

September 25, 2013
REQUEST FOR PROPOSAL (RFP)

BAIFA Express Lane Program Management Consultant

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Chair of MTC and BATA

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and Housing Agency*

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*MTC Commissioner,
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STEVE HEMINGER
Executive Director

ANN FLEMER
Deputy Executive Director, Policy

ANDREW R. FREMIER
Deputy Executive Director, Operations

Dear Consultant:

The Bay Area Infrastructure Financing Authority (BAIFA) invites your firm to submit a proposal to provide Program Management Consultant services for BAIFA's Express Lanes.

The Request for Proposal (RFP) documents for this project are available for download on the MTC website at <http://procurements.mtc.ca.gov/>. Proposers are responsible for checking the website for any addenda that may be issued relative to this RFP. Responses should be submitted in accordance with the instructions set forth in the RFP.

Interested firms must submit an original and eight (8) hard copies, as well as one electronic PDF version, of their proposal by **4:00 p.m., Wednesday November 13, 2013**, in accordance with the instructions contained in this RFP. Other key RFP dates are listed in Section V, Consultant Selection Timetable of the RFP.

The prime consultant or member of a joint venture in a design or construction management contract for BAIFA Express Lanes is not eligible to submit a proposal as a prime consultant or member of a joint venture in response to this RFP. Further information and instruction on organizational conflicts of interest can be found in Sections VII.H and IX.F of the RFP.

The BAIFA point of contact for this Solicitation is:

Lisa Klein, Principal, Express Lanes
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
Tel: 510/ 817-5832; E-mail: lklein@mtc.ca.gov

Thank you for your interest.

Sincerely,



Steve Heminger
Executive Director

SH:LK

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TABLE OF CONTENTS

I. MTC, BATA, BAIFA and Project Description	1
A. Description of MTC, BATA and BAIFA	1
B. Project Description.....	1
C. Supporting Documentation	5
II. Proposer Minimum Qualifications.....	5
III. Scope of Work, Period of Performance, and Budget.....	5
A. Scope of Work	5
B. Period of Performance.....	6
C. Budget	6
IV. Proposers' Conference and Requests for Clarification or Exceptions.....	7
V. Consultant Selection Timetable	7
VI. Submittal of Proposals	7
VII. Form of Proposal	9
A. Transmittal Letter.....	9
B. Title Page.....	9
C. Table of Contents	9
D. Overview and Summary.....	9
E. Work Plan.....	10
F. Qualifications and References	11
G. Cost Proposal	12
H. Conflicts of Interest.....	12
I. California Levine Act Statement	15
J. Insurance Provisions.....	15
K. Iran Contracting Act.....	15
L. Financial Responsibility	15
VIII. Proposal Evaluation	15
A. Verification of Minimum Qualifications	15
B. Review for General Responsiveness	15
C. Conflicts of Interest.....	16
D. Evaluation Panel and Evaluation Criteria	16
D. Proposer Discussions	17
E. Request for Best and Final Offer.....	18
IX. General Conditions.....	18

A. Award.....	18
B. Contract Arrangements	18
C. Selection Disputes	19
D. Public Records	19
E. Key Personnel.....	20
F. Conflicts Of Interest	21
G. Personally Identifiable Information	21
APPENDIX A, PRELIMINARY SCOPE OF WORK.....	23
APPENDIX B, FORMAT FOR PRESENTATION OF COST PROPOSAL	32
APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT	36
APPENDIX D, BAIFA STANDARD CONSULTANT CONTRACT.....	37
APPENDIX D-1, Insurance Requirements	89
APPENDIX D-1, INSURANCE REQUIREMENTS	89
APPENDIX E, IRAN CONTRACTING ACT	92

I. MTC, BATA, BAIFA and Project Description

A. Description of MTC, BATA and BAIFA

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

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

BAIFA is a Joint Powers Authority (JPA) between MTC and BATA created in 2006 for the purpose of financing the state contribution to the toll bridge seismic retrofit program and to plan, develop and fund transportation and related projects. In September, 2011, the Joint Exercise of Powers Agreement creating BAIFA was amended to permit BAIFA to participate in developing and operating express lanes. In October 2011, the California Transportation Commission (CTC) found 270 miles of express lanes (described as "Express Lanes to be operated by BAIFA through agreement with MTC" in Figure 1 in Project Description below) eligible for development and operation by MTC under Section 149.7 of the Streets and Highways Code. In April 2013, MTC delegated its express lane responsibilities to BAIFA.

A discussion of BAIFA's express lane responsibilities is provided with the RFP supporting documents at <http://procurements.mtc.ca.gov/>.

B. Project Description

BAIFA's intended 270 miles of express lanes are located in Solano, Contra Costa and Alameda Counties. These lanes will work in coordination with express lanes operated by the Santa Clara 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 to create a 550-mile Regional Express Lane Network. The network is shown in Figure 1.

The project defined by this RFP is to provide Program Management Consultant services for the 270-miles of express lanes to be operated by BAIFA. These lanes are described further in the CTC application materials, in which they are called the "Regional Express Lanes Network." These materials, including the programmatic project study report, are available on MTC's website at <http://procurements.mtc.ca.gov/>.

existing carpool lane system (Tier 2). The first conversion projects –a subset of Tier 1 that is generally referred to as “Phase 1” - will result in approximately 90 miles of express lanes on:

- I-680 in Contra Costa County between Alcosta Road and Livorna/Rudgear Road;
- I-880 in Alameda County between Marina/Lewelling and Dixon Landing Road;
- I-80 in Solano County between Red Top Road and Air Base Parkway;
- the San Francisco-Oakland Bay Bridge westbound approach;
- the San Mateo Bridge westbound approach; and
- the Dumbarton Bridge westbound approach.

Phase 1 Schedule

Environmental Review	2013 - 2014
Design & Construction	2013 - 2016
Open for operation	Fiscal Year 2015-2016 to Fiscal Year 2016-2017

BAIFA is delivering its lanes in partnership with ACTC, VTA, the Contra Costa Transportation Authority (CCTA), the Solano Transportation Authority (STA), Caltrans, the California Highway Patrol (CHP) and BATA, through the FasTrak® Program. As described above, ACTC and VTA will operate lanes and lead the approval and design process for these lanes. In addition, the Congestion Management Agencies (CMAs) ACTC, CCTA and STA may lead the environmental approval process and/or design for select BAIFA express lane projects. Caltrans may also lead design or construction processes. CHP will help manage the lanes and enforce HOV compliance. Customers will pay their tolls electronically via FasTrak® and/or declare their toll-free status through their FasTrak® toll tag setting.

The current Express Lanes Program Management Consultant, Parsons Brinckerhoff, Inc, was hired in September 2010 as a result of a competitive procurement to help prepare the CTC application, develop the Concept of Operations, conduct additional special studies, help coordinate initial public information, and support initial project development and program management of BAIFA’s “Phase 1” projects. This contract is set to expire on January 31, 2014.

To better reflect the current status of the BAIFA Express Lane Program, staff is modifying the scope of services to be provided under this Program Management Consultant Contract. As such, the Consultant hired through this contract will perform a significantly broader and more strategically active role than was scoped under the current contract, along with typical responsibilities for programmatic cost, schedule, and risks management. As Phase 1 moves beyond the Project Approval and Environmental Documentation stage and into design, and as more projects launch, the Program Management Consultant will be relied upon to develop an effective program management strategy and to serve as an extension of BAIFA staff where expertise and resources are needed.

Specifically, the Program Management Consultant will develop a Program Control strategy and implement and maintain Program Control tools to manage and oversee the 270-mile BAIFA Express Lane program. The Consultant will also facilitate ongoing meetings with the express

lane partners, provide other coordination services, and provide budgeting and fund management support. In addition, if ordered through BAIFA-initiated task orders, the selected Consultant may: augment BAIFA staff to provide project delivery support; continue and expand the public involvement and communications program; support the procurement and oversight of other express lanes professional service contracts; plan program operations; and support operations of BAIFA express lanes once they open.

C. Supporting Documentation

BAIFA has supplied several supporting documents at <http://procurements.mtc.ca.gov/> related to:

- BAIFA Background
- BAIFA Express Lane Background
- Express Lane Maps
- BAIFA Express Lane Contracts and Organization
- Proposal Forms

II. Proposer Minimum Qualifications

Proposals must demonstrate that the firm submitting the proposal (“Proposer”) or its team, as applicable, meets the following Minimum Qualifications to be eligible for consideration for this project.

1. The proposed Project Manager must have at least five (5) years of overall project management experience performing work similar to that described in *Appendix A, Preliminary Scope of Work*.
2. The Prime Consultant has successfully served as the Program Management Consultant for a project similar in size and scope to the BAIFA’s Express Lanes. A project similar in size and scope is defined as a project involving multiple projects, multiple agency delivery partners, and containing both civil and Intelligent Transportation Systems (“ITS”) components.
3. At least one firm on the Consultant team must have at least three (3) years of experience developing, delivering, or providing oversight of express lanes or other roadway/bridge tolling projects.

III. Scope of Work, Period of Performance, and Budget

A. Scope of Work

The scope of work for the project is provided in *Appendix A, Preliminary Scope of Work*. Appendix A is organized into three project elements.

1. Project Element I: Base Scope
2. Project Element II: Task Order Initiated Tasks
3. Project Element III: New Consultant Responsibilities

1. Appendix A, Project Element I: Base Scope

The firm selected to enter into a contract (“Consultant”) will be expected to perform all work and analysis necessary to complete the Project Element I scope of work, which includes Project Management, Program Controls, Program Coordination, and Budget Support. Payment for work

performed under Project Element I will be time and materials with annual “not-to-exceed” budgets.

2. Appendix A, Project Element II: Task Order Initiated Tasks

Work under Project Element II will be assigned pursuant to BAIFA-initiated task orders, which will include a specific scope of work based on the tasks identified in *Appendix A, Preliminary Scope of Work*. Payment for work performed under task orders may be deliverables-based or time and materials, as determined by the BAIFA Project Manager. A sample task order form is attached hereto as Attachment A-2, Task Order Form to *Appendix D, BAIFA Standard Consultant Contract*.

BAIFA will start the task order negotiation process based on program priorities and funding considerations. The Consultant will work collaboratively with BAIFA to prepare detailed scopes of work, budgets, schedules, and payment provisions for each task order. Once BAIFA and the Consultant agree to the terms of a Task Order, it will be executed by both parties, and work will begin.

The tasks identified under Element II are Project Delivery Support, Public Involvement & Communications, Professional Services Support, Program Operations Planning and Operations Support. BAIFA reserves the right to assign these tasks by task order to the contract resulting from this RFP or contract separately for these services.

3. Appendix A, Project Element III: Additional Consultant Responsibilities

This project element includes tasks that may be assigned to this Consultant later in the contract period by contract amendment. Additional funding would be made available to add these tasks to this Contract and full scopes of work for such tasks would be developed at the time the tasks are added.

B. Period of Performance

BAIFA expects the work to commence on or about March 1, 2014, and to be completed no later than June 30, 2017. At BAIFA’s sole option, the contract may be extended for three (3) additional years in increments of BAIFA’s choosing for work related to the *Appendix A, Scope of Work*.

C. Budget

BAIFA has budgeted approximately five million eighty thousand dollars (\$5,080,000) for this effort subject to the approval of future BAIFA Budgets. More budget detail is provided in Section VII.G, Cost Proposal and *Appendix B, Format for Presentation of Cost Proposal*.

IV. Proposers' Conference and Requests for Clarification or Exceptions

A Proposers' Conference will be held at 3 p.m. on Friday, October 4, 2013 at the Joseph P. Bort MetroCenter Building, 101 8th Street, Oakland, in the Claremont Conference Room.

Any addenda will be posted on MTC's website. All Proposers are responsible for checking the website for any addenda to the bid documents.

Any requests for clarification of or exceptions/modifications to RFP requirements must be received by BAIFA no later than 4:00 p.m., on Friday, October 11, 2013, to guarantee response or consideration. BAIFA reserves the right to reject any proposal that contains unauthorized conditions or exceptions.

V. Consultant Selection Timetable

3 p.m., on Friday, October 4, 2013	Proposers' Conference, at 101 8 th Street, Oakland, CA 94607, Claremont Conference Room
4:00 p.m., on Friday, October 11, 2013	Closing date/time for receipt of requests for clarification and modifications/exceptions
4:00 p.m. on Wednesday, November 6, 2013	Deadline for protesting RFP provisions
4:00 p.m., Wednesday, November 13, 2013*	Closing date/time for receipt of proposals
Week of December 9, 2013*	Interviews/Discussions (if held)
4:00 p.m., on Friday, January 10, 2014*	Date for receipt of Best and Final Offers (if required)
Wednesday, January 26, 2014*	BAIFA Approval

**Dates are approximates and are subject to change before or after the closing date of the RFP.*

VI. Submittal of Proposals

1. Interested firms must submit an original and eight (8) hard copies, as well as one electronic PDF version, of their proposal by **4:00 p.m., Wednesday, November 13, 2013. Submission of an electronic copy of the proposal without hard copies will not satisfy the submission requirement.**
2. Proposals are to be addressed as follows:

Express Lane Program Management Consultant

Attention: Lisa Klein
Bay Area Infrastructure Financing Authority
101 8th Street, 3rd Floor Receptionist
Oakland, CA 94607

3. Proposer's name and return address must also appear on the envelope.
4. Proposals will be received only at the address shown above and, whether delivered by an employee of the Proposer, U.S. Postal Service, courier or package delivery service, must be delivered and time stamped **no later than the date and time indicated**. The timestamp located on the 3rd floor at the receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of proposals. BAIFA is not responsible for deliveries delayed for any reason. Any proposals received after said date and time or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened.
5. No proposals submitted solely by email and no faxed proposals will be considered.
6. Consultant agrees and acknowledges all RFP specifications, terms and conditions and indicates ability to perform by submission of a proposal.
7. A signed proposal submitted to BAIFA in response to this RFP shall constitute a binding offer from Consultant to contract with BAIFA according to the terms of the proposal for a period of 180 days after the proposals are due to BAIFA.
8. A Proposal may be withdrawn at any time before the date and time when Proposals are due by submitting a written request for its withdrawal to the BAIFA Project Manager.
9. This RFP does not commit BAIFA to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFP.
10. Only one proposal will be accepted from any one person, partnership, corporation, or other entity.
11. BAIFA reserves the right to accept or reject all proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all Proposers.
12. BAIFA reserves the right in its sole discretion not to enter into any contract as a result of this RFP.
13. If the selected Proposer fails to enter into a contract with BAIFA in a timely manner as determined by BAIFA, in accordance with the terms and conditions of this RFP, BAIFA reserves the right to reject the proposal and enter into a contract with the next highest scoring firm.

VII. Form of Proposal

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

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

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

Each proposal shall not exceed 75 letter-size (8 ½ by 11 inch) pages (not including title page, transmittal letter, table of contents, staff resumes, conflict of interest mitigation strategy, writing samples, and annual and quarterly financial filing) with a font size of 12 point or larger and must include the following:

A. Transmittal Letter

Proposals must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and the name and telephone number of a contact person, if different from the signature. Acknowledge the receipt of any addenda to the RFP. Indicate that the Proposal is a firm offer to enter into a contract to perform work related to this RFP for a period of 180 days from the due date for Proposals.

B. Title Page

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

C. Table of Contents

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

D. Overview and Summary

This section should clearly convey the Consultant's understanding of the nature of the work and the general approach to be taken, and identify any specific considerations. It should include, but not be limited to, the following:

1. A discussion of the project's purpose;
2. A summary of proposed approach; and

3. The assumptions made in selecting the approach.

E. Work Plan

This section should present a work plan for the tasks in Project Elements I and II described in *Appendix A, Scope of Work*. The work plan should not address tasks in Project Element III. The proposed work plan should:

1. Discuss how the Consultant will conduct the identified tasks and subtasks, identify deliverables, and propose a schedule. The proposal should discuss the tasks in sufficient detail to demonstrate a clear understanding of the project and component tasks. The schedule should show the expected sequence of tasks, subtasks and milestones.

While all tasks and subtasks should be addressed in the Work Plan, it is important that Proposers' Work Plans:

- Propose an approach to developing program controls to effectively manage the BAIFA Express Lane program (Task I.B.1). Describe the challenges you envision, the tools you will employ and how you plan to employ them. Discuss the roles and responsibilities you propose for BAIFA staff, consultant staff under this contract and consultant/contractor staff under other BAIFA contracts.
 - Propose an approach to maintaining and monitoring the program schedule to include the work of all program consultants and contractors (Tasks I.B.3 & 4). Discuss how you will monitor schedule compliance of other consultants/contractors and keep BAIFA staff well informed of schedule progress and issues.
 - Propose a draft transition plan (Task I.A.6). For both non-incumbent and incumbent Proposers, the draft plan should identify the knowledge transfer that would need to occur if, respectively, being awarded/not being awarded the contract resulting from this RFP.
 - Propose your approach to managing Project Delivery from environmental documentation through project integration (Task II.A). Discuss the processes you will put in place to communicate with BAIFA staff when acting as an extension of BAIFA staff. Describe your approach to construction contract procurement.
 - Describe your approach to planning for operations (Task II.E), including the topics that must be addressed and how to address them as well as roles and responsibilities.
 - Propose an approach to Public Involvement & Communications (Task II.B), including public meetings, general awareness development, stakeholder outreach and customer education. Discuss use of outreach and communication tools with different audiences and describe your approach to messaging, branding and working with multiple delivery partners.
2. Provide a staffing plan for each task. Provide an organizational chart that shows roles and responsibilities of key personnel and reporting structure, including reporting and

communication relationships between BAIFA, Consultant staff, and subconsultants, if any.

3. Describe your approach to managing resources and maintaining quality results. Include a description of the role of any subcontractors, their specific responsibilities, and how their work will be supervised to maintain quality results.
4. Identify and explain any problem areas and/or potential obstacles (such as maintaining schedule, budget overruns, feasibility, etc.) to successful completion of the Scope of Work, attached as *Appendix A*. Discuss methods, formal and informal, that you will use to track and resolve these problems/obstacles during the project.

F. Qualifications and References

1. Describe proposed team's qualifications specific to the requirements set forth in Section II, Proposer Minimum Qualifications and Requirements. For minimum qualification #2, provide a description of the previous project(s) similar to the services requested, indicating the project title, duration, budget, sponsoring agency and sponsor project manager, and roles played by key personnel proposed for this contract. Identify the personnel, including subcontractors' personnel, whose expertise or experience addresses each of the specified needs.
2. Identify and provide examples of additional qualifications relevant to the successful completion of the Scope of Work attached as *Appendix A*.
3. Identify key personnel (including subcontractor personnel) and briefly discuss individual qualifications to perform each task. Identify the physical location of team members' offices. Each key personnel resume shall not exceed two pages.
4. Provide at least one sample of a written technical report, memo or white paper developed for a tolling project. Also submit a memo or report written for an executive level audience to inform policy decisions. Finally, submit public outreach material developed by your team for an effort of similar scope or magnitude (e.g., website, project/program fact sheets, etc.) The samples must have been prepared by key members of the Consultant team and should identify the authors/designers/developers. Only one copy of each sample is required. As appropriate, Public Outreach materials may be provided via URL. Hard-copy samples will be returned after proposal evaluation, upon request. The samples will be considered in evaluating firm and staff expertise and experience, and written presentation effectiveness.
5. Provide at least two and no more than five references for the prime firm and each subconsultant firm that is providing key personnel or a task lead. Include references for the project(s) submitted as evidence of meeting the Minimum Qualifications. Identify which proposed key staff members were involved in each referenced project and the role the key staff member played.

6. Identify all contracts your firm (including subcontractors) has held with MTC, BATA, or BAIFA in the past three years. Include a brief description of the scope of work, the contract amount, and date of execution.
7. Identify all contracts your firm and team subcontractors hold or have held with the Alameda County Transportation Commission (ACTC), Sunol Smart Carpool Lane Joint Powers Authority (JPA), the Santa Clara Valley Transportation Authority (VTA), Contra Costa Transportation Authority (CCTA), the Solano Transportation Authority (STA) or Caltrans for services related to express lane toll systems, including planning, program or project controls, environmental documentation, public outreach, design or toll system implementation services. Include a brief description of the scope of work, the contract amount, date of execution, agency project manager, and team members who worked on the contract.

G. Cost Proposal

Provide the cost proposals listed below using the formats and directions provided in *Appendix B, Format for Presentation of Cost Proposals*. Budgets should reflect any anticipated cost increases (e.g., due to salary increases, staff promotions, cost of living, etc.) through FY2016-17. The cost proposals shall become part of the resulting contract. Directions for submitting each cost proposal are provided in the cost proposal forms.

1. Cost Proposal #1: **Rate Sheets**
Following the directions provided in *Appendix B, Format for Presentation of Cost Proposals*, complete Cost Proposal #1: Rate Sheets to identify the proposed fully loaded hourly rates for all personnel to be used on the project. The hourly rates shall be broken out by description of costs to include, at a minimum, salary, benefits, overhead and profit for each year of the contract term. Any mark-up charged on subconsultant costs shall also be identified.
2. Cost Proposal #2: **Project Budget by Task by Year**
Following the directions provided in *Appendix B, Format for Presentation of Cost Proposals*, complete Cost Proposal #2: “Project Budget by Task by Year” provided at <http://procurements.mtc.ca.gov/>.

H. Conflicts of Interest

Section IX.F of the RFP explains what is considered an organizational conflict of interest. This section describes the conflicts of interest and potential conflicts of interest that BAIFA has identified related to this RFP. These are summarized in table format below.

Conflicts of Interest Identified by BAIFA

The prime consultant or member of a joint venture for a design or construction management contract for BAIFA Express Lanes as described on Figure 1 of this RFP is not eligible to submit a proposal as a prime consultant or member of a joint venture in response to this RFP. This

restriction applies whether the design or construction management contract is held by BAIFA, ACTC, CCTA, or STA.

In addition, the prime consultant awarded this program management contract will be ineligible to submit proposals as the prime consultant on the following future procurements: 1) Design or construction management contracts for express lanes to be operated by BAIFA, and 2) The BAIFA Toll System Integrator.

Potential Conflicts of Interest Identified by BAIFA

BAIFA has also determined that conflicts of interest may exist between work resulting from this procurement and the other express lane civil and toll system contracts issued by BAIFA or BAIFA's express lane partners, including ACTA and VTA, depending on the roles played by the Proposer on each contract, including Toll System Integrator, Program or Project Management for an express lane partner, and other express lane professional services contracts such as traffic and revenue forecasting, legal advice, marketing/public information, utility coordination, performance assessment/before & after studies, special studies, financial analysis, and technical review.

Address Existing Conflicts of Interest

The proposal should state that the lead firm does not have any of the relationships described above that would make it ineligible from bidding on this RFP. In addition, if the proposed lead firm or any subconsultant currently holds a lead or sub role on a BAIFA Express Lane design, construction or other professional services contract issued by BAIFA or one of its express lane partners that presents a potential conflict of interest, describe how you will mitigate such conflicts of interest as defined in Section IX.F. Specifically, discuss how objectivity and the ability to render impartial assistance or advice to BAIFA might be compromised if a firm held roles on both the BAIFA Express Lane Program Management Consultant contract and other express lane contracts and what you will do to mitigate the potential conflict of interest.

How to Address Existing and Future Potential Conflicts of Interest

Proposers should address all contracting combinations they believe are, or may become, applicable to them. Contract relationships to consider include those shown in the table below.

For each contract combination, address how to maintain objectivity and render impartial advice relative to specific tasks in *Appendix A, Preliminary Scope of Work*. For example discuss how you would mitigate the potential that objectivity would be compromised if a firm were:

- Responsible for Program Controls (Task I.B) and also working on another BAIFA project that would be tracked and monitored through the Program Controls process;
- Augmenting BAIFA staff to manage a design contract (Task II.A.1) on which the firm was a subconsultant;
- Responsible for both BAIFA and an express lane partner's program/project controls;
- Responsible for both BAIFA and an express lane partner's public outreach;

Proposers should not be limited by the examples and combinations described above, but should discuss any potential conflicts of interest that may arise, and strategies to mitigate these conflicts.

Eligibility to Submit a Proposal due to Existing or Future Conflict of Interest

Proposed BAIFA PMC RFP Role	Firm Holds a Design or Construction Management Contract for Express Lanes in the Bay Area					
	with BAIFA		with a CMA or Caltrans for an express lane that will be operated by BAIFA		with a CMA or Caltrans for an express lane that will not be operated by BAIFA	
	Prime/JV	Sub	Prime/JV	Sub	Prime/JV	Sub
Prime	Not permitted	*	Not permitted	*	*	*
Sub	*	*	*	*	*	*
	Firm Holds the Toll System Program Manager Contract with BAIFA (Atkins North America, Inc.)					
Prime	Permitted	Permitted	N/A			
Sub	Permitted	Permitted				
	Toll System Integrator Contract					
Prime	Not permitted	*	N/A		*	*
Sub	*	*			*	*
	Firm Holds a Project/Program Manager Contract for a CMA					
Prime	N/A		*	*	*	*
Sub			*	*	*	*

* Permitted with a discussion of your approach to mitigating potential conflicts.

I. California Levine Act Statement

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

J. Insurance Provisions

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

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

K. Iran Contracting Act

Pursuant to California Public Contracts Code Sections 2200 *et seq.*, (AB 1650, Iran Contracting Act of 2010) Proposers for contracts equal to or in excess of one million dollars (\$1,000,000) must certify, at the time of proposal submission that Proposer is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable. Submit a signed Iran Contracting Act Document (*Appendix E*).

L. Financial Responsibility

In a separate sealed envelope: Provide a copy of Proposer's most recent annual audited Financial Statement and past quarterly financial filing. The statements will be reviewed to determine responsibility only. All statements will be returned to all Proposers prior to consultant selection.

VIII. Proposal Evaluation

A. Verification of Minimum Qualifications

The Project Manager will review proposals to ensure that each Proposal meets the Minimum Qualifications set out in Section II, Proposer Minimum Qualifications of this RFP. Proposers failing to meet the Minimum Qualifications will not be considered.

B. Review for General Responsiveness

The Project Manager, in consultation with the BAIFA's Office of General Counsel, will conduct an initial review of the proposals for general responsiveness. Any proposal that does not include enough information to permit the evaluators to rate the proposal in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. A proposal that fails to include one or more items requested in the Form of Proposal may be considered

responsive, if evaluation in every criterion is possible. BAIFA reserves the right to request additional information from responsive Proposers prior to evaluation.

C. Conflicts of Interest

The Project Manager will review proposals to ensure that the proposed prime consultant is not also a prime consultant on a design or construction management contract for the express lanes to be operated by BAIFA, as described in Section VII.H. Proposers who do not complete the information required by Section VII. H. will not be considered.

D. Evaluation Panel and Evaluation Criteria

Responsive proposals will then be evaluated by an evaluation panel of BAIFA and partner agency staff. The evaluation of the proposals shall be within the sole judgment and discretion of the evaluation panel.

All contact during the evaluation phase shall be through the BAIFA Project Manager only. Proposers shall neither contact nor lobby any evaluation panel members during the evaluation process. Attempts by Proposer to contact and/or influence members of the evaluation panel may result in disqualification of Proposer. For more information on *ex parte* communications, see Section IX H. Ex Parte Communications, below.

Responsive proposals shall be evaluated on the basis of the following evaluation factors, with their relative importance indicated by percentages. Sub-factors, where indicated, are not inclusive and are not weighted; they are provided to illustrate some of the considerations that will affect factor evaluations:

1. Approach and Work Plan (40%)
 - a) Thoroughness, appropriateness, clarity, logic, and risk of Proposer's work plan carrying out the tasks listed in Project Elements I and II of *Appendix A, Scope of Work*.
 - b) Logic, risk and appropriateness of proposed team structure, task assignment, coordination, lines of communication, and project office location.
 - c) Thoroughness, clarity and logic of Proposer's approach to avoiding or mitigating conflict of interest.
2. Qualifications and References (25%)
 - a) Qualifications and experience for the lead firm, Project Manager, subcontractors, and the key project staff in: (i) projects similar to the Scope of Work of this RFP; (ii) covering the required skill sets and experience identified in this RFP; (iii) working on California highways and in the Bay Area; and (iv) coordinating across multiple partner agencies and consultants.
 - b) References for the lead firm, and any subconsultant that has key personnel or task leads assigned to the project, and key project staff for projects of similar size and scope and with public agencies, particularly in California.

3. Cost Effectiveness, Resource Availability and Allocation (25%)
 - a) Appropriateness of budget allocation between Elements I and II.
 - b) Assignment of key personnel hours among project elements, tasks, and subtasks.
 - c) Availability of key personnel to support this project, including team depth, plans for back-up personnel, physical proximity to BAIFA's offices, percentage of personnel time earmarked for this contract over the contract period of performance, etc.
 - d) Appropriateness of labor hour distribution among tasks.
 - e) Appropriateness of the rates for labor, overhead and profit.
 - f) Appropriateness of other direct costs.
 - g) Appropriateness of other markups, if applicable.
4. Communications (10%)
 - a) Clarity, structure, effectiveness, and readability (e.g., grammar, spelling, format, content organization, writing quality, etc.) of the proposal and writing samples.
 - b) Ability to speak and present clearly (as demonstrated in interviews or discussions, if held).

Following the initial evaluation, the evaluation panel may elect to recommend award to a particular Proposer based on written proposals alone (with or without interviews). Accordingly, each initial proposal should be submitted on the most favorable terms from a price and technical viewpoint. The panel may also elect to enter into discussions with a "short list" of Proposers, consisting of those Proposers reasonably likely, in the opinion of the panel, to be awarded the contract.

D. Interviews

Interviews, if held will consist of a contractor presentation and an introduction to key staff, who shall be expected to be present and respond to questions.

E. Proposer Discussions

The purpose of discussions with a Proposer on the "short list" will be to identify to that Proposer specific deficiencies and weaknesses in its proposal and to provide the Proposer with the opportunity to consider possible approaches to alleviating or eliminating them. These deficiencies or weaknesses may include such things as technical issues, management approach, cost, or team composition. Discussions may take place through written correspondence (including email) and/or during face-to-face meetings. The Proposer's project manager, as well as other key personnel identified by the evaluation panel, will be expected to participate in any discussions. The format of the discussions will be determined by the Evaluation Panel.

F. Request for Best and Final Offer

Following discussions, if held, Proposers on the “short list” will be given the opportunity to revise their written proposals to address the concerns raised during discussions or to make any other changes through issuance of a Request for Best and Final Offer (BAFO). Following receipt of the BAFOs, the evaluation panel will evaluate the BAFOs against the evaluation criteria.

G. Recommendation for Award

The panel will recommend a Consultant to the BAIFA Executive Director, based on their evaluation of the written proposals or BAFOs and oral interviews or discussions (if held). The Executive Director will review the recommendation and, if he agrees, he will approve the award or forward the recommendation to BAIFA for approval.

IX. General Conditions

A. Award

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

B. Contract Arrangements

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

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

Payment provisions under the contract resulting from this RFP will be time and materials with ceiling and either time and materials with ceiling or fixed price deliverables-based for the Task Orders issued under Project Element II.

C. Selection Disputes

A Proposer may object to a provision of the RFP on the grounds that it is arbitrary, biased, or unduly restrictive, that it should have been found to have met minimum qualifications, or to be responsive or to the selection of a particular Consultant, on the grounds that BAIFA procedures, the provisions of the RFP or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

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

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

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

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

Authorization to award a contract to a particular Consultant by BAIFA shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the BAIFA Executive Director or, if the decision of the BAIFA Executive Director is appealed, the issuance of BAIFA's decision.

D. Public Records

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

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

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

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

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

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

E. Key Personnel

Key staff persons assigned to the project are expected to remain on the project. Any change in key staff persons of the proposed project team is subject to prior written approval of BAIFA.

Removal of any key staff persons identified in the proposal without written consent of the Project Manager may be considered a material breach of contract.

F. Conflicts Of Interest

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

The Proposer further warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code Sections 1090 *et seq.* or 87100 *et seq.* during the performance of services under any contract resulting from this RFP 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 related to this Agreement if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

G. Personally Identifiable Information

Consultant agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment G, Special Conditions Regarding Personally Identifiable Information of Appendix D, BAIFA Standard Consultant Contract.

H. Ex Parte Communications

Proposers and Proposers' representatives may not communicate with an officer, director, commissioner, employee or agent of BAIFA, with the exception of the BAIFA Project Manager, regarding this procurement until a recommendation to award has been approved by BAIFA. Proposers and their representatives are not prohibited, however, from making oral statements or

presentations regarding the procurement in public to one or more representatives of BAIFA during a public meeting.

In the context of these instructions to Proposers, an “*ex parte* communication” is any communication between a Proposer (or the Proposer’s representative) and the BAIFA Executive Director, Commission member, or other BAIFA officer or employee regarding the procurement regardless of who initiates the communication, before BAIFA has approved the recommendation to award. A “Proposer or Proposer’s representative” includes all of the Proposer’s employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Proposer’s proposal, and any individual or entity who has been requested by the Proposer to contact BAIFA on the Proposer’s behalf. Any written *ex parte* communication between a Proposer (or the Proposer’s representative) and BAIFA or its representatives will be subject to disclosure pursuant to the California Public Records Act.

APPENDIX A, SCOPE OF WORK

I. BASE SCOPE

A. PROJECT MANAGEMENT

1. Prepare and submit monthly invoices within 30 days of the end of the billable month. Invoices shall include the following information by task:
 - Original budget;
 - Hours and dollars (by employee) billed for the current month;
 - Dollar amount invoiced to date;
 - Remaining budget;
 - Percentage of the work completed; and
 - Estimated cost to complete for budget items (for Element II Tasks).
2. Submit monthly progress reports to BAIFA along with the monthly invoice. Each monthly progress report should include the following information:
 - A summary of the Program Management Consultant activities that occurred during the month;
 - Task Order project status including scope, schedule, deliverables, and budget adherence.
3. Maintain auditable records of all contract agreements, finances, etc.
4. Coordinate team members to provide consistent staffing resources, maintain effective communications within the team, and ensure that changes to the project are well planned and coordinated.
5. Prepare for and lead weekly project status meetings with the BAIFA project staff.
6. *(Task 6 applies only if a new consultant or consultant team is selected)* Finalize the transition plan provided in the selected proposal and work with the existing Program Management Consultant for up to one month to transition project responsibilities at the start of the contract period and facilitate all necessary training.
7. Define and write Task Orders required to accomplish tasks in Project Element II.

Deliverables

Task/Subtask	Deliverable	Frequency
I.A.1	Monthly Invoices	Monthly within 30 days of the end of the billable month
I.A.2	Monthly Progress Reports	Monthly within 30 days of the end of the billable month
I.A.3	Project records	Upon request
I.A.4	Effective project team	On-going
I.A.5	BAIFA – Consultant meetings	Weekly
I.A.6	Finalized transition plan	March 1, 2014
I.A.7	Draft and Final Task Orders	As needed

B. PROGRAM CONTROLS

Under this task, CONSULTANT shall provide and implement tools to manage and oversee the 270-mile BAIFA Express Lane program. While other BAIFA civil and toll system consultants, as well as other CMA consultants, are expected to maintain controls (e.g., schedules, budgets, etc.) at the project-level, the Program Management Consultant shall ensure that project-level staff adhere to and apply program controls.

1. Review program and project management processes and tools currently used by the BAIFA Express Lane program and its program partners, and develop a recommended approach for BAIFA to effectively manage the program through program controls. Address topics including challenges, available tools, program vs. project management responsibilities, consultant vs. agency staff roles, BAIFA vs. CMA and Caltrans roles, risk management, scope management, schedule management, cost management, information management and other applicable topics.
2. Maintain and monitor program schedule.
 - a. Include all civil, telecommunications, and toll system tasks for multiple projects, including projects on which BAIFA leads the civil phases and those on which another agency (e.g., CMA or Caltrans) leads the civil or toll system phases.
 - b. Identify and track milestones and scheduling dependencies among projects and between civil, telecommunications, and toll work.
 - c. Monitor consultant/contractor-developed project schedules for their compliance with the program schedule and milestones, and evaluate progress of consultant/contractor activities against the program schedule and report variances.
 - d. Develop strategies for managing scheduling dependencies to keep work moving forward effectively.
3. Develop a programmatic risk management plan.
 - a. Define and assess potential program risks and uncertainties related to cost, funding, schedule, coordination, technical issues or institutional considerations at all program stages. Establish the probability of occurrence and identify possible mitigations at each stage.
 - b. Ensure that that program risk management controls are applied and adhered to at the project level.
4. Develop a programmatic Quality Control/Quality Assurance plan.
 - a. Identify QA/QC procedures, roles and responsibilities across projects and up to the Program Management Consultant and BAIFA.
 - b. Ensure procedures are applied to project-level QA/QC plans.
5. Provide organizational planning assistance to develop and maintain organizational charts, flow charts, process diagrams, contact lists for consultant teams and agency partners, etc. to document program staffing, roles and responsibilities, work flow, etc.
6. Maintain a program cost estimate to assess consistency with program and project capital budgets, including capital outlay, capital outlay support, operations, maintenance, right-of-way, risks, and contingencies.
7. Establish and maintain a document control system to organize all project documents by Work Breakdown Structure for all phases of the program. Establish procedures to ensure that the document control system controls versions and is accurate, complete

- and accessible to all necessary entities. Train BAIFA and other entities, as appropriate, to use the document control system.
8. Develop and implement other Program Controls identified through Task I.B.1 as needed. Ensure these program controls are applied and adhered to at the project level as appropriate.
 9. Update the Work Breakdown Structure as needed and ensure its use across projects.
 10. Produce reports.
 - a. Produce quarterly program delivery status reports summarizing the status of all projects in the delivery pipeline, including schedule adherence, delays, risk assessment, quality control status, and remedies.
 - b. Produce reports required for project funding sources, for example, Regional Measure 2 progress reports.
 - c. Develop annual report to the California Transportation Commission, as required under California Streets and Highways Code Section 149.7.

Deliverables

Task/Subtask	Deliverable	Frequency
I.B.1	Program Management & Controls Approach	Draft: within 30 days of contract start Final: within 60 days of contract start
I.B.2	Project Schedule, Project schedule assessment and status update presentations	Updated at least monthly Monthly
I.B.3	Draft Risk Management Plan Final Risk Management Plan Risk assessment and status update	Within 3 months of Contract start Within 5 months of contract start Updated as needed and no less than quarterly Quarterly – through the “Program Delivery Status Report,” (Subtask I.B.9.b)
I.B.4	Draft Quality Control/Quality Assurance Plan Final Quality Control/Quality Assurance Plan QA/QC assessment and status update	Within 3 months of Contract start Within 5 months of contract start Quarterly – through the “Program Delivery Status Report,” (Subtask I.B.9.b)
I.B.5	Organizational charts, Process diagrams, Contact lists	As needed
I.B.6	Cost Estimate	Updated as needed and no less than annually
I.B.7	Document Control System	Once
I.B.8	As defined in Task I.B.1	As defined in Task I.B.1
I.B.9	Revised WBS	Updated as needed and no less

		than annually
I.B.10	Program Delivery Status Report	Quarterly
	Funding reports	As needed per fund source requirements
	CTC Report	Annually

C. PROGRAM COORDINATION

1. Attend and support express lane working groups and committees including the Express Lane Operations Technical Working Group (TWG) the Executive Steering Committee (ESC), and All-Consultant Team, which each meet monthly. Prepare meeting agendas and minutes. Prepare meeting materials and facilitate agenda items as requested.
2. Coordinate with BAIFA staff, consultants and partner agency staff to understand program and project status, strategies and issues related to all Regional Express Lane projects sponsored or implemented by BAIFA or BAIFA’s agency partners. Gather the information needed to accomplish all Program Control subtasks.
3. Coordinate expert panels and/or peer reviews for different program aspects as needed.
4. Provide documentation, data and graphics to support the development of procurements and presentations.
5. Develop or assist with applications for funding opportunities.
6. Review, seek and strategize opportunities to streamline the Caltrans review and delivery process. This could be done by coordinating and strategizing the delivery of key tasks at the project level to create economies of scale across the program.
7. Facilitate and support agreements with Caltrans required during the project development and delivery process.
8. Provide analysis and support related to statutory and regulatory issues and support statewide coordination.
9. Update the network implementation strategy initially developed in the California Transportation Commission (CTC) application.
10. Facilitate and participate in discussions with other groups like the California Toll Operators Committee (CTOC) about express lane policies and related issues on behalf of BAIFA as requested by BAIFA staff.

Deliverables

Task/Subtask	Deliverable	Frequency
I.C.1	Meeting Agendas, Materials, Notes, Action Item Log, Transmittal Log	Monthly per meeting
I.C.2	Meeting Notes from Coordination Meetings	Monthly, and as needed
I.C.3	Draft and Final Panel/Peer Review Reports	As needed
I.C.4	Program summaries, charts, graphs, graphics, presentations, etc. tailored as needed	As needed

I.C.5	Application Materials	As needed
I.C.6	Recommendation Memos	As needed
I.C.7	Documentation to facilitate agreement preparation	As needed
I.C.8	Meeting Notes	As needed
I.C.9	Network implementation strategy updates	Annually
I.C.10	Meeting Notes	As needed

D. BUDGET SUPPORT

1. Develop annual capital and operating budgets for agency approval.
2. Manage program cash flow, anticipate funding source needs, and position the program for new funding source opportunities.

Deliverables

Task/Subtask	Deliverable	Frequency
I.D.1	Working Budgets	Updated as needed
	Draft and Final Annual Budgets	Annually
I.D.2	Cash Flow Presentation	Quarterly

II. TASK ORDER INITIATED TASKS

Work performed under Project Element II, will be authorized by Task Orders, initiated and developed according to the Task Order Process described in Attachment A-1, of *Appendix D, BAIFA Standard Consultant Contract*. 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), deliverables and subconsultant participation (if any), in a completed form as shown in Attachment A-2, Task Order Form, Appendix D, BAIFA Standard Consultant Contract, attached hereto and incorporated herein by this reference. BAIFA reserves the right to assign these tasks, in whole or part, by task order to the contract resulting from this RFP or contract separately for these services.

A. PROJECT DELIVERY SUPPORT

Support and augment BAIFA staff as needed to manage project delivery from environmental documentation through construction and integration of civil and toll system work. It is expected that BAIFA will be the lead agency for all stages of project delivery and construction for some projects. BAIFA anticipates needing 1 to 2 consultant FTEs to perform this support work. Examples of the support work that BAIFA may enter into Task Order to accomplish include:

1. Provide project management and consultant oversight for one or more stages of the Caltrans project delivery process, including project initiation document, environmental, and design and construction management.
2. Provide project level controls, which feed into program controls (addressed in Task I.B.) including:
 - a. Project schedules
 - b. Project budgets and estimates
 - c. Project risk management plans
 - d. Quality controls
3. Manage commitments made during the environmental documentation phase.
4. Support procurement of construction contractors through advertisement, award and administration of construction contracts:
 - a. Provide strategic advice and technical guidance on the structure of contractor procurement packages.
 - b. Navigate the process of developing bid packages and shepherd construction contracts in the state highway right-of-way.
 - c. Provide documentation to support the development of procurements.
 - d. Write portions of the procurement documents.
 - e. Participate in evaluation as requested.
 - f. Provide strategic advice on procurement strategies. At a high level, assess potential to use alternative delivery strategies for delivery of express lane projects. (e.g., design sequencing, design-build, construction manager/general contractor, public-private partnerships) Note: This is not intended to include detailed technical, legal or financial assistance for delivery of large scale public private partnership projects.
 - g. Prepare additional technical reviews as needed, including preparing comparative cost estimates and cost & price analyses.
5. Prepare, or assist in preparing, comparative cost estimates, cost and price analyses, and engineers' estimates.

Deliverables: To be determined by Task Order

B. PUBLIC INVOLVEMENT AND COMMUNICATIONS

1. Provide strategic advice and further develop and update the “BAIFA Express Lane Public Involvement and Communications Approach” to respond to evolving needs of the program. Collaborate with BAIFA staff to develop and refine messages. Participate in up to two workshops with BAIFA and other consultant staff to further the plan’s development.
2. Provide technical advice, guidance and expertise to support BAIFA's implementation of the Public Information Strategy.
3. Develop and maintain public information Fact Sheets and FAQs for general and targeted audiences to be published on-line and/or used at public meetings. Coordinate with project-level consultants to develop project-specific fact sheets and FAQs.
4. Develop and implement a branding strategy.

5. Update and maintain the BAIFA Express Lane website, http://mtc.ca.gov/projects/express_lanes/, including content, design, programming and coordination with the BAIFA, FasTrak®, Clipper® and 511 web sites.
6. Develop and maintain tools and graphics to explain express lane operations (e.g., videos; interactive maps) to be used on-line and/or in presentations.
7. Support BAIFA partner & stakeholder outreach, including:
 - a. Plan and participate in strategy meetings with CMAs (ACTC, CCTA, STA & VTA), and
 - b. Plan and participate in subsequent stakeholder outreach meetings (e.g., city and county staff/leaders, advocacy groups, etc.).
8. Support the Public Information Work Group (PIWG)
 - a. Prepare meeting agendas and minutes, and
 - b. Prepare meeting materials and facilitate agenda items as requested.
9. Coordinate with project-level consultants to support environmental-phase public outreach.
10. Monitor media and seek media opportunities for express lane coverage. Share information about media inquiries with other public agency stakeholders.
11. Implement existing and additional strategies defined in the “BAIFA Express Lane Public Involvement and Communications Approach” (Task II.B.1), such as community meetings.
12. If applicable, coordinate with other public outreach and marketing consultants hired by BAIFA (e.g., project level outreach staff, marketing specialists) or by BAIFA’s project partners.

Deliverables: To be determined by Task Order

C. PROFESSIONAL SERVICES SUPPORT

1. Support the procurement of consultants as needed for specialized work (e.g., traffic & revenue forecasts, financial analysis, marketing, performance assessment), including:
 - a. Provide technical guidance and strategic advice about the structure of procurements and resulting contracts to ensure an effective program consultant team,
 - b. Provide documentation to support the development of Requests for Proposals (RFPs) and Requests for Qualifications (RFQs),
 - c. Write portions of RFPs and RFQs, and
 - d. Participate in RFP and RFQ evaluation as requested.
2. Facilitate and provide oversight of professional services consultant work (e.g., traffic & revenue forecasting, financial analysis, marketing, performance), including:
 - a. Facilitate the exchange of technical information, policy assumptions and analysis results among consultants and agencies.
 - b. Manage the timing of the activities relative to other project or program delivery activities.
 - c. Provide advice as to reasonableness of the consultants’ approach, assumptions and results. Collect and assess comparative information from other projects if helpful.

Deliverables: To be determined by Task Order

D. PROGRAM OPERATIONS PLANNING

1. Coordinate with the Toll System Manager consultant, BAIFA and BATA staff to develop a staffing and resource plan for operations.
2. Develop a comprehensive set of BAIFA Express Lane Standard Operating Procedures (SOPs), incorporating those developed by the Toll System Manager consultant.
3. Conduct special studies as needed to support planning for operations, start-up of operations, or ongoing operations. Examples may include studies related to enforcement, operational strategies, performance, technical analyses, etc. Define an enforcement strategy for express lanes in partnership with CHP. The strategy shall define needs, contract and enforcement issues, enforcement tools, recommend an enforcement strategy, performance metrics, performance measurement procedures, roles and responsibilities and standard operating procedures.
4. Implement the enforcement strategy by developing agreements, advising on enforcement tools, and coordinating with CHP as necessary to address other issues.
5. Work with BAIFA's Toll System Manager consultant and develop a Performance Monitoring Plan for express lanes that defines performance metrics, measurement procedures and roles and responsibilities. Identify "before and after" studies needed to support performance monitoring and strategies for conducting the studies.
6. Support BAIFA in partnership with Caltrans to further refine and document roles and responsibilities and develop agreements with respect to express lane operation and maintenance.

Deliverables: To be determined by Task Order

E. OPERATIONS SUPPORT

1. Participate in training for the start-up of operations.
2. Facilitate or participate in regular debriefs during the initial operational period, which could be a few days to several weeks.
3. Recommend and make adjustments to operating procedures during the initial operation period.
4. Produce monthly operations reports, using data from the toll system and other sources, summarizing and analyzing revenue, travel times, speeds, paid trips, HOV trips, and other performance measures. Prepare these reports for both the staff and executive level.
5. Coordinate with Caltrans and CHP as needed.
6. Coordinate services to implement the Supplemental Incident Response Plan.

Deliverables: To be determined by Task Order

III. ADDITIONAL CONSULTANT RESPONSIBILITIES

This project element includes tasks that may be assigned to this Consultant later in the contract period by Contract Amendment. Additional funding would be made available to add these tasks to this Contract and full scopes of work for such tasks would be developed at the time the tasks are added.

A. CUSTOMER COMMUNICATION AND EDUCATION

Implement a strategy to educate Bay Area travelers about BAIFA's express lanes and/or the Regional Express Lane Network. Implementation would be done in coordination with the BAIFA Express Lane partners and would include a broad range of traditional media and outreach approaches as well as social media approaches.

B. ESTABLISH A PROGRAM OFFICE

Establish a program office in close proximity to BAIFA's offices, where multiple program and project consultants can work together.

C. OTHER PROGRAM MANAGEMENT AND TECHNICAL SERVICES RELATED TO THE IMPLEMENTATION AND OPERATION OF BAIFA'S EXPRESS LANES

This task includes other program management and technical assistance tasks that may be necessary for the successful implementation or operation of express lanes.

APPENDIX B, FORMAT FOR PRESENTATION OF COST PROPOSAL

Cost Proposal #1: Rate Sheets

Instructions for completing *Appendix B*: Table 1, Rate Sheets

1. In the pink cell, enter the prime Contractor's name.
2. In the green cell, enter the name of the Project Manager.
3. In the "Name/position" column, enter the name of key personnel and their position. For non-key personnel, provide the position title and personnel names (if known). There are 15 rows for each fiscal year; additional rows may be added as needed.
4. In the "Firm" column, enter the firm associated with the name/position.
5. In the blue cells, provide the hourly rates you would charge BAIFA for each positions. Enter the hourly salary, overhead, benefits, and profit included in the fully loaded hourly rate in the appropriate column.
6. Under the "Fully loaded hourly rate" column, enter the sum of the previous 4 columns.
7. In the column labeled "% increase over prior Fiscal Year," enter the increase in the fully loaded hourly rate for each position from the prior fiscal year.
8. In the row labeled, "subconsultant mark-up" indicate the percentage that subconsultant labor hours will be marked-up by the prime firm each year, if applicable.

Note that formulas are not provided in the Excel version of the following table that is available on MTC's website at <http://procurements.mtc.ca.gov/>. Proposers are encouraged to use formulas where appropriate.

COST PROPOSAL #1: RATE SHEET

Team:

Project Manager:

FY	Name/position (note 1)	Firm	Salary (hourly rate)	Benefits Overhead	Profit	Other (note 2)	Fully loaded hourly rate (note 3)	% Increase over prior Fiscal Year
FY14	1							N/A
	2							N/A
	3							N/A
	4							N/A
	5							N/A
	6							N/A
	7							N/A
	8							N/A
	9							N/A
	10							N/A
	11							N/A
	12							N/A
	13							N/A
	14							N/A
	15							N/A
FY14 mark-up on subconsultant fully loaded hourly rate (if applicable):								
FY14-15	1							
	2							
	3							
	4							
	5							
	6							
	7							
	8							
	9							
	10							
	11							
	12							
	13							
	14							
	15							
FY15 mark-up on subconsultant fully loaded hourly rate (if applicable):								

Proposed Hourly Rates by Year	Name/position (note 1)	Firm	Salary (hourly rate)	Benefits	Overhead	Profit	Other (note 2)	Fully loaded hourly rate (note 3)	% Increase over prior Fiscal Year
FY15-16	1								
	2								
	3								
	4								
	5								
	6								
	7								
	8								
	9								
	10								
	11								
	12								
	13								
	14								
	15								
FY16 mark-up on subconsultant fully loaded hourly rate (if applicable):									
FY16-17	1								
	2								
	3								
	4								
	5								
	6								
	7								
	8								
	9								
	10								
	11								
	12								
	13								
	14								
	15								
FY17 mark-up on subconsultant fully loaded hourly rate (if applicable):									

Note 1: If staff changes occur, the replacement staff must receive the same or lower salary.

Note 2: Bidders must specifically identify what constitutes any "Other" costs included in this column.

Note 3: Fully loaded hourly rate = Salary + Benefits + Overhead + Profit + Other

APPENDIX B, FORMAT FOR PRESENTATION OF COST PROPOSAL, cont.

Cost Proposal #2: Project Budget by Task by Year

Provide a project budget by task by year for FY14 thru FY17 recognizing the following guidance:

- BAIFA estimates that at least 50% of the budget should be dedicated to Project Element II.
- The total budget for the 3.3 year period may not exceed \$5.08 million.

BAIFA has prepared an Excel workbook for Proposers to use that includes the following templates available at <http://procurements.mtc.ca.gov/>. BAIFA has not provided formulas in the excel worksheets.

Table A: Project Budget by Task FY2013-14 (March – June)

Table B: Project Budget by Task FY2014-15

Table C: Project Budget by Task FY2015-16

Table D: Project Budget by Task FY2016-17

Table E: 3.3-Year Project Budget by Task

Proposers may modify the templates to meet their needs, *but each cost proposal must include at a minimum the level of detail depicted in the templates*. For example, Proposers could provide more detail at the task level or add notes, explanation, and assumptions.

Instructions for Completing Tables A - D:

1. Complete one table per fiscal year (e.g., Table A for FY2013-14)
2. In the green cells, enter the names and firms of assigned personnel. If you have non-key personnel, enter the position name and indicate their firm. Additional columns may be added.
3. In the yellow cells, enter the fully loaded hourly rate (from Cost Proposal #1) of each corresponding personnel or position.
4. In the orange cells, enter the hours by task for each personnel or position.
5. In the “Team Labor Hours” column, sum the hours (orange columns) by task.
6. In the “Team Labor Cost” column, calculate the labor cost of each task by multiplying the hourly rates (yellow cells) by the budgeted hours for each personnel/position and summing.
7. In the blue area, enter the other direct costs by task.
8. Include ALL burdens (e.g, G&A, M&S) you will charge on other direct costs in the columns labeled “ODC Burden.” Please insert columns if additional burden columns are needed.
9. Include the fee you will charge on other direct costs in the columns labeled “ODC Fee.”
10. In the white subtotal (or sum) rows, enter the requested subtotal.
11. For Project Element II, propose the total cost for each task order-initiated task. Assume that each task order will be issued for the full fiscal year (4 months for FY13-14), and include everything described in *Appendix A, Scope of Work*.
12. In the last row of Tables A through E, enter the totals of each column for the fiscal year. The total shall contain all costs for the project including overhead and profit.
13. In the rows labeled “Burdens & Fee Formulas,” describe the percentages of each burden and fee and how it is applied (e.g., 3% of materials; 5% of subconsultant fees, etc.)

Instructions for Completing Table E: 3.3-Year Project Budget by Task

1. Add the appropriate sums from Tables A-D in the appropriate column of Table E.

APPENDIX C, CALIFORNIA LEVINE ACT STATEMENT

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

BAIFA’s commissioners include:

Amy Rein Worth
Bill Dodd

Federal Glover
Scott Haggerty

Bijan Sartipi
Jim Spring

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

YES NO

If yes, please identify the commissioner: _____

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

YES NO

If yes, please identify the commissioner: _____

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

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

APPENDIX D, BAIFA STANDARD CONSULTANT CONTRACT

PROFESSIONAL SERVICES AGREEMENT

between

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY

and

NAME OF CONSULTANT

for

BAIFA EXPRESS LANE PROGRAM MANAGEMENT CONSULTANT

March 2014 to June 30, 2017

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
APPENDIX D, MTC STANDARD CONSULTANT CONTRACT.....	37
1. SCOPE OF SERVICES.....	40
1.1 PROGRESS REPORTS.....	41
2. PERIOD OF PERFORMANCE.....	41
3. COMPENSATION AND METHOD OF PAYMENT.....	42
4. KEY PERSONNEL.....	42
5. AMENDMENTS.....	43
6. TERMINATION.....	43
7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS.....	44
8. INDEPENDENT CONTRACTOR.....	44
9. INDEMNIFICATION.....	45
10. DATA TO BE FURNISHED BY BAIFA.....	45
10.1 PERSONALLY IDENTIFIABLE INFORMATION.....	46
10.2 NONDISCLOSURE OF CONFIDENTIAL INFORMATION.....	46
11. OWNERSHIP OF WORK PRODUCTS.....	47
12. SUBCONTRACTS.....	48
13. ASSIGNMENT OF AGREEMENT.....	48
14. RECORDS.....	48
15. AUDITS.....	49
16. NOTICES.....	49
17. SOLICITATION OF CONTRACT.....	49
18. PROHIBITED INTERESTS.....	50
18.1 ORGANIZATIONAL CONFLICTS OF INTEREST.....	50
19. LAWS AND REGULATIONS.....	51
20. CLAIMS OR DISPUTES.....	51
21. REMEDIES FOR BREACH.....	52
22. TEMPORARY SUSPENSION OF WORK.....	52
23. WARRANTY OF SERVICES.....	53
24. DISPUTE RESOLUTION.....	54
25. CHOICE OF LAW.....	55
26. ATTORNEYS' FEES.....	55
27. PARTIAL INVALIDITY.....	55

28. BENEFIT OF AGREEMENT	55
29. NO THIRD PARTY BENEFICIARIES	55
30. ENTIRE AGREEMENT; MODIFICATION	55
ATTACHMENT A, Scope Of Work	57
ATTACHMENT A-1, Task Order Process	58
ATTACHMENT A-2, Task Order Form	60
ATTACHMENT B, Project Schedule	63
ATTACHMENT C, Compensation and Method of Payment.....	64
ATTACHMENT D, Key Personnel Assignments	66
ATTACHMENT E, Insurance and Financial Security (Bond) Provisions	67
ATTACHMENT F, Subconsultant List.....	72
ATTACHMENT G, Special Conditions Relating to Personally Identifiable Information..	72
ATTACHMENT H, Federally-Required Clauses.....	76
ATTACHMENT I, State Required Clauses	76
ATTACHMENT I-1, Fair Employment Practices Addendum	77
ATTACHMENT I-2 Nondiscrimination Assurances	79
ATTACHMENT I-3, State Department of Transportation Requirements	87

PROFESSIONAL SERVICES AGREEMENT

Between BAY AREA INFRASTRUCTURE FINANCING AUTHORITY

And INSERT NAME OF CONSULTANT

For BAIFA EXPRESS LANE PROGRAM MANAGEMENT CONSULTANT

THIS AGREEMENT is made and entered into as of the xx day of Month, 20___, by and between the the Bay Area Infrastructure Financing Authority (herein called "BAIFA"), a joint powers authority established pursuant to a joint exercise of powers agreement between BAIFA and BATA entered into pursuant to Government Code Sections 6500 *et. seq.* and INSERT NAME OF CONSULTANT, (herein called "CONSULTANT").

RECITALS

WHEREAS, BAIFA intends to obtain program management consultant services for the 270-miles of Bay Area Express Lanes to be operated by BAIFA (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

CONSULTANT's services are described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. CONSULTANT agrees to perform or secure the performance of all specified services within the maximum payment specified in Article 3, subject to the prior written approval of a work plan by Lisa Klein, (herein called "BAIFA Project Manager"). As BAIFA Project Manager, Lisa Klein 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'S PM**

("CONSULTANT Project Manager"). A change in the CONSULTANT Project Manager requires BAIFA written approval.

A general description of the tasks to be required of CONSULTANT is included in this Agreement as Attachment A, Scope of Work, Project Element II attached hereto and incorporated herein by this reference. All required services in Project Element II 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. Lisa Klein (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 Lisa Klein ("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 March 1, 2014, and shall be completed no later than June 30, 2017, 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 Attachment B, Project Schedule, attached hereto and

incorporated herein by this reference. CONSULTANT's services under Project Element II 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 Attachment A 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 once determined* dollars (**\$TBD**) (“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 work performed under Project Element I, CONSULTANT shall be paid for hours worked and reimbursed for authorized expenses, plus reasonable termination costs, not to exceed the maximum amount payable for the terminated work. For work performed under Project Element II, 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 10%, 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 work performed under Project Element I, CONSULTANT shall be paid for hours worked and reimbursed for authorized expenses, not to exceed the maximum amount payable for the terminated work. For work performed under Project Element II, 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 E, Insurance and Financial Security (Bond) Provisions, attached hereto and incorporated herein, against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement. All 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

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

- A. Any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by CONSULTANT caused by any breach of the Agreement or negligent act or omission or willful misconduct of the CONSULTANT or its officers, employees, subconsultants or agents; or
- B. Any allegation that materials or services provided by CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

CONSULTANT further agrees to defend any and all such claims, actions, suits or other legal proceedings and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against any of the BAIFA Indemnified Parties, CONSULTANT shall, at its expense, satisfy and discharge the same. The provisions set forth in this Article are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable.. This indemnification shall survive termination or expiration of this Agreement.

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.

10.1 PERSONALLY IDENTIFIABLE INFORMATION

CONSULTANT agrees to comply with the special provisions related to the access and protection of personally identifiable information set forth in Attachment G, Special Conditions Regarding Personally Identifiable Information, attached hereto and incorporated herein by this reference.

10.2 NONDISCLOSURE OF CONFIDENTIAL INFORMATION

BAIFA may be required to make available to CONSULTANT certain confidential, non-public or proprietary information ("Confidential Information") for purposes of carrying out the Project. Confidential Information may be tangible, intangible, visual, oral, written, and/or electronic information, present or future, and includes: (i) proprietary information learned through inspection of drawings, specifications or equipment; (ii) descriptions of proprietary processes, designs, functionality or know-how; (iii) proprietary software, programming data, code or information; and (iv) other information disclosed in writing and marked as "Confidential" or with a similar notice. As between BAIFA and CONSULTANT, Confidential Information shall remain the sole and exclusive property of BAIFA, and no license or other rights to Confidential Information or any works deriving from Confidential Information is granted or implied hereby. Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of CONSULTANT; b) CONSULTANT can demonstrate to have had rightfully in its possession prior to disclosure by BAIFA or its contractors, vendors or licensors; c) CONSULTANT rightfully obtains from a third party who has the right to transfer or disclose it; or (d) is required to be disclosed by law or applicable legal process.

CONSULTANT agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose such Confidential Information except for the business purpose underlying this Agreement, except

as authorized in writing by BAIFA. CONSULTANT further agrees to disclose Confidential Information only to its directors, officers, employees and consultants who need to know such information, and who have agreed to be bound by the terms and conditions of this Agreement. Promptly upon the request of BAIFA, at any time and for any reason, CONSULTANT shall destroy or return to BAIFA, at BAIFA's option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by BAIFA.

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 F, 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 following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer.

15. AUDITS

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

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

Any conflicting language regarding audits contained in Attachment H, Federally-Required Clauses, shall supersede this Article.

16. NOTICES

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

To BAIFA:	Attention: Lisa Klein Bay Area Infrastructure Financing Authority 101 - 8th Street Oakland, CA 94607-4700 Email: XX @mtc.ca.gov Fax: 510.817-5848
To CONSULTANT:	Attention: Insert Name of Appropriate Person Consultant's name Consultant's address Consultant's address Email: X Fax: X

17. SOLICITATION OF CONTRACT

CONSULTANT warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than bona fide employees working solely for CONSULTANT, any fee, commission, percentage, brokerage fee,

gift, or any other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, 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

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:

The finalized Scope of Work, based on Appendix A, Preliminary Scope of Work, of the BAIFA Express Lane Program Management Consultant RFP will be inserted here.

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 MTC **Director of Operations 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 MTC **Operations Section Director**, for review and approval. The MTC **Operations 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 MTC 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 MTC **Operations Section Director** and CONSULTANT. Revisions to Task Orders shall require written approval by both the MTC **Operations 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 or BATA 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> <input type="checkbox"/> Time and Materials <input type="checkbox"/> Deliverables

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>	<i>Total Cost*</i>
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

Insert name and title of 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

Project Schedule

Task #	Work to be Performed/Deliverables (#)	Completion Date

CONSULTANT's services performed under Project Element II shall be performed in accordance with the schedule included in each duly executed Task Order.

ATTACHMENT C

Compensation and Method of Payment

LABOR – HOUR: Project Element I

A. Compensation. CONSULTANT shall be compensated for services performed under Project Element I based on the hourly rates for the key personnel set forth in Attachment D, Key Personnel Assignment, attached hereto and incorporated herein by this reference, which include all labor, supervision, 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. 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.

D. Method of Payment. CONSULTANT shall submit invoices for services rendered on a monthly basis, identifying the work for which payment is requested; the hours worked; any authorized expenses, together with receipts for such expenses; the amount requested; and the cumulative amount billed and paid under this Agreement. If applicable, CONSULTANT's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment G.

TASK ORDERS - Project Element II

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. If applicable, CONSULTANT's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment G.

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

Insurance and Financial Security (Bond) Provisions

SELECT TYPE OF INSURANCE REQUIRED BASED ON TYPE OF CONTRACT BEING ISSUED (I.E. JANITORIAL SERVICES WOULD FALL INTO THE MTC CRIME CATEGORY), IF YOU HAVE QUESTIONS, PLEASE CONTACT CONTRACT UNIT STAFF.

BAIFA TYPE OF CONTRACT & APPLICABLE CONTRACT PROVISIONS	Certificate Code	WC, G/L, Auto, & Property	Professional Liability	Cyber Liability	Employee Dishonesty	Environmental
<i>BAIFA Professional High Hazard</i> <i>(No Environmental, No Crime)</i>	<i>MPH</i>	<i>\$5M</i>	<i>\$5M</i>			
<i>BAIFA Environmental Low Hazard</i> <i>(No Professional, No Crime)</i>	<i>MEL</i>	<i>\$2M</i>				<i>\$2M</i>
<i>BAIFA Environmental High Hazard</i> <i>(No Professional; No Crime)</i>	<i>MEH</i>	<i>\$10M</i>				<i>\$10M</i>

NOTE: THESE REQUIREMENTS WILL BE REVISED IN ACCORDANCE WITH THE TYPE/LEVEL OF INSURANCE SELECTED IN THE TABLE ABOVE AND OR IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE SOLICITATION.

Insurance and Financial Security (Bond) Provisions

1. INSURANCE

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

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

In the event CONSULTANT or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that CONSULTANT's insurance be primary without right of contribution from 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. [Should any bridge work require coverage for the United States Longshore Harbor Workers Act, CONSULTANT agrees to furnish proof of insurance, if required.](#)

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 2 of this Attachment E (if any), 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 \$1,000,000 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 \$1,000,000 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.

Such policy shall contain a Waiver of Subrogation in favor of BAIFA.

BAIFA (and those entities listed in Attachment ____), 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.

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.

2. ADDITIONAL INSUREDS

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

MTC
BATA

ATTACHMENT F

Subconsultant List

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

ATTACHMENT G

Special Conditions Relating to Personally Identifiable Information

CONSULTANT may have access to personally identifiable information (“PII”) in connection with the performance of the Agreement. PII is any information that is collected or maintained by BAIFA or CONSULTANT that identifies or describes a person or can be directly linked to a specific individual. Examples of PII include name, address, email address, phone or fax number, signature, or travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

1. Right to Audit

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

2. General Confidentiality of Data

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

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

Notwithstanding anything to the contrary in Article 14. Records, of this Agreement, CONSULTANT agrees to retain PII for no longer than the time period specified by the BAIFA Project Manager in an individual task order. At the conclusion of this retention period, CONSULTANT agrees to use Department of Defense (“DOD”) approved methods to sanitize any electronic media containing PII, including but not limited to magnetic disks, optical disks, magnetic tape, and memory. Hard drives and computers shall be reformatted and reimaged in an equivalently secure fashion. CONSULTANT agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. CONSULTANT is prohibited from storing PII on portable hardware, including but not limited to, laptops, thumb drives and so forth. At the conclusion of the performance period of this Agreement, CONSULTANT shall submit a certification to the BAIFA Project Manager as follows: “All PII whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in Section 2.

General Confidentiality of Data of the Attachment G Special Conditions Relating to Personally Identifiable Information.”

3. Compliance with Statutes and Regulations

CONSULTANT agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 *et seq.*) and in the California Streets and Highways Code Section 31490. In addition, CONSULTANT warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and BAIFA relating to the handling and confidentiality of PII and agrees to indemnify BAIFA against any loss, cost, damage or liability by reason of CONSULTANT’s violation of this provision.

4. Subconsultants

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

5. Consultant Guarantees

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

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

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

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

6. Notice of Security Breach

CONSULTANT shall immediately notify BAIFA when it discovers that there may have been a breach in security which has or may have resulted in compromise to PII. For purposes of this

section, immediately is defined as within two hours of discovery. The BAIFA contact for such notification is as follows:

Privacy Officer
privacyofficer@mtc.ca.gov
(510) 817-5700

ATTACHMENT H
Federally Required Clauses
“Not Used”

ATTACHMENT I-1

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, CONSULTANT shall not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. CONSULTANT shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. CONSULTANT, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of the CONSULTANT'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements as appropriate.

3. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

4. CONSULTANT shall permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which CONSULTANT was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that CONSULTANT has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by CONSULTANT and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to CONSULTANT, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure CONSULTANT's breach of this Agreement.

ATTACHMENT I-2

NONDISCRIMINATION ASSURANCES

CONSULTANT HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964” (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which CONSULTANT receives federal financial assistance from the Federal Department of Transportation. CONSULTANT HEREBY GIVES ASSURANCE THAT CONSULTANT shall promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, CONSULTANT hereby gives the following specific assurances with respect to its federal-aid Program:

1. That CONSULTANT agrees that each “program” and each “facility” as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a “program”) conducted, or will be (with regard to a “facility”) operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.
2. That CONSULTANT shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements: CONSULTANT hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.
3. That CONSULTANT shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.
4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where CONSULTANT receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where CONSULTANT receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That CONSULTANT shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the CONSULTANT with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates CONSULTANT for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates CONSULTANT or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which CONSULTANT retains ownership or possession of the property.

9. That CONSULTANT shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that CONSULTANT, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That CONSULTANT agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. CONSULTANT shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. CONSULTANT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of STATE assisted contracts. The California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out the Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31 USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to CONSULTANT by STATE, acting for the U.S. Department of Transportation, and is binding on CONSULTANT, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

APPENDIX A TO ATTACHMENT I-2

During the performance of this Agreement, CONSULTANT, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

(1) **Compliance with Regulations:** CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) **Nondiscrimination:** CONSULTANT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) **Solicitations for Sub-agreements, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **Information and Reports:** CONSULTANT shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to CONSULTANT's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request STATE enter into such litigation to protect the interests of STATE, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B TO ATTACHMENT I-2

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that CONSULTANT shall accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the CONSULTANT all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto CONSULTANT and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on CONSULTANT, its successors and assigns.

CONSULTANT, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) *

(2) that CONSULTANT shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become

the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.*

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX C TO ATTACHMENT I-2

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by CONSULTANT, pursuant to the provisions of Assurance 7(a) of Attachment I-2 .

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add ‘as covenant running with the land’’) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, CONSULTANT shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, CONSULTANT shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of CONSULTANT and its assigns.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX D TO ATTACHMENT I-2

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the CONSULTANT, pursuant to the provisions of Assurance 7 (b) of Attachment I-2 .

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add “as a covenant running with the land”) that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, CONSULTANT shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, CONSULTANT shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of CONSULTANT, and its assigns.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

**ATTACHMENT I-3, STATE DEPARTMENT OF TRANSPORTATION
REQUIREMENTS**

Caltrans Non – Discrimination

A. In the performance of work undertaken pursuant to this Agreement, CONSULTANT shall not, and shall affirmatively require that its contractors shall not, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave.

B. CONSULTANT shall ensure, and shall require that its contractors and all subcontractors and/or subrecipients shall ensure, that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT shall comply, and ensure that its contractors and subcontractors and/or subrecipients shall comply, with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (af), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

C. Each of CONSULTANT's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements. CONSULTANT shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under this Agreement.

D. CONSULTANT shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR Part 21, and 23 CFR Part 200 are made applicable to this Agreement by this reference. Wherever the term "Contractor" appears therein, it shall mean CONSULTANT.

E. CONSULTANT shall permit, and shall require that its contractors, subcontractors, and subrecipients will permit, access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by STATE to investigate compliance with these non-discrimination provisions.

APPENDIX D-1, INSURANCE REQUIREMENTS

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

Yes (√)	Please certify by checking the box below that required coverages will be provided within five (5) days of BAIFA's notice to firm that it wishes to contract with the firm.
—	<u>Workers' Compensation Insurance</u> 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. Should any bridge work require coverage for the United States Longshore Harbor Workers Act, CONSULTANT agrees to furnish proof of insurance, if required.
—	<u>Commercial General Liability Insurance</u> 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 MTC. BAIFA, MTC, and BATA, 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.
—	<u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.
—	<u>Umbrella Insurance</u> in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage

	including all endorsements and additional insured requirements.
—	<p><u>Errors and Omissions Professional Liability Insurance</u> for errors and omissions and the resulting damages, including, but not limited to, economic loss to BAIFA and having minimum limits of \$1,000,000 per claim. [use the following if contract involves receipt of personally identifiable information or other confidential information: Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.]</p> <p>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.</p>
—	<p><u>Property Insurance.</u> 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.</p>
<p>BAIFA, MTC, and BATA, 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.</p> <p>All policies will be issued by insurers acceptable to BAIFA, generally with a Best's Rating of A-VIII or better.</p> <p>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.</p> <p>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.</p> <p>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.</p>	

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

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.

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.

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.

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

By signing below you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within five (5) days of BAIFA’s notice to firm that it wishes to contract with the firm.

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

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

requirements will be assumed.

APPENDIX E – IRAN CONTRACTING ACT of 2010
(Public Contract Code Section 2200 et seq.)

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

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

OPTION #1 - CERTIFICATION

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

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

OPTION #2 – EXEMPTION

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

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

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