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State Business, Transportation  
and Housing Agency*

JIM SPERING  
*MTC Commissioner,  
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STEVE HEMINGER  
*Executive Director*

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*Deputy Executive Director, Policy*

ANDREW B. FREEMER  
*Deputy Executive Director, Operations*

October 3, 2013

**REQUEST FOR QUALIFICATIONS  
Regional Express Lanes Network Phase 1 Project:  
Utility Service Establishment and Utility Relocation Coordination**

Dear Consultant:

The Bay Area Infrastructure Financing Authority (BAIFA) invites your firm to submit a Statement of Qualifications (SOQ) to assist BAIFA with utility service establishment and utility relocation coordination for the Regional Express Lanes Network Phase 1 Projects. BAIFA intends to contract with a Consultant to streamline the utility service requirements and establish the required service points for the Express Lane Network to prevent delays to the project delivery schedule.

In addition, the Metropolitan Transportation Commission (MTC), Metropolitan Transportation Commission Service Authority for Freeways and Expressways (MTC SAFE), Bay Area Headquarters Authority (BAHA), and the Bay Area Toll Authority ("BATA") may utilize this RFQ to obtain utility establishment and utility relocation coordination services for non-express lane projects on an as-needed basis.

This letter and its enclosures constitute the Request for Qualifications (RFQ) for this project. Responses should be submitted according to the instructions set forth in this RFQ. The Proposer's attention is directed to page 10 of this RFQ, Section VIII, General Conditions, Subsection G, Organizational Conflict of Interest.

**Statement of Qualifications Due Date**

Firms must submit an original and eight (8) copies, as well as one electronic PDF version of their SOQ by **4:00 p.m., Tuesday, October 29, 2013**. *SOQs received after that date and time will not be considered.* Submitted SOQs shall be considered firm offers to enter into a contract to perform the work in connection with this RFQ for a period of one hundred twenty (120) days from the due date.

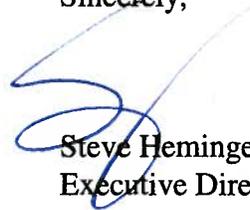
**BAIFA Point of Contact**

SOQs and all inquiries relating to this RFQ shall be submitted to Alice Truong, Contract Specialist, at the address shown below. E-mail inquiries may be directed to [atruong@mtc.ca.gov](mailto:atruong@mtc.ca.gov). For telephone inquiries, call (510) 817-5749.

Alice Truong, Contract Specialist  
Bay Area Infrastructure Financing Authority  
Joseph P. Bort MetroCenter  
101 Eighth Street  
Oakland, California 94607-4700

Thank you for your interest.

Sincerely,



Steve Heminger  
Executive Director

SH: sb: at

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Coordinator RFQ\_final.doc

REQUEST FOR QUALIFICATIONS

to the

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY

REGIONAL EXPRESS LANE NETWORK PHASE 1 PROJECT:  
UTILITY SERVICE ESTABLISHMENT  
AND  
UTILITY RELOCATION COORDINATION

October 3, 2013

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

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## **I. BACKGROUND & PROJECT DESCRIPTION**

### **A. Background**

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

BAIFA's goals for express lanes are to: (1) Improve connectivity by closing gaps in the existing High Occupancy Vehicle (HOV) network; (2) Improve freeway efficiency by making the best use of existing capacity; and (3) Offer a reliable, congestion-free option to buses, carpoolers and those willing to pay a toll. BAIFA intends to begin revenue operations in April 2016.

Key features include the implementation of zone-based tolling in combination with more open access express lane configurations and automated toll enforcement with switchable toll tags. For more detail on these features see: [http://www.mtc.ca.gov/projects/express\\_lanes/intro.htm](http://www.mtc.ca.gov/projects/express_lanes/intro.htm).

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

### **B. Project Description**

The Consultant will be asked to streamline the utility electrical service, telecommunications and wireless services requirements, and establish the required utility service points for the Express Lane Network to prevent delays to the project delivery schedule.

BAIFA is developing preliminary engineering documents to convert existing HOV lanes to express lanes on segments of I-880, I-680, and the westbound approaches to the San Francisco-Oakland Bay Bridge (SFOBB), San Mateo Bridge and Dumbarton Bridge. These segments are collectively referred to as the Regional Express Lanes Phase 1 Project, as shown in *Appendix D*. The Regional Express Lane Project Program, Phase 1, comprises of four (4) projects, three (3) of which are led by BAIFA, one (1) by Solano Transportation Authority (STA). The selected Consultant resulting from this RFQ will provide services for all four (4) projects. STA is concurrently completing the PA/ED phase and final design phases. BAIFA's current schedule plans for portions of Phase 1 to be operational in Fiscal Year 2015-2016.

#### ***Near-Term Express Lane Projects:***

In the near-term, the selected Consultant will likely be asked to focus on providing utility coordination assistance to the following four (4) projects:

1. I-680 in Contra Costa and Alameda County, northbound from Alcosta Boulevard to Livorna Road, and southbound from Rudgear Road to Alcosta Boulevard.
2. I-880 in Santa Clara and Alameda County, northbound from SR-237 to Lewelling Boulevard, and southbound from Hegenberger Road to SR-237; SR-92 in Alameda County, westbound from I-880 to the San Mateo-Hayward Bridge Toll Plaza; SR-84 in Alameda County, westbound from I-880 to the Dumbarton Bridge Toll Plaza.
3. I-80 in Solano County from I-80/680/SR12 to Air Base Parkway
4. SFOBB Approach

The utility services and providers included of this RFQ include power, telecommunications service, and wireless services providers. BAIFA is the lead contracting agency for establishing utility service connections with PG&E and other service providers. Coordination with the Alameda County Transportation Commission (ACTC), Contra Costa Transportation Authority (CCTA), STA, Caltrans, and the Santa Clara Valley Transportation Authority (VTA) may be required and these agencies are active partners in the development of the Express Lane Network. The project must be delivered on an aggressive timeline as BAIFA intends to open the first of the Phase 1 projects, likely I-680, in Fiscal Year 2015-2016.

#### ***Future Express Lane Projects***

At this time, plans for future Express Lane Projects inclusive of the remainder of the Tier 1 Project are undetermined. BAIFA reserves the right, at its sole discretion, to assign Future Express Lane Projects work to the selected Consultant resulting from this RFQ or re-procure for future Express Lane Projects if it is determined to be in its best interest to do so.

The remainder of the Tier 1 Project consists of the two (2) projects as follows:

1. I-80 in Alameda and Contra Costa Counties from I-80/580/880 to Carquinez Bridge
2. I-680 in Contra Costa northbound from Livorna Road to the Solano County Line, and southbound from the Solano County Line to Rudgear Road.

#### ***Non-Express Lane Projects***

In addition, MTC, MTC SAFE, BATA and BAHA may need assistance with yet to be identified work including, but not limited to Utility Service Establishment and Utility Relocation Coordination that may be necessary to support delivery of other non-express lane projects. BAIFA reserves the right, at its sole discretion, to assign Non-Express Lane Projects work to the selected Consultant resulting from this RFQ or re-procure for Non-Express Lane Projects if it is determined to be in its best interest to do so.

## II. MINIMUM QUALIFICATIONS

To be eligible for SOQ evaluation, a firm must demonstrate:

- The Consultant's Project Manager must have a minimum of five (5) years of utility coordination experience in the nine-county San Francisco Bay Area region, including experience with preparing utility service agreements, utility relocations, costs associated with utility services/relocations, and experience in preparing Notices to Owner for utility facility relocations, and PUC requirements.
- Experience with preparing PG&E interagency agreements and with PG&E processes and procedures.
- The Consultant has successfully completed at least three (3) projects in the past seven (7) years substantially similar to one or more tasks requested by BAIFA in *Appendix A, Scope of Work*.
- Experience in coordinating with utility companies and Project Engineers for all utility activities, including utility verification, utility conflict, utility relocation, and billing. Possess the knowledge of required interaction with utility companies.
- Experience with of Local, State and Federal laws, policies and procedures that deal with Utility relocation, including Chapter 13 of the Caltrans Right of Way (R/W) Manual.
- Experience with the Caltrans Project Development process, Caltrans Encroachment Policy, Caltrans R/W Utilities policy and procedures, and local encroachment policies and procedures.

## III. SCOPE OF WORK AND SCHEDULE

A scope of work for the project is provided in *Appendix A, Scope of Work*. All work 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, 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.

BAIFA expects the work to commence on or about January 1, 2014 and to be operational in January 2016. BAIFA intends to enter into a contract with the selected Consultant for a three (3) year initial term. At BAIFA's sole option, the contract may be extended for two (2) additional one-year periods.

**IV. PROPOSERS’ CONFERENCE, REQUESTS FOR CLARIFICATION OR EXCEPTIONS AND ADDENDA**

A proposers’ conference will be held on Tuesday, October 15, 2013 at 10:00 a.m. at the Joseph P. Bort MetroCenter Building, 101 8<sup>th</sup> Street, Oakland, in Conference Room 171 on the 1st floor. Please arrive by the start time listed. Attendance at the conference is not mandatory for proposers.

Any requests for clarification, or questions regarding RFQ requirements, or requests for exceptions to or modifications of RFQ provisions must be received by BAIFA no later than 4:00 p.m. on October 17, 2013, to guarantee consideration.

Any addenda to this RFQ that may be issued by BAIFA will be posted at <http://procurements.mtc.ca.gov/>. It is the proposer’s responsibility to check for addenda and questions and answers related to this RFQ and comply with new or revised requirements that may be stated therein.

**V. CONSULTANT SELECTION TIMETABLE**

10:00 a.m., Tuesday, October 15, 2013	Proposers’ Conference in Conference Room 171 at 101 Eighth Street, Oakland, CA.
4:00 p.m., Thursday, October 17, 2013	Closing date and time for requests for clarifications / exceptions
No later than three (3) business days prior to the date SOQs are due	Closing date and time for protest of RFQ provisions
<b>4:00 p.m., Tuesday, October 29, 2013</b>	<b>Closing date/time for receipt of Statement of Qualifications</b>
Monday, November 21, 2013*	Interviews (if required)
December 18, 2013	BAIFA Board Approval

*\*Dates are approximate and are subject to change*

**VI. FORM OF SOQ**

Sections that should be included in each SOQ are described below. Page limits, where specified, are for each side of print. Proposers are asked to print double-sided copies to save paper.

**A. Transmittal Letter**

A transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm. The transmittal letter should include the name, telephone number and email of a contact person if different from the signator. The letter must indicate whether there are any conflicts of interest that would limit the respondent’s ability to provide the requested services, which should be fully addressed as described in Section VI. K, Conflict of Interest below. The letter must also indicate that the SOQs are firm offers to enter into a contract to perform work related to this RFQ for a period of one hundred twenty (120) days from SOQ due date.

## **B. Title Page**

Title page showing the RFQ subject, the name of the proposer's firm, address, telephone number, fax, name of contact person, email, and the date.

## **C. Table of Contents**

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

## **D. Qualifications and Experience**

A detailed statement of the firm's qualifications and previous experience in conducting work similar to the tasks described in the Scope of Work (*Appendix A*), and resumes for the Project Manager and key personnel the proposer intends to use to perform the task(s), summarizing the individual's training and experience relevant to task(s) described in *Appendix A*. If subconsultants are used, include the resumes of key subconsultant personnel, as well.

The information provided in this section should demonstrate that the firm can meet the minimum qualifications required by Section II. Minimum Qualifications. For clarity, the firm is asked to submit a table showing each proposed staff person and their applicable skills and/or areas of expertise and naming the lead staff who meets the minimum qualifications. Staff should have a demonstrated understanding of PG&E processes and procedures and the ability to meet BAIFA's project delivery objectives.

## **E. Understanding of Project**

Describe the firm's understanding of BAIFA's objectives and work requirements and describe the firm's ability to satisfy those objectives and requirements. Succinctly describe the proposed approach for completing the tasks listed in *Appendix A, Scope of Work*, including the roles of the project team. In order to help BAIFA meet the aggressive timeline, discuss the firm/team's tactics for accelerating the completion of this project. Be sure to include technical and procedural innovations used successfully on other projects. Include any alternatives that would reduce expenditures while achieving BAIFA's objectives and timeline.

## **F. References**

Include at least three (3) references attesting to your firm's previous experience in performing work substantially similar or related to the services requested. Please provide the names of previous/current clients, along with the names, telephone numbers, and email addresses of client contact person(s) for each reference.

## **G. Similar Projects**

A summary (no longer than one page each) of at least three (3) projects completed within seven (7) years prior to the date of this RFQ similar in subject matter and scope to all tasks in the Scope of Work. The summary must include the name of the client agency, the firm's role and responsibilities, roles and responsibilities of key staff, the firm's contract term and amount, and a contact person (with telephone number and e-mail) who may be contacted as a reference.

## **H. Detailed Scope of Services**

Succinctly describe the proposed scope of services for completing the tasks listed in *Appendix A, Scope of Work*, including the level of effort for each major task and subtasks. A breakdown of the number of meetings and conference calls must also be described.

## **I. Detailed Task Budget**

IN A SEPARATE SEALED ENVELOPE: In order to help BAIFA assess how efficiently the firm will manage its resources for this project, provide a time and material estimate for each task identified in *Appendix A, Scope of Work*. An estimate of hours and cost by task and subtask for all team members with averaged labor rates by classification should be provided. Proposer should include additional recommended tasks, which should be clearly identified as optional tasks and should be included as separate line items in the detailed task budget. Neither hourly rates nor the overall costs for tasks and subtasks will be factors in the evaluation process.

## **J. Hourly Rates**

IN A SEPARATE SEALED ENVELOPE: Submit a description of the Consultant's hourly rates. Rates shall include all direct and indirect costs. The fully loaded hourly rates for all personnel to be used on the project, including subconsultants. Fully-loaded hourly rate means an hourly rate that includes all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, and ordinary materials and supplies. Rates indicated shall be firm for the initial three (3) year contract term. Describe the basis for rate escalation, if any, following the initial term.

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

## **K. Conflict of Interest**

Describe in detail any current and/or future potential organizational conflicts of interest as they relate to the tasks listed in *Appendix A, Scope of Work*, and propose mitigations for the potential conflicts. Please include in this discussion any potential conflicts arising from contracts with BAIFA, MTC, BATA, MTC SAFE, and BAHA.

**A firm serving as the prime consultant for the BAIFA's Express Lane Program Management is not eligible for this Utility Service Establishment and Utility Relocation Coordination project.**

See Section VIII.G for additional information concerning organization conflicts of interest.

## **L. Forms and Certificates**

1. A signed California Levine Act statement (*Appendix B*)
2. A signed Insurance Provisions document (*Appendix C-1*).

## **VII. QUALIFICATIONS EVALUATION**

### **A. Review for General Responsiveness and Satisfaction of Minimum Qualifications**

The Project Manager, in consultation with the BAIFA Office of General Counsel, will conduct an initial review of the SOQs for responsiveness to ensure that each SOQ meets the Minimum Qualifications set out in Section II, Minimum Qualifications. Proposers failing to meet the Minimum Qualifications will not be considered responsive. Also, any SOQ that does not include enough information to permit the evaluators to rate the SOQ in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. BAIFA reserves the right to request additional information from responsive proposers at any time during the evaluation process. An SOQ that fails to include one or more items requested in Section VI, Form of SOQ may be considered responsive, if evaluation in every criterion is possible.

### **B. SOQ Evaluation**

Responsive SOQs meeting the Minimum Qualifications will then be evaluated on the basis of the following evaluation factors, listed in descending order of relative importance.

1. Experience and qualifications of the firm and proposed staff expertise in relation to the areas of expertise sought by BAIFA and the tasks listed in *Appendix A*, Scope of Work;
2. Demonstrated understanding of the project and ability of the proposed approach to meet BAIFA's objectives; and
3. Past experience/references.

Following the evaluation, the panel may elect to recommend award to a Consultant or may develop a "short list" of Consultants, with a reasonable likelihood of being awarded a Contract, for interviews. References may be checked for one or more of such short-listed firms prior to final evaluation.

BAIFA reserves the right not to convene interviews, but to make an award on the basis of written SOQs, alone. Further, BAIFA reserves the right to accept or reject any and all submitted SOQs, to waive minor irregularities, and to request additional information from the firms at any stage of the evaluation.

### **C. Recommendation for Award**

The panel will then recommend a firm to the BAIFA Executive Director, based on its evaluation of the written SOQs and interviews (if held). The BAIFA Executive Director will review the recommendation and, if he agrees with the recommendation, forward the recommendation to the BAIFA Board for approval.

## **VIII. GENERAL CONDITIONS**

### **A. Limitations**

This RFQ does not commit BAIFA to award a contract or to pay any costs incurred in the preparation of a SOQ in response to this RFQ. BAIFA will not reimburse any firm for costs related to preparing and submitting a SOQ.

### **B. Award**

BAIFA intends to enter into a contract with a Consultant whose SOQ is most advantageous to BAIFA, based on the evaluation criteria outlined above.

### **C. Binding Offer**

A signed SOQ submitted to BAIFA in response to this RFQ shall constitute a binding offer from Consultant to contract with BAIFA according to the terms of the SOQ for a period of one hundred twenty (120) days after its date of submission, which shall be the date SOQs are due to BAIFA.

### **D. Contract Arrangements**

BAIFA's standard consultant contract is enclosed for your reference as *Appendix C*. If a firm 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 listed above. If no such change is requested, the firm will be deemed to accept BAIFA's standard contract provisions.

The selected firm will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix C-1, Insurance Requirements*. By submitting a SOQ, the selected firm agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix C-1, Insurance Requirements*, within five (5) days of BAIFA's notice to firm that it is the successful proposer. Requests to change BAIFA's insurance requirements must be brought to BAIFA's attention no later than the closing date for receipt of requests for clarifications/exceptions listed above. If such objections are not brought to BAIFA's attention consistent with the protest provisions of this RFQ, compliance with all material insurance requirements will be assumed.

All work will be assigned pursuant to BAIFA-initiated task orders. 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 included as part of *Appendix C, BAIFA's Standard Consultant Agreement*.

### **E. Selection Disputes**

A firm may object to a provision of the RFQ on the grounds that it is arbitrary, biased, or unduly restrictive, or it was found to not meet Minimum Qualifications or its SOQ was found to be non-responsive or to the selection of a particular Consultant on the grounds that BAIFA procedures, the provisions of the RFQ or applicable provisions of federal, state or local law have been

violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

1. No later than 4:00 p.m. on the third working day prior to the date SOQs are due, for objections to RFQ provisions; or
2. No later than 4:00 p.m. on the third working 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 working day after the date on which the contract is authorized by the BAIFA Board or the date the firm is notified that it was not selected, whichever is later, for objections to consultant selection.

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the BAIFA Board 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 Executive Director. The Executive Director will respond to the protest in writing, based on the recommendation of a BAIFA review officer.

Should the protester wish to appeal the decision of the Executive Director, it may file a written appeal with the BAIFA Board, no later than 4:00 p.m. on the third working day after receipt of the written response from the Executive Director. The BAIFA Board's decision will be the final agency decision.

Authorization to award a contract to a particular firm by the BAIFA Board 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 Executive Director or, if the Executive Director's decision is appealed, until the decision of the BAIFA Board.

## **F. Public Records**

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

If the Proposer believes any SOQ content contains trade secrets or other proprietary information that the proposer believes would cause substantial injury to the proposer's competitive position if disclosed, the proposer may request that BAIFA withhold from disclosure such proprietary materials by marking each page containing proprietary information, as confidential and shall include the following notice at the front of its SOQ:

“The data on the following pages of this SOQ 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 SOQ, 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 SOQ confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the Proposer may not designate any required SOQ forms or the Cost Proposal as confidential. Consequently, any language purporting to render any SOQ forms or the Cost Proposal as confidential or proprietary will be regarded as ineffective and will be disregarded.**

In the event properly marked data is requested pursuant to the California Public Records Act, the Proposer will be advised of the request. If the SOQ requests that 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, does not include the statement described above at the front of its SOQ, and does not 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.

### **G. Organizational Conflict of Interest**

**A firm serving as the prime consultant for the BAIFA's Express Lane Program Management is not eligible for this Utility Service Establishment and Utility Relocation Coordination project.**

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

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

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

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

#### **H. Cooperative Use**

The Metropolitan Transportation Commission (MTC), Metropolitan Transportation Commission Service Authority for Freeways and Expressways (MTC SAFE), Bay Area Toll Authority (BATA) and Bay Area Headquarters Authority (BAHA), may utilize this RFQ to obtain utility service establishment and utility relocation coordination for non-express lane projects, at the same terms and conditions included in this RFQ and firm's SOQ's during the period of time that the contract resulting from this RFQ are in effect.

## APPENDIX A, SCOPE OF WORK

The Consultant shall complete utility coordination with utility companies including PG&E, AT&T, Verizon and other wireless communication companies to establish the required electrical and communication services for the BAIFA Express Lane Network. In the near term, the Consultant's effort is expected to focus on Phase 1 projects, refer to *Appendix D, Maps*, for a list of Phase 1 projects. At BAIFA's discretion, the scope of work may also include utility coordination and establishment for future Tier 1 Express Lane Projects. The Consultant shall work closely with BAIFA, STA, Caltrans and utility companies to prepare the needed service establishment. In addition, the Consultant shall be responsible for coordinating with agencies and consultants in other related contracts and projects. This includes, but is not limited to:

- Utility Companies
- BAIFA's design and environmental planning (PA/ED) consultants
- BAIFA's final design PS&E consultants
- BAIFA's Toll System Integration, Communications, System Management and Project Management consultants
- California Department of Transportation (Caltrans)
- Agencies and consultants with projects in the Project vicinity
- Agencies and consultants with related Highway Improvement projects (including Express Lanes projects being completed within the limits of the Tier 1 projects)

The Consultant shall perform all work necessary to establish electrical and communication services for the project. This scope includes but is not limited to utility verification, utility conflict resolution, utility relocation, and billings, identifying utility constraints and responsibilities of impacted utilities, determining if the acquisition of additional property rights is required to establish the new utility services. Identifying the limits and widths of any required easements must be included. The Consultant shall be responsible for the preparation, submittal and approval of all accompanying documents (i.e., permits, agreements, etc.). Engineering services to complete easement acquisitions are included in this scope of work. The Consultant may utilize subconsultants as needed for property appraisal, acquisition services, or any other element associated with this scope of work.

Caltrans, as owner-operator of the freeway system, will provide independent quality assurance of the preparation of the documents required for the project. BAIFA, as owner-operator of the Express Lane network, will provide oversight and review of all documents specifically related to the Express Lanes. All project services and deliverables must adhere to current California PUC, PG&E, AT&T, Verizon, Caltrans, and other utility purveyor requirements. These requirements include adherence to design standards, regulations, policies and procedures for all work on the freeway/Interstate system and within State Right of Way at the time of project construction advertisement.

Compliance with current Federal Highway Administration (FHWA) mandated requirements is also necessary for all work on the Interstate system. Any work beyond the limits of the State Right of Way must adhere to current standards for the appropriate local agency. All work must be

performed and work products prepared in a format and manner customarily anticipated by the appropriate approving agency (i.e., City, County, State or Federal).

The Consultant may be asked to assist on other non-express lane projects that may require utility service establishment and utility relocation coordination. Other non-express lane projects include, but are not limited to, building, rehabilitation, and highways and freeways.

### **Task 1 – Task Management**

The Consultant shall coordinate with the BAIFA Project Manager or designated staff on a day-to-day basis; preparing agendas and records of meetings; preparing and maintaining a project schedule; preparing presentations and/or handouts for various meetings; coordinating with other agencies and consultants; and other general task management activities. This task also includes preparing monthly invoices and associated progress reports. When service needs and utility relocations are identified, the Consultant shall prepare and maintain a project schedule that details the completion schedule for each planned service request or utility relocation.

### **Task 2 – Prepare Permits and Agreements to Obtain Utility Services**

The Consultant shall prepare all utility engineering documents, utility service applications/requests and complete any agreements for submission and approval. Working with Caltrans and BAIFA staff, the Consultant shall determine the appropriate permits and agreements required. This task shall include but not limited to any work required for establishing services for communications and power to the Express Lane Infrastructure (e.g. VTMS, tolling system equipment, Over Head Sign Structures, etc.) as well as additional services such as those needed for highway lighting and ramp metering. Coordination with utility service, telecommunications and wireless service providers is also included. Establishing a master agreement between the different utility providers and BAIFA for the ongoing maintenance and operation of the Express Lane network is also required. Preparation and obtaining approval of Caltrans R/W activities and Utility Certification, Encroachment Permits and Right of Way Certification are included in this task.

### **Task 3 – Coordinate Utility Relocation and Conflict Resolution**

The Consultant shall perform quality control reviews of the verification of existing utilities undertaken by BAIFA's design consultants, including any work required to review existing plans and/or as-builts. This task also includes conducting field reviews of Phase 1 projects of the BAIFA Express Lane network. The Consultant shall review utility potholing results obtained from the design consultant and prepare conflict maps that are required to resolve any utility conflicts. This task shall include identifying utility infrastructure needs, inspecting existing facilities, and preparing an engineering estimate for construction of the utility services and/or relocations.

### **Task 4 – Utility Easement Engineering and Acquisition Services**

The Consultant shall provide engineering support for determining utility easement requirements and provide right-of-way engineering services to determine utility easement requirements. This task shall include property appraisals, acquisition services and engineering support. It is assumed that the Phase 1 project will only require property right acquisitions for utility easements. No additional highway right-of-way needs are anticipated with the Phase 1 projects and are not included in this task. For estimating purposes, please assume that 140 electrical service points and 35 communication service points will be required. Utility easement acquisitions may be required

at 20 service point locations (20 affected property owners).

**Task 5 – Longitudinal Utility Encroachment Variance**

Separate longitudinal utility encroachment variances may be required for each of the four (4) Phase 1 projects. The Consultant shall prepare the Caltrans Longitudinal Utility Encroachment Variance Requests required by Caltrans. Approval of the variance requests or relocation of facilities in question is also included in this task.

**Task 6 – Support Services during Advertisement and Construction**

The Consultant shall provide construction support during advertisement and construction of these projects. This task shall include, but is not limited to, responding to bid inquiries and Request For Information (RFI's) regarding the Consultant's work.

**Task 7 – Other As-Needed Tasks**

The Consultant shall provide support for other as-needed tasks as assigned by BAIFA, MTC, MTC SAFE, BAIFA, BATA and BAHA. From time to time, BAIFA, MTC, MTC SAFE, BAIFA, BATA and BAHA may need assistance with yet to be identified tasks including, but not limited to Utility Service Establishment and Utility Relocation Coordination that may be necessary to support delivery of BAIFA's express lanes network and/or other non-express lane projects that require utility service establishment and utility relocation coordination.

**APPENDIX B, 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:

Bill Dodd  
Federal D. Glover  
Scott Haggerty  
Bijan Sartipi  
James P. Spering  
Amy Rein Worth

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any 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 C, BAIFA'S STANDARD CONSULTANT AGREEMENT**

*Instructions: Red*  
*Choices: Blue or Purple*

PROFESSIONAL SERVICES AGREEMENT

between

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY

and

NAME OF CONSULTANT

for

UTILITY SERVICE ESTABLISHMENT AND  
UTILITY RELOCATION COORDINATION

FISCAL YEARS 2013-2014 to 2015-2016

PROFESSIONAL SERVICES AGREEMENT  
Between BAY AREA INFRASTRUCTURE FINANCING AUTHORITY  
And INSERT NAME OF CONSULTANT  
For UTILITY SERVICE ESTABLISHMENT AND  
UTILITY RELOCATION COORDINATION

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

**RECITALS**

WHEREAS, BAIFA intends to secure services for engineering services including assistance in Utility Service Establishment and Utility Relocation Coordination for the Regional Express Lane Network Phase 1 Project and related work (herein called "the Project"); and

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

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

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

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

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

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

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

### 1.1 PROGRESS REPORTS

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

### 2. PERIOD OF PERFORMANCE

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

### 3. COMPENSATION AND METHOD OF PAYMENT

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

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

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

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

4. KEY PERSONNEL

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

5. AMENDMENTS

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

6. TERMINATION

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

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

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

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

## 7. INSURANCE REQUIREMENTS

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

8. INDEPENDENT CONTRACTOR

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

9. INDEMNIFICATION

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

CONSULTANT further agrees to immediately defend the BAIFA Indemnified Parties with respect to any Claims and Losses if such Claims and Losses are alleged to arise out of or relate to any allegations of CONSULTANT’s breach of obligations under this Agreement, willful misconduct, or negligent services performed under this Agreement. As part of this defense obligation, CONSULTANT agrees to either retain counsel to defend the BAIFA Indemnified Parties or pay charges of the BAIFA Indemnified Parties’ attorneys with regard to the Claims and Losses. CONSULTANT’s duty to defend shall apply and be enforced even if it is alleged that the acts, omissions or failures to act of parties other than CONSULTANT, including the BAIFA Indemnified Parties, caused or contributed to the Claims and Losses.

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

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

#### 10. DATA TO BE FURNISHED BY BAIFA

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

#### 11. OWNERSHIP OF WORK PRODUCTS

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

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

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

## 12. SUBCONTRACTS

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

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

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

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

## 13. ASSIGNMENT OF AGREEMENT

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

## 14. RECORDS

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



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:

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

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

## **ATTACHMENT A-1, TASK ORDER PROCESS**

### Detailed Task Order Process:

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

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

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

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

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

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

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

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

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

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

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

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

**ATTACHMENT A-2**  
Task Order Form

1. Task Order No. (include FY)	
2. Title of Task:	
3. BAIFA Task Lead (if different from BAIFA Project Manager):	
4. Description of work:	<i>Summarize key task expectations. For more information, see attached <u>Task Order Budget and Schedule and Detailed Description of Work (attached)</u>.</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>	<u>Total Cost*</u>
1.		\$1
2.		\$1
3.		\$1
4.		\$1
5.		\$1
6.		\$1
7.		\$1
	<b>Total:</b>	<b>\$7.00</b>

\*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
<b>Total:</b>					<b>\$5.00</b>

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

BAY AREA INFRASTRUCTURE  
 FINANCING AUTHORITY

CONSULTANT

\_\_\_\_\_  
 Melanie Crotty, Operations Director  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Insert name and title of authorized individual  
 Date: \_\_\_\_\_

Task Order Schedule

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

Detailed Description of Work

**Task Order #: Title**

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

**ATTACHMENT B**

**Not Used**

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

**TASK ORDERS**

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

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

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

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

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

**ATTACHMENT D**  
**Key Personnel Assignments**

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

**ATTACHMENT E**  
**Subconsultant List**

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

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

**ATTACHMENT F**  
**Insurance Requirements**

1. INSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. Certificates of Insurance. Prior to commencement of any work hereunder, CONSULTANT shall deliver to BAIFA Certificates of Insurance verifying the aforementioned

coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

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

### 3. ADDITIONAL INSUREDS

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

- Bay Area Infrastructure Financing Authority (BAIFA)
- Bay Area Toll Authority (BATA)
- Metropolitan Transportation Commission (MTC)
- California Department of Transportation (Caltrans)

**APPENDIX C-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 boxes at left that required coverages will be provided within five (5) days of BAIFA's notice to firm that it is the successful proposer.
—	<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.
—	<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 BAIFA. BAIFA, MTC, BATA, Caltrans, 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 \$5,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
—	<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 \$2,000,000 per claim. The policy shall provide coverage for all work performed by CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on

	<p>behalf of the CONSULTANT. No contract or agreement between CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Errors &amp; Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.</p>
—	<p><u>Property Insurance.</u> Property Insurance covering CONSULTANT'S own business personal property and equipment to be used in performance of 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>B. <u>Acceptable Insurers.</u> All policies will be issued by insurers acceptable to BAIFA, generally with a Best's Rating of A-VIII or better.</p> <p>C. <u>Self-Insurance.</u> 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>D. <u>Deductibles and Retentions.</u> 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> <p>E. <u>Claims Made Coverage.</u> If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, CONSULTANT shall:</p> <ol style="list-style-type: none"><li>(1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;</li><li>(2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and</li><li>(3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, CONSULTANT shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.</li></ol> <p>F. <u>Failure to Maintain Insurance.</u> All insurance specified above shall remain in force until all work or services to be performed are satisfactorily</p>

completed, all of CONSULTANT’s personnel, subcontractors, and equipment have been removed from BAIFA’s property, and the work or services have been formally accepted. CONSULTANT must notify BAIFA if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

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

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

3. **ADDITIONAL INSUREDS**

The following entities are to be named as Additional Insureds under applicable sections of this Appendix C-1 and as BAIFA Indemnified Parties, pursuant to the Agreement.

- Bay Area Infrastructure Financing Authority (BAIFA)
- Bay Area Toll Authority (BATA)
- Metropolitan Transportation Commission (MTC)
- California Department of Transportation (Caltrans)

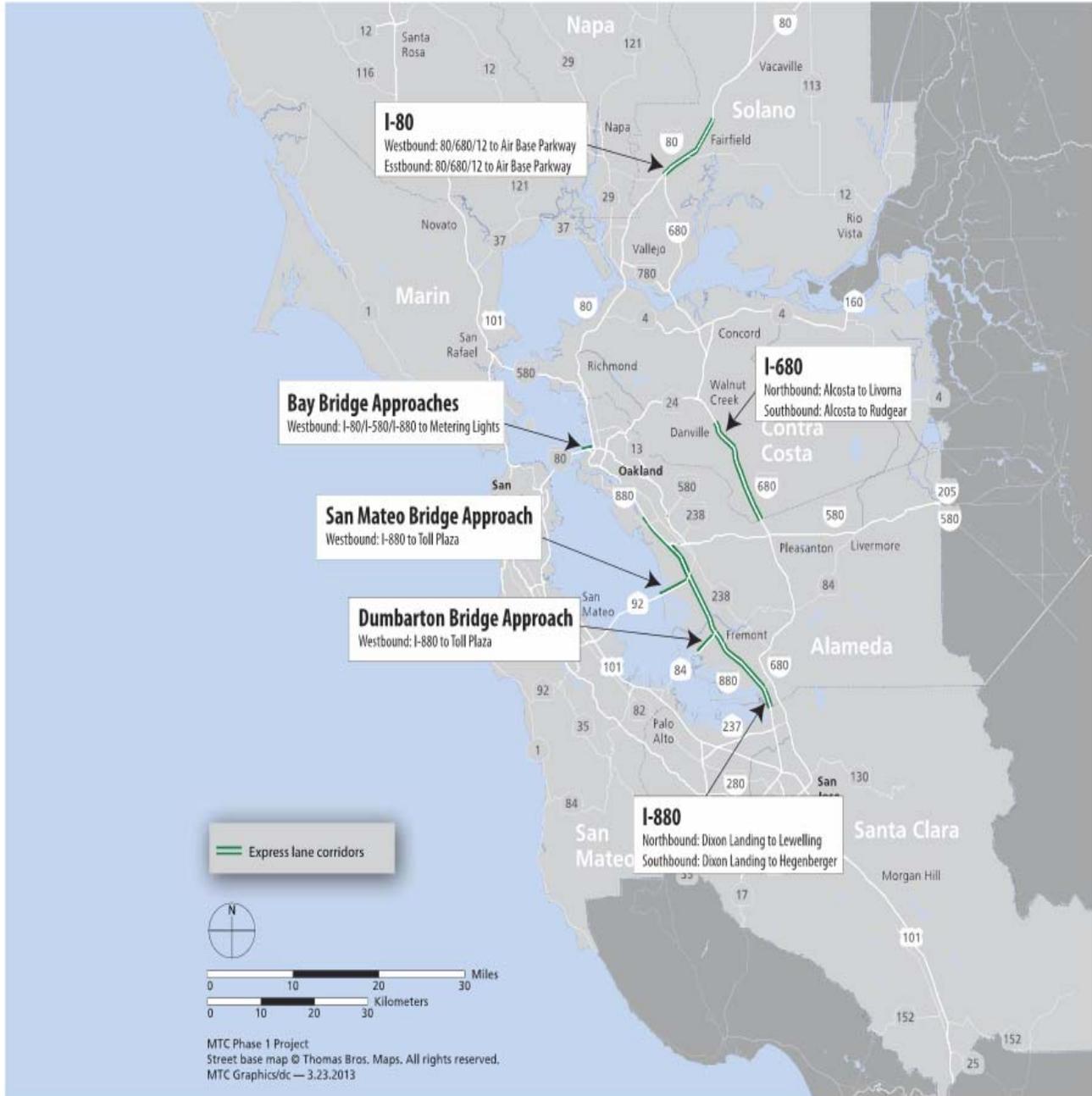
**By signing below, you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within five (5) days of BAIFA’s notice to firm that it is the successful proposer.**

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 the date for protesting RFQ provisions. If such objections are not brought to BAIFA’s attention consistent with the protest provisions of this RFQ, compliance with the insurance requirements will be assumed.**

## APPENDIX D, MAPS

### REGIONAL EXPRESS LANES PHASE 1 PROJECT



### REGIONAL EXPRESS LANES NETWORK

