financial, swap and investment advisory services (50%);
2. Experience with transportation and/or toll revenue clients (35%);
3. SOQ quality and completeness (10%); and
4. SOQ insightfulness, accuracy and clarity of response to RFQ Section VII, Form of RFQ, Item E, Experience and Availability, Item No. 2 (5%)

### ***D. Proposer Interviews***

Following the initial evaluation of SOQs, the evaluation panel may elect to recommend a Consultant with or without interviews or may develop a short list of firms to be considered for selection. Oral interviews will be held with short-listed firms. If a short list is developed, firms that were not selected for the short list will be notified; however, the evaluation record shall remain confidential until the BATA Oversight Committee authorizes award.

BATA reserves the right to not convene interviews and to make an award on the basis of written SOQs, alone. SOQs should be submitted on the most favorable terms. References may be contacted at any point in the evaluation process. Further, BATA reserves the right to accept or reject any and all SOQ submitted, to waive minor irregularities in SOQs, and to request

additional information from one or more the Proposers. Any award made will be made to the firms whose SOQs are the most advantageous to BATA, based on the evaluation criteria listed above.

During the evaluation, any potential conflicts of interest (see Section IX, General Conditions, Subarticle F) will be considered. BATA may request additional information from any firm that appears to have an organizational conflict of interest, including its plan to mitigate any such conflicts. BATA will not award a contract to a firm with an actual conflict of interest, or with an apparent conflict of interest that cannot be adequately mitigated, in BATA's sole opinion.

#### ***E. Recommendation for Contract Award***

The panel will recommend the selected Consultant to the BATA Executive Director, based on evaluation of the written SOQ and oral interviews (if held). The Executive Director will review the recommendation and, if he agrees, he will approve the award or forward the recommendation to the BATA Oversight Committee which authorizes award.

### **IX. GENERAL CONDITIONS**

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

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

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

BATA's Standard Consultant Contract is attached as *Appendix D*. If a Proposer wishes to propose a change to any standard BATA contract provision, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of requests for clarifications/exceptions. If no such change is requested, the Proposer will be deemed to accept BATA's standard contract provisions, unless such language is protested in accordance with Section C below.

The selected Consultant will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1, Insurance Requirements*. Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements in *Appendix D-1*, within ten (10) days of BATA's notice that it is the successful Proposer. Requests to change BATA's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions. BATA will review the requests and issue an addendum if material changes requested by a prospective Proposer are acceptable. Objections to BATA determinations on requests to change insurance requirements pursuant to the protest provisions of this RFQ must be brought to BATA's attention no later than the deadline for protesting RFQ provisions or compliance with all material insurance requirements will be assumed.

The contract resulting from this RFQ will be a combination of time and materials payment and financing-related work with a fixed price as outlined in the Contract.

### ***C. Selection Disputes***

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

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

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the BATA Oversight Committee authorizes award.

Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the BATA review officer to recommend a resolution to the BATA Executive Director.

The BATA Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Should a Proposer wish to appeal the decision of the BATA Executive Director, it may file a written appeal with the [BATA Operations Committee/MTC Administration Committee/BATA Oversight Committee/BAIFA/BAHA], no later than 4:00 p.m. on the third business day after receipt of the written response from the BATA Executive Director. The BATA Oversight Committee's decision will be the final agency decision.

Authorization to award an agreement to a particular Proposer by BATA shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the BATA Executive Director or, if the decision of the BATA Executive Director is appealed, the issuance of BATA Oversight Committee's decision.

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

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

If the Proposer believes any SOQ content contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer may request that BATA withhold from disclosure such proprietary materials by marking each page containing proprietary information, including financial information, if any, required to be submitted under Section VII of this RFQ, as confidential and shall include the following notice at the front of its SOQ:

"The data on the following pages of this SOQ, including financial information submitted under Section VII of the RFQ marked along the right margin with a vertical line, contain technical or financial information that constitute trade secrets and/or that, if disclosed, would cause substantial injury to the Proposer's competitive position. The Proposer requests that such data be used for review by BATA only, but understands that exemption from disclosure will be limited by BATA's obligations under the California Public Records Act. If an agreement is awarded to the Proposer submitting this SOQ, BATA shall have the right to use or disclose the data, unless otherwise provided by law. [List pages]."

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

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

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

#### ***E. Key Personnel***

The Account Relationship Manager assigned to the project is expected to remain on the project. Any change in the Account Relationship Manager is subject to prior written approval of BATA. Removal of the Account Relationship Manager identified in the SOQ without written consent of the BATA Project Manager may be considered a material breach of contract.

***F. Conflicts Of Interest***

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

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

Whenever BATA is awarding a contract that involves the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts of the Proposer, and if so, whether any potential bias can be mitigated acceptably by BATA and the Proposer. After award, the winning Proposer shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under the agreement resulting from this and other BATA solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to BATA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other project.

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

***G. Not Used***

***H. Not Used***

***I. Web-Based Communication***

Proposer agrees to submit all communication and required documentation, including but not limited to invoices, requests for contract modifications, etc. to the BATA Project Manager or his/her designee via a web-based system designated by BATA to which BATA will provide system access.

## **APPENDIX A, SCOPE OF WORK**

The services to be performed by Financial/Municipal Advisor shall consists of services for BATA, MTC or BAIFA requested by the Project Manager or a designated representative including, but not limited to, the following:

Task 1: Financing Related Services:

Assist in evaluating underwriters

Assist in evaluating bond and disclosure counsel

Assist with rating agency presentations

Assist in negotiations with underwriters, liquidity providers and insurance providers

Assist with securing liquidity providers

Assist with swap analysis

Assist in making presentations to BATA, including its governing board and BATA management

Assist in preparing the Official Statement and all other disclosure documents used in the offering of bonds

Assist in analysis of financial alternatives available to BATA and make recommendations on specific strategies

Assist with the risk analysis of various financial products and strategies

Work cohesively as a member of BATA's financing team

Assist with negotiating fees of banking team

Assist with investor relations

Evaluate effectiveness of remarketing agents

Provide advice in investment planning and management

Assist with financial planning

Serve as the agencies' Independent Registered Municipal Advisor.

Task 2 Advisory Services:

Provide non-deal specific ongoing financial, swap and investment advisory services, including services listed in Task 1 that are unrelated to a particular financing, on an as needed basis.

**APPENDIX B, Not Used**

### APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT

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

BATA’s commissioners include:

Dave Cortese, Chair  
Jake Mackenzie, Vice Chair  
Alicia C. Aguirre  
Tom Azumbrado  
Jason Baker  
Tom Bates  
David Campos

Dorene M. Giacomini  
Federal D. Glover  
Scott Haggerty  
Anne W. Halsted  
Steve Kinsey  
Sam Liccardo  
Mark Luce

Julie Pierce  
Bijan Sartipi  
Libby Schaaf  
James P. Spering  
Adrienne J. Tissier  
Scott Wiener  
Amy Rein Worth

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

YES  NO

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

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

YES  NO

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

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

\_\_\_\_\_  
DATE

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

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

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

## APPENDIX D, BATA STANDARD CONSULTANT CONTRACT

PROFESSIONAL SERVICES AGREEMENT  
Between BAY AREA TOLL AUTHORITY  
And *INSERT NAME OF CONSULTANT*  
For Financial Advisory Services

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made and entered into as of the **xx** day of **Month**, 20\_\_\_\_, by and between the **Bay Area Toll Authority** (herein called “BATA”), established pursuant to **Streets and Highways Code § 30950 et seq.**, and the **Bay Area Toll Authority** entered into pursuant to **Government Code Sections 6500 et seq.**, and **INSERT NAME OF CONSULTANT**, (herein called “CONSULTANT”) [**“CONTRACTOR”** **MAY BE SUBSTITUTED, IF APPROPRIATE, IN WHICH CASE “subcontractor” SHOULD ALSO BE SUBSTITUTED FOR “subconsultant” AS APPROPRIATE THROUGHOUT**], a **PICK ONE OF THE FOLLOWING:** partnership, \_\_\_\_\_[state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the State of \_\_\_\_\_. BATA is entering into this agreement on behalf of itself, the Metropolitan Transportation Commission (MTC) and the Bay Area Infrastructure Financing Authority (BAIFA); all references to BATA shall be deemed to apply to each such agency, as applicable.

### RECITALS

WHEREAS, BATA intends to secure the services of a qualified firm to provide comprehensive financial advice for managing its \$9 billion debt portfolio, its \$3.5 billion investment portfolio and its \$1.9 billion swap portfolio and all future financing needs and to provide other financial advisory services to BATA on an as-needed basis (herein called the “Project”); and

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

WHEREAS, the parties hereto now wish to enter into this Agreement pursuant to which CONSULTANT will render professional services in connection with the Project as hereinafter provided;

NOW, THEREFORE, the parties hereto agree as follows:

#### 1. SCOPE OF SERVICES

CONSULTANT's services are described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. CONSULTANT agrees to perform or secure the performance of all specified services within the maximum payment specified in Article 3, subject to the prior written approval of a work plan by Susan Woo, (herein called "BATA Project Manager"). The BATA Project Manager is responsible for communication with CONSULTANT and the administration of this Agreement. BATA's Executive Director or designated representative may substitute a new BATA Project Manager by written notice to CONSULTANT.

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

CONSULTANT agrees to perform or secure the performance of all specified services in their entirety with respect to Task 2 within the limit specified in Article 3.

In the performance of its services, CONSULTANT represents that it has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services, and CONSULTANT represents that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

#### 1.1 SUBMISSION OF CONTRACT DOCUMENTS

To the extent requested by the BATA Project Manager, CONSULTANT shall submit communications and required documentation, including but not limited to invoices, requests for contract modifications, and information on payments received and made to subconsultants, subconsultant utilization, and if applicable, certified payrolls, to the BATA PROJECT MANAGER or his or her designee via one or more web-based systems designated by BATA to which BATA will provide CONSULTANT with system access. BATA may withhold payment of invoices pending receipt of such communications and required documentation via the applicable web-based system.

## 2. PERIOD OF PERFORMANCE

CONSULTANT's services hereunder shall commence on or after July 1, 2016, and shall be completed no later than June 30, 2021, unless extended by a duly executed amendment or earlier terminated, as hereinafter provided. CONSULTANT's services under Attachment A, Scope of Work, Task 1, shall be performed in accordance with the schedule included in individual financing transactions. CONSULTANT's services under Attachment A, Scope of Work, Task 2, shall be performed as requested.

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

BATA and CONSULTANT agree that CONSULTANT shall be compensated for all CONSULTANT services provided in connection with a financing under Task 1 of Attachment A, Scope of Work, out of the financing proceeds, as negotiated by the parties and subject to the review and approval of the Authority at the time the BATA board approves the financing transaction. Such services shall be at the sole discretion of BATA. In negotiating CONSULTANT's compensation, the parties shall take into consideration the size and complexity of the issuance or transaction, the value added by CONSULTANTS's services, the hourly rates of and estimated time to be spent by the applicable key personnel, and the estimated expenses. At the request of BATA, CONSULTANT shall submit relevant documents to support its work concurrent with completion of the financing transactions.

BATA and CONSULTANT further agree that CONSULTANT shall be compensated for all BATA services provided under Task 2 of Attachment A, Scope of Work, at the hourly rates set forth in Attachment D, Key Personnel Assignments, which are fully inclusive (as applicable) of labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subconsultants' costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee, not to exceed two hundred and fifty thousand dollars per annum (\$250,000/annum)] ("Maximum Payment"). BATA shall make payments to CONSULTANT in accordance with the provisions described in Attachment C, Compensation and Method of Payment, attached hereto and incorporated herein by this reference.

All invoices shall be submitted electronically via email to BATA at [acctpay@mtc.ca.gov](mailto:acctpay@mtc.ca.gov) or in writing to:

Attention: Accounting Section  
Bay Area Toll Authority  
101 Eighth Street  
Oakland, CA 94607

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

#### **4. KEY PERSONNEL**

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

#### **5. AMENDMENTS**

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

#### **6. TERMINATION**

A. Termination for Convenience. BATA may terminate this Agreement for convenience, in whole or in part, at any time by written notice to CONSULTANT. Upon receipt of notice of termination, CONSULTANT shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to BATA. CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed 3%, plus reasonable termination costs, not to

exceed the amount payable for such deliverables. CONSULTANT shall be paid for hours worked and reimbursed for authorized expenses, plus reasonable termination costs, not to exceed the maximum amount payable for the terminated work. For terminated Task 1 work, CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed 3%, plus reasonable termination costs, not to exceed the amount payable for such deliverables. For terminated Task 2 work, CONSULTANT shall be paid for hours worked, plus authorized expenses and reasonable termination costs, not to exceed the maximum amount payable for the terminated work. If CONSULTANT has any property in its possession belonging to BATA, CONSULTANT will account for the same, and dispose of it in the manner BATA directs. Except as provided above, BATA shall not in any manner be liable for CONSULTANT's actual or projected lost profits had CONSULTANT completed the services required by this Agreement.

B. Termination for Default. If CONSULTANT does not deliver the work products specified in this Agreement in accordance with the delivery schedule or fails to perform in the manner called for in the Agreement, or if CONSULTANT fails to comply with any other material provision of the Agreement, BATA may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on CONSULTANT, setting forth the manner in which CONSULTANT is in default. If CONSULTANT does not cure the breach or describe to BATA's satisfaction a plan for curing the breach within the fifteen (15) day period, BATA may terminate the Agreement for default. In the event of such termination for default, CONSULTANT will be entitled to be reimbursed only for work performed in full compliance with the contract requirements as follows: CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables. CONSULTANT shall be paid for hours worked and reimbursed for authorized expenses, not to exceed the maximum amount payable for the terminated work. For terminated Task 1 work, CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables. For terminated Task 2 work, CONSULTANT shall be paid for hours worked, plus authorized expenses, not to exceed the maximum payable for the terminated work. Such reimbursement will be offset by any costs incurred by BATA to complete work required under the Agreement. In no event shall BATA be required to reimburse CONSULTANT for any costs incurred for work causing or contributing to the default. If CONSULTANT has any property in its possession belonging to BATA, CONSULTANT will account for the same, and dispose of it in the manner BATA directs. BATA shall not in any manner be liable for CONSULTANT's actual or projected lost profits had CONSULTANT completed the services required by this Agreement.

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

## **7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS**

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

## **8. INDEPENDENT CONTRACTOR**

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

## **9. INDEMNIFICATION**

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

A. Any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be alleged to have occurred, caused by any breach of the Agreement or negligent act or omission or willful misconduct of CONSULTANT or its officers, employees, subconsultants or agents or any of them, arising from, under or in connection with this Agreement; or

B. Any allegation that materials or services provided by CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

CONSULTANT further agrees to defend any and all such claims, actions, suits or other legal proceedings and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against any of the BATA Indemnified Parties, CONSULTANT shall, at its expense, satisfy and discharge the same.

The provisions set forth in this Article are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable. This indemnification shall survive termination or expiration of this Agreement.

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

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

### **10.1 NONDISCLOSURE OF CONFIDENTIAL INFORMATION**

BATA may be required to make available to CONSULTANT certain confidential, non-public or proprietary information (“Confidential Information”) for purposes of carrying out the Project. Confidential Information may be tangible, intangible, visual, oral, written, and/or electronic information, present or future, and includes: (i) proprietary information learned through inspection of drawings, specifications or equipment; (ii) descriptions of proprietary processes, designs, functionality or know-how; (iii) proprietary software, programming data, code or information; and (iv) other information disclosed in writing and marked as “Confidential” or with a similar notice. As between BATA and CONSULTANT, Confidential Information shall remain the sole and exclusive property of BATA, and no license or other rights to Confidential Information or any works deriving from Confidential Information is granted or implied hereby. Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of CONSULTANT; b)

CONSULTANT can demonstrate to have had rightfully in its possession prior to disclosure by BATA or its contractors, vendors or licensors; c) CONSULTANT rightfully obtains from a third party who has the right to transfer or disclose it; or (d) is required to be disclosed by law or applicable legal process.

CONSULTANT agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose such Confidential Information except for the business purpose underlying this Agreement, except as authorized in writing by BATA. CONSULTANT further agrees to disclose Confidential Information only to its directors, officers, employees and consultants who need to know such information, and who have agreed to be bound by the terms and conditions of this Agreement. Promptly upon the request of BATA, at any time and for any reason, CONSULTANT shall destroy or return to BATA, at BATA's option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by BATA.

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

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

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

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

## **12. SUBCONTRACTS**

### **[FOR AGREEMENTS WITH SUBCONSULTANTS AT OUTSET]**

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

### **[FOR AGREEMENTS WITH NO SUBCONSULTANTS AT OUTSET]**

A. No subconsultants are currently approved by BATA for work under this Agreement. In advance of the assignment of any work to a subconsultant, such subconsultant must be approved in writing by the BATA Project Manager and engaged under written contract with CONSULTANT with provisions allowing CONSULTANT to comply with all requirements of this Agreement, including without limitation Article 11, OWNERSHIP OF WORK PRODUCTS. Failure of a subconsultant to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of CONSULTANT.

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

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

## **13. ASSIGNMENT OF AGREEMENT**

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

#### **14. RECORDS**

CONSULTANT agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. CONSULTANT further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer.

#### **15. AUDITS**

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

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

#### **16. NOTICES**

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

To BATA:

Attention: Susan Woo  
Metropolitan Transportation Commission  
101 - 8th Street  
Oakland, CA 94607-4700  
Email: swoo@mtc.ca.gov  
Fax: (510)817-5848

To CONSULTANT:

Attention: **Insert Name of Appropriate Person**  
**Consultant's name**

Consultant's address  
Consultant's address  
Email: X  
Fax: X

## **17. SOLICITATION OF CONTRACT**

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

## **18. PROHIBITED INTERESTS**

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

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

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

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

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

If at any time during the term of this Agreement CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONSULTANT shall immediately provide BATA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, BATA becomes aware of an organizational conflict of interest in connection with CONSULTANT's performance of the work hereunder, BATA shall similarly notify CONSULTANT. In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by BATA, BATA will consider the conflict presented and any alternatives proposed and meet with CONSULTANT to determine an appropriate course of action. BATA's determination as to the manner in which to address the conflict shall be final.

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

## **19. LAWS AND REGULATIONS**

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

## **20. CLAIMS OR DISPUTES**

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

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

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

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

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

## **21. REMEDIES FOR BREACH**

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

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

## **22. TEMPORARY SUSPENSION OF WORK**

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

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

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

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

## **23. WARRANTY OF SERVICES**

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

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

1. The right to have CONSULTANT re-perform such services at CONSULTANT's expense; or
2. The right to have such services done by others and the costs thereof charged to and collected from CONSULTANT if within 30 days after written notice to CONSULTANT

requiring such re-performance, CONSULTANT fails to give satisfactory evidence to BATA that it has undertaken said re-performance; or

3. The right to terminate the Agreement for default.

CONSULTANT shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions.

## **24. DISPUTE RESOLUTION**

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

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

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

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

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

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

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

## **25. CHOICE OF LAW**

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

## **26. ATTORNEYS' FEES**

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

## **27. PARTIAL INVALIDITY**

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

## **28. BENEFIT OF AGREEMENT**

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

## **29. NO THIRD PARTY BENEFICIARIES**

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

## **30. ENTIRE AGREEMENT; MODIFICATION**

This Agreement, including any attachments, constitutes the complete agreement between the parties and supersedes any prior written or oral communications. CONSULTANT represents that in entering into the Agreement it has not relied on any previous representations,

inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both CONSULTANT and BATA. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

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

**BAY AREA TOLL AUTHORITY**

**NAME OF CONSULTANT**

---

Steve Heminger, Executive Director

---

**Insert Appropriate Name, Title**

**ATTACHMENT A**

*Scope of Work*

Outline of Services

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

To Come

**ATTACHMENT B**  
*Not Used*

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

**TASK ORDERS**

A. Expenses. For work under Task 2, BATA will reimburse CONSULTANT for all expenses deemed reasonable and necessary by BATA incurred by CONSULTANT in the performance of this Agreement. .

B. Method of Payment. CONSULTANT shall submit invoices for services rendered no more frequently than on a monthly basis. Invoices shall identify work for which payment is requested by date. All invoices will be dated, numbered in serial order, and signed by CONSULTANT.

For invoices for work under Task 1, CONSULTANT shall specify each deliverable for which payment is requested and the amount requested.

For invoices for work under Task 2, CONSULTANT shall submit invoices for services rendered on a monthly basis, covering fees and expenses for a single calendar month. Each invoice shall specify the work performed, hours worked, and amount due (by personnel), authorized expenses, the total amount claimed under the invoice and the amount paid to date for Task 2 work.

**ATTACHMENT D**  
*Key Personnel Assignments*

	<u>Name</u>	<u>Hourly Rate</u>
1.	*	

\* Account Relationship Manager

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

1. INSURANCE

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

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

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

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

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of CONSULTANT and CONSULTANT's officers, agents, and employees and with limits of

liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, a products/completed operations aggregate liability limit of not less than \$2,000,000 and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of BATA.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

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

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

4. Umbrella Insurance in the amount of \$10,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

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

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

6. Property Insurance. Property Insurance covering CONSULTANT'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of BATA (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special

Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of BATA.

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

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

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

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

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

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

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of CONSULTANT's personnel, subconsultants, subcontractors, and equipment have been removed from BATA's property, and the work or services have been formally accepted. CONSULTANT must notify BATA if any of the above required coverages are non-renewed or cancelled. The failure to

procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

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

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

## 2. ADDITIONAL INSURED

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

**None**

**ATTACHMENT F**  
*Not Used*

**ATTACHMENT G**  
*Subconsultant List*

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

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

**APPENDIX D-1, INSURANCE REQUIREMENTS**

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

Yes (√)	<p><b>Please certify by checking the box below that required coverages will be provided within ten (10) business days of BATA’s notice to firm that it wishes to contract with the firm.</b></p>
—	<p><u>Workers' Compensation Insurance</u> with Statutory limits, and <u>Employer’s Liability Insurance</u> with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of CONSULTANT’s employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of BATA. Such <u>Workers Compensation &amp; Employer’s Liability</u> may be waived, if and only for as long as CONSULTANT is a sole proprietor or a corporation with stock 100% owned by officers with no employees.</p>
—	<p><u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of CONSULTANT and CONSULTANT’s officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, a products/completed operations aggregate liability limit of not less than \$2,000,000 and Personal &amp; Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of BATA.</p> <p>Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.</p> <p>BATA and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT’s operations.</p>
—	<p><u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT’s officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability that shall not be less than \$1,000,000 combined single limit per accident.</p>
—	<p><u>Umbrella Insurance</u> in the amount of \$10,000,000 providing excess limits over Employer’s Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.</p>

—	<p><u>Errors and Omissions Professional Liability Insurance</u> for errors and omissions and the resulting damages, including, but not limited to, economic loss to BATA and having minimum limits of \$5,000,000 per claim. The policy shall provide coverage for all work performed by CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Errors &amp; Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.</p>
—	<p><u>Property Insurance.</u> Property Insurance covering CONSULTANT'S own business personal property and equipment to be used in performance of its Agreement with BATA, materials or property to be purchased and/or installed on behalf of BATA (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of BATA.</p>
<p>Consultant's obligation to provide the insurance described herein may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to BATA.</p> <p>Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from BATA. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.</p> <p>In the event that BATA seeks coverage as an additional insured under any Consultant insurance policy that contains a deductible or self-insured retention, Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Consultant, subconsultant, subcontractor, or any of their employees, officers or directors, even if Consultant or subconsultant is not a named defendant in the lawsuit.</p> <p>If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Consultant shall:</p> <ol style="list-style-type: none"><li>1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of its Agreement with BATA or the beginning of any work under such Agreement;</li><li>2. Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and</li><li>3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.</li></ol>	

All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Consultant's personnel, subcontractors, and equipment have been removed from BATA's property, and the work or services have been formally accepted. Consultant must notify BATA if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of its Agreement with BATA.

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

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

**By signing below you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within ten (10) business days of BATA's notice to firm that it wishes to contract with the firm.**

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

**NOTE: If you were unable to check "Yes" for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to BATA's attention no later than closing date/time for receipt of requests for modifications/exceptions. If such modifications/exceptions are not brought to BATA's attention consistent with the provisions of this RFQ, compliance with the insurance requirements will be assumed.**

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**APPENDIX E – IRAN CONTRACTING ACT of 2010**

(Public Contract Code Section 2200 et seq.)

Prior to bidding on, submitting a SOQ or executing a contract or renewal for a Bay Area Toll Authority (BATA contract for goods or services of \$1,000,000 or more, a Proposer must either: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your Proposer or financial institution name and Federal ID Number (if available) and complete one of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

**OPTION #1 - CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is not on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Proposer Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in</i>	

**OPTION #2 – EXEMPTION**

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a Proposer/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a SOQ for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Proposer Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or N/A)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>