



August 29, 2012
Addendum No. 3
to

**REQUEST FOR QUALIFICATIONS
Regional Express Lane Network Electronic Toll Services
System Manager,
dated August 1, 2012**

Dear Consultant:

This letter is Addendum No. 3 to the Request for Qualifications (“RFQ”) for Regional Express Lane Network Electronic Toll Services System Manager dated August 1, 2012. Where text is revised, deleted text is shown in strike-through format; added text is *italicized*. The RFQ is revised as follows:

<u>Addendum Item</u>	<u>Reference</u>	<u>Change</u>
1.	RFQ, Letter of Invitation, <u>Selection Timetable</u>, page 4	No later than one (1) week prior to the date SOQs are due <i>No later than 4 p.m. on August 31, 2012</i> Closing date for objections to RFQ provisions
2.	RFQ, VI. GENERAL CONDITIONS, E. <u>Selection Disputes</u> page 12	No later than one (1) week prior to the date SOQs are due <i>4 p.m. on August 31, 2012</i> , for objections to RFQ provisions;
3.	RFQ, APPENDIX C, MTC PROFESSIONAL SERVICES AGREEMENT, ARTICLE 1. SCOPES OF SERVICES, paragraph 2	In the performance of its services, CONSULTANT represents that it has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services that are performing the same or similar work, at the same time and locality and under the same or similar conditions faced by Consultant, and CONSULTANT represents that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing. CONSULTANT agrees to perform or secure the performance of all specified

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San Mateo County

Amy Rein Worth, Vice Chair
Cities of Contra Costa County

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U.S. Department of Housing
and Urban Development

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Cities of Alameda County

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City and County of San Francisco

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Santa Clara County

Bill Dodd
Napa County and Cities

Dorene M. Giacomini
U.S. Department of Transportation

Federal D. Glover
Contra Costa County

Mark Green
Association of Bay Area Governments

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Alameda County

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San Francisco Bay Conservation
and Development Commission

Steve Kinsey
Marin County and Cities

Sam Liccardo
Cities of Santa Clara County

Jake Mackenzie
Sonoma County and Cities

Kevin Mullin
Cities of San Mateo County

Bijan Sartipi
State Business, Transportation
and Housing Agency

James P. Spring
Solano County and Cities

Scott Wiener
San Francisco Mayor's Appointee

Steve Heminger
Executive Director

Ann Flemer
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

		<p>services in their entirety with respect to fully executed Task Orders within the Maximum Payment specified in Article 3. Lisa Klein (herein called "MTC Project Manager") is responsible for communication with CONSULTANT and the administration of this Agreement. MTC'S Executive Director or designated representative may substitute a new MTC Project Manager by written notice to CONSULTANT.</p>
<p>4.</p>	<p>RFQ, APPENDIX C, MTC PROFESSIONAL SERVICES AGREEMENT, SECTION 9, INDEMNIFICATION, paragraph 2</p>	<p>CONSULTANT further agrees to immediately defend the MTC Indemnified Parties with respect to any Claims and Losses if such Claims and Losses are alleged to arise out of or relate to any allegations of CONSULTANT'S breach of obligations under this Agreement, willful misconduct, or negligent services performed under this Agreement, <i>provided that MTC : (i) promptly notifies CONSULTANT in writing of the Claim, and (ii) at CONSULTANT's expense and request, provides CONSULTANT with all reasonable assistance, information and authority to settle and perform its indemnity obligations.</i> As part of this defense obligation, CONSULTANT agrees to either retain counsel to defend the MTC Indemnified Parties or pay charges of the MTC Indemnified Parties' attorneys with regard to the Claims and Losses. CONSULTANT'S duty to defend shall apply and be enforced even if it is alleged that the acts, omissions or failures to act of parties other than CONSULTANT, including the MTC Indemnified Parties, caused or contributed to the Claims and Losses.</p>
<p>5.</p>	<p>RFQ, APPENDIX C, MTC PROFESSIONAL SERVICES AGREEMENT, NEW SECTION 9.1,</p>	<p><i>Article 9.1 LIMITATION OF LIABILITY Except for CONSULTANT's (i) indemnification obligations under Article 9; or (ii) breach of confidentiality obligations under Article 10.2, neither Party shall be liable for lost profits,</i></p>

	LIMITATION OF LIABILITY	<i>frustration of economic or business expectations, or any other consequential, indirect, incidental, punitive or special damages arising from performance or nonperformance of the Agreement, however arising, even if the Party against which the claim is made has been advised of the possibility of such damages.</i>
6.	RFQ, APPENDIX C, MTC PROFESSIONAL SERVICES AGREEMENT, SECTION 10, DATA TO BE FURNISHED BY MTC, paragraph 1, first sentence:	All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“MTC Data”) made available to CONSULTANT by MTC for use by CONSULTANT in the performance of its services under shall remain the property of MTC and this Agreement shall be returned to MTC (<i>or disposed of as directed by MTC</i>) at the completion or termination of this Agreement. ...”
7.	RFQ, APPENDIX C, MTC PROFESSIONAL SERVICES AGREEMENT, SECTION 10.2, NONDISCLOSURE OF CONFIDENTIAL INFORMATION	Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of CONSULTANT; b) CONSULTANT can demonstrate to have had rightfully in its possession prior to disclosure by MTC or its contractors, vendors or licensors; c) CONSULTANT rightfully obtains from a third party who has the right to transfer or disclose it; <i>d) information that CONSULTANT can demonstrate was independently derived by CONSULTANT</i> ; or (d) -(e) is required to be disclosed by law or applicable legal process.
8.	RFQ, APPENDIX C, MTC PROFESSIONAL SERVICES AGREEMENT, SECTION 11, OWNERSHIP OF WORK PRODUCTS, paragraphs 1 and 3:	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 <i>as required deliverables under this Agreement</i> to MTC by CONSULTANT or its subconsultants pursuant to this

		<p>Agreement shall be and are the property of MTC. MTC shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the CONSULTANT or in the hands of any subconsultant upon completion or termination of the work shall be immediately delivered to MTC. CONSULTANT hereby assigns to MTC ownership of any and all rights, title and interest in and to such Work Products, including ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the <i>such</i> Work Product.</p> <p>CONSULTANT also agrees to execute all papers necessary for MTC to perfect its ownership of the rights in the Work Product. Notwithstanding the above, "Work Products" are not intended nor shall they be construed to include <i>CONSULTANT'S tools, systems or information used by the CONSULTANT to provide the services hereunder, including computer software (object code and source code), know-how, methodologies, equipment or processes and the pre-existing intellectual property and any derivatives thereof, secured, developed, written, or produced by CONSULTANT prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; CONSULTANT shall retain all right, title and interest in any such pre-existing intellectual property.</i></p> <p><i>Except with respect to MTC Data incorporated into Work Products,</i> CONSULTANT represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all such materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret,</p>
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		or other intellectual-property or proprietary right of any third party.
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The remaining provisions of the RFQ, dated August 1, 2012, remain unchanged. In the event of a conflict between this Addendum and the previous version(s), this Addendum takes precedence.

Questions and Answers regarding this RFQ are enclosed with this Addendum.

Any questions concerning this addendum to the RFQ should be directed to Lisa Klein, Project Manager, at (510) 817-5832 or lklein@mtc.ca.gov.

Sincerely,



Steve Heminger
Executive Director

SH:LK

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**REQUEST FOR QUALIFICATIONS (RFQ)
REGIONAL EXPRESS LANE NETWORK ELECTRONIC TOLL SERVICES
SYSTEM MANAGER
dated August 1, 2012**

**Proposers' Conference and Submitted Questions and Answers
Second Set – Contract Language and Insurance**

August 29, 2012

Q1: Regarding Appendix C, Section 7, INSURANCE AND FINANCIAL SECURITY REQUIREMENTS, which states, “CONSULTANT shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the types of insurance and financial security listed in Attachment E, Insurance and Financial Security (Bond) Provisions...,” is there a bond requirement?

A1: No, there is no bond requirement for this project.

Q2: Can the Property Insurance waiver of subrogation requirement be eliminated?

A2: No.

Q3: Will the Professional Service Agreement resulting from this RFQ include Attachment G to Appendix C relating to Personally Identifiable Information?

A3: No.

Q4: Will MTC lower the Errors and Omissions Professional Liability Insurance limit currently set at \$5 million?

A4: MTC considers this limit reasonable and will not lower it.

Q5: Will MTC eliminate the Umbrella Insurance in the amount of \$5,000,000?

A5: MTC considers this coverage appropriate and the limit reasonable.

Q6: Will MTC revise the language in Article 3, COMPENSATION AND METHOD OF PAYMENT?

A6: No.

Q7: Will MTC revise the language in Article 6, TERMINATION, Subsection B, Termination for Default?

A7: No.

Q8: Will MTC revise the language in Article 7, INSURANCE AND FINANCIAL SECURITY REQUIREMENTS?

A8: No.

Q9: Will MTC revise the language in Article 8, INDEPENDENT CONTRACTOR?

A9: No.

Q10: Will MTC revise the language in Article 12, SUBCONTRACTS?

A10: No.

Q11: Will MTC revise the language in Article 18, PROHIBITED INTERESTS?

A11: No.

Q12: Will MTC revise the language in Article 22, TEMPORARY SUSPENSION OF WORK?

A12: No.

Q13: Will MTC revise the language in Article 23, WARRANTY OF SERVICES?

A13: No.

Q14: Will MTC revise the language in Article 24, DISPUTE RESOLUTION?

A14: No.

Q15: Will MTC revise any of the language in APPENDIX C, ATTACHMENT E, SECTION 1, INSURANCE?

A15: No.