

CONTRACT

between the

BAY AREA TOLL AUTHORITY

and

CONTRACTOR

for the

FASTRAK® REGIONAL CUSTOMER SERVICE CENTER

TERMS AND CONDITIONS

Revised August 15, 2012

Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, California 94607-4700

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GLOSSARY OF TERMS

Addenda:	Written revisions to the Request for Proposal issued by BATA on May 25, 2012, before the receipt of Best and Final Offers.
Agency or Agencies:	Golden Gate Bridge, Highway and Transportation District (GGBHTD), Santa Clara Valley Transportation Authority (VTA), Sunol Smart Carpool Joint Powers Authority or Alameda County Transportation Commission (ACTC) (singular) or Golden Gate Bridge, Highway and Transportation District (GGBHTD), Santa Clara Valley Transportation Authority (VTA), Sunol Smart Carpool Joint Powers Authority, and Alameda County Transportation Commission (ACTC) (plural).
Approved Project Schedule:	The detailed schedule, approved by BATA pursuant to Article 2.5, that Contractor has agreed to adhere to in the performance of the Contract.
BATA:	Bay Area Toll Authority, the public entity established pursuant to California Streets and Highway Code § 30950 <i>et seq.</i> responsible for the programming, administration and allocation of all toll revenues (except toll revenues from the seismic retrofit surcharge) from state-owned toll bridges within the jurisdiction of the Metropolitan Transportation Commission.
BATA Project Manager:	BATA's duly designated representative for management of the Work under this Contract.
Caltrans:	The State of California Department of Transportation.
Change Notice:	A written notice issued to the Contractor by BATA specifying a proposed change to the Contract.
Change Order:	An order executed by BATA and Contractor amending the Contract.
Contract:	The signed agreement between BATA and the Contractor to design, implement, operate and maintain the FasTrak® Customer Service Center, as defined in this Contract, Terms and Conditions, Article 1.1.1, "Documents Comprising Contract." <u>"Contract" is used interchangeably with "Agreement."</u>
Contractor or CSC Operator:	The party selected as a result of the FasTrak® Regional Customer Service Center Request for Proposal who enters into the Contract to design, implement, operate, and maintain the FasTrak® Regional Customer Service Center.
FasTrak®	Trademark licensed statewide by agencies who are compliant with Title 21, <u>Public Works</u> , of the California Code of Regulations (21 CCR §1700 <i>et seq.</i>) electronic toll collection provisions.

FasTrak® Regional CSC or the Project:	The FasTrak® Regional Customer Service Center that serves the Bay Area toll bridges (state-owned and the Golden Gate Bridge), SFO Parking Garage, and Regional Express Lanes and provides account maintenance, violation processing and customer service to FasTrak® patrons.
GGBHTD:	Golden Gate Bridge Highway and Transportation District, formed pursuant to California Streets and Highways Code §27000 <i>et seq.</i>
Major Subcontractor:	A Subcontractor with a contract in an amount equal to or greater than \$500,000.
Metropolitan Transportation Commission or BATA	The regional planning agency established pursuant to California Government Code §66500 <i>et seq.</i> , the governing board of which serves also as BATA's governing board.
Notice of Award:	Written notice from BATA to a Proposer of the selection of that Proposer by BATA to enter into the Contract to perform the Work described in the Request for Proposal.
Notice to Proceed:	Written notice from BATA to the Contractor to proceed with the Work specified in the Notice to Proceed.
Contractor's Project Manager:	Contractor's duly designated representative for day-to-day management of the Work and communications with BATA.
Proposal:	Contractor's Proposal to perform the Work required in the RFP.
Request for Proposal or RFP:	BATA's Request for Proposal, dated May 25, 2012, as revised by Addenda, to design, implement, operate and maintain the FasTrak® Regional CSC.
Scope of Work:	The Work to be performed by Contractor in accordance with these Terms and Conditions of the Contract, as described in the Contract documents identified in Article 1.1.1.
Site:	The locations where the Work will be performed, and all locations where CSC system equipment shall reside.
Toll Bridges:	San Francisco Bay Area toll bridges, which consist of the Golden Gate Bridge and seven (7) state owned toll bridges: Antioch Bridge, Benicia-Martinez Bridge, Carquinez Bridge, Richmond-San Rafael Bridge, Dumbarton Bridge, San Mateo-Hayward Bridge, and the San Francisco-Oakland Bay Bridge.
Work:	All of the Contractor's efforts necessary to complete all of its obligations under the Contract.

**FASTRAK® REGIONAL CUSTOMER SERVICE CENTER
DESIGN • IMPLEMENT • OPERATE • MAINTAIN CONTRACT**

PROFESSIONAL SERVICES AGREEMENT

Between

BAY AREA TOLL AUTHORITY

And INSERT NAME OF CONTRACTOR

For the Fastrak® Regional Customer Service Center

THIS AGREEMENT is made and entered into as of the ____ day of **MONTH**, 2012, by and between the Bay Area Toll Authority (herein called BATA), established pursuant to Streets and Highways Code § 30950 *et seq.*, and **INSERT NAME OF CONTRACTOR**, (herein called "CONTRACTOR", a partnership, _____ [state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the State of _____.

RECITALS

WHEREAS, BATA issued a Request for Proposal for a contractor to design, implement, operate and maintain the Fastrak® Regional Customer Service Center (RCSC) (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 an agreement (the "Agreement") pursuant to which Contractor will render professional services in connection with the Project as hereinafter provided.

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF WORK

1.1 CONTRACT

1.1.1 Documents Comprising Contract

The FasTrak® Regional CSC Contract consists of the following signed documents, in order of precedence:

- a. Change Orders;
- b. Contract Terms and Conditions;
- c. Approved Final System Design Document;
- d. Approved Preliminary System Design Document;
- e. Appendix A, including its Attachments;
- f. The Request for Proposal dated May 25, 2012, as revised by any Addenda issued;
- g. Contractor's Proposal dated _____.

If the above order of precedence does not resolve a conflict, the BATA Project Manager shall make a determination of the appropriate interpretation, which Contractor agrees to implement, subject to the claims procedure in Article 13.3. In the event of a conflict between one or more provisions within one of the contract documents listed above, the more stringent provision with respect to Contractor's duties and responsibilities shall prevail.

1.1.2 Contract Interpretation

The documents comprising the Contract are intended to be complementary, and to fully describe and provide for a complete Project. The parties agree that an interpretation that supports such intent shall be given precedence over one that does not. If the ambiguity allows more than one possible interpretation supporting the intent of a complete product and the references above do not resolve the ambiguity, the BATA Project Manager shall make a reasonable determination of the appropriate interpretation.

Where appropriate: references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words "including" "includes" and "include" shall be deemed to be followed by the words "without limitation", unless otherwise indicated; references to articles or tasks are to this Contract and include all sub-articles or subtasks under the article or section referenced; words not otherwise defined that have well-known technical or industry meanings are used in

accordance with such recognized meanings; references to “persons” include their respective permitted successors and assigns and, in the case of “governmental persons,” persons succeeding to their respective functions and capacities; and words of any gender used herein shall include the other gender where appropriate. Unless otherwise specified, lists contained in the Contract describing or defining the Work shall not be deemed all-inclusive.

1.1.3 Change Orders

BATA reserves the right to request changes in the services to be performed by CONTRACTOR. All such changes shall be incorporated in written change orders, which shall specify the changes in work performed and any adjustments in compensation and schedule. All change orders shall be executed by the Executive Director or a designated representative and CONTRACTOR. The BATA Project Manager is not a designated representative, for purposes of approving a change order.

1.2 BATA’S AUTHORITY

1.2.1 BATA’s and Agencies Right to Site Access

BATA and Agencies will have the right to full access to the Site at all times during the performance of this Contract and any extensions thereof. BATA agrees that any personnel so granted access shall comply with applicable safety and security procedures for the Sites and shall not unduly interfere with the performance of the Work undertaken at such Site. To the extent possible, reasonable advance notice will be given of intended entry to a Site by BATA during non-business hours.

1.2.2 Authority of Project Manager

The BATA Project Manager (identified in Attachment 1 to these Terms and Conditions) has the responsibility, under authority from BATA, to administer this Contract so that its completion is accomplished in accordance with contractual requirements. Should the performance of the Contractor or the quality of Contractor’s work or materials furnished not meet the standards specified in the Contract, the BATA Project Manager has the authority to take any action or require any measures, on behalf of BATA, that are available to BATA under this Contract to ensure compliance with contractual requirements, unless the Contract specifically requires such action or measures to be taken by another individual. The BATA Executive Director will notify Contractor of any change in the designation of the BATA Project Manager by BATA.

1.2.3 Publicity and Public Presentations

BATA must approve all BATA, Agency or FasTrak®-related copy in writing prior to publication by the Contractor or its subcontractors. Contractor agrees not to allow BATA, Agency, or FasTrak®-related copy to be published in Contractor's or its subcontractors' advertisements or public relations programs without prior written approval from the BATA Project Manager; except that Contractor and its subcontractors may include, without BATA prior approval, descriptions of the FasTrak® Regional CSC, their respective roles in the Project, and related contact information in resumes, proposals, qualification packages, project data sheets, and similar items used within the industry to propose and qualify for similar work. Contractor agrees that published information on BATA, an Agency, or the FasTrak® RCSC shall be factual only and in no way imply that BATA, and/or an Agency endorse Contractor's firm, service, or product.

In addition, during the term of the Contract, BATA must approve in advance and in writing any public presentations made by Contractor or its subcontractors on the FasTrak® RCSC, including in connection with conferences, trade fairs, and studies.

1.2.4 BATA's Right of Approval or Consent

Unless otherwise specified, under any provision granting BATA a right of approval or consent, such approval or consent will not be unreasonably withheld, conditioned or delayed.

1.3 CONTRACTOR'S OBLIGATIONS

1.3.1 General Description

Contractor shall perform all services, provide all materials, equipment, and software, and undertake all efforts necessary or appropriate (excluding only those efforts that the Contract specifies will be provided or undertaken by BATA or other persons) to design, implement, operate and maintain the Project to achieve the full extent of function required by the Contract, in accordance with the terms and conditions set forth in the Contract.

Omission from the Contract of details of the Work that do not substantively alter the functional requirements or the mis-description of details generally acknowledged to be customary and/or necessary to carry out the Work or which Contractor knew or reasonably should have known to be included in the Work shall not relieve Contractor from performing

such omitted or mis-described details, and it shall be performed as if fully and correctly set forth and described in the Contract, without entitlement to a Change Order hereunder.

1.3.2 Contractor's Responsibility for Handling Funds

In performing this Contract, the Contractor will be entrusted with the responsibility for handling the funds of others, for documenting financial transactions and for maintaining the integrity of financial records. The Contractor shall exercise its responsibilities prudently and shall institute all appropriate mechanisms for the custody and administration of the Toll Collection funds and records.

1.3.3 Contractor's Project Manager

Contractor has designated a Project Manager, identified in Attachment 1, who is authorized to manage the Work and communicate with BATA on a day-to-day basis and who will act as the primary point of contact in all matters on behalf of Contractor. The Project Manager will assign other individuals as contacts with regard to specific functional areas of the Work, subject to the approval of BATA. The Contractor's Project Manager is designated in Attachment 1 to this Contract.

1.3.4 Key Personnel

The key personnel to be assigned to this work by Contractor and, if applicable, their hourly rates and the estimated hours to be supplied by each are set forth in Appendix B, Price Form listed under Key Personnel, attached hereto and incorporated herein by this reference. Substitution of any of the personnel named in Appendix B or a decrease in the hours provided to the project by such personnel of more than 10% requires the prior written approval of the Project Manager or a designee. Contractor shall maintain records documenting compliance with this Article, which shall be subject to the audit requirements of Article 14.5. Contractor 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.

1.3.5 Occupational Safety and Health

Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are

unsanitary, hazardous, or dangerous to his or her health as defined by applicable safety and health standards.

1.3.6 Maintenance of Records

Contractor shall accurately maintain all contract information in accordance with best industry practices and generally accepted accounting principles.

1.3.7 Permits and Licenses

Except as may be otherwise indicated, Contractor shall procure all necessary permits and licenses, pay all charges and fees, comply with all permit conditions and give all notices necessary and incident to the due and lawful prosecution of the Work.

1.4 CONTRACTOR'S REPRESENTATIONS

1.4.1 Authority to Contract

Contractor represents, warrants and covenants for the benefit of BATA that Contractor is duly organized with all requisite power to own its properties and assets and to carry on its business as now conducted or proposed to be conducted. Contractor further represents, warrants and covenants for the benefit of BATA that the execution, delivery and performance of this Contract has been duly authorized by all necessary actions of Contractor and of Contractor's members and will not result in a breach of or a default under Contractor's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which Contractor or any member of Contractor is a party or by which Contractor's properties and assets may be bound or affected. This Contract constitutes the legal, valid and binding obligation of Contractor, enforceable in accordance with its terms.

1.4.2 Contractor's Review of Contract

By submitting a Proposal for the Project and by executing this Contract, the Contractor represents that it has carefully reviewed and understands all of the requirements of the Contract, and has determined that it is fully able to conduct, perform and complete the requirements of the Contract within the times required and on the terms and conditions stated in the Contract.

1.4.3 Capabilities and Qualifications of Contractor and Contractor Personnel

Contractor has, and throughout the term of this Contract shall maintain, all required authority, professional ability, skills, capacity, financial resources, and has available or will obtain the necessary equipment, materials, tools and facilities, to perform its obligations hereunder in accordance with the requirements contained in the Contract. All personnel performing work under this Contract will have the necessary credentials and expertise and shall otherwise be fully qualified to perform the Work to which they are assigned.

1.5 GOVERNMENTAL RULES AND APPROVALS

Contractor acknowledges and agrees that it is responsible for familiarizing itself with the requirements of any and all applicable governmental rules and regulations pertaining to its performance of Work under this Contract and for complying with the foregoing at its sole cost and expense and without any increases in the lump sum or unit prices in Appendix B, Price Form of the Contract or any extensions of the Project Completion Date on account of such compliance (other than those implemented through the Change Order procedure described in Article 12), regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract. If rules, regulations, or laws are enacted or implemented after execution of this Contract that increase Contractor's cost or time to complete the Project, Contractor may initiate a change order for additional compensation or time pursuant to Article 12.4, Contractor-Initiated Change Orders. Conversely, if rules, regulations, or laws are enacted or implemented after execution of this Contract that decrease Contractor's cost or time to complete the Project, BATA may initiate a deductive change order pursuant to Article 12.2, BATA-INITIATED CHANGE NOTICE.

1.6 NOTICES

Except for invoices submitted by Contractor 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 the individuals listed in Attachment 1. Address, fax, or email changes to Attachment 1 may be made by either party by written notice, without the need for a Change Order.

2. TIME PROVISIONS

2.1 CONTRACT TERM

Contractor's services hereunder shall commence on or after November 30, 2012, and shall be completed no later than June 30, 2019, unless extended by duly executed amendment or earlier terminated, as hereinafter provided. The Contract may be extended, in BATA's sole discretion, in annual increments of up to ten (10) additional consecutive years, subject to the annual budgetary approval processes of BATA.

2.2 GUARANTEED COMPLETION DATES AND LIQUIDATED DAMAGES

Contractor shall commence CSC Operations on July 1, 2014. Time is of the essence with respect to such date. Failure to meet this date will result in liquidated damages of \$250,000 per ~~week~~ ~~month~~ or any portion thereof, up to a maximum amount of \$5,000,000.

2.3 COMPUTATION OF PERIODS

References to "days" contained in the Contract shall mean calendar days unless otherwise specified; provided that if the date to perform any act or give any notice specified in the Contract (including the last date for performance or provision of notice "within" a specified time period) falls on a non-business day, including a United States or State of California holiday, such act or notice may be timely performed on the next succeeding day that is a business day. Notwithstanding the foregoing, requirements contained in the Contract for which it is clear that performance is intended to occur on a non-business day, shall be required to be performed as specified, even though the date in question may fall on a non-business day. The term "business days" shall mean days on which BATA is officially open for business.

2.4 PROJECT SCHEDULE

Within 30 days after contract execution, Contractor shall submit a Project Schedule for BATA approval. Contractor shall provide sufficient information on the Project Schedule to enable proper control and monitoring of the tasks and subtasks in the Scope of Work. BATA will review the proposed Project Schedule. The Approved Project Schedule shall become part of this Contract, and the basis for Contractor's scheduling of its Work under the Contract.

The Approved Project Schedule shall be updated and submitted to BATA monthly thereafter until Project Completion has been achieved. Upon BATA approval of the update,

the updated Approved Project Schedule shall become part of the Contract, superseding any previous inconsistent schedule milestones or due dates.

Contractor shall furnish sufficient resources to ensure the performance of the Work in accordance with the Approved Project Schedule. If Contractor falls behind in the performance of the Work as indicated in the Project Schedule, Contractor shall take such steps as may be necessary to improve its progress.

Submission of the monthly revisions to the Project Schedule shall not release or relieve the Contractor from full responsibility for completing the Work within the time set forth in the previous Approved Project Schedule.

2.4.1 Progression of Work

Contractor shall at all times schedule and direct the Work to provide an orderly progression thereof, to achieve completion within the specified time for completion and in accordance with the Approved Project Schedule.

2.5 DELAYS

2.5.1 Schedule Slippage

If at any time Contractor fails to complete any activity by the completion date in the Approved Project Schedule, unless previously excused by the BATA Project Manager in writing, or as elsewhere provided for in the Contract, Contractor will be required, within seven (7) days, to submit to the Project Manager a statement as to how it plans to return to compliance.

If Contractor fails or refuses to implement measures sufficient to bring its Work back into conformity with the current Approved Project Schedule, its right to proceed with any or all portions of the Work may be terminated under the provisions of the Contract. However, in the event BATA, in its sole determination, should permit Contractor to proceed, BATA's permission shall in no way operate as a waiver of its rights nor shall it deprive BATA of its rights under any other provisions of the Contract.

Under no circumstances is either party responsible for any delay (or resulting damages) caused by or arising from the actions of the other party, its employees, agents, officers or subcontractors. Additionally, Contractor will not be responsible for any delay (or resulting damages) resulting from any Force Majeure event, as defined in Article 11.1 herein.

2.5.2 Mitigation of Damages and Delays

Contractor agrees to take all reasonable and appropriate actions to mitigate damages in all circumstances, including, with respect to Contractor, re-sequencing, reallocating or redeploying its resources, as appropriate.

3. PAYMENT

3.1 GENERAL

Payments to the Contractor will be as indicated on the Appendix B, Price Form, subject to any adjustments described below in Article 3.5.2, Performance Payment Adjustment. Payment for Implementation will be made on a lump sum, fixed price basis. Payment for Operations and Maintenance will be made on a monthly basis based on fixed unit prices. All work performed by the Contractor in meeting the requirements of the Contract shall be paid under one of the above payment methods, which shall constitute full compensation for the Work, including: (a) the cost of all insurance and bond premiums, home office, job site and other overhead, and profit relating to Contractor's performance of its obligations under the Contract; (b) the cost of performance of each and every portion of the Work (including all costs of all Work provided by Subcontractors); (c) the cost of obtaining all governmental approvals (except for any permits for which BATA or an Agency is the appropriate applicant); all costs of compliance with and maintenance of such governmental approvals; (d) all risk of inflation, currency risk, interest and other costs of funds associated with the progress payment schedule for the Work as provided herein; and (e) payment of any taxes, duties, permits and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein.

3.2 MAXIMUM PAYMENT

Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation to be paid Contractor under this agreement exceed the sum of _____dollars (\$_____).

3.3 INVOICES

Contractor shall submit an invoice identifying the project deliverable or milestone for which payment is sought no later than thirty (30) days after BATA's acceptance of such deliverable/milestone. Payment shall be made by BATA within thirty (30) days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative. All invoices shall be made in writing and delivered or mailed to BATA as follows:

Attention: Accounting Section
Bay Area Toll Authority
Joseph P. Bort MetroCenter
101 - 8th Street
Oakland, CA 94607-4700

Contractor shall provide any appropriate documentation relating to the Contractor's invoice, reasonably requested by BATA. BATA may delay payment, with no interest accruing during the delay, for any invoiced item if such information is not provided within a reasonable period of time after it is requested by BATA. Contractor payment for Operations and Maintenance may be adjusted for failure to meet performance standards in accordance with the schedule set out in the Appendix A, Scope of Work.

3.4 PAYMENT FOR LUMP SUM ITEMS

For the lump sum items associated with the Implementation Phase, payment will be made based on satisfactory completion of the Milestones or Deliverables, as indicated in Appendix B, Price Form. "Completion" as used herein includes achievement of applicable approvals by BATA. Contractor shall provide supporting documentation relating to Contractor's invoice, as is requested by BATA, within 14 days of receipt of BATA's written request for such documentation. BATA may delay payment, with no interest accruing during the delay, for any invoiced item if, in BATA's sole opinion, sufficient supporting documentation has not been provided. If BATA and the Contractor disagree about the Work completed as reflected in an invoice, BATA shall make payment based on the Work it believes is completed, and specify in writing the reason for the withheld amounts. The Contractor may initiate the dispute resolution procedures set forth in Article 13 following BATA's written disapproval of any invoiced amount.

3.4.1 Withheld Amounts and Final Payment

BATA shall withhold, as a retainage, 5% of the value of each payment due hereunder until all services required under this Agreement through System Acceptance have been completed and accepted by BATA. Final payment of any balance due Contractor, including any amounts withheld, will be made promptly after satisfactory completion of the work under this Agreement, and after receipt and written acceptance by BATA of the reports and working papers which are required to be furnished under this Agreement. The retainage will be released upon written notification by BATA of System Acceptance. Retainage will not be withheld on Operations and Maintenance payments.

3.5 PAYMENT FOR OPERATIONS AND MAINTENANCE

Operations and maintenance costs shall be paid on a monthly basis based on the price schedule set out in the Appendix B, Price Form.

3.5.1 Determination Of Unit-Based Costs

BATA shall have the sole authority to determine the number of transactions and violation notices or other events used as a basis for unit-based cost payment purposes, using any means and methods it determines are appropriate to confirm that the quantities shown in Contractor's invoice accurately reflect the number of such events.

Contractor shall provide any appropriate documentation relating to Contractor's invoice, as shall be requested by BATA, within 14 days of receipt of BATA's written request for such information. BATA may delay payment, with no interest accruing during the delay, for any invoiced item if such requested information is not provided within the allotted time or if BATA, in its sole opinion, believes the information to be incomplete or inaccurate. If BATA and Contractor disagree about the quantities as reflected in an invoice, BATA shall make payment based on the quantities it believes are correct, and specify in writing the reason for the withheld amounts. Contractor may initiate the dispute resolution procedures set forth in Article 13 following BATA's written disapproval of any invoiced amount.

3.5.2 Performance Payment Adjustment

Failure to meet the performance requirements for Operations and Maintenance service provided in Appendix A, Scope of Work, Section 3.24, Performance Management Standards, shall result in adjustment to the payment for the monthly invoice. Performance standard requirements may be waived due to extraordinary or unforeseen events or due to circumstances beyond the control of the Contractor as determined by the BATA Project Manager. Standard reports will be used to measure whether the performance standard has been met. Standard reports shall be generated by Contractor and provided to BATA on a monthly basis. The reports shall be in a format approved by BATA.

3.5.3 Lost Revenue

In the event Contractor negligence results in lost toll revenue, BATA, at its discretion, may deduct the amount of lost revenue from Contractor payment, except for loss caused by the sole negligence or wrong-doing of BATA or an Agency.

4. BONDS AND INSURANCE

4.1 PERFORMANCE AND PAYMENT BONDS

Contractor, concurrently with the execution and delivery of this Contract, has provided additional security for the performance of its obligations to perform the Work required hereunder through a Performance Bond and Payment Bond issued by a surety acceptable to BATA on forms acceptable to BATA. The Performance Bond is in the amount of 100% of the total price of the Contract Implementation Phase on Appendix B, Price Form (line item P9) and guarantees the Contractor's faithful performance through System Acceptance in compliance with all terms and conditions specified in these contract documents. If, due to change orders, this dollar amount increases by more than 10%, the Contractor shall secure a consent of surety increasing the penal amount of the Performance Bond to reflect the revised dollar amount. In no event should the existence of the Performance Bond or the stated amount thereof be construed to cap, liquidate or otherwise modify or limit the amount of damages payable by Contractor hereunder upon the occurrence of a Contractor event of default.

The Payment Bond is in the amount of 100% of the Facility Readiness Contract price on Appendix B, Price Form (line item P4) and shall guarantee full payment for labor, materials and equipment furnished under the Contract.

[In lieu of a performance bond, Contractor may substitute a Letter of Credit issued in a form and from a bank satisfactory to BATA.]

4.2 LETTER OF CREDIT

Contractor agrees to provide no later than 90 days prior to the commencement of the Operations Phase, additional security for the performance of its obligations for maintenance and operations hereunder through a letter of credit issued by a bank whose long-term debt is rated "A7" or better by either Moody's, Fitch, or Standard & Poor's (the "Letter of Credit"), in the stated amount of \$5,000,000, with a term of one (1) year. The Letter of Credit shall be annually renewed, extended or replaced so that it remains in effect continuously throughout the terms of the Contract. BATA shall be authorized under the Letter of Credit to make one or more sight drawings thereon upon certification to the issuing bank that an event of default by

the Contractor hereunder has occurred and not been cured in accordance with the Contract. The Letter of Credit shall also permit a drawing thereon in the full stated amount thereof in the event that any required renewal, extension or replacement thereof is not made prior to 30 days of its expiration. The Letter Of Credit serves as additional security for the performance of the Contractor's obligations, and in no event shall the existence of the Letter of Credit of the stated amount thereof be construed to cap, liquidate or otherwise modify or limit the amount of damages payable by the Contractor hereunder upon the occurrence of a Contractor event of default.

4.3 INSURANCE

4.3.1 Insurance Requirements

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

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

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

4.3.2 Workers' Compensation and Employer's Liability Insurance

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 Contractor's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of BATA. Such Workers Compensation & Employers Liability may be waived, if and only for as long as Contractor is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

4.3.3 Commercial General Liability Insurance

Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Contractor and Contractor's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of BATA.

BATA and those entities listed in Article 4.3.16 of this section, and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising ~~directly or indirectly~~ from Contractor's operations.

4.3.4 Business Automobile Liability Insurance

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

4.3.5 Umbrella or Excess Liability Coverage

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.

4.3.6 Errors and Omissions Professional Liability Insurance

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 \$10,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. A \$3,000,000 sub-limit is acceptable for the media coverage only.

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

4.3.7 Property Insurance

Property Insurance covering Contractor's own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of BATA (if any). Coverage shall be written on a "Special Form" or equivalent 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.

4.3.8 Employee Dishonesty/Crime Insurance

Employee Dishonesty/Crime Insurance insurance policy covering Contractor's employees for loss of or damage to money, securities or other property resulting from theft. The following limits of liability should apply: (a) Employee Dishonesty - \$5,000,000; and (b) Client Property Blanket Bond - \$5,000,000. Contractor shall reimburse BATA for any and all losses within the deductible, for insured losses, the cost to prove the loss, accountants' fees, defense costs including attorneys' fees and any other fees associated with a claim. In lieu of a Client Property Blanket Bond, the policy shall contain a Joint Loss Payee endorsement or other Third Party coverage naming BATA.

4.3.9 Acceptable Insurers

All policies will be issued by insurers ~~acceptable to BATA~~ authorized or licensed to do business in California, generally with a Best's Rating of A-VIII or better.

4.3.10 Self-Insurance

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

4.3.11 Deductibles and Retentions

Contractor shall be responsible for payment of any deductible or retention on Contractor'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 Contractor insurance policy that contains a deductible or self-insured retention, Contractor shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Contractor, subconsultant, subcontractor, or any of their employees, officers or directors, even if Contractor or subconsultant is not a named defendant in the lawsuit.

4.3.12 Claims Made Coverage

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

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

4.3.13 Failure to Maintain Insurance

All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Contractor's personnel, subcontractors, and equipment have been removed from BATA's property, and the work or services have been formally accepted. Contractor 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.

4.3.14 Certificates of Insurance

Prior to commencement of any work hereunder, Contractor 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.

4.3.15 Disclaimer

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant hereto, including, but not limited to, liability assumed pursuant to Article 11.2 of this Agreement.

4.3.16 Additional Insureds

The following entities are to be named as Additional Insureds under applicable sections of insurance and as BATA Indemnified Parties, pursuant to Article 11.2 of the Agreement.

- Bay Area Toll Authority (BATA)
- Golden Gate Bridge Highway and Transportation District (GGBHTD)
- California Department of Transportation (Caltrans)
- Santa Clara Valley Transportation Authority (VTA)
- Alameda County Transportation Commission (ACTC)
- Sunol Smart Carpool Lane Joint Powers Authority

5. RIGHTS IN DATA

5.1 INTELLECTUAL PROPERTY AND WORK PRODUCT OWNERSHIP RIGHTS

5.1.1 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 Contractor by BATA for use by Contractor 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 Contractor’s use or possession of such BATA Data. Any updates, revisions, additions or enhancements to such BATA Data made by

Contractor in the context of the Project shall be the property of BATA and subject to the provisions of Article 5.1.2.

Neither Contractor nor its subcontractors will be permitted to use or disseminate any BATA Data outside of the context of the Project, without the prior written approval of BATA. All authorized uses of BATA Data by the Contractor outside of the context of the Project shall include a copyright notice on behalf of BATA.

5.1.2 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 Contractor or its subcontractors 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 the Contractor or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to BATA. Contractor 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. Contractor 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 Contractor’s pre-existing intellectual property secured, developed, written, or produced by Contractor prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; Contractor shall retain all right, title and interest in any such pre-existing intellectual property.

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

Contractor 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.

In the case of software developed and paid for (in whole or in part) under this Agreement, in addition to the source code and source code documentation, the Contractor shall make available to BATA, upon request, a list of all applicable software development tools, i.e.,

all software required to edit/alter the source code and successfully recompile and operate the software, including operating systems, libraries, tools and utilities, data base structures, code and compilers, as well as any other items not readily available to BATA in the commercial marketplace. In addition, throughout the maintenance period of this Agreement, Contractor shall provide BATA, as Work Products, source code and source code documentation for any and all modifications, updates, fixes, utilities and libraries.

Work Products do not include software and related documentation defined in Subarticle 5.1.4 below.

5.1.3 Restriction on Use of Work Products

Neither the Contractor nor its subcontractors will be permitted to use or disseminate any Work Products outside of the context of the Project without the prior written approval of BATA. All authorized uses of Work Products by the Contractor outside of the context of the Project shall include a copyright notice on behalf of BATA.

A draft Work Product is considered by BATA to be confidential information unless it is incorporated into a Work Product that becomes a public document or is released by BATA to the public in another form. Neither Contractor nor its subcontractors shall use, publish, or base other work on such draft Work Products, without the prior written consent of BATA.

5.1.4 Contractor Software

Contractor or its subcontractors and/or third party licensors of software shall retain ownership of the copyright to any software programs, code, materials or data used in the performance of this project that pre-exist this Agreement; are developed outside its scope of services; or are a new translation, version or derivative of an existing program, code, material or method that is the intellectual property of Contractor, its subcontractors, or a third party licensor of software (“Contractor Data”), provided that for pre-existing software to be considered Contractor Data, it must be identified in Attachment 4-1, Contractor Software.

Contractor hereby grants, and shall require any applicable subcontractor also to grant, to BATA a nonexclusive, royalty-free, irrevocable, perpetual, assignable license to use, copy, publish or disclose Contractor data for the benefit and operation of the Project, effective upon payment under this Contract to Contractor for such materials, provided that BATA agrees that it will not publish or disclose Contractor data to which the “trade secret” privilege, as defined in California Evidence Code Section 1061 would apply. BATA may exercise its license through a sublicense to a third party, without the approval of Contractor or its subcontractors, if applicable.

With the exception of standardized commercially available third-party software, as defined in Article 5.1.5, Commercial Software, below, all source code, including source code to modifications, updates, fixes, utilities and libraries, as well as detailed source code documentation for such source code, shall be deposited in escrow prior to System Acceptance. Source code documentation shall be sufficient to allow for compiling and testing of the source code including at a minimum a list of applicable proprietary software development tools. Source code documentation shall provide detail on the third party commercially available software used in conjunction with the system including name, version, sub-version number and release date. It shall also include documentation on how the third party commercially available software is linked to the system software. Additionally, the Contractor agrees to include in the escrow the identities of and most current available contact information for one or more qualified programmers who had or have responsibility for the creation of the Software and the methodology such that they can explain the source code and the methodology and otherwise be used as system references. Every twelve (12) months for the duration of the maintenance period or within 30 days following a major software change, whichever is more frequent, the latest version of the source code and detailed source code documentation shall be placed in escrow. Additionally, BATA may request additional escrow deposits at BATA's cost. If BATA requests such a deposit, it shall be complete within 30 days of request by BATA. BATA shall have the right to retain the services of a reputable expert to compile and test the source code and documentation deposited in the escrow account to determine that they are sufficient to permit BATA to exercise its rights to access such source code and documentation, at BATA's cost, subject to such expert's signing a nondisclosure agreement with the Contractor or subcontractor owning the software. Should assistance be required of Contractor during this process, Contractor will be given a Change Order in accordance with the terms of the Contract to provide such services on a time and materials basis. Other than those costs associated with additional escrow deposits made at BATA's request, Contractor is responsible for all costs associated with maintaining the escrow account. Such amounts are included in the Appendix B, Price Form under Operations and Maintenance.

The escrow agreement shall include a release provision providing for the escrowed software and source code to be released to BATA: (1) in the event that Contractor ceases to function as a going concern; makes an assignment for the benefit of creditors; becomes the subject of a proceeding in bankruptcy, receivership, insolvency or similar laws, which proceeding is not dismissed within thirty (30) days after it is instituted; or liquidates, dissolves or sells substantially all of its assets or is purchased by another company; (2) in the event that Contractor is unable or fails to adequately and at reasonable cost to BATA support and maintain the licensed software after receiving reasonable notice as determined by BATA from

BATA of such failure and Contractor's failure to cure as set forth in the notice; (3) in the event that Contractor materially breaches its agreement with BATA in a manner that directly interferes with BATA's ability to use the licensed software as agreed; or (4) on the Project Completion Date or, if earlier terminated pursuant to Article 15 on or before the effective termination date, excluding any termination for convenience that occurs on or before the Systems Acceptance Date.

5.1.5 Commercial Software

Contractor shall secure and administer all licenses or sublicenses for standardized commercially available software used for the Project and shall provide to BATA copies of such licenses, along with any documentation provided by the third party suppliers. Contractor shall not be required to furnish to BATA the source code to third party software, the right to make copies (other than back-up or archival copies), or the right to modify the software. However, Contractor shall secure licenses to commercial software that authorize BATA to allow third parties to use such software in connection with the Project.

Licenses or sublicenses shall name BATA as licensee, where possible and consistent with Contractor's obligations under this Agreement. Otherwise, Contractor shall be named as licensee. In that case, at least six months prior to the end of the Contract term, Contractor shall begin efforts either to assign such licenses or sublicenses to BATA or BATA's designee or, if such assignments are not practicable, to provide BATA with sufficient information to enable it to secure the licenses or sublicenses necessary for the continued operation of the Project.

5.1.6 Open Source/Freeware

Open Source/Freeware is defined as software for which the source code is made freely available for use, modification, and redistribution. Open Source/Freeware also includes software that is neither a Work Product, as defined in Article 5.1.2, Ownership of Work Products, nor contractor software or commercial software, as defined in Articles 5.1.4, Contractor Software and Article 5.1.5, Commercial Software, respectively.

Open Source/Freeware that is approved for use under this Contract is listed in Attachment 4-2, Open Source/Freeware. Contractor shall not use any other Open Source/Freeware on Project without the prior written approval of BATA. Requests for approval shall be in writing and include the name, version, functionality, origin of software source, availability of source, author, technical documentation, integration and security issues, justification for use, and copies of applicable licenses. Contractor agrees to service and maintain all open source/freeware approved for use.

Contractor represents and warrants the following: (a) that the licenses for any Open Source/Freeware used in the Project allow the use of Open Source/Freeware in Project by, for, and on behalf of BATA; (b) there are no charges connected to any licenses for any Open Source/Freeware used in the Project or that it has fully covered any such charges; and (c) the use of Open Source/Freeware will not conflict with or otherwise impair BATA's intellectual property and work product ownership rights set forth under this Article 5.

Prior to System Acceptance, Contractor shall deposit in escrow all source code to Open Source Freeware used on Project, including source code to modifications, updates, fixes, utilities and libraries, as well as detailed source code documentation for such source code. The provisions of Article 5.1.4, Contractor Software, relative to the escrow deposits, escrow account, and escrow agreement are likewise applicable to deposits in connection with Open Source/Freeware.

5.2 CONFIDENTIAL INFORMATION

5.2.1 Nondisclosure of Confidential Information

During the performance of the work under the Contract, it may be necessary for one party to this Contract to disclose or make certain confidential, non-public or proprietary information ("Confidential Information") available to the other party 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 Contractor, Confidential Information shall remain the sole and exclusive property of the disclosing party, 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 the receiving party; b) the receiving party can demonstrate to have had rightfully in its possession prior to disclosure by BATA the disclosing party or its contractors, vendors or licensors; c) the receiving party 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.

The receiving party 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 the disclosing party. The receiving party further agrees to disclose Confidential Information only to its Commissioners, directors, officers, employees and Contractors who need to know such information, and who have agreed to be bound by the terms and conditions of this Article 5.2.1. Promptly upon the request of the disclosing party, at any time and for any reason, the receiving party shall destroy or return to the disclosing party, 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.

The parties agree to require any agents or third parties to whom Confidential Information must be disclosed to execute a nondisclosure agreement that incorporates the substantive requirements of this Article 5.2.1, the terms of which will be provided in advance to the other party for review and comment.

The current and future electronic toll system including processing techniques and procedures that support the toll solution are Confidential Information. If requested by BATA, Contractor shall be required to sign a separate non-disclosure agreement prior to receiving Confidential Information. Otherwise, the requirements contained in this Article 5.2.1 protecting Confidential Information apply.

5.2.2 Contractor Designation of Confidential Information

BATA's rights and responsibilities with respect to disclosure of any printed or electronic document or writing are subject to the California Public Records Act ("the Act" in this Article) (California Government Code § 6250 *et seq.*). To the extent that Contractor considers any writing, as defined in Government Code § 6252 (e), to be a trade secret or otherwise confidential or proprietary, Contractor shall mark such document or record "Confidential". BATA's agreement with Contractor's designation of the document or record shall be presumed 15 days after its receipt, and BATA will treat such document or record as Confidential Information, pursuant to Article 5.2.1. However, should Confidential data be requested pursuant to the Act, Contractor as a condition of non-disclosure shall be asked to indemnify, defend and hold BATA harmless against any claims, suits or other proceedings instituted against BATA under the Act for access to such writing, paying all costs associated with such claims, suits or actions, including legal fees, with sole control of their defense, including all negotiations, and any settlement or compromise.

If BATA disagrees with Contractor's designation of the document or record as Confidential Information, BATA shall notify the Contractor of BATA's decision in writing and may: (a) return the document to the Contractor, requesting that it be re-designated as non-

confidential or re-submitted, excluding any Confidential Information; or (b) agree to accept such document or record as Confidential Information, provided that Contractor agrees in writing to indemnify, defend and hold BATA harmless against any claims, suits or other proceedings instituted against BATA under the Act for access to such writing, paying all costs associated with such claims, suits or actions, including legal fees, with sole control of their defense, including all negotiations, and any settlement or compromise.

5.3 PERSONALLY IDENTIFIABLE INFORMATION

Contractor shall have access to personally identifiable information (“PII”) in connection with the performance of this Agreement. PII is any information that is collected or maintained by BATA or Contractor that identifies or describes a person or can be directly linked to a specific individual, including that individual’s account. Examples of PII include, but are not limited to, name, address, phone or fax number, license plate number, FasTrak® account number, credit card information, and travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement.

5.3.1 Right to Audit

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

5.3.2 General Confidentiality of Data

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

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

Contractor agrees to retain only the PII of a FasTrak® customer that is necessary to perform account functions such as billing, account settlement, or enforcement activities. All other information that may be collected and maintained shall be discarded no more than four years and six months after the closure date of the billing cycle and the bill has been paid, and all toll violations, if applicable, have been resolved for the customer. Contractor shall discard all account information, including PII, no later than four years and six months after the date an account is closed or terminated and all outstanding amounts due are paid and all toll violations, if applicable, have been resolved. At the conclusion of this retention period, Contractor agrees to use Department of Defense (“DoD”) approved software to wipe any disks containing PII. Hard drives and computers shall be reformatted and reimaged in an equivalently secure fashion. Contractor agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. Contractor is prohibited from storing PII on laptops, thumbdrives and so forth.

5.3.3 Compliance with Statutes and Regulations

Contractor agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 et seq.) and in the California Streets and Highways Code Section 31490. In addition, Contractor warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and BATA relating to information handling and confidentiality of PII, including the terms and conditions contained in this Article 5.3, PERSONALLY IDENTIFIABLE INFORMATION, and agrees to indemnify, hold harmless, and defend BATA Indemnified Parties in accordance with Article 11.2, INDEMNIFICATION, against any loss, cost, damage or liability by reason of Contractor’s violation of this provision.

5.3.4 Subcontractors

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

5.3.5 Contractor Guarantees

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

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

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

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

5.3.6 Notice of Security Breach

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

PRIVACY OFFICER
(510) 817-5700
privacyofficer@mtc.ca.gov

6 DESIGN, IMPLEMENTATION AND TESTING OF REGIONAL CSC SYSTEM

6.1 GENERAL OBLIGATIONS

Contractor shall perform all planning, design and software development services and complete all corresponding submittals required in Appendix A, Scope of Work.

6.2 INTENT OF CONTRACT

The intent of the Contract is to describe complete items to be procured. Where the Contract requirements describe items in relation to performance, but not in complete detail, the best industry practice shall be followed.

6.3 SUBMITTALS

Contractor's submittal requirements and submittal schedule shall be as set out in Contractor's approved Project Management Plan, required by the Appendix A, Scope of Work.

6.3.1 Approvals

BATA approval will be required for designated submittals. BATA will approve or reject such submittals, providing an explanation of the reasons for rejection. Such approval or rejection will be provided within 30 days of submittal according to the submittal schedule, unless BATA provides the Contractor with written notification that the review period for a particular submittal will be extended and stating the time in which it will be completed. In any instance where BATA does not provide approval, rejection or written notification of an extended review period within the 30-day period, the submittal shall be deemed approved. BATA's right to extend the review period is intended to allow flexibility in special circumstances where the nature of the submittal requires more involved review, and not as a diminution of BATA's obligation to promptly review submittals. To the extent such extensions impact Contractor's ability to perform the Work and meet its obligations under the Contract, such extensions may be subject to the Change Order provisions of Article 12, and Contractor would be entitled to request a Change Order.

BATA acceptance of a submittal, any part of which is not in compliance with a requirement of the Contract, does not constitute a prospective revision of such requirement, unless the requirement is revised by Change Order pursuant to Article 12.

6.4 BATA APPROVAL OF CHANGES IN SOFTWARE DESIGN SUBCONTRACTORS

Contractor shall use the design and software development firm(s) identified in the Proposal. Contractor shall not change the designated design and software development firm(s) or shift work from one firm to another (including changes in work performed by Subcontractors) without the prior written approval of the BATA Project Manager, which approval shall not be unreasonably withheld.

6.5 MATERIALS

Contractor shall furnish all materials required to complete the work, except for BATA-furnished material as indicated. As used in this Article, the term "materials" shall mean materials and equipment furnished or items being procured. Notwithstanding any prior inspection or approval, only materials conforming to the requirements of the Contract shall be incorporated. The materials furnished shall be new except as may specifically be provided elsewhere in the Contract. Contractor shall submit to the Project Manager a list of its sources of materials. The list shall be submitted in sufficient time to allow the Project Manager to provide for inspection and testing of materials in advance of their use if desired. Contractor shall furnish samples as indicated in Appendix A, Scope of Work. Inspections and tests may be made by BATA as indicated. If made at any point other than the equipment delivery site, they shall in no way be considered as an indication of acceptance of any material that may be delivered later for incorporation in the Work.

6.6 TESTING

The prices in Appendix B, Price Form, include full compensation for any testing required to be performed by Contractor under the Contract. All costs incurred to remedy items found not to be compliant with the specifications shall be borne by Contractor.

6.7 SYSTEM ACCEPTANCE

System Acceptance ~~of the Project~~ will be achieved when BATA, in its sole discretion, determines that Contractor has complied with the system completion requirements set forth in the Agreement. At a minimum, in order for acceptance to be considered by BATA to have occurred, BATA must have received all Project documents, drawings, software, hardware, interface, test data, manuals and other deliverables for the Project required under this Agreement, and Contractor shall have successfully completed the Acceptance Testing and all of Contractor's other obligations related to the Implementation Phase under this Agreement. In addition, Contractor must have submitted all requests for change orders, disputes of change notices/orders, and claims under Article 12 related to the Implementation Phase or a statement that no such requests, disputes or claims will be applied for or made and an Affidavit that all subcontractor debts and claims have been paid and/or settled.

7 OPERATION AND MAINTENANCE OF FASTRAK® REGIONAL CSC SYSTEM

7.1 GENERAL OBLIGATIONS

Contractor's responsibilities for operating and maintaining the FasTrak® Regional Customer Service Center are set forth in the Appendix A, Scope of Work. BATA reserves the right to enter into one of more extended operations and maintenance agreements with Contractor, provided that Contractor has performed satisfactorily.

7.2 OPERATING POLICY

All policy decisions regarding the Project's operations shall rest with BATA and/or the Agencies.

7.3 OWNERSHIP OF PROJECT EQUIPMENT AND SUPPLIES

Subject to Article 5, Rights in Data, upon Project Completion, as defined in Article 9, as between BATA and Contractor, BATA shall own all materials and equipment, including computer hardware, and supplies purchased under this Contract and still useful in the operation of the project when Project Completion is attained.

7.4 PROHIBITION AGAINST TAMPERING

Contractor is prohibited from employing any electronic or other means of altering the performance data measurement. Tampering with, falsely reporting or artificially enhancing performance data is a material breach of this Contract, subjecting the Contractor to termination for default pursuant to Article 15.2.

8 WARRANTIES

8.1 WARRANTY TERM

The Contractor's warranties under Article 8.2 shall commence at System Acceptance, as defined in Article 6.7, SYSTEM ACCEPTANCE, and be remain in effect until for one year from the date of Project Completion, as defined in Article 9.1, PROJECT COMPLETION. of the Implementation Phase. The Contractor's warranties under Article 8.3 and Article 8.4 shall commence at contract execution and shall be perpetual. The Contractor's warranties under

Article 8.5 shall commence at contract execution and remain in effect until one year from the date of Project Completion.

8.2 CONTRACTOR WARRANTIES

Contractor's warranties shall be in accordance with Appendix A, Scope of Work. Contractor warrants that all materials, equipment, and other hardware items provided by the Contractor for the Project (a) shall meet the applicable requirements of Appendix A, (b) shall be new at the time furnished, and (c) shall be free of all liens, encumbrances and other rights and interests of third parties. Contractor, at its option, will at no charge either repair any warranted product not meeting these requirements with new or reconditioned parts, or replace it with the same or an equivalent product, subject to the notice provisions set forth herein. Repaired or replaced hardware products are warranted for the balance of the original applicable warranty period. All removed and/or replaced parts shall become the property of Contractor.

Contractor warrants that Project software will be free from reproducible defects that materially vary from the functional requirements and specifications in the Contract. In addition, Contractor makes no independent warranty as to any commercial off-the-shelf software, however, Contractor will pass along the software provider's warranty, to the extent the terms of such warranty permit it.

BATA shall notify the Contractor in writing, or by telephone or fax confirmed in writing, after discovery of a discrepancy or defect covered by the warranties set forth herein. Contractor's warranty responsibilities hereunder shall be contingent upon BATA providing such notice within the warranty period, except that if such discrepancy or defect is one of which Contractor knew or should have known, as a result of its O/M responsibilities under the Contract, such notice shall be deemed given. As soon as practicable, and in any event within 10 days after receiving BATA's telephone notice, the Contractor shall propose a recommended method of correcting the discrepancy or defect that meets all requirements of the Contract and involves the least loss of operating time.

If BATA determines that it would be inefficient or impractical for the Contractor to perform the corrective work, or that the Contractor is unwilling or unable, for whatever reason, to perform the corrective work in the manner or within the time required by the Contract, BATA reserves the right to perform the corrective work itself, or to select another firm or entity to perform the corrective work. If such corrective work by BATA or another firm or entity occurs because Contractor is unwilling or unable to perform the work in accordance with the

Contract, such corrective work shall be at Contractor's expense, provided that Contractor is kept informed as to the details and costs of any such corrective work. The party performing such corrective work shall warrant the corrective work performed directly to BATA.

Unless otherwise required by BATA, the Contractor shall perform the corrective work required to satisfy this warranty as rapidly as practicable, and in any event within 60 days from the date such corrective work was begun, unless the extent of the corrective work reasonably requires a longer period of performance. The Contractor shall perform the corrective work and shall procure required materials using the fastest means available in order to minimize BATA's loss of operating time.

8.3 PATENT AND COPYRIGHT WARRANTY

Contractor represents and warrants that it will have all necessary patent, copyright, and any other necessary intellectual property rights to Work Products, software, and other deliverables furnished by Contractor under the Contract (referred to in this Article 8.3 as "Such Deliverables").

In case any Such Deliverable or its use under the Contract is held to constitute an infringement of the patent rights or copyrights of a third party and its use is enjoined, the Contractor, at the Contractor's sole cost and expense, shall promptly and in consultation with BATA: (a) secure for BATA the right to continue using said Deliverable by suspension of the injunction or by procuring a royalty-free license(s); or (b) replace Such Deliverable with a non-infringing substitute that meets the requirements of the Contract; or (c) modify Such Deliverable so that it becomes non-infringing, consistent with the requirements of the Contract; or (d) if (a) through (c) are not reasonably practicable, remove Such Deliverable and refund to BATA the sums paid therefor without prejudice to any other rights of BATA. If the amount of time necessary to proceed with one of these options is deemed excessive by BATA, BATA may direct the Contractor to select another option or risk default. Nothing in this Article shall be deemed to limit or condition BATA's rights under Article 11.3.2. The foregoing remedies do not extend to claims based on alteration or modification of Such Deliverables, unless Contractor has specifically approved or participated in such alteration or modification.

8.4 TITLE WARRANTY

Contractor warrants that it owns or will own, and has or will have, good and marketable title to all goods, materials, equipment, tools, supplies, systems or equipment furnished or to be

furnished, by it and its Subcontractors that become part of the CSC or are purchased for BATA for the operation, maintenance or repair thereof, free and clear of all encumbrances.

Contractor warrants that the title conveyed under the terms of this Contract shall be good and that all goods, materials, equipment, tools, supplies, systems or equipment shall be delivered to the Site free from all security interests or other liens or encumbrances. Contractor also agrees to defend the title against all persons claiming the whole or part of any goods, materials, equipment, tools, supplies, systems or equipment.

8.5. WARRANTY OF SERVICES

- A. In the performance of its services, Contractor represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of Contractors 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, Contractor 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 Contractor hereunder are deficient because of Contractor's or subcontractors failure to perform said services in accordance with the warranty standards set forth above, BATA shall report such deficiencies in writing to the Contractor within a reasonable time. BATA thereafter shall have:
1. The right to have Contractor re-perform such services at the Contractor's expense; or
 2. The right to have such services done by others and the costs thereof charged to and collected from the Contractor if within 30 days after written notice to Contractor requiring such re-performance, Contractor fails to give satisfactory evidence to the BATA that it has undertaken said re-performance; or
 3. The right to terminate the Contract for default. Contractor shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions.

9 PROJECT COMPLETION AND TRANSITION

9.1 PROJECT COMPLETION

Project Completion will occur when BATA determines that all obligations under this Contract have been met by Contractor and all of the following have occurred:

- a. BATA has received all documents, drawings, software, interface data, test data, manual, and other deliverables for the Project required under the Contract;
- b. Contractor has submitted all requests for Change Orders, disputes of change notices/orders, or claims under Articles 12 and 13, or a statement that it will not submit such requests, disputes, or claims; and
- c. Retentions owing to Contractor have been released by BATA.

9.2 TRANSITION AT END OF CONTRACT TERM

9.2.1 Training of BATA Personnel

Contractor shall provide training of BATA personnel or the personnel of a BATA - designated organization to operate and maintain the Project following Project Completion. Such training shall include training of BATA personnel or of a third party contractor in the operation of the FasTrak® Regional CSC software systems. Contractor shall provide all instructors, literature, training aids, and equipment reasonably necessary to train personnel to operate and maintain the Project, which shall be turned over to BATA at the termination of the Contract.

9.2.2 Condition of Assets

By the end of the Contract term, all assets shall be in a state of good repair, taking into consideration normal wear and tear and the useful life of the project assets.

10 SUBCONTRACTORS

A. Subcontractors approved by BATA for subcontract work under this Agreement are listed in Attachment 3, Subcontractor List, attached hereto and incorporated herein by this reference. Any subcontractors must be engaged under written contract with the Contractor

with provisions allowing the Contractor to comply with all requirements of this Agreement, including without limitation Article 5.1.2, OWNERSHIP OF WORK PRODUCTS. Failure of a subcontractor to provide insurance in accordance with Article 4.3.1, INSURANCE REQUIREMENTS, shall be at the risk of Contractor.

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

C. Any substitution of subcontractors listed in Attachment 3 must be approved in writing by BATA's Project Manager in advance of assigning work to a substitute subcontractor. Substitution of subcontractors shall be in accordance with California Public Contracts Code §4100, as applicable.

D. Applicable provisions of this Agreement shall be included in any subcontract or subcontractor agreement in excess of \$25,000 entered into under of this Agreement. Contractor shall ensure that, when minimum wage rates are applicable to work performed under the Contract, they shall apply to labor performed under subcontracts or by assignment.

E. Any claim by Contractor for additional compensation or schedule extension based on a Subcontractor's claim shall be passed on to BATA for review only after an independent review and determination by Contractor that such Subcontractor's claim has merit under the terms and conditions of the Contract.

10.1 ASSIGNMENT OF SUBCONTRACTS TO BATA

Each instrument evidencing any agreement of Contractor with any Subcontractor shall provide, pursuant to terms in form and substance satisfactory to BATA, that (a) the rights of Contractor under such instrument are assigned to BATA contingent only upon written request from BATA or its successor or assignee following Contract termination or expiration; and (b) all warranties (express and implied) of such Subcontractor shall inure to the benefit of BATA.

10.2 MAJOR SUBCONTRACTORS

Any Subcontractor at any tier receiving \$500,000 under a Subcontract over the term of the Contract is a Major Subcontractor. Major Subcontractors may not be replaced without prior written consent of BATA, which consent shall not be unreasonably withheld. Substitution of Major Subcontractors without BATA's express written consent shall constitute grounds for termination under Article 15. Nothing in this paragraph is intended to interfere with Contractor's decision to terminate a Major Subcontractor who is in default of its obligations under its subcontract with Contractor.

10.3 SUBCONTRACT RECORDS

Contractor shall update the list of its Subcontractors provided in its Proposal on a quarterly basis. Contractor shall allow BATA access to all Subcontracts and records regarding Subcontracts, consistent with Article 14.5, and shall deliver to BATA, within thirty (30) days after execution or the point when the Subcontractor becomes a Major Subcontractor, true and complete copies of all Subcontracts with Major Subcontractors, excluding confidential data or price information.

11 RISK ALLOCATION

11.1 FORCE MAJEURE

Contractor shall not be responsible for any delays in performance resulting from a "Force Majeure" event, i.e., any event beyond the control of Contractor and not due to an act or omission of Contractor that materially and adversely affects Contractor's obligations hereunder and which event (or the effects of which event) could not have been avoided by due diligence and use of reasonable efforts by Contractor, including, but not limited to, the following:

- a. Any earthquake, hurricane, flood or other natural disaster;
- b. Any epidemic, blockade, rebellion, war, riot, act of sabotage or civil commotion, disastrous or extensive fire or explosion, act of terrorism, or strike;
- c. The suspension, termination, interruption, denial or failure to obtain, renew or amend any permit BATA is responsible for obtaining;

- d. Any change in a governmental rule or regulation, or change in the judicial or administrative interpretation of a governmental rule or regulation, or adoption of any new governmental rule or regulation that imposes significant additional costs or delays on Contractor and that was not proposed or otherwise reasonably foreseeable at the Proposal Date; and
- e. Any lawsuit seeking to restrain, enjoin, challenge or delay construction of the Project or the granting or renewal of any governmental approval that is necessary to the Project.

Contractor shall be granted an extension of time to compensate for the delay in the completion of its Work caused by a Force Majeure Event, provided that the Contractor establishes that the Work would have been completed in a timely manner but for the Force Majeure event, that the Contractor has taken reasonable precautions to prevent delays due to such causes, and provided that the Contractor has complied with the notice and other provisions of Article 12.4. The above-indicated causes for which extensions of time have been granted hereunder shall not in and of themselves entitle Contractor to additional compensation, except as provided in Article 12.5.

11.2 INDEMNIFICATION

To the maximum extent permitted by law, Contractor shall indemnify, keep and hold harmless BATA and those entities (if any) identified as additional insureds in Article 4.3.16 of this Agreement 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, arising from the performance of this Agreement by Contractor caused by any breach of the Agreement or negligent act or omission or willful misconduct of the Contractor or its officers, employees, subconsultants or agents; or
- B. Any allegation that materials, equipment, devices, processes, documents, materials, software or any other materials or services (“Such Materials or Services”) provided by Contractor under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

Contractor 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, Contractor 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.

In case Such Materials or Services or their use under the Contract are held to constitute an infringement and their use enjoined, the Contractor, at the Contractor's sole cost and expense, shall promptly fulfill its responsibilities under Article 8.3.

11.3 RISK OF DAMAGE AND LOSS

11.3.1 Risk of Loss of Toll Collection Revenue

At all times throughout the term of this Contract or any extension thereof, Contractor shall bear all risk of loss to the tolls collected by the CSC System and lost while in the possession of the Contractor and due to any delays or failure by Contractor to properly process data, except for loss caused by the sole negligence or wrong-doing of BATA or an Agency.

11.3.2 Risk of Damage and Loss to CSC System

Contractor shall bear all risk of damage or loss to the CSC System, including all materials, equipment and property required for the implementation of the Project, including any CSC System equipment located off-site for repair or any other reason (with the exception of materials, equipment or property located at BATA's office or any other site the usage of which is controlled by BATA) except for damage and loss BATA agrees was caused by the sole negligence or wrong-doing of BATA or an Agency. In the case of damage or loss that BATA agrees was caused by the sole negligence or wrong-doing of BATA or an Agency, Contractor must promptly replace the damaged or lost portions of the CSC System at Contractor's cost, and submit the amount(s) thus expended to BATA for reimbursement as a clearly identified, separate item on its next invoice to BATA.

11.3.4 Foreseeable Circumstances

Except as otherwise provided in this Contract, all loss or damage arising from any obstruction or difficulties, reasonably foreseeable by Contractor, whether natural or artificial,

which may be encountered in the prosecution of the Work, or the furnishing of the supplies, materials or equipment, or from any action of the elements prior to Project Completion, or from any act or omission not authorized by the Contract on the part of the Contractor or any agent or person employed by it shall be the responsibility of and be borne by Contractor.

11.4 MITIGATION OF DAMAGES AND DELAYS

Contractor agrees to take all reasonable and appropriate actions to mitigate damages in all circumstances, including re-sequencing, reallocating or redeploying its resources.

11.5 PASSAGE OF TITLE

Title to all hardware and supplies purchased under this Contract and still useful in the operation of the Project shall pass to BATA at Project Completion, as defined in Article 9 or upon early termination pursuant to Article 15. Contractor agrees to execute any and all papers necessary to perfect BATA's ownership of hardware and supplies. Title to Work Products and Contractor Data is governed by the provisions of Article 5.1.

11.6 LIMITATION ON CONSEQUENTIAL DAMAGES

Neither party shall be liable for lost profits, frustration of economic or business expectations, or any other consequential, indirect, incidental, punitive or special damages arising from performance or nonperformance of the contract, even if notice is issued as to the potential for such claims.

The foregoing limitation on Contractor's liability shall not apply to or limit any right of recovery BATA may have respecting the following: (a) Liquidated damages as referenced in Article 2.2, GUARANTEED COMPLETION DATES AND LIQUIDATED DAMAGES; (b) Loss of Agency toll revenues as referenced in Article 3.5.3, Lost Revenue and Article 11.3.1, Risk of Loss of Toll Collection Revenue; and/or (c) Contractor's obligations to indemnify, hold harmless, and defend BATA Indemnified Parties as set forth in Article 11.2, INDEMNIFICATION and Article 5.3.3, Compliance with Statutes and Regulations, of this Agreement.

The limitations on damages set forth in this Contract are agreed allocations of risk, constituting in part the consideration for their respective obligations under this Contract, and such limitations shall survive the determination of any court of competent jurisdiction that any remedy provided herein or available at law fails of its essential purpose.

12 CHANGE ORDERS

12.1 GENERAL

BATA reserves the right to make alterations to and permit deviations from the Contract and to require such changes in the extent or manner of performance of the Work as are determined by BATA to be necessary, subject to the provisions of this Article 12. All changes to the Contract shall be implemented by means of a Change Order signed by both parties.

12.2 BATA-INITIATED CHANGE NOTICE

Each proposed change to the Contract initiated by BATA pursuant to Article 12.1 will be initiated by means of a written Change Notice issued by BATA. The Change Notice will include a description of the scope of the proposed change and a request for Contractor to submit a proposal for performance of the changed work, including all compensation and/or schedule impacts, as described in Article 12.3.

Contractor shall have twenty (20) days to review and respond to the Change Notice, unless BATA has specified a longer period, ~~based upon the needs of the Project~~. If Contractor fails to respond to the Change Notice within the specified period, BATA may issue a preliminary Change Order, pursuant to Article 12.6, such to Contractor's right to protest under Article 12.7.

12.3 CONTRACTOR'S CHANGE NOTICE PROPOSAL

Contractor shall provide to BATA a Change Notice Proposal for providing the changed work within the time specified in the Change Notice. The Change Notice Proposal ~~Contractor's proposal~~ shall contain cost or price information sufficient to allow BATA to make a determination that any increase in compensation to Contractor is fair and reasonable. Contractor shall use the hourly rates stated in Table 4 included in the Appendix B, Price Form, in preparing its Change Notice ~~P~~proposal, unless otherwise agreed by the BATA Project Manager. If cost reasonableness cannot be established on the basis of a catalogue or market price of a commercial product sold in substantial quantities, or on the basis of prices set by law or regulation, Contractor is required to submit detailed cost breakdowns, including information on labor and materials costs, overhead and other indirect costs.

If Contractor believes the changed work will have a schedule impact, the Change Notice Proposal must include changes to the Approved Project Schedule.

BATA will review the Change Notice Contractor's Proposal, and the parties shall negotiate in good faith to determine the final terms and conditions of the Change Order and equitable adjustments to Appendix B, Price Form and/or Approved Project Schedule. If the parties cannot agree on terms, BATA may issue a preliminary Change Order, subject to Contractor's right to protest under Article 12.7.

12.4 CONTRACTOR-INITIATED CHANGE ORDERS

Should circumstances arise which, in the opinion of the Contractor, justify additional compensation or time or require changes in the Work specified by the Contract, Contractor may initiate a change order by written request, including sufficient information regarding cost and schedule to provide a basis for negotiation with BATA, as provided in Article 12.3, including references to applicable provisions of the Contract; the factual reasons for which Contractor believes a revision to the Specifications, additional compensation, or a schedule extension is called for; and an estimate of any cost increase or schedule extension.

Contractor shall meet with the BATA Project Manager or any other designated representative of BATA involved in evaluating the Contractor's request for a Change Order. Following such discussion(s), BATA will either: (i) issue a Change Order for Contractor's signature under Article 12.6; (ii) issue a written denial of Contractor's request for a Change Order; or (iii) accept the request in part and deny it in part. If Contractor agrees with the terms and conditions of a Change Order, Contractor shall sign a copy of the Change Order and return it to the BATA Project Manager, and Contractor shall promptly proceed with the work as indicated therein. If Contractor disagrees with BATA's action, it may file a protest under Article 12.7. If the Contractor fails to protest in accordance with the applicable procedures, Contractor shall not be entitled to file a claim for additional compensation or schedule extension or other remedy under Article 13 for the change other than those specified in the Change Notice. Notwithstanding any request for a Change Order, Contractor's duty to complete the Work in accordance with the provisions of the Contract shall not be postponed or abated.

12.5 EXTENSIONS FOR CERTAIN DELAYS

Contractor may request a Change Order under Article 12.4 above to the extent that Contractor has been delayed by a Force Majeure Event under Article 11.1. In such event, an

extension of the appropriate Mandatory Milestone or Guaranteed Completion Date commensurate with the delay thus caused will be granted, provided that Contractor has complied with the notice and other procedures set forth herein. If, in addition, Contractor has suffered actual losses as a result of the delay; Contractor took all reasonable precautionary and remedial actions, and was not able to fully mitigate such actual losses through insurance or otherwise; and the delay was not within the contemplation of the Contract, then BATA shall pay the Contractor the net amount of the unmitigated actual loss, provided that Contractor has complied with the notice and other claims procedures set forth herein. Actual loss for delays shall be understood to include no items of expense other than reasonable, verified amounts, including documented indirect costs. Contractor may file a protest under Article 12.7 or file a claim pursuant to Article 13.32 if BATA denies a request for a delay-related extension.

12.6 CHANGE ORDERS

Change Orders shall be issued by BATA as soon as practicable after their initiation by either party.

BATA may issue a Preliminary Change Order if it does not receive a Contractor response to a Change Notice or if it agrees in part and disagrees in part to a Contractor-initiated Change Notice. If Contractor disagrees with the terms and/or conditions of the Preliminary Change Order, Contractor may file a protest under Article 12.7.

BATA shall issue a Change Order if the terms of the Change Order have been agreed to by Contractor or if Contractor's protest of a Preliminary Change Order has been denied. If Contractor agrees with the terms and conditions of such Change Order, Contractor shall sign the Change Order and return it to the BATA Project Manager.

If Contractor fails to protest a Preliminary Change Order, in accordance with the procedures in Article 12.7, Contractor shall not be entitled to any claim for additional compensation or schedule extension arising out of or relating to any change in the Work other than that specified in the Change Order, and payment will be made as set forth in the Change Order. Such payment shall constitute full compensation and schedule adjustment for any Work required therein, or all events giving rise to a Contractor requested Change Order. Contractor will be deemed to have consented to the terms and conditions set forth in any Preliminary Change Order that Contractor does not dispute within ten (10) days or such other reasonable time period stated in the Preliminary Change Order for protest.

The following constitute amendments of the Contract: (a) a Change Order signed by both parties; (b) a Change Order issued by BATA based on a Preliminary Change Order that was not protested by Contractor in accordance with Article 12.7 or, if protested, was decided against Contractor; and (c) a revised Change Order signed by the parties as a result of a claim filed pursuant to Article 13 decided in favor of Contractor. When the Change Order becomes effective for any of these reasons, Contractor shall promptly proceed with the Work as indicated in the Change Order.

12.7 PROTEST

Contractor shall have ten (10) days from receipt of a BATA denial of a Contractor-Initiated Change Notice or a Preliminary Change Order from BATA to protest any of its terms to the BATA Executive Director. Thereafter, Contractor shall have up to ten (10) additional days to supplement its protest with additional information or documentation in support of its protest. The BATA Executive Director shall appoint a review officer to review the protest, and shall respond within twenty (20) days to Contractor. BATA and Contractor agree to negotiate in good faith to resolve disputed Change Orders.

An undisputed Change Order, or a disputed Change Order for which Contractor's protest is denied shall be considered as part of the Contract, as provided in Article 12.6, and is subject to the claims provisions in Article 13.

This protest procedure shall apply to other disputes by Contractor of discretionary decisions made by BATA under the Contract.

12.8 CHANGE ORDER RECORDS

For cost data submitted in connection with Change Orders, unless such data is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, BATA and its representatives have the right to examine all books, records, documents and other data of Contractor related to the negotiation of or performance of Work under such Change Orders, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

12.9 EXCLUSIVE REMEDIES

The procedures specified in this Article are Contractor's remedy of first resort for compensation for actual or constructive changes or delays. Claims resulting from actual or constructive changes or delay not first made through the procedures specified in this Article are not permitted and are hereby waived by Contractor. No course of conduct or dealings between the parties, no express or implied acceptance of changes or alterations to the Work, and no claim that BATA has been unjustly enriched by an alteration or change to the Work, shall be the basis of any other claim for an increase in compensation or extension in the time for completion of the Work.

13 CONFLICT RESOLUTION AND CLAIMS

13.1 ADDITIONAL REMEDIES

If BATA rejects all or any part of the Final Invoice, Contractor may pursue whatever remedies it may have under the Contract at law or equity.

13.2 CONTRACTOR'S OBLIGATIONS

Failure by BATA to pay any amount in dispute shall not alleviate, diminish or modify in any respect Contractor's obligation to perform under the Contract, including Contractor's obligation to achieve ~~Final Acceptance of the~~ Project Completion and to complete all Work in accordance with the Contract, and Contractor shall not cease or ~~slow down~~ alter its performance under the Contract on account of any such amount.

13.3 CLAIMS OR DISPUTES

Contractor 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 Contractor claims before Contractor has performed any disputed work. Therefore, Contractor's failure to provide timely notice shall constitute a waiver of Contractor's claims for additional compensation and/or time.

Contractor 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 Contractor 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 no later than thirty (30) working days following either the occurrence of the event on which such claim is based or the date on which the Contractor knew or should have known of the event, or where Contractor disputes the result of a protest under Article 12.7, PROTEST~~in the case of a disputed Preliminary Change Order~~, no later than twenty (20) working days of its receipt of BATA's response to the protest, unless the BATA Project Manager agrees to an extension. In no event shall a claim be made after Contractor has started performance of the work giving rise to the potential claim for additional compensation.

If there is a dispute over any claim, Contractor 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. Contractor shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached which resolves Contractor's claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the Contractor claim, they may choose to pursue dispute resolution pursuant to Article 13.4, DISPUTE RESOLUTION, or BATA may terminate the Agreement.

13.3.1 Final Claim

Within 30 days after the date of Project Completion, as defined in Article 9.1, Contractor shall prepare and present to the BATA Project Manager a Proposed Final Invoice, showing the proposed total amount of compensation previously paid and remaining to be paid under the Contract including all amounts retained.

13.3.2 BATA Payment of Final Invoice

All prior invoices and payments shall be subject to correction in the Proposed Final Invoice. BATA will review Contractor's Proposed Final Invoice and respond with a written request for additional information or documentation, changes or corrections within thirty (30)

days of its receipt or, in the case of a Final Invoice accompanied by one or more claims, within sixty (60) days.

Based on BATA's response, Contractor shall submit a Final Invoice incorporating any changes or corrections made by BATA, together with any additional requested information or documentation. If BATA agrees with all requests for compensation in the Final Invoice, BATA will pay the entire sum found due within thirty (30) days of its receipt and will provide Contractor with a copy of an Approved Final Invoice. If BATA does not agree with any amounts claimed as compensation, BATA shall respond in writing, within such thirty (30) day period, identifying those items in the Final Invoice that BATA is refusing to pay, along with a written explanation of the basis of the rejection. If BATA fails or refuses to act on a Final Invoice within the required time period, the claim shall be deemed to have been rejected by BATA on the last day of the period within which BATA was required to respond.

Upon final determination of all Contractor's claims for payment in the Final Invoice, BATA shall pay the entire sum ~~BATA finds found~~ due without prejudice to the rights of either BATA or Contractor in connection with such disputed sums.

13.4 DISPUTE RESOLUTION

A. Informal Resolution of Disputes. Contractor 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, BATA's Project Manager shall provide a written determination as to the dispute, which shall include the basis for its decision. Upon Contractor's written acceptance of the 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 Project Manager's determination.

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

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

C. Other Remedies. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in either the Superior Court of California for the County of Alameda or the Federal District Court for the Northern District of California. ~~a California State or Federal court of competent jurisdiction.~~ Contractor must satisfy the file a government claims requirements as set forth in pursuant to Government Code Section 910 *et seq.* before initiating in order to initiate a civil action, where applicable.

D. Pending Resolution. The Contractor 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. Likewise, BATA will continue to make non-disputed payments on non-disputed work during the dispute resolution process.

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

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

14 ADMINISTRATIVE AND STATUTORY REQUIREMENTS

14.1 LAWS AND REGULATIONS

Contractor shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government, including but not limited to BATA that relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations

and procedural requirements which are imposed on BATA as a recipient of federal or state funds are hereby in turn imposed on Contractor.

14.2 STATE OF CALIFORNIA REQUIREMENTS

14.2.1 Antitrust Claims

The Contractor's attention is directed to California Government Code §4552, which shall be applicable to the Contractor and its subcontractors:

"In submitting a proposal to a public purchasing body, the Proposer offers and agrees that if the proposal is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchasing body pursuant to the proposal. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Proposer."

14.2.2 Prevailing Wages and Use of Apprentices

Contractor shall comply with California Labor Code §1720 *et seq.* and Title 8 of the California Code of Regulations §16000 *et seq.* governing the payment of prevailing wages, as determined by the Director of the California Department of Industrial Relations, in regards to installation or any other public work performed under this Contract.

14.2.3 Fair Employment Practices: California Fair Employment And Housing Act

In the performance of the Contract, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation or age in any manner prohibited by law. Contractor shall take affirmative action to ensure that applicants are hired and that employees are treated during employment in accordance with this non-discrimination obligation. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this article.

14.3 RECORDS

Contractor 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. Contractor 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.

14.5. AUDITS

Contractor shall permit BATA, the Agencies, and their authorized representatives to have access to Contractor'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. Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

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

14.6 SOLICITATION OF CONTRACT

Contractor warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for Contractor, 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 Contractor, 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 Contractor's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

14.7 PROHIBITED INTERESTS

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree or have the potential of conflicting with the performance of services required under the Agreement or the impartial rendering of assistance or advice to BATA. Contractor 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, Contractor further covenants that it has made a complete disclosure to BATA of all facts of which it is aware upon due inquiry bearing upon any possible interest, direct or indirect, which it believes any member, officer, agent or employee of 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.

14.8 ORGANIZATIONAL CONFLICTS OF INTEREST

Contractor shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to 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.

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

If at any time during the term of this Agreement Contractor becomes aware of an organizational conflict of interest in connection with the work performed hereunder, Contractor shall immediately provide BATA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. Contractor's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, BATA becomes aware of an organizational conflict of interest in connection with Contractor's performance of the work hereunder, BATA shall similarly notify Contractor. In the event a conflict is presented, whether disclosed by Contractor or discovered by BATA, BATA will consider the conflict presented and any alternatives proposed and meet with Contractor 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 the Contractor to damages incurred by the BATA in addressing organizational conflicts that arise out of work performed by Contractor, or to termination of this Agreement for breach.

14.9 CONSTRUCTION CLAUSES

14.9.1 Applicability

The provisions contained in this Article 15.6.1 are applicable to any public works components of the Project. Public Work has the same meaning as defined in California Civil Code §§3100 and 3106, California Public Contract Code §1101, and California Labor Code §1720, as applicable.

14.9.2 State Labor Code

Contractor shall comply with California State Labor Code §§1774 and 1775. In accordance with said §1775, Contractor shall forfeit as a penalty to BATA not more than \$200 for each calendar day or portion thereof for each worker paid less than the prevailing wage rates determined by the Director of Industrial Relations for such work or craft in which such worker is employed for any Work done under the Contract by Contractor or by any Subcontractor under the Contract (in violation of the provisions of the California State Labor Code and, in particular, State Labor Code §§1770 to 1780, inclusive). The amount of forfeiture shall be determined by the Labor Commissioner based on specified factors pursuant to said §1775. In addition to said penalty and pursuant to said §1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or

portion thereof for which each Worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor. The Contract shall be binding upon and inure to the benefit of BATA and Contractor and their permitted successors, assigns and legal representatives.

14.9.3 Payroll Records

The Contractor shall comply with the provisions of State Labor Code §§1776 and 1812, and shall be responsible for compliance by its Subcontractors. The penalties specified in the Labor Code for noncompliance may be deducted from any monies due which may become due to the Contractor.

A certified copy of payroll records provided for in State Labor Code §1776 shall be furnished to the Project Manager or designee each week.

14.9.4 Contractor Inspection

The Contractor shall inspect all materials, supplies and equipment that are to be used, consumed or incorporated in the Work. In addition, Contractor shall conduct a continuous program satisfactory to the Project Manager or designee of construction quality control for all Work performed under this Contract. The Contractor shall have the primary responsibility for inspecting the Work and materials; the Project Manager or designee's inspection is conducted to verify that the Contractor has performed its inspections. Any observation, verification, inspection, or approval of the Work or materials by BATA shall not relieve the Contractor of any of Contractor's obligations to fulfill the Contract as prescribed. Work and materials not meeting Contract requirements shall be made acceptable, and unsuitable work or materials may be rejected, notwithstanding that payment for such Work or materials may have been previously authorized and included in a progress payment.

14.9.5 Resolution of Construction Claims

Resolution of construction claims shall be in accordance with the provisions of California Public Contracts Code §20104 *et seq.*

14.9.6 Project Stabilization Agreement

Contractor acknowledges the existence of a Project Stabilization Agreement regarding work at the building at 390 Main Street, San Francisco, and shall comply therewith with

respect to any and all work it performs or is performed on its behalf within the scope of said agreement. A copy of the Project Stabilization Agreement is attached hereto as Attachment 6.

15 DEFAULT AND TERMINATION

15.1 REMEDIES FOR BREACH

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

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by BATA or Contractor 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.

15.2 TERMINATION FOR CONTRACTOR'S DEFAULT

15.2.1 Default Defined

Default by Contractor shall include (a) breach of a material provision of the Contract, and failure to correct such breach within the cure period provided below under the notice of default described in Article 15.2.2; or (b) a "Default Event", which includes any of the following occurrences:

- (i) Contractor ceases to function as a going concern;
- (ii) Contractor makes an assignment for the benefit of creditors;
- (iii) Contractor becomes the subject of any proceeding under any application bankruptcy, receivership, insolvency or similar laws, which proceeding is not dismissed within thirty (30) days after it is instituted; or
- (iv) Contractor liquidates or; dissolves ~~or sells~~ substantially all of its assets.

The contractual remedy of termination for default is not available to Contractor, Contractor's sole remedies against BATA are under Article 12 and 13.

15.2.2 Termination for Default

If Contractor 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 Contractor 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 (or other reasonable period to be determined by BATA) advance written notice of termination on Contractor, setting forth the manner in which Contractor is in default. If Contractor does not cure the breach or describe to BATA's satisfaction a plan for curing the breach within the fifteen (15) day period (or other period specified by BATA), BATA may terminate the Agreement for default. In the event of such termination for default, Contractor will be entitled to be reimbursed for work performed in full compliance with the contract requirements as follows: Contractor shall be reimbursed for costs incurred for incomplete Work up to the time of termination, not to exceed the amount payable under the Contract for such Work. Such reimbursement will be offset by any extra costs incurred by BATA to complete work required under the Agreement. In no event shall BATA be required to reimburse Contractor for any costs incurred for work causing or contributing to the default. If Contractor has any property in its possession belonging to BATA, Contractor will account for the same, and dispose of it in the manner BATA directs. BATA shall not in any manner be liable for the Contractor's actual or projected lost profits had the Contractor completed the services required by this Agreement.

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

15.3 TERMINATION FOR THE CONVENIENCE OF BATA

BATA may terminate this Agreement, in whole or in part, at any time by written notice to Contractor. Upon receipt of notice of termination, Contractor 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. Contractor shall be reimbursed for costs incurred for

incomplete Work up to the time of termination and a reasonable profit not to exceed 5%, plus reasonable termination costs, not to exceed the amount payable under the Contract for such Work. Termination costs include losses that have been or will be reasonably and properly incurred by Contractor as a direct result of the termination of the Contract, but only to the extent that the losses are incurred in connection with the Project and in respect of the provision of the Work including: (i) any materials or goods ordered and/or subcontracts, rental or leasing contracts and/or insurance arrangements (including fees or penalties payable for early termination) placed that cannot be cancelled without such losses being incurred; (ii) any other expenditure and/or liability incurred in anticipation of the provision of the Work in the future that cannot be canceled or avoided; and/or (iii) the reasonable and justified costs of demobilization used in connection with the Work; provided that (a) the losses incurred under any such arrangements or agreements are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and (b) the Contractor has reasonably mitigated such losses.

Any equipment, materials, Work Products and supplies paid for by BATA shall become, on payment, the property of BATA. If Contractor has any property in its possession belonging to BATA, Contractor 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 Contractor's actual or projected lost profits had Contractor completed the services required by this Agreement.

15.4 BATA OPERATION FOLLOWING NOTICE OF TERMINATION

BATA, in its sole discretion, may choose to take over operation of the Project or any part of the Work following issuance of a notice of termination under Articles 15.2 and 15.3.

15.5 ACTIONS TAKEN FOLLOWING TERMINATION

Immediately upon receipt of a notice of termination, the Contractor shall: (a) stop work under the Contract on the date and to the extent specified in said notice; (b) terminate, unless otherwise directed by the BATA Project Manager, all orders and subcontracts to the extent that they relate to the performance of work terminated and place no further orders or subcontracts for materials, services or facilities, except as may be necessary for the completion of such portion of the work under the Contract as is not terminated; (c) if directed by the BATA Project Manager, assign to BATA all of the right, title and interest of the Contractor under any orders and subcontracts; (d) if directed by the BATA Project Manager, transfer title and deliver to

BATA (i) work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination; and (ii) the completed or partially completed plans, drawings, manuals, information and other property which, if the contract had been completed, would have been required to be furnished to BATA; (e) complete performance of such part of the work as shall not have been terminated by said notice; (f) if termination was effected pursuant to Article 15.3, submit any claim for termination costs; and (g) follow any other directions directed by the BATA Project Manager.

15.6 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 Contractor to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of Contractor. The Contractor shall comply immediately with the written order of BATA to suspend the work wholly or in part. The suspended work shall be resumed when Contractor is provided with written direction from BATA to resume the work.

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

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

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

16 MISCELLANEOUS PROVISIONS

16.1 INDEPENDENT CONTRACTOR

Contractor 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. Contractor has, and

hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by Contractor who are assisting in the performance of services under this Agreement. Contractor 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. Contractor shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

16.2 REPRESENTATIVES

BATA and Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract. Either party may change its designated individual by a subsequent writing delivered to the other party.

16.3 SURVIVAL

All provisions that by their inherent character should survive termination of this Contract shall survive the termination of this Contract. These provisions include, without limitation, all those terms and conditions contained in Article 5, Rights in Data, Article 8, Warranties, Article 11.2, Indemnification, and Article 11.5, Passage of Title.

16.4 LIMITATION ON THIRD PARTY BENEFICIARIES

The parties recognize that this contract is for the joint benefit of BATA, as the public agency delegated responsibility for electronic toll collection on state-owned bridges, and GGBHTD, as the public agency responsible for toll collection at the Golden Gate Bridge. Accordingly, GGBHTD is hereby deemed a third party beneficiary of this Contract pursuant to California Civil Code Section 1559. There are no other third-party beneficiaries of this Contract.

16.5 ASSIGNMENT

16.5.1 By Contractor

Contractor shall not assign or delegate all or any part of its obligations under the Contract to any other person(s) without the prior written approval of BATA, except as expressly permitted in this Article 16.5.1. Contractor may assign monies due or to become due under the Contract and such assignment will be recognized by BATA, if given proper notice thereof, to the extent permitted by law, but any assignment of monies shall be subject to all proper set-offs in favor of BATA and to all deductions provided for in the Contract.

Contractor's assignment or delegation of any of its Work under the Contract shall be ineffective to relieve Contractor of its responsibility for the Work assigned or delegated, unless BATA, in its sole discretion, has approved such relief from responsibility in writing.

16.5.2 By BATA

BATA may, in its sole discretion, assign the Contract, in whole or in part, to one or both of the Agencies, without the prior approval of Contractor.

16.6 LANGUAGE

All specifications, manuals and other documents to be prepared under the Contract shall be written in the English Language.

16.7 CHOICE OF LAW

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

16.8 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.

16.9 PARTIAL INVALIDITY

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

16.10 BENEFIT OF AGREEMENT

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

16.11 SECTION HEADINGS

Section headings in this Contract are not intended to have any substantive meaning and shall not be considered relevant to the interpretation of the terms and conditions of the Contract.

16.12 ENTIRE AGREEMENT; MODIFICATION

This Agreement for Services, including any attachments, constitutes the complete Agreement between the parties and supersedes any prior written or oral communications. Contractor represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both the Contractor 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, the Agreement has been executed by the parties hereto as of the day and year first written above.

BAY AREA TOLL AUTHORITY

NAME OF CONTRACTOR

Steve Heminger, Executive Director

INSERT APPROPRIATE NAME, TITLE

APPENDIX A, SCOPE OF WORK

Outline of Services

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

APPENDIX B, PRICE FORM

ATTACHMENT 1, DESIGNATED REPRESENTATIVES

CONTRACTOR'S NAME

PROJECT MANAGER:

First Name Last Name

Address

City, State, Zip Code

XXX/XXX-XXXX (phone)

XXX/XXX-XXXX (fax)

Email address

BATA PROJECT MANAGER:

Beth Zelinski

101 Eighth Street

Oakland, CA 94607

510/817-5715 (phone)

510/817-5848 (fax)

bzelinski@mtc.ca.gov

ATTACHMENT 2, KEY PERSONNEL

	Title or Job Category	Name and contact information
1.	Project Manager	First Name Last Name Address City, State, Zip Code XXX/XXX-XXXX (phone) XXX/XXX-XXXX (fax) Email address
2.	Software Design Manager	First Name Last Name Address City, State, Zip Code XXX/XXX-XXXX (phone) XXX/XXX-XXXX (fax) Email address
3.	Data Migration Manager	First Name Last Name Address City, State, Zip Code XXX/XXX-XXXX (phone) XXX/XXX-XXXX (fax) Email address
4.	Operations Manager	First Name Last Name Address City, State, Zip Code XXX/XXX-XXXX (phone) XXX/XXX-XXXX (fax) Email address
5.	Financial Manager	First Name Last Name Address City, State, Zip Code XXX/XXX-XXXX (phone) XXX/XXX-XXXX (fax) Email address
6.	Test Manager	First Name Last Name Address City, State, Zip Code XXX/XXX-XXXX (phone) XXX/XXX-XXXX (fax) Email address

7.	Quality Assurance Manager	First Name Last Name Address City, State, Zip Code XXX/XXX-XXXX (phone) XXX/XXX-XXXX (fax) Email address
8.	Maintenance Manager	First Name Last Name Address City, State, Zip Code XXX/XXX-XXXX (phone) XXX/XXX-XXXX (fax) Email address

ATTACHMENT 3, SUBCONTRACTOR LIST

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

ATTACHMENT 4-1, CONTRACTOR SOFTWARE

ATTACHMENT 4-2, OPEN SOURCE/FREWARE

ATTACHMENT 5, BONDS TO ACCOMPANY CONTRACT

PAYMENT BOND TO ACCOMPANY CONTRACT

KNOW ALL MEN BY THESE PRESENTS

THAT WHEREAS, the Bay Area Toll Authority ("BATA") has awarded to _____ as Principal, hereinafter designated as the "Contractor," a contract for the work described as follows:

AND WHEREAS, Contractor is required to furnish a bond in connection with said contract, to secure the payment of claims of laborers, mechanics or material suppliers employed on work under said contract as provided by law;

NOW, THEREFORE, We the undersigned Contractor and Surety are held and firmly bound unto the BATA in the sum of _____dollars _____ (\$_____), said sum being 100% of the estimated amount payable by the said the BATA under the terms of the contract, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly and by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if Contractor, his or its heirs, executors, administrators, successors, assigns or subcontractors shall fail to pay any of the persons named in Section 3181 of the Civil Code, amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor, that the surety hereon will pay for the same, in an amount not exceeding the sum specified in this bond; otherwise, the above obligation shall be void. In case suit is brought upon this bond, the said surety will pay a reasonable attorney's fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____ A.D., 2012.

Contractor
Surety
[SEAL]
Attorney in Fact

PERFORMANCE BOND TO ACCOMPANY CONTRACT

KNOW ALL MEN BY THESE PRESENTS

THAT WHEREAS, the Bay Area Toll Authority (“BATA”) has awarded to _____

_____ as Principal, hereinafter designated as the “Contractor,” a contract for the work described as follows:

AND WHEREAS, Contractor is required to furnish a bond in connection with said contract guaranteeing the faithful performance thereof;

NOW, THEREFORE, We, the undersigned Contractor and Surety, are held and firmly bound unto BATA, in the sum of _____ dollars (\$_____), to be paid to BATA or its certain attorney, its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing contract and any alteration thereof made, as therein provided, on his or their part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless BATA, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____ A.D., 2012.

Contractor
Surety
Attorney in Fact

ATTACHMENT 6, PROJECT STABILIZATION AGREEMENT