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May 22, 2013

**Request for Qualifications for
 Regional Express Lane Network Phase 1: I-680 Project PS&E
 Issued to Prequalified Consulting Firms
 to Provide On-Call Design Services**

Dear Consultant:

As per the September 24, 2010 BATA Request for Qualifications for On-Call Construction Management and Design Services, which was approved by the BATA Oversight Committee on January 12, 2011, the Bay Area Infrastructure Financing Authority (BAIFA) reserves the right in its sole discretion to hold mini-procurements among select pool firms. As such, BAIFA invites your firm to submit a Statement of Qualifications (SOQ) to assist BAIFA in completing Plans, Specifications and Estimate (PS&E) for the **Regional Express Lane Network Phase 1: I-680 Project**.

Proposer Minimum Qualifications

To be eligible for consideration for this project, Consultant must be a prequalified firm from the approved list of design firms resulting from the 2010 BATA Request for Qualifications for On-Call Construction Management and Design Services.

Submittal Deadline and Consultant Selection Timetable

Interested firms must submit an original and seven (7) hard copies as well as one electronic version (PDF) of their SOQs no later than the closing date/time for receipt of SOQs. SOQs should be submitted to Alice Truong, Contract Specialist, Bay Area Infrastructure Financing Authority, Joseph P. Bort MetroCenter, 101 - 8th Street, 3rd Floor, Oakland, CA 94607.

Our schedule for this contract is as follows:

Closing date/time for receipt of SOQs	Friday, June 7, 2013 at 4:00 p.m.
BAIFA staff may contact proposer for clarification	Friday, June 7, 2013 – Thursday, June 13, 2013
Interviews, if needed	Friday, June 14, 2013
BAIFA approval	Wednesday, July 24, 2013

**Interview and approval dates are approximate and are subject to change.*

Following approval, BAIFA may issue a contract to the successful Firm for work to be performed as described in Appendix A, Scope of Work. After contract execution, BAIFA will then issue an initial task order to refine the scope of work for the project. The budget and scope of any further task orders will be subject to negotiation.

Background

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

BAIFA's goals for express lanes are to: (1) Improve connectivity by closing gaps in the existing High Occupancy Vehicle (HOV) network; (2) Improve freeway efficiency by making the best use of existing capacity; and (3) Offer a reliable, congestion-free option to buses, carpoolers and those willing to pay a toll. BAIFA intends to begin revenue operations in December 2015.

Key features include the implementation of zone based tolling in combination with more open access express lane configurations and automated toll enforcement with switchable toll tags. For more detail on these features see:

http://apps.mtc.ca.gov/meeting_packet_documents/agenda_2055/3_Concept_of_Ops.pdf

The BAIFA express lanes will work in coordination with the express lanes operated by the Valley Transportation Authority (VTA) in Santa Clara County, the Alameda County Transportation Commission (ACTC) on I-580 and the Sunol Smart Carpool Lane Joint Powers Authority on I-680.

The CTC application materials, including the programmatic project study report, are available on MTC's website at <http://www.mtc.ca.gov/planning/hov/>. A discussion of BAIFA's express lane responsibilities is available on MTC's website at

http://apps.mtc.ca.gov/meeting_packet_documents/agenda_2031/4_BAIFA_Resolution_4.pdf.

Project Overview

Currently MTC, on behalf of BAIFA, is completing the Project Initiation Document (PID) and Project Approval and Environmental Document (PA/ED) phases through the completion of a combined Project Study Report/Project Report (PSR/PR) for the conversion of approximately 76 lane-miles of existing HOV lanes to express lanes. These conversions will be completed on I-880, I-680, and the westbound approaches to the San Francisco-Oakland Bay Bridge, San Mateo Bridge and Dumbarton Bridge. These segments are collectively referred to as the Regional Express Lanes Phase 1 Project, as shown in Figure 1. While BAIFA is the lead contracting agency for the Project PS&E, the Alameda County Transportation Commission (ACTC), Contra Costa Transportation Authority (CCTA), and the Santa Clara Valley Transportation Authority (VTA) will participate actively. The project must be delivered on an aggressive timeline as BAIFA intends to open the first of the Phase 1 projects, likely I-680, toward the end of 2015.

The contract that will result from this RFQ is for the completion of the Final PS&E package for the portion of the Phase 1 projects on I-680, located in Contra Costa and Alameda County, northbound from Alcosta Boulevard to Livorna Road, and southbound from Rudgear Road to Alcosta Boulevard. The westbound Phase 1 express lane improvements to the San Francisco-

Oakland Bay Bridge approach and I-880 with the San Mateo and Dumbarton bridges approach are not included in this RFQ.

In order to expedite design and meet the 2015 target to begin revenue operations, BAIFA is employing a “design at risk” strategy. This includes contracting for the PS&E effort following appropriate PA/ED milestones, but prior to completion of PA/ED. Topographic mapping is underway for the Phase 1 PSR/PR at a PS&E level of detail and will be provided to the selected Consultant.

- As part of the Project Report, the equivalent of 35% preliminary engineering will be completed by BAIFA’s existing PA/ED consultant. Systems integration, including development, installation and testing of the Electronic Toll Collection (ETC) software and equipment will not be completed as part of the contract resulting from this RFQ.
- BAIFA anticipates the Toll Systems Integrator’s start of work to coincide with the 65% PS&E review. This timing allows for the integrator to review the 65% design as one of their initial tasks and influence the civil design early enough to reduce change orders later.

Another strategy BAIFA has to accelerate Project delivery is a task to produce an advanced overhead sign structure procurement package, which is a part of the scope of work for this RFQ. This package must be prepared prior to the Project’s Final PS&E approval for construction. Procuring the sign structures in advance reduces the duration required for overall project delivery. This is achieved by proceeding with the fabrication and delivery of the overhead sign structures concurrent with the final design and PS&E approval processes, which eliminates the lead time required for sign structure procurement from the construction schedule.

BAIFA’s Utility Service consultant will lead coordination efforts with Pacific Gas & Electric (PG&E), AT&T and other utility companies to complete agreements, service applications, utility relocations and property right (easement) acquisitions. The selected Consultant will not be completing the utilities service activities as part of the contract resulting from this RFQ, however, the selected Consultant will need to coordinate final design activities with BAIFA’s Utility Service consultant in completing these activities.

The scope of work for the contract will include coordination with BAIFA staff, BAIFA’s Program Management consultant, BAIFA’s Toll System Manager consultant, BAIFA’s Utility Service consultant and BAIFA’s Toll System Integrator. Draft and preliminary reference documents including the Concept of Operations and various express lane exhibits will be made available on MTC’s website at <http://procurements.mtc.ca.gov/> during the procurement process.

Several Congestion Management Agencies (CMAs) are conducting concurrent PA/ED and PS&E work on other corridors: I-80 in Solano County, I-580 in Alameda County, I-680 in Contra Costa County, and US 101/SR 85 in Santa Clara County; however those projects are not a part of this RFQ. Coordination with these agencies will be required and the final PS&E package must be consistent with other projects that have already completed the Caltrans project approval phase.

Budget

BAIFA has budgeted approximately \$3 million for I-680. However, Proposers are asked to offer alternatives that would reduce BAIFA's project expenditures while achieving BAIFA's objectives and meeting project deadlines.

Statement of Qualifications Content

Firms must limit SOQs to 15 pages for each option, not including resumes, organization charts, and schedules. Proposers are asked to print double-sided copies to save paper. Responses must be specific and clearly address each component required by the section. **Responses such as "see other document" will be considered non-responsive.**

Your SOQ should be signed by an official authorized to solicit business and enter into contracts for the firm and should address the following:

- a) Point of Contact – The point of contact will be notified should BAIFA staff have any follow-up questions. At a minimum, indicate name of contact person, contact person's telephone number and email address.
- b) Approach to the Project – Describe the Firm's understanding of BAIFA's objectives and work requirements and describe the Firm's ability to satisfy those objectives and requirements. Succinctly describe the proposed approach for completing the tasks listed in Appendix A, Scope of Work. The Firm should identify key challenges that will be faced in completing the work, and may also suggest technical and procedural innovations not specifically mentioned in this RFQ that have been used successfully on other projects. Additional items included that are not specifically requested in the RFQ must be clearly marked as "additional or optional tasks". Include any alternatives that would reduce expenditures while achieving BAIFA's objectives and timeline.
- c) Management Plan – Describe your approach to client communications and coordination. Describe methods of planning, scheduling, delivering tasks, coordinating meeting strategies, and how the team will provide updated and accurate information to BAIFA for the duration of the contract.
- d) Work Plan and Schedule – The Work Plan shall include a description of how each major task listed in Appendix A, Scope of Work and major subtask will be conducted. Be sure to include identification of deliverables for each major task and subtask. Also, provide a milestone schedule based on the major tasks and subtasks. The schedule should show the expected sequence of tasks and subtasks, and include durations for the performance of each task, subtask, milestones, submittal dates, and review periods for each submittal. Incorporate the PS&E activities into the overall proposed project schedule provided below:

PROPOSED PROJECT SCHEDULE*

July 2013

BAIFA Approval/Contract Execution of I-680 PS&E Design
Contract

September 2013	Preliminary Engineering and Draft PR Submitted to Caltrans*
September 2013	Notice to Proceed on Final I-680 PS&E Design Contract
November 2013	Caltrans Approval of Environmental Document (CE/CE)
January 2014	Caltrans Approval of PR (Project Approval)
April 2014	Notice to Proceed - Systems Integrator Contract
April 2014	Advanced Sign Structure Procurement Advertisement
September 2014	Advertise/List Roadway Project*

*PS&E activities schedule not to exceed dates marked by asterisks

- e) In order to help BAIFA meet the aggressive timeline, discuss the firm/team's tactics for accelerating the completion of this project. Be sure to include technical and procedural innovations used successfully on other projects.
- f) Proposed Staffing Plan and Availability – Firms should attempt to use subcontractors proposed under the 2010 BATA RFQ for On-Call Design Services. If existing subcontractors cannot adequately complete the tasks, Firms should describe any new subcontractors that will make up the project team (including percentage of work and the distribution of work among them). At a minimum, the Project Manager must be from a prequalified firm from the approved list of design firms. The prequalified firm must act as the prime consultant for this engagement and contract directly with BAIFA to complete the scope of work. For each subcontractor proposed for this project, include number of years in business; size of company (employees, annual revenue); and type of organization (individual, partnership, corporation). Include a description of the subcontractor's role and their specific responsibilities and how their work will be supervised.

For each task provide the names, qualifications, previous related experience, and percentage of personnel time for key staff the team intends to use to perform the work specified in Appendix A, Scope of Work, as well as any additional or optional tasks. This discussion should include subcontractors.

For firms with multiple offices, please clarify which resources are available directly out of the local office. For all key team members, the SOQ should include resumes describing similar contracts on which they have been involved and their role on that contract (list any current transportation projects located in nine county San Francisco Bay Area, contract value and percentage completed for that contract), their proposed role on this contract, and a description of the benefits the person brings to the team.

- g) Detailed Task Budget – In order to help BAIFA assess how efficiently the firm will manage its resources for this project, provide a time and material estimate for each task identified in Appendix A, Scope of Work. An estimate of hours and cost by task and subtask for all team members should be provided. Proposer should include additional recommended tasks, which should be clearly identified as optional tasks and should be included as separate line items in the detailed task budget. Neither hourly rates nor the overall costs for tasks and subtasks will be factors in the evaluation process.
- h) IN A SEPARATE SEALED ENVELOPE: Firms must extend existing Consultant rates under any current agency (i.e., BATA/MTC/MTC SAFE/BAHA) Design Services

contracts for this project. For any new positions not listed in an existing contract, firms should provide a description of the Consultant's and subcontractor's hourly rates. Rates shall include all direct and indirect costs. Rates indicated shall be firm for the entire duration of the contract term.

Evaluation

SOQs will be evaluated based upon the following factors, listed in order of relative importance:

1. Demonstrated understanding of the project and ability of the proposed approach to meet BAIFA's objectives;
2. Qualifications of firms and proposed staff to complete work specified in Appendix A, Scope of Work;
3. Schedule and capacity to provide qualified personnel; and
4. Management of resources.

Award

All Proposers may be required to participate in interviews, if held. BAIFA reserves the right to award the contract with or without interviews based upon the SOQs received. Any award made will be to the Consultant whose SOQ is most advantageous to BAIFA based on the evaluation criteria defined in the above section. BAIFA reserves the right to accept or reject all SOQs submitted, waive minor irregularities, request additional information, or revisions to offers, with any or all proposers.

A firm's hourly rates will not be a factor in the evaluation. However, BAIFA reserves the right to negotiate with or to decline to enter into a contract with a firm whose rates are unreasonable in BAIFA's sole discretion.

If BAIFA and the highest ranked Firm are unable to agree upon the terms and conditions of the Firm's contract through negotiations, BAIFA will have the right to negotiate with the next highest ranked Firm and so forth until a Consultant is selected under the terms of the RFQ. BAIFA also reserves the right to cancel this procurement and re-procure for this project if it is determined to be in its best interest to do so.

Public Records

This RFQ and any material submitted by a Proposer in response to this RFQ are subject to public inspection under the California Public Records Act (Government Code § 6250 et seq.), unless exempt by law. SOQs will remain confidential until BAIFA has authorized award.

Organizational Conflict of Interest

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

Proposer further warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code Sections 1090 *et seq.* or 87100 *et seq.* during the performance of services under any contract

resulting from this RFQ and that it will not knowingly employ any person having such an interest. Violation of this provision may result in the contract being deemed void and unenforceable.

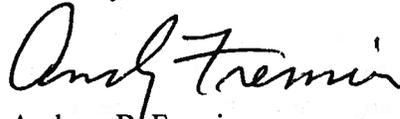
Whenever BAIFA is awarding a contract that involves the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts of the Proposer, and if so, whether any potential bias can be mitigated acceptably by BAIFA and the Proposer.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

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

Our standard consultant agreement is attached for your reference. Should you have any questions about this RFQ, please contact Alice Truong, Contract Specialist at atruong@mtc.ca.gov.

Thank you for your interest.

Sincerely,



Andrew B. Fremier
Deputy Executive Director, Operations

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APPENDIX A: SCOPE OF WORK

The Consultant shall prepare project construction documents, including Plans, Specifications and Estimate (PS&E) as required for the Project construction bid package and Advanced Sign Structure Procurement. The Consultant shall provide construction support services during advertisement and construction. Primary elements of the Project are signing, striping, median barrier reconstruction, storm drain modifications and installation of infrastructure for electrical toll collection systems (including poles and empty conduit) for a more open access express lane facility. The Consultant will work closely with BAIFA and Caltrans, and shall be responsible for coordination with agencies and consultants in other related contracts and projects. This includes, but is not limited to:

- BAIFA's Toll Program Management consultant
- BAIFA's PA/ED consultants
- BAIFA's Utility Service Coordination consultant
- BAIFA's Toll System Integration and Systems Management consultants
- Agencies and consultants with projects in the Project vicinity
- Agencies and consultants with related Express Lanes projects (including CMA-led Express Lanes projects)

The Consultant shall perform all work necessary to complete final design of the Project and produce all necessary documents required to obtain Caltrans approval of the PS&E and associated encroachment permit for BAIFA to advertise, award and administer the construction of the planned improvements. This will include approval of design plans, specifications, and development of engineer's estimate. These documents must be acceptable to Caltrans, Federal Highway Administration (FHWA), local jurisdictions and BAIFA. In addition, the Consultant shall be responsible for the preparation, submittal and approval of all accompanying documents (i.e. permits, agreements, reports, presentation materials, exhibits etc.).

Caltrans, as owner-operator of the freeway system, will provide independent quality assurance of the preparation of the documents required for the project. All project services and deliverables must adhere to current Caltrans mandated requirements for project development of improvements on the freeway/Interstate system. These requirements include adherence to design standards, regulations, policies and procedures for all work on the freeway/Interstate system within State right-of-way at the time of project construction advertisement. Compliance with current FHWA mandated requirements is also necessary for all work on the Interstate system. Any work beyond the limits of the State right-of-way must adhere to current standards for the appropriate local agency. All work must be performed and work products prepared in a format and manner customarily anticipated by the appropriate approving agency (i.e., City, County, State or Federal). The Consultant's attention is directed to FHWA's Guide to HOT Lane Development, Caltrans HOV guidelines and Caltrans Traffic Operation Policy Directive TOPD 11-02 for Express/Managed Lanes.

The Toll Systems Manager consultant will make a recommendation to the PS&E consultant on the electrical specifications for the tolling system including placement of electrical drops and systems equipment. The Toll System Integrator will review the electrical specifications and systems placement after the 65% PS&E is submitted to Caltrans and concurrent with Caltrans

review.

The services may include, but are not limited to the following tasks:

- 1) Consultant shall complete final engineering design to support the development of construction bid documents including plans, specifications and cost estimate. Documents must be prepared in accordance with current Caltrans standards, policies and procedures. Assume that Caltrans 2010 Standard Plans and Specifications will be used.
- 2) Consultant shall prepare all technical studies and reports that accompany the PS&E package. The Consultant shall be responsible for obtaining the approval of the technical studies and reports from Caltrans, Local Agencies and BAIFA.
- 3) Consultant shall be familiar with and responsible for providing and performing the tasks and activities listed below. Typical tasks include, but are not limited to, the following:

Task 1 – Project Management

Consultant shall coordinate with the BAIFA Project Manager or designated staff and/or Program Manager consultant on a day-to-day basis; prepare agendas and records of meetings for monthly project team meetings; prepare and maintain a project schedule; prepare project status reports; prepare presentations and/or handouts for various meetings; coordinate with other agencies and consultants; and other general project management activities.

Task 2 – Preliminary Engineering and Technical Reports

Consultant shall prepare and revise documents including technical reports and design exception fact sheets as required for approval. This task shall include, but is not limited to Drainage Report, Storm Water Data Report, Foundation Reports, Geotechnical Design & Material Report (GDMR), Site Investigation Report, Lane Closure Report, Hydromodification Plan (if needed), and Transportation Management Plan (TMP) for the PS&E package. This task involves circulating documents for review with the 65%, 95% and final PS&E packages and responding to comments.

Task 3 – Prepare Permits and Agreements and Obtain Permits

Consultant shall complete all permit and agreement applications for submission and approval. Working with Caltrans and BAIFA, the Consultant shall determine the appropriate permits and agreements to be prepared. This task shall include any support work required for acquiring utility easements. Establishing services for communications and power will be completed in coordination with BAIFA's Utility Service Coordination consultant.

Task 4 – Prepare 65% PS&E for Caltrans Review and Approval

The strip maps included in the PSR/PR will be developed to approximately the 35% level of plan completion at the time that the Notice to Proceed is issued. This task is to develop the plans to Caltrans' 65% level of completion. The PS&E package must be prepared in accordance with Caltrans processes/procedures. This task involves transfer of 35% design data and comments from PA/ED consultants and preparing 65% construction documents. This task includes, but is not limited to, circulating 65% construction documents to participating agencies and other interested parties for review and comment, logging and indexing all comments received as a result of the circulation, participating in a Joint Resolution Team (JRT) meeting and preparing a written response to each comment.

Task 5 – Prepare 95% PS&E for Caltrans Review and Approval

Consultant shall prepare 95% construction documents and circulate to participating agencies and other interested parties for review and comment. This task also includes preparing 95% construction documents based on comments received as a result of the circulation of the 65% construction documents. This task shall include, but is not limited to, logging and indexing all comments received as a result of the circulation of the 95% construction documents, participating in a JRT meeting and preparing a written response to each comment received. Consultant will hold additional meetings if necessary to resolve any outstanding issues.

Task 6 – Final PS&E

Consultant shall prepare the Final PS&E based on comments received as a result of the circulation of the 95% PS&E construction documents. This task shall include all work necessary to prepare the Final PS&E including, but not limited to, logging and indexing all comments received as a result of the circulation of the 95% PS&E and preparing a written response to each comment. Consultant shall hold meetings if necessary to resolve any outstanding issues.

Task 7 – Design Support Services During Advertisement and Construction

Consultant shall provide construction support during advertisement and construction of the Project. This task shall include, but is not limited to, responding to bid inquiries, reviewing shop drawings and responding to Requests For Information (RFIs) regarding the design.

Task 8 – Advanced Overhead Sign Structure Design and Procurement Documents

Consultant shall prepare draft and final Overhead Sign Structures PS&E for an advanced overhead sign structure procurement. The advanced overhead sign structure procurement includes information required to fabricate and deliver the Sign Structures in advance of general civil (roadway) construction. This includes circulation of 65%, 95% and Final Overhead Sign Structure procurement documents and responding to comments. Consultant shall submit the plans for approval and provide support during advertisement and construction. This task shall include, but is not limited to, logging and indexing all comments received as a result of the circulation of the 65%, 95%, and Final procurement documents and preparing a written response to each comment. Consultant shall hold meetings if necessary to resolve any outstanding issues. This task includes coordination with the general civil (roadway) PS&E package.

APPENDIX B: BAIFA's STANDARD CONSULTANT AGREEMENT

Instructions: Red
Choices: Blue or Purple

PROFESSIONAL SERVICES AGREEMENT

between

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY

and

NAME OF CONSULTANT

for

DESIGN SERVICES

FISCAL YEARS 201__-201__ to 201____-201____

PROFESSIONAL SERVICES AGREEMENT
Between BAY AREA INFRASTRUCTURE FINANCING AUTHORITY
And INSERT NAME OF CONSULTANT
For DESIGN SERVICES

THIS AGREEMENT is made and entered into as of the xx day of Month, 2013, by and between the Bay Area Infrastructure Financing Authority (herein called "BAIFA"), a joint powers authority established pursuant to a joint exercise of powers agreement between MTC and BATA entered into pursuant to Government Code Sections 6500 *et. seq.* and INSERT NAME OF CONSULTANT, (herein called "CONSULTANT"), a partnership, _____[state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the State of _____.

RECITALS

WHEREAS, BAIFA intends to secure services for engineering design services including assistance in completing Plans, Specifications, and Estimate (PS&E) for the Regional Express Lane Network Phase 1: I-680 Project (herein called "the Project"); and

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

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

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

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

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

good standing. CONSULTANT agrees to perform or secure the performance of all specified services in their entirety with respect to fully executed Task Orders within the Maximum Payment specified in Article 3. Chris Lillie, PE (herein called "BAIFA Project Manager") is responsible for communication with CONSULTANT and the administration of this Agreement. BAIFA'S Executive Director or designated representative may substitute a new BAIFA Project Manager by written notice to CONSULTANT.

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

1.1 PROGRESS REPORTS

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

2. PERIOD OF PERFORMANCE

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

3. COMPENSATION AND METHOD OF PAYMENT

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

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

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

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

4. KEY PERSONNEL

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

5. AMENDMENTS

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

6. TERMINATION

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

liable for CONSULTANT's actual or projected lost profits had CONSULTANT completed the services required by this Agreement.

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

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

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

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

8. INDEPENDENT CONTRACTOR

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

9. INDEMNIFICATION

CONSULTANT agrees to indemnify and hold harmless BAIFA and those entities (if any) identified as additional insureds in Attachment F, Insurance Requirements, and their commissioners, directors, officers, agents, and employees (collectively “BAIFA Indemnified Parties”) from and against any and all claims, demands, actions, causes of action, damages, liability, obligation, costs and expenses (including attorneys’ fees and costs) of any kind whatsoever, including (without limitation) those for personal injuries (including, but not limited to death, bodily injuries, emotional or mental distresses and losses of consortium), property damages or pecuniary, financial or economic losses of any kind whatsoever (collectively “Claims and Losses”) if the Claims and Losses are caused by CONSULTANT’s breach of obligations under this Agreement, willful misconduct, or negligent services performed under this Agreement. It is understood and agreed that Consultant has no obligation to indemnify and hold the BAIFA Indemnified Parties harmless if the Claims and Losses are caused by the sole active negligence of the BAIFA Indemnified Parties.

CONSULTANT further agrees to immediately defend the BAIFA 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. As part of this defense obligation, CONSULTANT agrees to either retain counsel to defend the BAIFA Indemnified Parties or pay charges of the BAIFA 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 BAIFA Indemnified Parties, caused or contributed to the Claims and Losses.

The provisions set forth in this Section are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder

is to be severable and enforceable. This indemnification shall survive termination or expiration of this Agreement.

10. DATA TO BE FURNISHED BY BAIFA

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

11. OWNERSHIP OF WORK PRODUCTS

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

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

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

12. SUBCONTRACTS

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

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

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

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

13. ASSIGNMENT OF AGREEMENT

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

14. RECORDS

CONSULTANT agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. CONSULTANT further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years

employees working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, BAIFA shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from CONSULTANT's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

18. PROHIBITED INTERESTS

CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, 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 BAIFA. CONSULTANT further covenants that in the performance of the Agreement no person having any such interest shall be employed.

No member, officer, employee or agent of BAIFA, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, CONSULTANT further covenants that it has made a complete disclosure to BAIFA 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 BAIFA (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 BAIFA.

18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

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

CONSULTANT shall not engage the services of any subconsultant or independent contractor on any work related to this Agreement if the subconsultant or independent contractor,

or any employee of the subconsultant or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

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

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

19. LAWS AND REGULATIONS

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

20. CLAIMS OR DISPUTES

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

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

CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

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

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

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

21. REMEDIES FOR BREACH

In the event CONSULTANT fails to comply with the requirements of the Agreement in any way, BAIFA 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 BAIFA or CONSULTANT shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

22. TEMPORARY SUSPENSION OF WORK

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

If the suspension is due to CONSULTANT's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the

CONSULTANT, all costs shall be at CONSULTANT's expense and no schedule extensions will be provided by BAIFA.

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

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

23. WARRANTY OF SERVICES

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

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

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

24. DISPUTE RESOLUTION

A. Informal Resolution of Disputes. CONSULTANT and BAIFA 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 BAIFA provide a written determination as to the proposed resolution of the dispute. Within twenty-one (21) calendar days of the request, BAIFA's Project Manager shall provide a written determination as to the dispute, which shall include the basis for its decision. Upon CONSULTANT's written acceptance of the Project

Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, BAIFA may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the Project Manager's determination.

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

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

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

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

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

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

25. CHOICE OF LAW

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

26. ATTORNEYS' FEES

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

27. PARTIAL INVALIDITY

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

28. BENEFIT OF AGREEMENT

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

29. NO THIRD PARTY BENEFICIARIES

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

30. ENTIRE AGREEMENT; MODIFICATION

This Agreement for Services, including any attachments, constitutes the complete Agreement between the parties and supersedes any prior written or oral communications. CONSULTANT represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both the CONSULTANT and BAIFA. 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 INFRASTRUCTURE FINANCING
AUTHORITY

NAME OF CONSULTANT

Steve Heminger, Executive Director

Insert Appropriate Name, Title

J:\CONTRACT\Procurements\Engineer&Architect\Express Lanes\Express Lanes Phase 1 PS&E\Phase 1 Express Lane PSE RFQ_final.docx

ATTACHMENT A

Scope Of Work

Outline of Services

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

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

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

ATTACHMENT A-1, TASK ORDER PROCESS

Detailed Task Order Process:

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

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

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

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

Step 4* – The BAIFA PM forwards the draft Final Task Order to the BAIFA Contract Administrator for review and approval. Once approved, the BAIFA PM forwards two copies of the Task Order to the BAIFA BAIFA Section Director, for review and approval. The BAIFA BAIFA Section Director signs both copies of a Final Task Order to signify approval and returns them to the BAIFA PM.

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

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

Step 7 – Any services added to the Agreement by a Task Order shall be subject to all applicable conditions of the Agreement. Revisions to Task Orders shall require written approval by both the BAIFA BAIFA Section Director and CONSULTANT. Revisions to Task Orders shall require written approval by both the BAIFA Section Director and CONSULTANT.

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

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

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

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

ATTACHMENT A-2
Task Order Form

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

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

A. Deliverables-based.

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

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

B. Time and Materials

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

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

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

**BAY AREA INFRASTRUCTURE
 FINANCING AUTHORITY**

CONSULTANT

 Melanie Crotty, Section Director
 Date: _____

 Insert name and title of authorized individual
 Date: _____

Task Order Schedule

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

Detailed Description of Work

Task Order #: Title

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

ATTACHMENT B

Not Used

ATTACHMENT C
Compensation and Method of Payment

TASK ORDERS

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

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

C. Method of Payment. CONSULTANT shall submit invoices for services rendered no more frequently than on a monthly basis. Invoices shall identify work for which payment is requested by Task Order number (including fiscal year). All invoices will be dated, numbered in serial order, and signed by CONSULTANT.

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

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

ATTACHMENT D
Key Personnel Assignments

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

ATTACHMENT E
Subconsultant List

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

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

ATTACHMENT F
Insurance Requirements

1. INSURANCE

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

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

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

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

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT's officers,

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

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

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

4. Umbrella Insurance in the amount of \$5,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to BAIFA and having minimum limits of \$2,000,000 per claim. The policy shall provide coverage for all work performed by CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.

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

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

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

D. Deductibles and Retentions. CONSULTANT shall be responsible for payment of any deductible or retention on CONSULTANT's policies without right of contribution from BAIFA. 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 BAIFA seeks coverage as an additional insured under any CONSULTANT insurance policy that contains a deductible or self-insured retention, CONSULTANT shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of CONSULTANT, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONSULTANT or subconsultant is not a named defendant in the lawsuit.

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

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

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

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

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

3. ADDITIONAL INSUREDS

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

- Bay Area Infrastructure Financing Authority (BAIFA)
- Bay Area Toll Authority (BATA)
- Metropolitan Transportation Commission (MTC)

FIGURE 1
REGIONAL EXPRESS LANE NETWORK PHASE 1 PROJECTS

